

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

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| In the Matter of |) | |
| |) | |
| MCI Communications, Inc. |) | IC No. 08-S0294950 |
| |) | |
| Complaint Regarding |) | |
| Unauthorized Change of |) | |
| Subscriber's Telecommunications Carrier |) | |

ORDER ON RECONSIDERATION

Adopted: May 18, 2009

Released: May 19, 2009

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Verizon asking us to reverse a finding that Verizon violated the Commission's carrier change rules by failing to respond to a complaint.¹ On reconsideration, we affirm that MCI's actions violated the Commission's carrier change rules and deny the *Petition*.²

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting 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.³ The rules were designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

¹ See Petition for Reconsideration of Verizon (filed March 30, 2009) (*Petition*), seeking reconsideration of *MCI Communications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, 24 FCC Rcd 2700 (2009) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). In 2005, the Commission approved the merger of Verizon Communications Inc. and MCI, Inc. See *Verizon Communications Inc. and MCI, Inc. – Applications for Approval of Transfer of Control*, WC Docket No. 05-75, 20 FCC Rcd 18433 (2005). Although the *Petition* recognizes that the *Division Order* found a violation against MCI, the *Petition* refers to Verizon instead of MCI in all other respects in seeking reversal of the *Division Order*. MCI is a subsidiary of Verizon and Verizon has requested that items concerning unauthorized changes of subscribers' service involving MCI (e.g., complaints, correspondence, and orders) reference MCI but should be served on Verizon. See e-mail to Diane Fallica, FCC, from Suzanne Carmel, Associate Director, Verizon (dated March 17, 2006). We will reference MCI and Verizon individually as appropriate.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

⁶ See *id.* at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ 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.¹⁰ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on December 16, 2008, alleging that Complainant's telecommunications service provider had been changed to MCI without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified MCI of the complaint.¹⁴ MCI failed to respond within 30 days, as required by the Commission's rules,¹⁵ and the Division therefore found that MCI violated the Commission's carrier change rules.¹⁶ Verizon seeks reconsideration of the *Division Order*.¹⁷

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Verizon's *Petition*. As discussed below, MCI failed to respond to the complaint within the required 30-day time frame and thus was properly presumed to have violated the Commission's carrier change rules.

⁷ See 47 C.F.R. § 64.1120; see also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹⁰ See 47 C.F.R. §§ 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).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 08-S0294950, filed December 16, 2008.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ See Notice of Informal Complaint No. 08-S0294950 to MCI from the Deputy Chief, Division, CGB, dated December 31, 2008. See also n.1, *supra*.

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ See *Division Order* at 24 FCC Rcd 2702.

¹⁷ Included with Verizon's *Petition* was its response to the complaint. See Verizon's Response to Informal Complaint No. IC-08-S0294950, received March 30, 2009 (*Verizon Response*).

7. In its *Petition*, Verizon explains that, “[d]ue to human error, Verizon inadvertently did not respond to the Complaint ... [and] did not discover this error until the *Order* was released.”¹⁸ Verizon also argues that “the facts underlying the Complaint do not support a finding that Verizon’s actions resulted in an unauthorized carrier change in Complainant’s telecommunications service provider.”¹⁹ Verizon explains that another Verizon customer contacted Verizon to request certain routine changes to its business account and mistakenly indicated that Complainant’s telephone number was part of the customer’s services with Verizon.²⁰ Verizon claims it did not discover the error until several months after Complainant’s telephone number was changed to Verizon.²¹ Verizon requests that, based on these facts, we grant the *Petition*, overturn the *Division Order*, and consider the facts presented in the *Verizon Response*.²² Citing 47 C.F.R. § 1.106(c)(2),²³ Verizon claims it is in the public interest to allow for all relevant evidence to enter into the record, especially where Verizon’s failure to respond was inadvertent.²⁴

8. We find Verizon’s arguments unpersuasive. Verizon does not dispute that it failed to respond to the Notice of Informal Complaint within 30 days.²⁵ Such failure to respond is presumed to be clear evidence of a violation of the Commission’s carrier change rules.²⁶ Therefore, the *Division Order* correctly found an “unauthorized change” by MCI.²⁷

9. Verizon’s public-interest arguments do not persuade us that we should consider the facts that it has raised for the first time on reconsideration. Verizon had ample time to respond in the first instance, and has not shown good cause why it did not do so. We note that we have explicitly stated that we will strictly enforce the requirement that a carrier provide clear and convincing evidence of authorization of the carrier change within the 30-day time frame specified by the Commission’s rules.²⁸ Contrary to Verizon’s public interest argument, we believe that strict enforcement of the filing time frame

¹⁸ See *Petition* at 1.

¹⁹ See *id.* at 2.

²⁰ See *Petition* at 2. The *Verizon Response* states that, “[u]nfortunately, business customer provided [Complainant’s] number to MCI, in error, during a normal busy [sic] request indicating that the number was part of their service.” *Verizon Response* at 1.

²¹ See *Petition* at 2.

²² See *id.*

²³ 47 C.F.R. § 1.106(c)(2), in relevant part, provides that a petition for reconsideration which relies on facts not previously presented to the Commission or to the designated authority may be granted only when the Commission or the designated authority determines that consideration of the facts relied on is required in the public interest.

²⁴ See *Petition* at 2.

²⁵ See *id.* at 1. All slamming complaints are served by Certified Mail – Return Receipt Requested, and a U.S. Postal Service return-receipt card (Postal Card) accompanies each notification to document a carrier’s receipt of the complaint. The Postal Card indicates that MCI received notification of the complaint January 8, 2009 (indicated by a postal date stamp). MCI’s response was due 30 days later. Because the 30th day was February 7, 2009 (a Saturday), the response was due by February 9, 2009. See generally 47 C.F.R. § 1.4. MCI did not file a request for extension of the 30-day response deadline.

²⁶ See 47 C.F.R. § 64.1150(d). See also *Qwest Communications, Inc.*, 24 FCC Rcd 2517, 2519 n.19 (2009) (“An authorized carrier can be in violation of the Commission’s carrier change rules if it fails to respond to a complaint within 30 days of receipt of that complaint.”).

²⁷ See 47 C.F.R. § 64.1150(d).

²⁸ See *Reduced Rate Long Distance, LLC*, 24 FCC Rcd 2492 (2009) (*Reduced Rate*).

is necessary to promote the public's interest in the quick resolution of these complaints.²⁹ We will, therefore, deny petitions for reconsideration that are based solely on new evidence that could have been presented during the established 30-day time frame.

10. Accordingly, we affirm the finding of the *Division Order* that MCI violated the Commission's carrier change rules for failing to respond to the complaint within 30 days. We therefore deny the *Petition*.

III. ORDERING CLAUSES

11. 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, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by Verizon on March 30, 2009, IS DENIED.

12. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

²⁹ See *Reduced Rate* at 24 FCC Rcd 2495. We also note that Verizon's *Petition* fails on the merits because it failed to provide evidence that another customer mistakenly submitted Complainant's telephone number to be switched.