

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

In the Matter of)
Telplex Communications) Complaint No. 3657024
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: March 3, 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. 3657024 (filed Nov. 13, 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 his business started receiving calls and emails from what he believed was AT&T, his current service provider. "They told me that they were discontinuing our landlines and that I must switch to a digital system . . . I asked them if they were AT&T and they said yes they were."⁷ Complainant states that he was also told that Telplex "would be billing for AT&T." After he received a bill that was twice what he had been paying, he called AT&T and was told that "Telplex was not AT&T and that I was misled."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 provided a copy of the LOA, and argues that the LOA discloses that Telplex resells voice and data service on behalf of AT&T. "A customer upgrading from AT&T copper service to AT&T's APEX VoIP and broadband service remains as an AT&T customer. . . Telplex simply handles the billing and fields customer service calls."¹¹ Telplex states that the LOA also shows that Complainant knew he was contacted by Telplex, and not AT&T, and that he understood the relationship between Telplex and AT&T. Finally, Telplex asserts that any confusion over the amount of Complainant's bill was related to the fact that Telplex's first bill was pro-rated, and Complainant was billed one month in advance.¹²

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.¹³ The Commission's carrier change rules, however, have not been extended to VoIP service.¹⁴ 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.¹⁵

6. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act

⁶ See Informal Complaint No. 3657024.

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. 3657024 (filed Dec. 24, 2019).

¹¹ *Id.*

¹² *Id.*

¹³ The bill Telplex issued to Complainant states, "[t]hank you for choosing Telplex Communications as your local and/or long distance phone company."

¹⁴ 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).

¹⁵ 47 CFR § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, 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.

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