

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

In the Matter of
Telplex Communications
Complaint Regarding
Unauthorized Change of
Subscriber's Telecommunications Carrier
Complaint No. 3529341

ORDER

Adopted: March 4, 2020

Released: March 4, 2020

By the 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. We find that Telplex's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny 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 also has adopted rules to limit the liability of subscribers when an unauthorized 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. 3529341 (filed Sept. 12, 2019); see also 47 CFR §§ 64.1100 – 64.1190.

2 47 U.S.C. § 258(a).

3 See 47 CFR § 64.1120.

4 See 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. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.⁶ In the complaint, Complainant also alleges that "Telplex is a company posing as AT&T and has set up internet and phone service in one of my business locations by saying that they were there on behalf of AT&T and the service is due to an upgrade."⁷ Complainant further states, "[w]e have paid several charges for invoices sent by [Telplex] and when we contacted AT&T they stated that this company is not associated with them at all. We are now having our service for internet and phone interrupted on a daily basis due to these outstanding invoices with the falsely represented company."⁸

4. Pursuant to our rules, we notified Telplex of the complaint.⁹ Telplex responded to the complaint, stating that authorization was received and confirmed through a letter of agency (LOA).¹⁰ Telplex also states that its sales representative contacted Complainant "to upgrade (not switch) [Complainant's] copper telephone service to digital VoIP service."¹¹ Specifically, Telplex asserts that the Complainant's "network, technicians and equipment are still provided by AT&T. Telplex only handles the billing and customer service."¹² Telplex disputes Complainant's claims of misrepresentation, arguing that the purpose of its sales call was to upgrade Complainant's service to AT&T's VoIP and broadband service, and that the individual with whom Telplex's sales representative spoke agreed to the upgrade.¹³

5. After reviewing all the evidence in the record, we disagree that Telplex was simply handling the billing and customer service on behalf of AT&T. The evidence shows that Telplex initiated a change in Complainant's service and began providing a Voice over Internet Protocol (VoIP) service to Complainant. Telplex also billed Complainant for its service.¹⁴ The Commission's carrier change rules, however, have not been extended to VoIP service.¹⁵ Thus, we conclude that Telplex's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.¹⁶

⁶ See Informal Complaint No. 3529341.

⁷ *Id.*

⁸ *Id.*

⁹ 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).

¹⁰ See Telplex Response to Informal Complaint No. 3529341 (filed Oct. 11, 2019).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ The bill Telplex issued to Complainant states, "[t]hank you for choosing Telplex Communications as your local and/or long distance phone company."

¹⁵ See 47 CFR § 64.1120. We note that the Commission has sought comment on whether to extend slamming regulations to VoIP or other IP-enabled service providers. See *Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11, paras. 71-72 (2004).

¹⁶ 47 CFR § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id.* § 1.721. Such filing will be deemed to relate back to the filing date of such 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 such Complainant. See *id.* § 1.719.

6. 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 DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Kurt A. Schroeder
Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau