

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

In the Matter of)
)
Peak Communications, Inc.) Complaint Nos. 1667175
) 2754353
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 the complaints¹ 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.² We conclude that Peak's actions did not result in an unauthorized change in Complainants' telecommunications service providers, 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.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 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 Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization. Pursuant to our rules, we notified Peak of the complaints.⁷ Peak responded to the complaints, stating that authorization was received and confirmed through third-party verifications (TPVs), but that the TPVs were no longer available due to the dates of the carrier switches.⁸ The Commission's rules require that carriers preserve records of verification for a period of two years.⁹ Thus, based on the evidence in the record, we conclude that Peak's actions did not result in an "unauthorized change" in Complainants' telecommunications service providers, as defined in the rules.¹⁰

4. 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 DENIED.

5. 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

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* 47 CFR § 64.1120(c)(3)(iv).

¹⁰ *See id.* § 64.1100(e). If either 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.

APPENDIX

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>
1667175	May 25, 2017	July 17, 2017
2754353	September 6, 2018	November 2, 2018