

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

In the Matter of )
)
Clear Rate Communications ) Complaint No. 5710888
)
Complaint Regarding )
Unauthorized Change of )
Subscriber's Telecommunications Carrier )

ORDER

Adopted: September 20, 2022

Released: September 21, 2022

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 (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.1 We conclude 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 The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.3 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 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

3. If a carrier uses a third party to verify a carrier switch, the Commission's slamming rules require that the carrier verify, among other things, that the consumer has the authority to change the carrier associated with the telephone number, that the person on the call wants to make the carrier change,

1 See Informal Complaint No. 5710888 (filed Sept. 1, 2022); 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.

and that the person on the call understands they are authorizing a carrier change.<sup>6</sup> The slamming rules also prohibit misrepresentations on sales calls.<sup>7</sup> Under the rules, 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.<sup>8</sup> 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.<sup>9</sup>

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.<sup>10</sup> In the complaint, Complainant states that she discovered her service had been changed when a fax she was attempting to send would not go through.<sup>11</sup> Complainant contacted her carrier Verizon and was told that "Clear Rate Telecom" had switched three of Complainant's phone lines to Clear Rate. Complainant also states that she "did not approve of anyone or a[ny] company taking our phone lines," and that she had never heard of Clear Rate before speaking with Verizon.<sup>12</sup>

5. Pursuant to our rules, we notified Clear Rate of the complaint.<sup>13</sup> Clear Rate responded to the complaint, stating that it has a "three part sales process" that includes the initial sales call, a third-party verification, and a follow-up "quality assurance call" to ensure that customers are not slammed and are "fully informed of the transfer of service."<sup>14</sup> Clear Rate provided recordings of the TPV and the "quality assurance call," but did not provide a recording of the sales call.<sup>15</sup>

6. On the recording that Clear Rate characterizes as a "quality assurance call," the Clear Rate representative states, "you understand that we cannot and do not change your service provider. It is through the contractual agreement between Verizon and Clear Rate that Clear Rate will provide your billing at the wholesale rates, so if you ever did choose a different service provider other than Verizon, the wholesale rates will not apply."<sup>16</sup> The Clear Rate representative then asks, "[d]id you have an email that you wanted me to add to the account?" Believing that she was speaking with Verizon, Complainant

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<sup>6</sup> See 47 CFR § 64.1120(c)(3)(iii).

<sup>7</sup> *Id.* § 64.1120(a)(1)(i)(A).

<sup>8</sup> 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).

<sup>9</sup> 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.*

<sup>10</sup> See Informal Complaint No. 5710888.

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

<sup>12</sup> *Id.*

<sup>13</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>14</sup> See Clear Rate Response to Informal Complaint No. 5710888 (filed Sept. 1, 2022) (*Clear Rate Response*).

<sup>15</sup> Clear Rate also stated that a balance of \$198.73 remained due on the account. See *Clear Rate Response* at 2.

<sup>16</sup> See *Clear Rate Response*.

responds, “[a]fter seven years, you all don’t have one on there?”<sup>17</sup>

7. The Division thoroughly reviewed all the evidence in the record provided by both the Complainant and Clear Rate. Based on the evidence in the record, we find Clear Rate has failed to provide persuasive evidence to rebut Complainant’s misrepresentation claim and therefore that Complainant’s authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, “[w]hen a consumer’s decision to switch carriers is predicated on false information provided in a sales call, that consumer’s authorization to switch carriers can no longer be considered binding.”<sup>18</sup> We therefore find that Clear Rate’s actions resulted in an unauthorized change in Complainant’s telecommunications service provider, as defined by the rules, and we discuss Clear Rate’s liability below.<sup>19</sup>

8. 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.<sup>20</sup> 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.<sup>21</sup> Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.<sup>22</sup>

9. 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 IS GRANTED.

10. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission’s rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred, and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

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<sup>17</sup> See also E-mail from Complainant to Division staff (Sept. 13, 2022) (asserting that, after listening to the recording provided by Clear Rate, Clear Rate “portrayed themselves as Verizon” and that she “never intended to switch from Verizon”).

<sup>18</sup> *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)).

<sup>19</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 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.

<sup>20</sup> See *id.* § 64.1160(b).

<sup>21</sup> See *id.* § 64.1160(d).

<sup>22</sup> See *id.* §§ 64.1140, 64.1160.

11. 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