

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

In the Matter of)	
)	
Long Distance Consolidated Billing Company)	Complaint Nos. 264883
)	865347
Complaints Regarding)	1052419
Unauthorized Change of)	2208830
Subscriber’s Telecommunications Carrier)	

ORDER

Adopted: May 14, 2019

Released: May 15, 2019

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

1. In this Order, we consider four complaints¹ alleging that Long Distance Consolidated Billing Company (LDCB) changed Complainants’ telecommunications service providers without obtaining authorization and verification from Complainants as required by the Commission’s rules.² We find that LDCB’s actions violated the Commission’s slamming 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.³ The Commission’s implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁴ Specifically, a carrier must: (1) obtain the subscriber’s written or electronically signed authorization in a format that satisfies our rules; (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 order.⁵ 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

¹ See Appendix.

² See 47 CFR §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a).

⁴ See 47 CFR § 64.1120.

⁵ 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.

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

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3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization. Pursuant to our rules, we notified LDCB of the complaints.⁷ LDCB responded to the complaints, stating that it obtained authorization from Complainants through third-party verifications (TPVs).⁸

4. In these four cases, LDCB submitted requests to change Complainants' carriers for two separate services: long distance and regional toll. In each of its TPVs, however, LDCB's verifier asks the consumers if they "authorize [LDCB] to provide *service* for your regional toll calls" and at no time confirmed whether the consumers authorized a *carrier change* for regional toll service.⁹ A switch from one carrier to another carrier differs from a change to one's service.¹⁰ The Commission has explained that "any description of the carrier change transaction . . . shall not be misleading" and emphasized that third-party verifiers must "convey explicitly that consumers will have authorized a carrier change," and not, for instance, an upgrade in existing service or bill consolidation.¹¹ The Commission also explained that "[t]he record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call."¹² The Commission further stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."¹³ We therefore find that LDCB's actions were in violation of our slamming rules, and we discuss LDCB's liability below.¹⁴

5. We note that two of the four Complainants allege that LDCB's telemarketer misrepresented their identity by stating that they were calling on behalf of the Complainant's current service provider.¹⁵ 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.¹⁶ We therefore will refer the record in these proceedings to our Enforcement Bureau to determine what additional actions may be necessary.¹⁷

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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.

⁷ *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).

⁸ *See* Appendix.

⁹ *See* TPVs provided with LDCB's responses (emphasis added).

¹⁰ *See Long Distance Consolidated Billing Company*, Notice of Apparent Liability, 30 FCC Rcd 8664, 8668-69, para. 14 (2015), Forfeiture Order, FCC 19-25, at paras. 21- 23, 2019 WL 1314938 (rel. Mar. 21, 2019) (finding that LDCB's TPVs did not comply with the rules as "verifying authorization to provide 'service' is not sufficient to confirm that the consumer wants to make a carrier change"); *see also Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) (the verifier's question—do you have authority to make changes to your long distance service?—did not confirm that the person was authorizing a change that would result in receiving service from a different carrier).

¹¹ *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Fourth Report and Order, 23 FCC Rcd 493, 501, para. 19 (2008) (*Fourth Report and Order*); *see also* 47 CFR § 64.1120(c)(3)(iii).

¹² *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

¹³ *Id.*

¹⁴ 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.

6. LDCB 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.¹⁸ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants' authorized carriers nor LDCB may pursue any collection against Complainants for those charges.¹⁹ Any charges imposed by LDCB 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.²⁰

7. 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 Long Distance Consolidated Billing Company ARE GRANTED.

8. 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 Long Distance Consolidated Billing Company may not pursue any collection against Complainants for those charges.

9. 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

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¹⁵ See Informal Complaint Nos. 264883 and 2208830.

¹⁶ See, e.g., *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723 (2017); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711 (2015).

¹⁷ 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.

¹⁸ See *id.* § 64.1160(b).

¹⁹ See *id.* § 64.1160(d).

²⁰ See *id.* §§ 64.1140, 64.1160.

APPENDIX

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
264883	April 29, 2015	June 8, 2015
865347	March 17, 2016	March 29, 2016
1052419	June 23, 2016	July 19, 2016
2208830	February 1, 2018	February 23, 2018