Before the

Federal Communications Commission

**Washington, D.C. 20554**

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| In the Matter of  Birch Communications  Complaints Regarding  Unauthorized Change of  Subscriber’s Telecommunications Carrier | **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)** | Complaint Nos. 1426304  1978830  2199917  2247175  2271888  2306222  2365800  2383307  2420110  2434520  2574553  2632104 |
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**ORDER**

**Adopted: May 1, 2019 Released: May 2, 2019**

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

1. In this Order, we consider twelve complaints[[1]](#footnote-3) alleging that Birch Communications (Birch) changed Complainants’ telecommunications service providers without obtaining authorization and verification from Complainants as required by the Commission’s rules.[[2]](#footnote-4) 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, 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]](#footnote-5) The Commission’s implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[[4]](#footnote-6) 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]](#footnote-7) 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]](#footnote-8)
3. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers had been changed without Complainants’ authorization.[[7]](#footnote-9) Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Birch of the complaints and Birch responded.[[8]](#footnote-10) 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 meet the verification requirements in the Commission’s rules. Therefore, we find that Birch’s actions did not result in “unauthorized changes” in Complainants’ telecommunications service providers, as defined by the rules.[[9]](#footnote-11)
4. We note, however, that each Complainant alleges that Birch’s telemarketer misrepresented either their identity (stating that they were calling on behalf of the Complainant’s current service provider) or the purpose of the call. The Commission has made clear that misrepresentations to obtain a consumer’s authorization to change carriers constitute unjust and unreasonable practices in violation of section 201(b) of the Act.[[10]](#footnote-12) We therefore will refer the record in these proceedings to our Enforcement Bureau to determine what additional actions may be necessary.[[11]](#footnote-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 filed against Birch Communications ARE DENIED.
6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



**APPENDIX**

COMPLAINT DATE OF DATE OF

NUMBER COMPLAINT RESPONSE

1978830 October 12, 2017 November 13, 2017

2199917 January 29, 2018 March 4, 2018

2247175 February 19, 2018 March 23, 2018

1426304 January 31, 2017 March 4, 2017

2271888 February 28, 2018 April 5, 2018

2306222 March 15, 2018 May 7, 2018

2383307 April 17, 2018 May 24, 2018

2365800 April 10, 2018 May 15, 2018

2420110 May 2, 2018 July 30, 2018

2434520 May 8, 2018 June 19, 2018

2574553 June 18, 2018 July 24, 2018

2632104 July 12, 2018 August 21, 2018

1. *See* Appendix. [↑](#footnote-ref-3)
2. *See* 47 CFR §§ 64.1100 – 64.1190. [↑](#footnote-ref-4)
3. 47 U.S.C. § 258(a). [↑](#footnote-ref-5)
4. *See* 47 CFR § 64.1120. [↑](#footnote-ref-6)
5. *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. [↑](#footnote-ref-7)
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 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. [↑](#footnote-ref-8)
7. *See* Appendix. [↑](#footnote-ref-9)
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). [↑](#footnote-ref-10)
9. *See* *id*. § 64.1100(e). 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. [↑](#footnote-ref-11)
10. *See, e.g., Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723 (2017); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711 (2015). [↑](#footnote-ref-12)
11. In June 2018, the Commission codified a rule to prohibit misrepresentations on sales calls to further reduce the incidence of slamming. Under the revised rule, upon a finding of material misrepresentation during the sales call, the consumer’s authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a switch, *e.g.*, a TPV. Sales misrepresentations may not be cured by a facially valid TPV. *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018); 47 CFR § 64.1120(a)(1)(i)(A). The new rule became effective on August 16, 2018. *See Consumer and Governmental Affairs Bureau Announces August 16, 2018 Effective Date for Slamming and Cramming Rules*, CG Docket No. 17-169, Public Notice, DA 18-747 (rel. July 19, 2018). We will apply the new rule to misconduct occurring on or after the effective date of the rule. [↑](#footnote-ref-13)