

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

In the Matter of )
Telplex Communications ) Complaint Nos. 2372902
Complaints Regarding ) 2673163
Unauthorized Change of ) 2706192
Subscriber's Telecommunications Carrier ) 2706906
) 2752843
)

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 five complaints<sup>1</sup> alleging that Telplex Communications (Telplex) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants as required by the Commission's rules.<sup>2</sup> We conclude that Telplex'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.<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> 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

(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 Telplex of the complaints and Telplex responded.<sup>8</sup> In each case, Telplex 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 Telplex's actions did not result in "unauthorized changes" in Complainants' telecommunications service providers, as defined by the rules.<sup>9</sup>

4. We note, however, that three of the six Complainants allege that Telplex'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.<sup>10</sup> 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.<sup>11</sup> We therefore will refer the record in these proceedings to our Enforcement Bureau to determine what additional actions may be necessary.<sup>12</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 Telplex Communications ARE DENIED.

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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.

<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.* § 64.1100(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.

<sup>10</sup> *See* Informal Complaint Nos. 2372902, 2673163, and 2706906.

<sup>11</sup> *See, e.g., Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723 (2017); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711 (2015).

<sup>12</sup> 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.

6. 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

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
2372902	April 12, 2018	April 25, 2018
2673163	July 31, 2018	September 7, 2018
2706192	August 14, 2018	September 13, 2018
2706906	August 14, 2018	September 14, 2018
2752843	September 5, 2018	October 5, 2018