Before the

Federal Communications Commission

**Washington, D.C. 20554**

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| In the Matter of  Clear Rate Communications, Inc.  Complaint Regarding  Unauthorized Change of  Subscriber’s Telecommunications Carrier | **)**  **)**  **)**  **)**  **)**  **)**  **)** | Complaint No. 707187 |

**ORDER**

**Adopted: May 2, 2019 Released: May 3, 2019**

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

1. In this Order, we consider the complaint[[1]](#footnote-3) alleging that Clear Rate Communications, Inc. (Clear Rate) changed Complainant’s telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission’s rules.[[2]](#footnote-4) We conclude that Clear Rate’s actions did not result in an unauthorized change in Complainant’s telecommunications service provider as defined in the rules, 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]](#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 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 Rate of the complaint and Clear Rate responded.[[7]](#footnote-9) Clear Rate stated that Complainant’s authorization was received and confirmed through third-party verification (TPV).[[8]](#footnote-10) We have reviewed the TPV and find that the TPV meets the verification requirements in the Commission’s rules. Therefore, we find that Clear Rate’s actions did not result in an “unauthorized change” in Complainant’s telecommunications service provider, as defined by the rules.[[9]](#footnote-11)
4. We note, however, that Complainant alleges that Clear Rate’s telemarketer misrepresented their identity (stating that they were calling on behalf of the Complainant’s current service provider) and 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 this proceeding 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 complaint filed against Clear Rate Communications, Inc. IS DENIED.
6. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



1. *See* Informal Complaint No. 707187, filed Dec. 14, 2015. [↑](#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. 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-9)
8. *See* Clear Rate Response to Informal Complaint No. 707187, filed Jan. 15, 2016. [↑](#footnote-ref-10)
9. *See* *id*. § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, 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 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. [↑](#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)