

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

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| In the Matter of |) | |
| |) | |
| Long Distance Consolidated Billing Co. |) | Complaint Nos. 09-S0296945 |
| |) | 10-S003003 |
| Complaints Regarding |) | 10-S2741307 |
| Unauthorized Change of |) | 11-S3273047 |
| Subscriber's Telecommunications Carrier |) | 11-S3247564 |
| |) | 13-S3746446 |

ORDER ON RECONSIDERATION

Adopted: December 8, 2020

Released: December 9, 2020

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. 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.¹ The Commission’s implementing rules require, among other things, that a carrier obtain subscriber authorization and follow specific verification procedures before a carrier change may occur.² Specifically, when a carrier uses a third party to verify the carrier change, it must confirm that the consumer has the authority to change carriers, wishes to change carriers, and understands that he or she is authorizing a carrier change.³

2. Long Distance Consolidated Billing Co. (LDCB), a long distance carrier, filed two petitions for reconsideration (collectively, Petitions) asking us to reconsider two Consumer Policy Division (Division) orders finding that LDCB changed six consumers’ telecommunications service providers without proper authorization verified in accordance with the Commission’s slamming rules.⁴

3. We conclude that the third-party verifications the Division addressed in the *Division Orders* were consistent with those the Division previously reviewed and found did not violate the Commission’s rules. Based on LDCB’s reliance on those decisions, we grant the Petitions, reverse the

¹ 47 U.S.C. § 258(a).

² See 47 CFR § 64.1120.

³ *Id.* § 64.1120(c)(3)(iii).

⁴ See Long Distance Consolidated Billing Co., Petition for Reconsideration (filed Apr. 29, 2013) (Petition 1); Long Distance Consolidated Billing Co., Petition for Reconsideration (filed Jan. 21, 2016) (Petition 2). Both of LDCB’s Petitions make the same arguments regarding the Division’s findings, and therefore we address both of them in this Order; see also *Long Distance Consolidated Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 3387 (CGB 2013) (*Division Slamming Order 1*) (granting five complaints); *Long Distance Consolidated Billing Co., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 30 FCC Rcd 14412 (CGB 2015) (*Division Slamming Order 2*) (granting one complaint); (collectively, *Division Orders*).

Division Orders, and deny the complaints.⁵ We now clarify, however, that those verifications do not comply with the Commission's more recent interpretation of the rules and that LDCB may not rely on them in the future.

II. BACKGROUND

4. The Commission's rules implementing section 258 require that a carrier: (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 to confirm orders electronically; or (3) use an appropriately qualified independent third party to verify the order.⁶ If the carrier uses an independent third party to verify subscriber authorization, 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."⁷

5. In 2008, the Commission made clear that "any description of the carrier change transaction . . . not be misleading" and 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 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."⁹ The Commission further stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."¹⁰

6. Between 2009 and 2013, six consumers (Complainants) complained that their carriers had been changed to LDCB without their authorization.¹¹ Pursuant to our rules, the Division notified LDCB of the complaints.¹² LDCB responded that the Complainants' authorizations were obtained and confirmed through third-party verification recordings.¹³ The Division reviewed the complaints, LDCB's responses, and the third-party verifications in each case, and determined that LDCB violated the Commission's slamming rules.

7. Specifically, the Division found that LDCB failed to clearly disclose that accepting the offer would result in a change of carriers or to elicit from the person on the call that he or she was authorized to make a carrier change. The *Division Orders* stated that "[a] switch from one carrier to

⁵ See 47 CFR §§ 64.1100-64.1190. In reversing the *Division Orders*, we deny the complaints that are the subject of those orders.

⁶ 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.

⁷ *Id.* § 64.1120(c)(3)(iii).

⁸ 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*). The revised verification requirements in Section 64.1120(c)(3)(iii) became effective on July 30, 2008; 47 CFR § 64.1120(c)(3)(iii).

⁹ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 18.

¹⁰ *Id.*

¹¹ See Informal Complaint Nos. 09-S0296945 (filed Oct. 9, 2009); 10-S003003 (filed Sept. 14, 2010); 10-S2741307 (filed Aug. 3, 2010); 11-S3273047 (filed Sept. 24, 2011); 11-S3247564 (filed Sept. 1, 2011); 13-S3746446 (filed Nov. 14, 2013).

¹² 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).

¹³ As discussed above, third-party verification 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).

another carrier differs from merely making changes to the customer's service" and that "any description of the carrier change transaction . . . shall not be misleading."¹⁴ LDCB seeks reconsideration of the *Division Orders*, relying in part on two earlier Division orders that found ostensibly "identical" third-party verification scripts used by LDCB were not misleading to consumers.¹⁵

III. DISCUSSION

8. Based on the record before us, we grant LDCB's Petitions and reverse the *Division Orders*. Although we conclude that LDCB's third-party verifications did not comply with the rules as the Commission has interpreted them, we find that the third-party verification at issue in one complaint complied with our interpretation at the time of the verification. In the remaining five cases, LDCB's third-party verifications were consistent with the verifications that the Division, in earlier rulings issued to LDCB, had reviewed and found not to violate the Commission's rules.

9. For one complaint, we find that the verifier did not convey explicitly that the consumer was authorizing a carrier change.¹⁶ LDCB completed the third-party verification, however, prior to the Commission's 2008 revision to the verification rules, which made explicit that any description of the carrier change not be misleading.¹⁷ Thus, we conclude that at the time LDCB performed the third-party verification, the lack of any express confirmation that the consumer was authorizing a carrier change did not violate the prior version of the Commission's rules. Thus, we reverse the Division's findings in that case and deny Informal Complaint No. 09-S0296945.

10. For the other five complaints, we find that at the time LDCB's verifier sought confirmation that the consumers were authorized to make a carrier change, LDCB's verification scripts were consistent with LDCB scripts the Division, in earlier orders, had found not to violate the slamming rules. We therefore reverse the *Division Orders*, grant the Petitions, and deny the complaints, as explained below.

11. In its Petitions, LDCB argues that the third-party verifications associated with the complaints contained questions "identical" to those the Division had previously reviewed in two other slamming cases—both involving LDCB itself—and found compliant with the rules.¹⁸ LDCB asserts the Division cannot subsequently find that the third-party verifications under review here were deficient when those third-party verifications were performed after the Division had issued the earlier slamming orders.¹⁹ We acknowledge that, at the time of the carrier switches that are the subject of these complaints, the Division had applied the Commission's rules to find that the third-party verifications used by LDCB were not misleading to consumers. In these circumstances, we decline to hold LDCB liable for violating the Commission's rules in the cases under review here.

12. While we grant the Petitions based on LDCB's reasonable reliance on the earlier Division slamming orders, we also clarify that more recent cases supersede those orders, and therefore LDCB may

¹⁴ *Division Slamming Order 1*, 28 FCC Rcd at 3389, para. 4; *Division Slamming Order 2*, 30 FCC Rcd at 14414, para. 4 (each citing 47 CFR § 64.1120(c)(3)(iii); *Fourth Report and Order*, 23 FCC Rcd at 493, para. 1).

¹⁵ See Petition 1 at 5-6; Petition 2 at 5-6; see also *Long Distance Consolidated Billing Co., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 1139 (CGB 2010) (*LDCB Order 1*); *Long Distance Consolidated Billing Co., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 24 FCC Rcd 8870 (CGB 2009) (*LDCB Order 2*).

¹⁶ Informal Complaint No. 09-S0296945.

¹⁷ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 18; 47 CFR § 64.1120(c)(3)(iii).

¹⁸ See, e.g., Petition 1 at 5-6; see also *LDCB Order 1* and *LDCB Order 2*.

¹⁹ See, e.g., Petition 1 at 6.

not rely on those earlier Division orders when conducting third-party verifications.²⁰ Under our consistent interpretation of the rules since that time, LDCB's third-party verifications fail to confirm that the person on the call is authorized to make a carrier change and wants to make such change.

13. In 2008 the Commission set forth detailed procedures that carriers using a third-party verification recording to verify consumer authorization must follow. While the rules do not prescribe specific language for third-party verifications, 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*"²¹ The Commission has 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,' or any other non-misleading term."²² 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.²³

14. In each third-party verification, LDCB's verifier asked the person on the call if he/she was "the authorized person to have Long Distance Consolidated Billing provide this new long distance service for the business location."²⁴ First, this question neither confirmed that the person on the call was authorized to make a "carrier change" nor contained similarly clear language to confirm that the consumer was authorized to change or switch to a carrier other than the consumer's existing presubscribed carrier. Second, as the Commission has consistently held since 2012, the question misleadingly suggested that the transaction involved only a change in service and not necessarily a switch from one carrier to another.²⁵ These rulings undermine LDCB's argument that the only logical interpretation of an affirmative response to this question is that the person is authorized to make the carrier change.²⁶

15. There is no mention of a carrier change or carrier switch in the question. The phrase "new long distance service" does not necessarily indicate a change in carriers. It might, for example, refer to a service with different costs or features from the same carrier. The Commission has made the

²⁰ In 2012, for example, the Consumer and Governmental Affairs Bureau issued an order denying a carrier's petition for reconsideration of a Division slamming order, finding that "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*." See *Consumer Telecom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (*CTI Reconsideration Order*). And in several Commission-level orders that followed, the Commission found carriers in apparent violation of the slamming rules as their third-party verifications confirmed a change in *service* rather than a change in *carrier*. These apparent findings were affirmed in subsequent forfeiture orders. See *Consumer Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013), Forfeiture Order, 31 FCC Rcd 10435, 10439-40, para. 10 (2016); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014), Forfeiture Order, 31 FCC Rcd 10392, 10396-97, para. 10 (2016) (*Central Forfeiture Order*); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014), Forfeiture Order, 31 FCC Rcd 10413, 10417-18, para. 10 (2016); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843 (2013); Forfeiture Order, 32 FCC Rcd 3723, 3730-31, paras. 20-21 (2017) (*Advantage Forfeiture Order*); *Long Distance Consolidated Billing Co.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664 (2015), Forfeiture Order, 34 FCC Rcd 1871, 1880-81, paras. 22-23 (2019).

²¹ 47 CFR § 64.1120(c)(3)(iii) (emphasis added).

²² *Fourth Report and Order*, 23 FCC Rcd at 502, para. 20 (emphasis added).

²³ 47 CFR § 64.1120(c)(3)(iii).

²⁴ See third-party verifications and third-party verification transcripts provided with LDCB's complaint responses.

²⁵ See, e.g., Commission orders identified in note 20, *supra*.

²⁶ See Petition 1 at 3.

same observation repeatedly.²⁷ These Commission orders refute LDCB's contention that the misleading question on the third-party verification script clearly referred to a carrier change.²⁸

16. We also reject LDCB's argument that the question must be read in context with other third-party verification questions, and that when "read together" the only conclusion is that the person on the call is authorized to make a carrier change.²⁹ 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."³⁰ On review, and solely for purposes of clarifying our current interpretation of the relevant rules, we find that the "context" LDCB provided elsewhere in the third-party verification did not resolve the ambiguity regarding a carrier change and, therefore, did not serve as clear and convincing evidence that the individual who answered the phone was authorized to make a carrier change or that the consumer wanted to make such a change.³¹

17. Nor is it permissible to include one misleading question during the third-party verification in the hope that other questions might clear up any confusion about the transaction. Once any significant ambiguity or confusion is introduced during the verification process, other questions or statements will not necessarily dispel such confusion for the consumer. As the Commission has made clear on numerous occasions, the prohibition on introducing ambiguity is crucial to protecting consumers, particularly where the Complainants contend they did not intend to change carriers at all.³²

18. Our decision not to impose liability in this case is limited to the circumstances involving the complaints here and the Commission's rules and interpretations in effect at the time of these verifications, and does not apply to any subsequent complaints or verifications involving LDCB. While we therefore reverse the *Division Orders* and deny the associated complaints, we emphasize that if LDCB continues to use the third-party verification scripts at issue in these cases or any scripts that do not confirm that the consumer is authorized to make a carrier change or that do not convey explicitly that consumers will have authorized a carrier change and not, for instance, an upgrade or change in service, it will be in violation of the Commission's carrier change rules.³³

²⁷ See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3730-31, paras. 20-21; *Central Forfeiture Order*, 31 FCC Rcd at 10396-97, para. 10; see also, e.g., *CTI Reconsideration Order*, 27 FCC Rcd at 5345, para. 17 (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").

²⁸ See Petition 1 at 3 ("Indeed, LDCB's question elicits confirmation that the person on the call is 'the authorized person to have Long Distance Consolidated Billing [i.e., a different carrier from the person's current carrier] provide this new long distance service [i.e., a service that will replace the person's current service] for the business location.'") The bracketed language was not included in LDCB's third-party verifications.

²⁹ See Petition 1 at 4-5.

³⁰ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

³¹ See 47 CFR § 64.1150(d) (requiring proof of verification to contain "clear and convincing evidence of a valid authorized carrier change"); 47 CFR § 64.1120(c)(3)(iii) (requiring that third-party verification recordings contain, among other things, confirmation that the person on the call is both authorized to make a carrier change and wants to make a carrier change).

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

³³ We note LDCB's statement about pursuing payment from complainants. See Petition 2 at 1, n.3. Nothing in the FCC's rules addresses whether LDCB may attempt to re-bill or pursue collections against complainants in light of this decision, and we do not make any determination here regarding whether such re-billing or collections would be consistent with other applicable laws or regarding the amount of any charges to which LDCB may be entitled. The Commission has not imposed specific requirements governing LDCB's approaches to billing its customers or the

(continued....)

19. For the reasons discussed above, we grant LDCB's Petitions, reverse the *Division Orders*, and deny the complaints.³⁴

IV. ORDERING CLAUSES

20. 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 Consolidated Billing Co. on April 29, 2013 and January 21, 2016, **ARE GRANTED**.

21. **IT IS FURTHER 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 that are the subject of the *Division Orders* **ARE DENIED**.

22. **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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contractual relationship between carriers and their billing agents. *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*, First Order on Reconsideration, 15 FCC Rcd 8158, 8177, para. 38, n.104 (2000).

³⁴ If any complainants are unsatisfied with the resolution of their complaints, they 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 the 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 the complainant. *See id.* § 1.719.