

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

In the Matter of )
)
Silv Communications, Inc. ) Complaint Nos. 573064
) 2151992
Complaints Regarding ) 2159390
Unauthorized Change of )
Subscriber's Telecommunications Carrier )

ORDER

Adopted: May 6, 2019

Released: May 6, 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 Silv Communications, Inc. (Silv) 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 Silv'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 were 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 percent of those charges

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3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Silv of the complaints.<sup>7</sup> Silv responded to the complaints, stating that it obtained authorization from Complainants through third-party verification (TPV).<sup>8</sup>

4. We have reviewed the TPVs and find that they are not intelligible. The verifiers' speech is so rapid as to be extremely difficult to understand and, in many places, completely indecipherable. We find that Silv did not provide clear and convincing evidence of an authorized carrier change.<sup>9</sup> Therefore, we find that Silv's actions were in violation of our carrier change rules, and we discuss Silv's liability below.<sup>10</sup>

5. Silv 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>11</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 Silv may pursue any collection against Complainants for those charges.<sup>12</sup> Any charges imposed by Silv 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 change.<sup>13</sup>

6. 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 Silv Communications, Inc. ARE GRANTED.

7. 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 change occurred and that Silv Communications, Inc. may not pursue any collection against Complainants 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* Appendix.

<sup>9</sup> *See Reduced Rate Long Distance, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11492, 11494, para. 4 (CGB 2008) (finding that the TPV was not intelligible and therefore the carrier had not provided clear and convincing evidence of a valid authorized carrier change).

<sup>10</sup> If any 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 the 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 the 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.

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

FEDERAL COMMUNICATIONS COMMISSION



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

## APPENDIX

INFORMAL  
COMPLAINT  
NUMBER

DATE OF  
COMPLAINT

DATE OF  
RESPONSE

573064

October 6, 2015

October 14, 2015

2151992

January 8, 2018

January 15, 2018

2159390

January 10, 2018

January 19, 2018