

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

In the Matter of
Clear Rate Communications, Inc.
Complaint Regarding
Unauthorized Change of
Subscriber's Telecommunications Carrier
Complaint No. 2987004

ORDER

Adopted: July 26, 2019

Released: July 26, 2019

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

1. In this Order, we consider a complaint alleging that Clear Rate Communications, Inc. (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules. We find that Clear Rate'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. The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur. 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. The Commission has also 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.

1 See Informal Complaint No. 2987004 (filed Dec. 17, 2018); see also 47 CFR §§ 64.1100 – 64.1190.

2 47 U.S.C. § 258(a).

3 See 47 CFR § 64.1120.

4 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.

5 These rules require the unauthorized 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. In June 2018, the Commission codified a rule to prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ 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 carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization. In the complaint, Complainant also alleges that Clear Rate's telemarketer told her that "[Clear Rate] had bought out the local carrier, Frontier, and I needed to sign up with them . . . I found out this was a lie but am still getting bills [from Clear Rate]."⁹

5. Pursuant to our rules, we notified Clear Rate of the complaint, and Clear Rate responded.¹⁰ Clear Rate stated that authorization was received and confirmed through a TPV. It also provided a recording of the sales call and stated that Clear Rate's telemarketer "never claimed [that Clear Rate] would be purchasing Frontier Communications and did not misrepresent [herself]."¹¹

6. We have reviewed all the evidence in the record and find Complainant's allegation of a sales call misrepresentation to be credible due to its specificity and consistency with other complaints we have reviewed. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's claim. On the sales call recording provided by Clear Rate, Clear Rate's representative asks to speak to the person who takes care of the Frontier phone bill and states that the purpose of the call is to notify the consumer that her bill next month could be a lot cheaper. Complainant specifically asks the representative during the call, "oh, you're not going to be Frontier anymore?" The Clear Rate representative responds, "No ma'am." This exchange could easily be misunderstood to imply that Frontier was becoming Clear Rate through a buy-out, as Complainant alleges. The sales call recording does not refute Complainant's claim that Clear Rate's telemarketer made a material misrepresentation to her that affected her decision to switch carriers.

7. Based on the evidence in the record, we conclude that a material misrepresentation occurred on Clear Rate's sales call, and that Complainant's authorization to change carriers is therefore invalid. We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

⁷ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A). The revised 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).

⁸ See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

⁹ See Informal Complaint No. 2987004.

¹⁰ 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).

¹¹ See Clear Rate Responses to Informal Complaint No. 2987004 (filed Jan. 28, 2019 and May 17, 2019).

8. 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 Clear Rate Communications, Inc. IS GRANTED.

9. 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 Clear Rate Communications, Inc. may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Nancy Stevenson
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