Before the

Federal Communications Commission

**Washington, D.C. 20554**

|  |  |  |
| --- | --- | --- |
| In the Matter of  Clear Rate Communications, Inc.  Complaint Regarding  Unauthorized Change of  Subscriber’s Telecommunications Carrier | **)**  **)**  **)**  **)**  **)**  **)**  **)** | Complaint No. 4538794 |
|  |  |  |

**ORDER**

**Adopted: March 24, 2021 Released: March 25, 2021**

By the 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.[[1]](#footnote-3) We find that Clear Rate’s 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.[[2]](#footnote-4) The Commission’s implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[[3]](#footnote-5) 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.[[4]](#footnote-6) 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.[[5]](#footnote-7)
3. We received Complainant’s complaint alleging that Complainant’s telecommunications service provider had been changed to Clear Rate without Complainant’s authorization.[[6]](#footnote-8) Pursuant to our rules, we notified Clear Rate of the complaint.[[7]](#footnote-9) Clear Rate responded, stating that Complainant’s authorization for a carrier switch was received and confirmed through a third-party verification (TPV) recording.[[8]](#footnote-10) Division staff reached out to Complainant and the employee who Clear Rate alleges authorized the carrier switch. Complainant’s employee listened to the TPV recording and asserted that it was fabricated. Complainant’s employee stated that the birthdate on the recording was incorrect and provided a signed declaration that he never authorized a switch in carriers and did not participate in the recorded conversation submitted by Clear Rate. Complainant’s employee stated that he contacted Clear Rate only after realizing the company’s service had been switched to Clear Rate in an effort to cancel Clear Rate’s service and to return the company to its preferred carrier. Complainant also stated that Clear Rate told him the company would be sent to collections if it failed to pay the outstanding balance on the bill.[[9]](#footnote-11)
4. Clear Rate has failed to produce clear and convincing evidence that it complied with the Commission’s verification procedures prior to submitting a request to switch the Complainant’s carrier.[[10]](#footnote-12) We therefore find that Clear Rate’s actions violated our carrier change rules, and we discuss Clear Rate’s liability below.[[11]](#footnote-13) We will also forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional actions may be necessary.
5. Clear Rate 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]](#footnote-14) 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 Clear Rate may pursue any collection against Complainant for those charges.[[13]](#footnote-15) Any charges imposed by Clear Rate 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 his/her authorized carrier at the time of the unauthorized change.[[14]](#footnote-16)
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 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 Clear Rate 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

1. *See* Informal Complaint No. 4538794 (filed Feb. 5, 2021); *see also* 47 CFR §§ 64.1100 – 64.1190. [↑](#footnote-ref-3)
2. 47 U.S.C. § 258(a). [↑](#footnote-ref-4)
3. *See* 47 CFR § 64.1120. [↑](#footnote-ref-5)
4. *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. [↑](#footnote-ref-6)
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. [↑](#footnote-ref-7)
6. *See* Informal Complaint No. 4538794. [↑](#footnote-ref-8)
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). [↑](#footnote-ref-9)
8. *See* Clear Rate Response to Informal Complaint No. 4538794 (filed Mar. 11, 2021) (Clear Rate Response). In addition to the TPV, Clear Rate provided an e-mail exchange with Complainant in which Complainant stated that he did not authorize a switch in service to Clear Rate; that he contacted Clear Rate only after his company’s account had been taken over by Clear Rate; and that he provided information to Clear Rate at that time simply to open a “support ticket.” [↑](#footnote-ref-10)
9. After Complainant notified Clear Rate that the carrier switch was not authorized, Clear Rate continued to bill Complainant and stated that an outstanding balance of $643.11 remained on the account and would not be waived. *See* Clear Rate Response at 4. [↑](#footnote-ref-11)
10. *See* 47 CFR § 64.1120(c); *see also* *OneLink Communications, Inc., et al*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403 (2016) (proposing a forfeiture against companies for, among other things, fabricating TPV recordings and slamming consumers); *United American Technologies*, *Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 6631, 6633, para. 4 (CGB 2008) (finding that because the TPV submitted by the carrier had been altered, the carrier failed to produce clear and convincing evidence that complainant authorized a carrier change). We note that Clear Rate’s TPV also failed to elicit from the person on the call each of the telephone numbers to be switched. *See* 47 CFR § 64.1120(c)(3)(iii). [↑](#footnote-ref-12)
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. [↑](#footnote-ref-13)
12. *See id.* § 64.1160(b). [↑](#footnote-ref-14)
13. *See id.* § 64.1160(d). [↑](#footnote-ref-15)
14. *See id.* §§ 64.1140, 64.1160. [↑](#footnote-ref-16)