

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. 4626555

ORDER

Adopted: May 7, 2021

Released: May 7, 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. 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. 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. 4626555 (filed Mar. 16, 2021); see also 47 CFR §§ 64.1100 – 64.1190.

2 47 U.S.C. § 258(a).

3 See 47 CFR § 64.1120.

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.

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. In 2018, the Commission codified a rule to prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the revised rule, upon a finding of material misrepresentation during the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification recording (TPV). Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed to Clear Rate without Complainant's authorization.⁹ In the complaint, Complainant also alleges that at the time she was switching her service to another provider, Clear Rate's telemarketer contacted her and led her to believe she was speaking with the new provider, [and] "tricked her into a one year contract."¹⁰

5. Pursuant to our rules, we notified Clear Rate of the complaint which included Complainant's allegation of misrepresentation.¹¹ Clear Rate responded to the complaint, stating that Complainant's authorization was received and confirmed through a TPV.¹² Clear Rate did not, however, provide the TPV or a recording of the sales call. Clear Rate provided only what it described as a recording of a "quality assurance call" it allegedly made to the consumer after the initial sales call and TPV were completed. On the recording Clear Rate's representative explains a calling plan for the consumer but does not confirm that the consumer has the authority to change carriers, wishes to change carriers, and understands that he or she is authorizing a carrier change as required by Commission rules.¹³ The failure of Clear Rate to provide proof of verified authorization is presumed to be clear and convincing evidence of a violation.¹⁴ Therefore, we find that Clear Rate's actions violated our slamming rules, and we discuss Clear Rate's liability below.¹⁵

⁶ *Id.* § 64.1120(a)(1)(i)(A).

⁷ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

⁸ See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

⁹ See Informal Complaint No. 4626555.

¹⁰ *Id.*

¹¹ 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).

¹² Clear Rate Response to Informal Complaint No. 4626555 (filed Apr. 19, 2021).

¹³ 47 CFR § 64.1120(c)(3)(iii).

¹⁴ See *id.* § 64.1150(d). We also find Complainant's allegation of a sales call misrepresentation to be credible, and that Clear Rate failed to provide persuasive evidence to rebut Complainant's claim of misrepresentation. Thus, even if Clear Rate had provided a facially valid TPV, Complainant's authorization would not be considered binding. See *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁵ 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. 47 CFR § 1.721. Such filing will be deemed (continued....)

6. 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.¹⁶ 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.¹⁷ 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.¹⁸

7. 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.

8. 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.

9. 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

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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.

¹⁶ *See id.* § 64.1160(b).

¹⁷ *See id.* § 64.1160(d).

¹⁸ *See id.* §§ 64.1140, 64.1160.