

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Birch Communications)	Complaint Nos. 864678
)	1744445
Complaints Regarding)	1987131
Unauthorized Change of)	2083516
Subscribers' Telecommunications Carrier)	

ORDER

Adopted: April 24, 2019**Released: April 24, 2019**

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider four complaints¹ alleging that Birch Communications (Birch) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Birch's actions violated the Commission's carrier change rules, and we therefore grant Complainants' complaints.

2. Section 258 of the Communications Act of 1934 (the Act), as amended, prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁴ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the subscriber's order.⁵ The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁶

¹ See Appendix.

² See 47 CFR §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a).

⁴ See 47 CFR § 64.1120.

⁵ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁶ These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges

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3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.⁷ Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Birch of the complaints.⁸ Birch responded to the complaints, stating that it had obtained authorization from the Complainants. However, in each case Birch failed to provide any proof of authorization, including a third-party verification (TPV) recording. The failure of Birch to provide proof of verified authorization is presumed to be clear and convincing evidence of violations.⁹ Therefore, we find that Birch's actions resulted in violations of our carrier change rules, and we discuss Birch's liability below.¹⁰ We also will forward a copy of the record of these proceedings to our Enforcement Bureau to determine what additional actions may be necessary.

4. Birch must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹¹ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants' authorized carriers nor Birch may pursue any collection against Complainants for those charges.¹² Any charges imposed by Birch on the Complainants for service provided after this 30-day period shall be paid by the Complainants to the authorized carriers at the rates the Complainants were paying the authorized carriers at the time of the unauthorized change of their telecommunications service providers.¹³

5. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaints against Birch Communications ARE GRANTED.

6. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that Birch may not pursue any collection against Complainants for those charges.

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to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. *See id.* §§ 64.1140, 64.1170.

⁷ *See* Appendix.

⁸ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

⁹ *See id.* § 64.1150(d).

¹⁰ If any Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules. *Id.* § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. *See id.* § 1.719.

¹¹ *See id.* § 64.1160(b).

¹² *See id.* § 64.1160(d).

¹³ *See id.* § 64.1140, 64.1160.

7. IT IS FURTHER ORDERED that this Order is effective upon release.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nancy Stevenson", is positioned above the printed name.

Nancy Stevenson
Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>
864678	March 16, 2016	April 15, 2016
1744445	June 30, 2017	August 10, 2017
1987131	October 16, 2017	November 20, 2017
2083516	December 2, 2017	January 8, 2018