

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

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| In the Matter of |) | |
| |) | |
| Long Distance Consolidated Billing Co. |) | Complaint Nos. 264883 |
| |) | 865347 |
| Complaints Regarding |) | 1052419 |
| Unauthorized Change of |) | 2208830 |
| Subscriber's Telecommunications Carrier |) | |

ORDER ON RECONSIDERATION

Adopted: December 21, 2020

Released: December 22, 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 a petition for reconsideration asking us to reconsider a Consumer Policy Division (Division) order finding that LDCB changed four consumers’ carriers without authorization verified in accordance with the Commission’s slamming rules.⁴ On reconsideration, we affirm that LDCB violated the Commission’s slamming rules and deny the Petition.⁵

II. BACKGROUND

3. 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

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 June 14, 2019) (Petition); see also Long Distance Consolidated Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 34 FCC Rcd 3232 (CGB 2019) (Division Order).

⁵ See 47 CFR §§ 64.1100-64.1190.

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.

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

4. The rules also require that “any description of the carrier change transaction . . . not be misleading” and 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 The Commission has explained 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,” and that “such practices are misleading and unreasonable, and warrant specific treatment in our rules.”⁹

5. Between 2015 and 2018, four consumers (Complainants) complained to the Commission that their carriers had been changed to LDCB without their authorization.¹⁰ Pursuant to our rules, the Division notified LDCB of the complaints.¹¹ LDCB responded that the Complainants’ authorizations were obtained and confirmed through third-party verification recordings.¹² 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.¹³

6. 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 authorizing a carrier change for regional toll service. The Division stated that “[a] switch from one carrier to another carrier differs from a change to one’s service” and that “any description of the carrier change transaction . . . shall not be misleading.”¹⁴ LDCB seeks reconsideration of the *Division Order*.

III. DISCUSSION

7. Based on the record, we affirm the *Division Order* and deny LDCB’s Petition. As discussed below, we find that LDCB violated the Commission’s slamming rules when, in each of the four cases, LDCB’s verifier failed to obtain express confirmation from the consumer that he or she was authorizing a *carrier change* for regional toll service and used misleading language that obscured the true purpose of the call.¹⁵

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 See Informal Complaint Nos. 264883 (filed Apr. 29, 2015); 865347 (filed Mar. 17, 2016); 1052419 (filed June 23, 2016); 2208830 (filed Feb. 1, 2018). Two of the Complainants also alleged that LDCB’s telemarketers misrepresented their identities by stating that they were calling on behalf of the Complainant’s current service provider. See Informal Complaint Nos. 264883 and 2208830.

¹¹ 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).

¹² 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).

¹³ See *Division Order*, 34 FCC Rcd at 3233, para. 4.

¹⁴ See *id.*

¹⁵ See 47 CFR § 64.1120(c)(3)(iii); see also *Long Distance Consolidated Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order on Reconsideration, DA 20-1468 (Dec. 9, 2020).

8. The Commission's rules 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* . . ." ¹⁶ 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."¹⁷ 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 an existing service, bill consolidation, or any other transaction.¹⁸

9. At the time LDCB switched Complainants' carriers, the Commission's rules required that a carrier obtain separate authorizations for each service sold.¹⁹ LDCB submitted requests to change two separate services for each Complainant: long distance and regional toll. In each third-party verification, LDCB's verifier asks the person on the call if he/she "authorize[s] [LDCB] to provide *service* for your regional toll calls" and at no time confirms whether the consumers were authorizing a *carrier change* for regional toll service.²⁰

10. We find that LDCB's third-party verification failed to obtain express confirmation from the consumer that he or she was authorizing a carrier change for regional toll service. First, LDCB's question neither verified that the person on the call authorized a carrier change for regional toll service nor contained similarly clear language to confirm that the consumer wanted to change or switch to a carrier other than the consumer's existing presubscribed carrier for regional toll service. 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 for regional toll service.²¹ There is no mention of a carrier change or carrier switch in the question. The phrase "to provide service" does not necessarily indicate a change in carriers. It might, for example, refer to a service provided by the current carrier but at a different price or with different features. The Commission

¹⁶ *Id.* § 64.1120(c)(3)(iii) (emphasis added).

¹⁷ *Fourth Report and Order*, 23 FCC Rcd at 502, para. 20 (emphasis added).

¹⁸ 47 CFR § 64.1120(c)(3)(iii).

¹⁹ 47 CFR § 64.1120(b) (2018). The Commission has since eliminated the requirement to obtain separate authorizations. See *Protecting Consumers from Unauthorized Carrier Charges and Related Unauthorized Charges*, Report and Order, 33 FCC Rcd 5773, 5782-83, paras. 27-28 (2018).

²⁰ See third-party verifications and third-party verification transcripts provided with LDCB's complaint responses.

²¹ In 2012, for example, the Consumer and Governmental Affairs Bureau (Bureau) denied 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 later orders, the Commission found carriers apparently violated the slamming rules when 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*).

has made the same observation repeatedly.²² In fact, the Commission has specifically found that the same third-party verification script LDCB used to verify other carrier changes violates the slamming rules.²³ These rulings refute LDCB's contention that the question on its third-party verification script clearly referred to a carrier change for regional toll service.²⁴

11. We also reject LDCB's argument that "with the full context of the TPVs, there can be no mistake that the Complainants authorized a carrier change for their regional toll . . . service."²⁵ LDCB asserts that its third-party verifications included other statements and questions during the conversations with Complainants that prove they were authorizing a carrier change for regional toll service.²⁶ It argues that the verifier's question regarding regional toll service follows a question regarding a carrier change for "long distance calls." According to LDCB, the verifier's question "[d]o you also authorize LDCB to provide service for your regional toll calls?" refers back to the consumer's previous answers giving LDCB authorization to change long distance carriers.²⁷

12. 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."²⁸ We find that the "context" LDCB provided elsewhere in the third-party verification did not resolve the ambiguity regarding a carrier change for regional toll service, and, therefore, did not serve as clear and convincing evidence that the individual who answered the call was authorizing a carrier change for such service.²⁹ 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.³⁰

13. We also disagree with LDCB that the Division's order creates a "de facto requirement" that carriers use the term "carrier change."³¹ The rules do not require any "magic words," as LDCB argues. Rather, the rules simply require unambiguous statements to the consumer so they understand the choices they are making.

14. Finally, LDCB argues that the third-party verifications associated with the four complaints contained questions "substantially identical" to those in third-party verifications the Division had previously reviewed in two other slamming cases in 2009 and 2010 and found compliant with the

²² 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; *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010).

²³ See *Long Distance Consolidated Billing Co.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664 (2015) (*LDCB NAL*), Forfeiture Order, 34 FCC Rcd 1871, 1880-81, paras. 22-23 (2019) (*LDCB Forfeiture Order*).

²⁴ See Petition at 4.

²⁵ *Id.* at 7.

²⁶ *Id.* at 6-7.

²⁷ *Id.*

²⁸ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

²⁹ See 47 CFR 64.1150(d) (requiring proof of verification to contain "clear and convincing evidence of a valid authorized carrier change").

³⁰ 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).

³¹ Petition at 3-4.

rules.³² LDCB asserts the Division cannot subsequently find that the third-party verifications under review here were deficient.³³ By the time the Complainants filed their complaints between 2015 and 2018, the Commission had issued several slamming orders that made clear a third-party verification that does not elicit the consumer's confirmation that he/she is authorized to make a carrier change fails to comply with the rules.³⁴ And the Commission proposed a forfeiture against LDCB in 2015 finding that the company's third-party verification scripts apparently violated the rules as they did not confirm that the consumers were authorizing a carrier change for regional toll service.³⁵ Yet even with the benefit of these orders LDCB did not revise its third-party verification script, which sought confirmation from the consumer that he/she was authorizing a change in "service" for regional toll calls. We therefore conclude that LDCB was on notice at the time of the third-party verifications in these four cases that the third-party verification script it used violated the Commission's slamming rules.

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

IV. ORDERING CLAUSES

16. 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 Long Distance Consolidated Billing Co. on June 14, 2019, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone
Deputy Chief
Consumer and Governmental Affairs Bureau

³² See Petition at 8-9; see also *Long Distance Consolidated Billing Co., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 1139 (CGB 2010); *Long Distance Consolidated Billing Co., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 24 FCC Rcd 8870 (CGB 2009).

³³ See Petition at 9.

³⁴ See *CTI Reconsideration Order*, 27 FCC Rcd at 5345, para. 17; see also Commission orders identified in note 21, *supra*.

³⁵ See *LDCB NAL*, 30 FCC Rcd at 8664-65, paras. 2-3 (2015). The Commission subsequently affirmed these apparent findings in a forfeiture order. *LDCB Forfeiture Order*, 34 FCC Rcd at 1880-81, paras. 22-23.