

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

In the Matter of	)	
	)	
Long Distance Access, Inc.	)	Complaint Nos. 10-S2911057
	)	10-S2684441
Complaints Regarding	)	11-S2924337
Unauthorized Change of	)	11-S2995232
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: June 3, 2019**

**Released: June 3, 2019**

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we address three petitions (collectively, Petitions) filed by Long Distance Access, Inc. (LDA) asking us to reconsider four Consumer Policy Division (Division) orders finding that LDA changed consumers' telecommunications service providers without proper authorization verified in accordance with the Commission's slamming rules.<sup>1</sup> On reconsideration, we affirm that LDA's actions violated the Commission's rules and deny the Petitions.<sup>2</sup>

**II. BACKGROUND**

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 and follow specific verification procedures 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> If the carrier uses an independent third party to verify the subscriber's consent, the rules require, among other things, that the verifier elicit confirmation that "the person on the [verification] call is authorized to make the carrier change."<sup>6</sup>

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<sup>1</sup> See Long Distance Access, Inc., Petition for Reconsideration Taken Pursuant to Delegated Authority (filed May 31, 2011) (Petition 1); Long Distance Access, Inc., Petition for Reconsideration Taken Pursuant to Delegated Authority (filed May 17, 2013) (Petition 2); Long Distance Access, Inc., Petition for Reconsideration Taken Pursuant to Delegated Authority (filed May 17, 2013) (Petition 3). Each of LDA's Petitions makes the same arguments regarding the Division's findings and therefore we address all of them in this Order.

<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 of the Commission's rules details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

<sup>6</sup> *Id.* § 64.1120(c)(3)(iii).

3. In 2008 the Commission amended the third-party verification rules requiring that “any description of the carrier change transaction . . . not be misleading” and emphasizing 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 a] bill consolidation.”<sup>7</sup> The Commission 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>8</sup> The Commission further stated that “such practices are misleading and unreasonable, and warrant specific treatment in our rules.”<sup>9</sup>

4. Four consumers (Complainants) filed slamming complaints against LDA, each alleging that their telecommunications service providers had been changed to LDA without their authorization.<sup>10</sup> Pursuant to our rules, the Division notified LDA of the complaints.<sup>11</sup> In its responses, LDA stated that the Complainants’ authorizations were received and confirmed through third-party verification recordings (TPVs).<sup>12</sup> The Division reviewed the complaints, LDA’s responses, and the TPVs in each case, and determined that LDA’s actions violated the Commission’s slamming rules.<sup>13</sup> Specifically, the Division stated that “[a] switch from one carrier to another carrier differs from merely making changes to the customer’s service” and emphasized that “any description of the carrier change transaction . . . shall not be misleading.”<sup>14</sup> LDA seeks reconsideration of the *Division Orders*.

### III. DISCUSSION

5. Based on the record before us, we affirm the *Division Orders* and deny LDA’s Petitions. As discussed below, we find that LDA violated the Commission’s slamming rules when, in each of the four cases, LDA’s verifier failed to confirm that the consumer wanted to make a *carrier change* and used misleading language that obscured the true purpose of the call.

6. Our rules set forth detailed procedures that carriers using a TPV to verify consumer authorization must follow. While the rules do not prescribe specific language that a TPV must include, they do require that all third-party verifiers “elicit, at a minimum the identity of the subscriber; [and] confirmation that the person on the call is authorized to make the *carrier change* . . . .”<sup>15</sup> The Commission has specifically stated that it “seek[s] to ensure that verifiers confirm the consumer’s intent to receive service *from a different carrier*, regardless of whether that is phrased as a ‘change,’ a ‘switch,’

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<sup>7</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, at 501-02, paras. 18-20 (2008) (*Fourth Report and Order*); 47 CFR § 64.1120(c)(3)(iii).

<sup>8</sup> *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

<sup>9</sup> *Id.*

<sup>10</sup> See Informal Complaint Nos. 10-S2911057 (filed Dec. 30, 2010); 10-S2684441 (filed June 3, 2010); 11-S2924337 (filed Jan. 13, 2011); 11-S2995232 (filed Feb. 28, 2011).

<sup>11</sup> See 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>12</sup> As discussed above, TPV is one method a carrier may use to verify and record a consumer’s authorization to change his or her preferred long distance carrier. *Id.* § 64.1120(c)(3).

<sup>13</sup> See *Long Distance Access, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 26 FCC Rcd 6365 (CGB 2011); *Long Distance Access, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4739 (CGB 2013 (granting three complaints) (collectively, *Division Orders*).

<sup>14</sup> See *Division Orders* at para. 4.

<sup>15</sup> 47 CFR § 64.1120(c)(3)(iii) (emphasis added).

or any other non-misleading term.”<sup>16</sup> The carrier’s verifier must confirm that the person on the call: (a) is authorized to make a carrier change; and (b) actually wants a carrier change—not merely an upgrade to existing service, bill consolidation, or any other transaction.<sup>17</sup>

7. Each of LDA’s TPVs fell short of our rules. Its verifier asked the consumer if he/she was the “authorized person to make changes on the account.”<sup>18</sup> This question was misleading and did not confirm that the person would be authorizing a change that would result in receiving service *from a different carrier*. The Commission has been clear that changing or upgrading service is not equivalent to changing carriers, and LDA’s TPV statements suggesting that it was seeking verification that the person was authorized to make account changes were misleading and violated section 64.1120(c)(3).<sup>19</sup>

8. Despite using this language, LDA argues that the TPVs satisfied the Commission’s requirements; that the TPVs did not include any misleading statements; and that “changing long distance service is the only change discussed in the entire TPV.”<sup>20</sup> LDA maintains that the Division “select[ed] one single line in the TPV[s] to reach a conclusion and fails to consider the totality of the TPV[s].”<sup>21</sup> LDA acknowledges, however, that its verifiers told the Complainants that the purpose of the verification was to confirm a “change in *service*” and asked them if they were authorizing LDA to make “changes on the account.”<sup>22</sup> We thus cannot find that its TPVs did not include misleading statements, consistent with our rules and precedent.

9. The Commission has explained that “some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose.”<sup>23</sup> Thus, “the scripts used by the independent third-party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”<sup>24</sup> Providing “context” for the consumer through other questions and statements, as LDA attempted to do here, does not elicit the consumer’s authorization for a carrier change as the rules require. As the Commission has stated on numerous occasions, this rule is crucial to protecting

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<sup>16</sup> *Fourth Report and Order*, 23 FCC Rcd at 502, para. 20 (emphasis added).

<sup>17</sup> 47 CFR § 64.1120(c)(3)(iii).

<sup>18</sup> See TPVs and TPV transcripts provided with LDA’s complaint responses. In one case, the verifier asks whether the consumer was “duly authorized to incur charges and make changes on the telephone account.” See Informal Complaint No. 10-S2684441.

<sup>19</sup> See *Central Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10396-97, para. 10 (2016); see also, e.g., *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding “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*”); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same); *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723, 3730-31, paras. 20-21 (2017) (*Advantage Forfeiture Order*).

<sup>20</sup> See, e.g., Petition 1 at 3.

<sup>21</sup> *Id.* at 2. Specifically, LDA states that the Division failed to consider the language authorizing the “switch” and “changing of long distance service appearing several times throughout the TPV.” See, e.g., *id.* at 2.

<sup>22</sup> See, e.g., Petition 2 at 2-3 (emphasis added).

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

<sup>24</sup> *Id.* (quoting *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*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

consumers, particularly where the Complainants contend that they did not intend to change carriers at all.<sup>25</sup>

10. For the reasons stated above, we affirm the *Division Orders* and deny LDA's Petitions.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, sections 1.106 and 1.719 of the Commission's rules, 47 CFR §§ 1.106, 1.719, and authority delegated by sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, the Petitions for Reconsideration filed by Long Distance Access, Inc., on May 31, 2011 and May 17, 2013 (two petitions), ARE DENIED.

12. IT IS FURTHER ORDERED that this Order is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone  
Deputy Chief  
Consumer and Governmental Affairs Bureau

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<sup>25</sup> See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3730, para. 21; *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13714, para. 8 (2015).