

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

In the Matter of )
Telplex Communications ) Complaint No. 2830631
Complaint Regarding )
Unauthorized Change of )
Subscriber's Telecommunications Carrier )

ORDER

Adopted: August 18, 2021

Released: August 19, 2021

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 In response to a consumer's slamming complaint, the carrier must submit proof of authorization for the carrier change to the Commission within 30 days.3

2. Telplex Communications (Telplex), a long distance carrier, filed a petition for reconsideration asking us to reconsider a Consumer Policy Division (Division) order finding that Telplex changed a consumer's carrier without proper authorization verified in accordance with the Commission's slamming rules.4 Under the special circumstances of this case and for the reasons set forth below, we waive on our own motion section 64.1150(d) of the Commission's rules, under which Telplex was required to provide evidence of an authorized carrier change within 30 days of receiving notification of a consumer complaint.5 We further find that, based on the evidence Telplex produced after the 30-day deadline, Telplex's actions did not result in an unauthorized carrier change, and therefore vacate the Division Order and dismiss Telplex's Petition as moot.

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

1 47 U.S.C. § 258(a).

2 See 47 CFR § 64.1120.

3 Id. § 64.1150(d).

4 See Telplex Communications, Petition for Reconsideration (filed June 5, 2019) (Petition); see also Telplex Communications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, Order, 34 FCC Rcd 2927 (CGB 2019) (Division Order).

5 47 CFR § 64.1150(d).

electronically; or (3) use an appropriately qualified independent third party to verify the order.<sup>6</sup> 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.”<sup>7</sup>

4. Commission rules require carriers, within 30 days of being notified of a slamming complaint, to provide proof of verification of the carrier change.<sup>8</sup> Proof of verification must contain clear and convincing evidence that the carrier change was authorized.<sup>9</sup> The Division uses such proof and any evidence supplied by the Complainant to determine whether a slam occurred.<sup>10</sup> Failure to respond or provide proof of verification is clear and convincing evidence of a violation.<sup>11</sup>

5. Complainant alleged that his company’s carrier had been changed to Telplex without authorization.<sup>12</sup> Pursuant to our rules, the Division notified Telplex of the slamming complaint through the Commission’s Consumer Complaint Center (CCC), and directed Telplex to respond to the complaint no later than 30 days from the date of the notice.<sup>13</sup> Telplex responded before that deadline with an e-mail to CCC Carrier Support, inquiring why it was categorized as a slamming complaint and asking staff to re-categorize it as a billing complaint.<sup>14</sup>

6. Telplex’s e-mail also contained a detailed response to the Complainant’s allegations that his company’s carrier was switched without permission.<sup>15</sup> Specifically, Telplex disputed Complainant’s allegation that he had been slammed; stated that the carrier switch was authorized; and asserted that it had received and confirmed Complainant’s authorization through a third-party verification recording.<sup>16</sup> It did not, however, provide the recording or any other proof of authorization with its e-mail. In response to Telplex’s e-mail, Commission staff sent an e-mail saying that the matter had been forwarded to the “correct office for responding.”<sup>17</sup> Telplex’s e-mail was then entered into the CCC, which effectively reassigned the complaint to Division staff for review, and the complaint no longer appeared on Telplex’s CCC page.

7. The Division considered the record evidence and found that Telplex had failed to provide timely proof of verified authorization, and that this failure to refute the Complainant’s allegations amounted to clear and convincing evidence that Telplex violated the Commission’s slamming rules.<sup>18</sup>

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<sup>6</sup> 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.

<sup>7</sup> *Id.* § 64.1120(c)(3)(iii).

<sup>8</sup> *Id.* § 64.1150(d).

<sup>9</sup> See *id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Informal Complaint No. 2830631 (filed Oct. 9, 2018).

<sup>13</sup> See Petition at 3-4; 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).

<sup>14</sup> See E-mail from Adam Bowser, Counsel to Telplex, to CCC Carrier Support (Oct. 18, 2018).

<sup>15</sup> See Petition, Declaration of Adam Bowser, Exhibit A.

<sup>16</sup> See *id.* 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.

<sup>17</sup> See *id.*

<sup>18</sup> See *Division Order*, 34 FCC Rcd at 2928, para. 3.

8. Telplex seeks reconsideration of the *Division Order*, arguing that because it appeared that the complaint had been closed in the CCC, Telplex was denied a fair opportunity to respond to the informal complaint. Telplex does not deny that it failed to provide proof of authorization within 30 days. Rather, it argues that the e-mail it sent to CCC Carrier Support after being served with the complaint was not a “substantive response” to the complaint, but an inquiry “seeking clarification about the categorization of the underlying complaint.”<sup>19</sup> In addition, Telplex asserts that following its e-mail request, it appeared that the complaint ticket had been closed in the CCC, “making it impossible” for Telplex to respond to the complaint and provide proof of authorization through the CCC. It also states that the last communication it received from the Commission was the e-mail saying its request had been forwarded to the appropriate party to respond to it.<sup>20</sup> Telplex asks that the Commission now review the third-party verification associated with the underlying carrier change, and it submitted a transcript of that third-party verification recording with its petition.<sup>21</sup>

### III. DISCUSSION

9. Based on the unique circumstances here, we find good cause to waive, on our own motion, the 30-day deadline for Telplex to file its response to the slamming complaint. We may waive a rule for good cause shown,<sup>22</sup> and waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>23</sup> We may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>24</sup> In this case, we find good cause to waive the 30-day filing deadline in section 64.1150(d) of the Commission’s rules.<sup>25</sup> We further find that Telplex’s late-filed third-party verification recording complied with the Commission’s verification requirements and thus vacate the *Division Order*.

10. As an initial matter, we disagree with Telplex that there was any basis to “re-categorize” the complaint as a billing complaint. The Complainant clearly identified the issue involved in his complaint as “Slamming (change of your carrier without permission)” and specified in his statement of facts that he “never had [the] intent[ion] to switch companies.”<sup>26</sup> Given the Complainant’s allegation that his carrier was switched without permission, we find that the Division correctly served the complaint as a slamming complaint on Telplex, and that Telplex had sufficient information about the nature of the complaint in order to respond as instructed.<sup>27</sup>

11. Further, the slamming rules require carriers to respond to slamming complaints within 30 days and to provide proof within that timeframe that they followed the Commission’s verification

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<sup>19</sup> Petition at 2.

<sup>20</sup> *Id.* at 5, 7.

<sup>21</sup> See Petition at 2, 4-6, and Declaration of Keith Nussbaum, Exhibit A.

<sup>22</sup> 47 CFR § 1.3 (providing for suspension, amendment, or waiver of Commission rules, in whole or in part, for good cause shown; the Commission may waive any provision of the rules on its own motion).

<sup>23</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>24</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>25</sup> 47 CFR § 64.1150(d).

<sup>26</sup> See Informal Complaint No. 2830631 (filed Oct. 9, 2018).

<sup>27</sup> In a process specific to slamming complaints, the Commission’s rules require the carrier to provide valid proof of authorization in response to such a complaint. This process generally results in an order from the Division either granting or denying the complaint. If the complaint is granted, the Division directs the carrier to compensate the subscriber whose carrier was changed without authorization. See 47 CFR §§ 64.1140, 64.1160, 64.1170.

procedures.<sup>28</sup> The Commission's rules do not specify *how* carriers must submit the third-party verification recording or other proof that the carrier switch was duly authorized. While the CCC portal is the typical (and preferred) means for submitting the necessary evidence, the rules do not require carriers to use it.<sup>29</sup> The CCC is designed so that, once a carrier responds to a slamming complaint, the complaint ticket in the CCC is reassigned to Commission staff for review and no longer appears as pending a carrier response. At that point, the CCC does not allow a carrier to submit any additional information through the CCC portal.

12. In this case, because Telplex's e-mail to CCC Carrier Support addressed the substance of the slamming complaint, Division staff added it to the CCC complaint ticket, which resulted in it no longer appearing as "pending a response" on Telplex's CCC page. This anomaly also prevented Telplex from using the CCC portal to provide proof of authorization within the required 30 days, and the portal did not provide information about any other means Telplex could use to submit this evidence. This, along with Division staff's statement that its inquiry was forwarded "to the correct office for responding" may have given Telplex the impression that it would have an opportunity to submit proof of authorization following a response to that inquiry, even after the 30-day deadline had passed. Accordingly, due to the unique circumstances in this matter, we waive section 64.1150(d) of the rules and consider the third-party verification attached to Telplex's Petition as if it were timely submitted.

13. We have reviewed Telplex's third-party verification recording, which was not available to the Division at the time it issued the *Division Order*, and find that it complies with the verification requirements in the slamming rules.<sup>30</sup> We therefore vacate the *Division Order*. We also note that Telplex represents that it absolved Complainant of all charges it assessed Complainant in a manner consistent with the Commission's liability rules.<sup>31</sup> Because we waive the filing deadline and vacate the *Division Order*, and because Complainant has been absolved of all charges, we dismiss Telplex's Petition as moot.

14. Although we waive our 30-day filing rule in this case, we caution carriers that the circumstances here will not excuse any other carrier's failure to respond to a slamming complaint and provide any proof of authorization for a carrier switch within the required 30-day filing deadline.<sup>32</sup>

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, section 64.1150(d) of the Commission's rules, 47 CFR § 64.1150(d), IS WAIVED to the extent described herein.

16. IT IS FURTHERED 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

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<sup>28</sup> *Id.* § 64.1150(d).

<sup>29</sup> For example, carriers could consider e-mailing or otherwise contacting Division staff to timely submit any required information.

<sup>30</sup> *See* 47 CFR § 64.1150(d).

<sup>31</sup> Telplex stated that, "upon receipt of the complaint, it fully credited Complainant's account, the company's unpaid balance was written off, and any collections activities ceased." Telplex further states that "this will not change," and that Complainant "will not be adversely affected in any way by granting th[e] Petition." Petition at 7.

<sup>32</sup> The Bureau will send a copy of this Order to Complainant and to Telplex at the addresses identified in FCC records. If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR §§ 1.719; 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 the complainant. *See id.* § 1.719.

§§ 0.141, 0.361, the Petition for Reconsideration filed by Telplex Communications on June 5, 2019, IS DISMISSED AS MOOT.

17. 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 *Division Order* IS VACATED, and the complaint that is the subject of the *Division Order* IS RESOLVED.

18. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order IS EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone  
Deputy Chief  
Consumer and Governmental Affairs Bureau