

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

In the Matter of )
)
Clear Rate Communications, Inc. ) Complaint No. 4982560
)
Complaint Regarding )
Unauthorized Change of )
Subscriber's Telecommunications Carrier )

ORDER

Adopted: October 1, 2021

Released: October 4, 2021

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

1. In this Order, we consider a complaint alleging that Clear Rate Communications, Inc. (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules. We find that Clear Rate has responded to the Complainant's complaint and has taken action to resolve the 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. 4982560 (filed Aug. 24, 2021); 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 her client's telecommunications service provider had been changed without authorization.<sup>6</sup> In the complaint, Complainant stated that Clear Rate contacted her client, a "developmentally disabled adult" and resident of an assisted living facility, in order to switch his carrier to Clear Rate. Complainant said that her client has a legal guardian, is not responsible for the telephone bill, and "did not have the legal ability to change phone companies."<sup>7</sup> Complainant also asserted that Clear Rate "led my client on by continually telling him to say yes" on the verification call even after he had expressed concerns about the questions asked of him.<sup>8</sup>

4. Pursuant to our rules, we notified Clear Rate of the complaint.<sup>9</sup> Clear Rate responded to the complaint, stating that the consumer agreed to switch carriers to Clear Rate and that authorization was received and confirmed through a third-party verification recording (TPV).<sup>10</sup> Clear Rate also stated that at the time of the TPV, it had no knowledge of the consumer's "cognitive abilities or legal status," but that the summary of events in the complaint was "accurate."<sup>11</sup> Clear Rate said it therefore took action to assist the consumer with returning to his preferred carrier and to cancel all charges.<sup>12</sup>

5. Based on the information provided by Clear Rate, it appears that Clear Rate has fully absolved the consumer of all unauthorized charges assessed by Clear Rate in a manner consistent with the Commission's liability rules. Complainant also confirmed for Division staff that her client was able to return to his preferred carrier and had not paid anything to Clear Rate for the unauthorized service. We therefore find that the complaint referenced herein has been resolved.<sup>13</sup> We caution carriers, however, that the Commission's rules require not simply that a carrier obtain affirmative answers to questions on a TPV but that before making a carrier switch, the carrier confirms that the consumer has the authority to change carriers, wishes to change carriers, and understands that he or she is authorizing a carrier change.<sup>14</sup>

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 Clear Rate Communications, Inc. IS RESOLVED.

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<sup>6</sup> See Informal Complaint No. 4982560.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 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>10</sup> See Clear Rate Response to Informal Complaint No. 4982560 (filed Sept. 2, 2021).

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

<sup>12</sup> See 47 CFR § 64.1160. Specifically, Clear Rate stated that the consumer's account was now "inactive with a balance of \$0.00."

<sup>13</sup> 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 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.

<sup>14</sup> See *id.* § 64.1120(c)(3)(iii); see also *Consumer Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17209-17210, paras. 29-31 (2013) (proposing an upward adjustment to the proposed forfeiture amount because the carrier and its telemarketers and third party verifiers exploited elderly or disabled consumers' obvious confusion and inability to understand the sales pitch they heard and understand the questions they were asked).

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

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton  
Acting Chief  
Consumer Policy Division  
Consumer and Governmental Affairs Bureau