

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

In the Matter of )
Cytel, Inc. ) Complaint Nos. 297801
Complaints Regarding ) 429718
Unauthorized Change of ) 842535
Subscriber's Telecommunications Carrier )

ORDER

Adopted: April 30, 2019

Released: May 1, 2019

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

1. In this Order, we consider three complaints<sup>1</sup> alleging that Cytel, Inc. (Cytel) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants as required by the Commission's rules.<sup>2</sup> We find that Cytel's actions violated the Commission's carrier change rules, and we therefore grant Complainants' complaints.

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.<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 are changed without authorization.<sup>6</sup>

<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.

<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

(continued....)

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 Cytel of the complaints.<sup>8</sup> Cytel responded, stating that it obtained authorization from Complainants through third-party verification (TPV). The evidence shows that Cytel's TPVs were apparently fabricated to mislead Complainants and regulatory officials into believing that it had verified the consumers' authorization, when in fact Cytel had not followed any of the Commission's verification procedures set forth in Section 64.1120(c).<sup>9</sup> Cytel has failed to produce clear and convincing evidence that it complied with the Commission's verification procedures prior to submitting or executing requests to switch the Complainants' long distance carriers.<sup>10</sup> We therefore find that Cytel's actions were in violation of our carrier change rules, and we discuss Cytel's liability below.<sup>11</sup>

4. Cytel must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized changes in accordance with the Commission's liability rules.<sup>12</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and that neither the Complainants' authorized carriers nor Cytel may pursue any collection against Complainants for those charges.<sup>13</sup> Any charges imposed by Cytel on the subscribers for service provided after this 30-day period shall be paid by the subscribers at the rates the subscribers were paying to the authorized carriers at the time of the unauthorized changes.<sup>14</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 complaints filed against Cytel, Inc. ARE GRANTED.

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

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

(Continued from previous page)

---

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.* § 64.1120(c). *See also OneLink Communications, Inc., et al*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403 (2016) (proposing a \$4,300,000 forfeiture against Cytel for, among other things, fabricating TPV recordings and slamming consumers).

<sup>10</sup> *See United American Technologies, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 6631, 6633, para. 4 (CGB 2008) (finding that because the TPV submitted by the carrier had been altered, the carrier failed to produce clear and convincing evidence that complainant authorized a carrier change).

<sup>11</sup> If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of 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 Complainant. *See id.* § 1.719.

<sup>12</sup> *See id.* § 64.1160(b).

<sup>13</sup> *See id.* § 64.1160(d).

<sup>14</sup> *See id.* §§ 64.1140, 64.1160.

FEDERAL COMMUNICATIONS COMMISSION



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

## APPENDIX

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
297801	May 19, 2015	May 29, 2015
429718	July 27, 2015	December 18, 2015
842535	March 1, 2016	March 10, 2016