

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

In the Matter of)
Birch Communications) Complaint No. 2638064/2638110
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: May 2, 2019

Released: May 2, 2019

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

1. In this Order, we consider the complaint¹ alleging that Birch Communications (Birch) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.² We conclude that Birch's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), 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 Complaint Nos. 2638064 and 2638110 were filed by the same Complainant on July 16, 2018.

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

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,⁷ we notified Birch of the complaint and Birch responded on August 20, 2018.⁸ Birch states that authorization was received and confirmed through third party verification (TPV). We have reviewed the TPV and find that the TPV meets the verification procedures in the Commission's rules.⁹ Therefore, we find that Birch's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.¹⁰

4. 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 complaint filed against Birch Communications IS DENIED.

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

Sincerely,



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

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percent of those charges 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 *Id.* § 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).

⁸ Birch's Response to Complaint Nos. 2638064/2638110, received August 20, 2018.

⁹ We note that Complainant maintains that the voice on the TPV recording is not hers and that the birthdate provided by the person on the call is not hers. We therefore will forward a copy of the record in this proceeding to the Enforcement Bureau for further review.

¹⁰ *See* 47 CFR § 64.1100(e). If 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.