

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

In the Matter of)
City Communications, Inc.) Complaint No. 3739293
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: January 21, 2020

Released: January 22, 2020

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

1. In this Order, we consider a complaint alleging that City Communications, Inc. changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules. We find that City Communications' 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. 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 has also 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. 3739293 (filed Jan. 4, 2020); 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 Pursuant to our rules, we notified City Communications of the complaint.⁷ City Communications responded to the complaint, stating that it obtained authorization from Complainant through a third-party verification (TPV) recording.⁸

4. In the TPV, City Communications' verifier does not confirm that the person is authorized to make a *carrier change*, as required by our rules. Instead, the verifier asks the person on the call, "are you the authorized person to make decisions on this phone line?" An affirmative response to this question does not establish whether the person is authorized to make a carrier change. Authorization to make a switch from one carrier to another carrier differs from merely being authorized to make "decisions."⁹ The Commission has explained that "any description of the carrier change transaction . . . shall not be misleading" and emphasized 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 bill consolidation.¹⁰ We therefore find that City Communications violated our slamming rules, and we discuss City Communications' liability below.¹¹

5. City Communications 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.¹² 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 City Communications may pursue any collection against Complainant for those charges.¹³ Any charges imposed by City Communications 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 the authorized carrier at the time of the unauthorized change.¹⁴

⁶ See Informal Complaint No. 3739293. Complainant also provided a copy of the telephone bill from City Communications, which identified Complainant's first name only.

⁷ 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).

⁸ See City Communications Response to Informal Complaint No. 3739293 (filed Jan. 16, 2020).

⁹ See *Tele Circuit Network Corporation, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 34 FCC Rcd 8620 (CGB rel. Sept. 26, 2019) (finding that authorization to make "decisions" differed from being authorized to make a carrier change); see also *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) (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).

¹⁰ 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, 501, para. 19 (2008); see also 47 CFR § 64.1120(c)(3)(iii).

¹¹ 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.

¹² See *id.* § 64.1160(b).

¹³ See *id.* § 64.1160(d).

¹⁴ See *id.* §§ 64.1140, 64.1160.

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 City Communications, Inc. IS GRANTED.

7. 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 City Communications, Inc. may not pursue any collection against Complainant for those charges.

8. 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