

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

In the Matter of
Clear Choice Communications
Complaint Regarding
Unauthorized Change of
Subscribers' Telecommunications Carrier
Complaint No. 2098819

ORDER

Adopted: April 26, 2019

Released: April 29, 2019

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

1. In this Order, we consider the complaint<sup>1</sup> alleging that Clear Choice Communications (Clear Choice) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>2</sup> We conclude that Clear Choice's actions violated the Commission's carrier change rules, and we therefore grant Complainant's complaint.

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

<sup>1</sup> See Informal Complaint No. 2098819, filed Dec. 11, 2017.

<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.

<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

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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, we notified Clear Choice of the complaint.<sup>7</sup> Clear Choice responded, stating that it received an order from a local carrier that Complainant had selected Clear Choice as his long distance carrier. As a result, Clear Choice established an account for Complainant.<sup>8</sup> However, Clear Choice failed to provide any proof of authorization for the carrier change, including a TPV recording. The failure of Clear Choice to provide proof of verified authorization is presumed to be clear and convincing evidence of a violation.<sup>9</sup> Therefore, we find that Clear Choice's actions resulted in a violation of our carrier change rules, and we discuss Clear Choice's liability below.<sup>10</sup>

4. Clear Choice must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>11</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Choice may pursue any collection against Complainant for those charges.<sup>12</sup> Any charges imposed by Clear Choice on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of his telecommunications service provider.<sup>13</sup>

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 complaint against Clear Choice Communications IS GRANTED.

6. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Clear Choice Communications may not pursue any collection against Complainant 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.

<sup>7</sup> *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).

<sup>8</sup> *See* Clear Choice Response to Informal Complaint No. 2098819, filed Jan. 26, 2018.

<sup>9</sup> *See* 47 CFR § 64.1150(d).

<sup>10</sup> If Complainant is unsatisfied with the resolution of its complaint, the 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.

<sup>11</sup> *See id.* § 64.1160(b).

<sup>12</sup> *See id.* § 64.1160(d).

<sup>13</sup> *See id.* § 64.1140, 64.1160.

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

Sincerely,



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