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

In the Matter of	)	
	)	
Peak Communications, Inc.	)	Complaint No. 709359
	)	
Complaint 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 the complaint[1] alleging that Peak Communications, Inc. (Peak) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[2] We find that Peak's actions violated the Commission's slamming rules, and we therefore grant 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] 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]

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[1] *See* Informal Complaint No. 709359 (filed Dec. 15, 2015).

[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 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.

3. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization. Pursuant to our rules, we notified Peak of the complaint.[7] Peak responded, stating that it obtained authorization from Complainant through third-party verification (TPV).[8] However, Peak failed to provide any proof of authorization for the carrier change, including a TPV recording. We subsequently contacted Peak to request the TPV.

4. Peak responded that it "retains verifications for a minimum of two years as required by FCC regulations" and that because the verification was completed more than two years ago, Peak had not retained the TPV.[9] However, we first notified Peak of the complaint on January 6, 2016, and Peak's response was filed on June 13, 2016, less than two years from the date Peak completed the verification. Thus, Peak was required to have maintained and preserved records of Complainant's authorization at the time it initially responded to the complaint.[10] The failure of Peak to provide proof of verified authorization is presumed to be clear and convincing evidence of a violation.[11] Therefore, we find that Peak's actions resulted in a violation of our slamming rules, and we discuss Peak's liability below.[12]

5. Peak must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.[13] We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Peak may pursue any collection against Complainant for those charges.[14] Any charges imposed by Peak on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change.[15]

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 complaint filed against Peak Communications, Inc. IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), the Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Peak Communications, Inc. may not pursue any collection against Complainant for those charges.

[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* Peak Response to Informal Complaint No. 709359 (filed June 13, 2016). Peak stated that the verification was completed on October 31, 2014.

[9] *See* Peak Response to Informal Complaint No. 709359 (filed Oct. 8, 2018).

[10] *See* 47 CFR § 64.1120(c)(3)(iv).

[11] *Id.* § 64.1150(d).

[12] If Complainant is unsatisfied with the resolution of its complaint, the 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.

[13] *See id.* § 64.1160(b).

[14] *See id.* § 64.1160(d).

[15] *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
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