

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

In the Matter of )
)
Peak Communications, Inc. ) Complaint Nos. 1548718
) 1852336
Complaints Regarding )
Unauthorized Change of )
Subscriber's Telecommunications Carrier )

ORDER

Adopted: May 24, 2019

Released: May 24, 2019

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

1. In this Order, we consider two complaints<sup>1</sup> alleging that Peak Communications, Inc. (Peak) 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 Peak'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.<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 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.<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

(continued...)

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

4. In each TPV, Peak's verifier does not confirm that the person is authorized to make a *carrier change*. Instead, the verifier asks the person on the call if he/she is "authorized by the telephone account holder to make changes and to incur charges on this telephone account." An affirmative response to this question does not establish whether the person is authorized to make a carrier change. 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.<sup>9</sup> 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."<sup>10</sup> The Commission further stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."<sup>11</sup> We therefore find that Peak's actions were in violation of our slamming rules, and we discuss Peak's liability below.<sup>12</sup>

5. Peak 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>13</sup> 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 Peak may pursue any collection against Complainants for those charges.<sup>14</sup> Any charges imposed by Peak 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>15</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 Peak Communications, Inc. ARE GRANTED.

(Continued from previous page) \_\_\_\_\_

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 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).

<sup>10</sup> *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

<sup>11</sup> *Id.*

<sup>12</sup> If either 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>13</sup> *See id.* § 64.1160(b).

<sup>14</sup> *See id.* § 64.1160(d).

<sup>15</sup> *See id.* §§ 64.1140, 64.1160.

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 changes occurred and that Peak Communications, Inc. may not pursue any collection against Complainants for those charges.

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

| <u>COMPLAINT<br/>NUMBER</u> | <u>DATE OF<br/>COMPLAINT</u> | <u>DATE OF<br/>RESPONSE</u> |
|-----------------------------|------------------------------|-----------------------------|
| 1548718                     | April 5, 2017                | May 11, 2017                |
| 1852336                     | August 15, 2017              | September 11, 2017          |