

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

In the Matter of	)	
	)	
Birch Communications	)	Complaint Nos. 1920495
	)	2020730
Complaints Regarding	)	2047725
Unauthorized Change of	)	2098925
Subscriber's Telecommunications Carrier	)	2140451
	)	2199917
	)	2252129
	)	2296075
	)	2324820
	)	2353500
	)	2537418

**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 eleven complaints<sup>1</sup> alleging that Birch Communications (Birch) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that Birch's actions did not result in unauthorized changes in Complainants' telecommunications service providers as defined in the rules, and we deny 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.<sup>3</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>4</sup> 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.<sup>5</sup> The Commission also has adopted rules to limit the liability of subscribers when a carrier change

<sup>1</sup> See Appendix.

<sup>2</sup> See 47 CFR §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a).

<sup>4</sup> See 47 CFR § 64.1120.

<sup>5</sup> 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.

occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers are changed without authorization.<sup>6</sup>

3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.<sup>7</sup> Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Birch of the complaints and Birch responded.<sup>8</sup> In each case, Birch states that authorization was received and confirmed through third party verifications (TPVs). We have reviewed the TPVs and find that the TPVs comply with the verification procedures in the Commission's rules. We therefore find that Birch's actions did not result in "unauthorized changes" in Complainants' telecommunications service providers, as defined by the rules.<sup>9</sup>

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 complaints filed against Birch ARE 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

---

<sup>6</sup> 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 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.

<sup>7</sup> *See* Appendix.

<sup>8</sup> 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).

<sup>9</sup> *See id.* § 64.1100(e). If either 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.

**APPENDIX**

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
1920495	September 13, 2017	November 7, 2017
2020730	November 1, 2017	January 23, 2018
2047725	November 14, 2017	February 13, 2018
2098925	December 11, 2017	February 12, 2018
2140451	January 2, 2018	February 13, 2018
2199917	January 29, 2018	March 4, 2018
2252129	February 21, 2018	April 2, 2018
2296075	March 12, 2018	April 17, 2018
2324820	March 23, 2018	April 27, 2018
2353500	April 4, 2018	May 15, 2018
2537418	June 1, 2018	July 9, 2018