

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

In the Matter of)
)
Telplex Communications) Complaint No. 3380396
)
Complaint Regarding)
Unauthorized Change of)
Subscriber’s Telecommunications Carrier)

ORDER

Adopted: September 26, 2019

Released: September 26, 2019

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

1. In this Order, we consider a complaint alleging that Telplex Communications (Telplex) changed Complainant’s telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission’s rules.¹ We find that Telplex’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.² The Commission’s implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ 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.⁴ 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.⁵

¹ See Informal Complaint No. 3380396 (filed July 9, 2019); 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 to Telplex without Complainant's authorization.⁹ In the complaint, Complainant also alleges that Telplex's telemarketer contacted his medical office, representing himself as an AT&T employee. Complainant specifically states that "Telplex advised his staff that they were calling from AT&T and they were going to provide a new plan for the office to bring down the rates of the service and to save. The staff member stated that she would check with the physician before she provided any authorization."¹⁰ The record shows that the staff member identified herself as a medical assistant with the office.

5. According to Complainant, "Telplex called back again, representing themselves as AT&T." At that time the medical office staff requested a written proposal for the new plan to show to the doctor in charge of the practice. Complainant states that he was unaware that Telplex had switched his office's service until he received a welcome letter from Telplex. He maintains that he called Telplex right away and advised the company that there was no authorization for the switch. Complainant states that Telplex then "advised his staff that if they did NOT pay the bill, the lines would be turned off." The medical practice's telephone services were then turned off on July 1, 2019, which meant that the doctor's regular patients could not make appointments and the county's trauma unit could not reach the medical practice.¹¹ With the complaint, Complainant provided copies of the invoices his office received from Telplex.

6. Pursuant to our rules, we notified Telplex of the complaint, and Telplex responded.¹² Telplex states that authorization was received and confirmed through a TPV. It also states that Complainant's "unverified allegations, made without any personal knowledge, are directly contradicted by two third-party verifications occurring immediately after the sales representative spoke with the . . . employee, who expressly authorized the carrier change, and did so expressly 'understand[ing] the

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. 3380396.

¹⁰ *Id.*

¹¹ *Id.*

¹² 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).

representative called you on behalf of TELPLEX COMMUNICATIONS and not AT&T and TELPLEX COMMUNICATIONS and AT&T are two SEPARATE companies COMPETING with each other.”¹³ Telplex further argues that it is not required to guarantee the actual authority of the individual claiming to grant authorization for a service change, nor is Telplex liable if the individual does not in fact have actual authority.¹⁴ In addition to the TPV, Telplex provided a “quality control” checklist that Telplex says its telemarketers follow when marketing its services, along with the transcript of the TPV call that followed the initial sales call. Telplex did not, however, provide a sales call recording or other evidence related to the sales call, such as the script used by the telemarketer, to rebut Complainant’s claim of misrepresentation.

7. The Division carefully reviewed all the evidence in the record provided by both the Complainant and Telplex. Based on the evidence in the record, we 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 Telplex has failed to provide persuasive evidence to rebut Complainant’s claim and therefore that Complainant’s authorization to change carriers is invalid. We therefore find that Telplex’s actions resulted in an unauthorized change in Complainant’s telecommunications service provider, as defined by the rules, and we discuss Telplex’s liability below.¹⁵

8. Telplex 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.¹⁶ 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 Telplex may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Telplex 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 his/her authorized carrier at the time of the unauthorized change.¹⁸

9. 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 Telplex Communications IS GRANTED.

10. 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 Telplex Communications may not pursue any collection against Complainant for those charges.

¹³ Telplex Response to Informal Complaint No. 3380396 at 1 (filed Aug. 9, 2019) (Telplex Response).

¹⁴ Telplex Response at 2-3.

¹⁵ If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission’s rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of 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 Complainant. *See id.* § 1.719.

¹⁶ *See id.* § 64.1160(b).

¹⁷ *See id.* § 64.1160(d).

¹⁸ *See id.* §§ 64.1140, 64.1160.

11. 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