

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 ON RECONSIDERATION

Adopted: August 27, 2019

Released: August 28, 2019

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we address a petition filed by Peak Communications, Inc. (Peak) asking us to reconsider a Consumer Policy Division (Division) order finding that Peak changed consumers' telecommunications service providers without proper authorization verified in accordance with the Commission's slamming rules. On reconsideration, we affirm that Peak violated the Commission's rules and deny the Petition.

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. 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. 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. 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."

1 See Peak Communications, Inc., Petition for Reconsideration (filed June 24, 2019) (Petition).

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

6 Id. § 64.1120(c)(3)(iii).

3. In 2008, the Commission adopted the *Fourth Report and Order*, which, among other things, amended the third-party verification rules.⁷ There, the Commission required that “any description of the carrier change transaction . . . 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 a] bill consolidation.”⁸

4. Two consumers (Complainants) filed slamming complaints against Peak, each alleging that their telecommunications service providers had been changed to Peak without their authorization.⁹ Pursuant to our rules, the Division notified Peak of the complaints.¹⁰ In its responses, Peak stated that the Complainants’ authorizations were received and confirmed through third-party verification recordings (TPVs).¹¹ The Division reviewed the complaints, Peak’s responses, and the TPVs in each case, and determined that Peak’s actions violated the Commission’s slamming rules.¹² Specifically, the Division found that Peak’s verifier did not confirm whether the individuals on the calls were authorized to make a carrier change as required by our rules.¹³ Peak seeks reconsideration of the *Division Order*.

III. DISCUSSION

5. Based on the record before us, we affirm the *Division Order* and deny Peak’s Petition. As discussed below, we find that Peak violated the Commission’s slamming rules when, in each case, Peak’s verifier failed to confirm that the consumer was authorized to make a carrier change.

6. In each TPV, Peak’s verifier asks the person on the call to confirm that they “are 18 years or older and authorized by the telephone account owner to make changes and to incur charges on this telephone account.”¹⁴ Despite using this language, Peak argues that it did not violate the slamming rules because, “based on the totality of the circumstances . . . it is more than reasonable for [Peak] to believe [the] person is authorized to make a carrier change to an account”¹⁵ Peak states that “if a person is authorized to ‘make changes and incur charges’ on an account, . . . that person is as a *de facto* matter, authorized to change the carrier providing service to that account.”¹⁶ We disagree.

⁷ 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 (2008) (*Fourth Report and Order*).

⁸ See *Fourth Report and Order*, 23 FCC Rcd at 501-02, paras. 18-20; 47 CFR § 64.1120(c)(3)(iii).

⁹ See Informal Complaint No. 1548718 (filed Apr. 5, 2017); Informal Complaint No. 1852336 (filed Aug. 15, 2017).

¹⁰ 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).

¹¹ 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).

¹² See *Peak Communications, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, DA 19-464 (CGB rel. May 24, 2019) (*Division Order*).

¹³ See *Division Order* at para. 4.

¹⁴ See TPVs provided with Peak’s complaint responses.

¹⁵ Petition at 5-6. Peak states that these circumstances include the verifier’s introductory explanation of the nature of the call; the verifier receiving affirmation from the consumer that the call was intended to verify a change in carrier; the consumer’s confirmation that he or she is authorized to make changes to the account; and the consumer’s understanding that the verification will result in a change in their service provider. *Id.* at 5.

¹⁶ *Id.*

7. Section 64.1120(c)(3) of the rules sets forth detailed procedures that carriers using a TPV to verify consumer authorization must follow.¹⁷ The procedures specifically require that the carrier's third-party verifier "elicit, at a minimum the identity of the subscriber; [and] confirmation that the person on the call is authorized to make the *carrier change*"¹⁸ In the TPVs at issue here, the verifier's statement that they were confirming the person was 18 years or older and authorized to make changes and incur charges on the telephone account simply did not establish that the person was authorized to make a carrier change.

8. We are not persuaded that because Peak's verifier made other statements during the verification regarding the purpose of the call and requested other information from the consumers such as dates of birth, its TPVs were "perfectly acceptable" under Commission rules.¹⁹ Providing context for the consumer through other questions and statements on the verification call does not elicit confirmation that the consumer is authorized to make a carrier change as the rules require. As the Commission has stated on numerous occasions, this rule is crucial to protecting consumers, particularly where the Complainants contend that they did not intend to change carriers at all.²⁰

9. For the reasons stated above, we affirm the *Division Order* and deny Peak's Petition.

IV. ORDERING CLAUSES

10. 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 Petition for Reconsideration filed by Peak Communications, Inc., on June 24, 2019, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone
Deputy Chief
Consumer and Governmental Affairs Bureau

¹⁷ 47 CFR § 64.1120(c)(3).

¹⁸ *Id.* § 64.1120(c)(3)(iii) (emphasis added).

¹⁹ See Petition at 4, 6.

²⁰ 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).