

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

In the Matter of)	
)	
MCI, Inc.	)	IC Nos. 04-S86632
	)	04-S86647
Complaints Regarding	)	04-S86714
Unauthorized Change of	)	04-S86775
Subscriber's Telecommunications Carrier	)	04-S87071
	)	04-S87098
	)	04-S87163
	)	04-S87195
	)	04-S87204
	)	04-S87242
	)	04-S87390
	)	04-S87473
	)	04-S87568
	)	04-S87782
	)	04-S87844
	)	04-S87898
	)	04-S000620S

ORDER

Adopted: September 28, 2004

Released: September 30, 2004

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints¹ alleging that MCI, Inc. (MCI) changed Complainants' telecommunications service provider(s) without obtaining authorization and verification from each Complainant in violation of the Commission's rules.² We conclude that MCI's actions did not result in an unauthorized change in Complainants' telecommunications service provider and we deny Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended

¹ See Appendix A. Informal Complaint No. 04-S87098 is a duplicate of Informal Complaint No. 04-S86632.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

by the Telecommunications Act of 1996 (1996 Act).³ Section 258 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.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 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.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, 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

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *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 Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁴ 47 U.S.C. § 258(a).

⁵ *See* 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ *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.

days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' service providers had been changed without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified MCI of the complaints and MCI responded.¹³ MCI states that authorizations were received and confirmed through third party verifications. We find that MCI has produced clear and convincing evidence of a valid authorized carrier change of Complainants' telecommunications service.¹⁴ Therefore, we find that MCI's actions did not result in an unauthorized change in Complainants' telecommunications service.¹⁵

5. 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 C.F.R. §§ 0.141, 0.361, 1.719, the Complaints filed by Complainants against MCI, Inc. ARE DENIED.

⁸ 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. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ See Appendix A.

¹² 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).

¹³ See Appendix A.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If a Complainant is unsatisfied with the resolution of this complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 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 47 C.F.R. § 1.719.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX A

INFORMAL COMPLAINT	DATE OF COMPLAINT	DATE OF CARRIER RESPONSE
04-S86632	April 7, 2004	June 7, 2004
04-S86647	April 8, 2004	June 10, 2004
04-S86714	February 25, 2004	June 10, 2004
04-S86775	March 23, 2004	July 27, 2004
04-S87071	April 28, 2004	July 7, 2004
04-S87163	May 7, 2004	August 10, 2004
04-S87195	May 10, 2004	July 10, 2004
04-S87204	May 21, 2004	August 11, 2004
04-S87242	April 26, 2004	August 10, 2004
04-S87390	May 19, 2004	August 9, 2004
04-S87473	May 19, 2004	August 9, 2004
04-S87568	June 7, 2004	August 23, 2004
04-S87782	June 25, 2004	August 27, 2004
04-S84844	June 30, 2004	September 2, 2004
04-S87898	July 8, 2004	September 3, 2004
04-S000620S	June 21, 2004	August 27, 2004

