

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

In the Matter of	)	
	)	
Qwest Communications, Inc.	)	IC No. 08-S0293796
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: February 26, 2009**

**Released: February 26, 2009**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Qwest Communications, Inc. (Qwest) asking us to reverse a finding that Qwest violated the Commission's carrier rules by failing to respond to a complaint.<sup>1</sup> On reconsideration, we affirm that Qwest's actions violated the Commission's carrier change rules.<sup>2</sup>

**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.<sup>3</sup> The rules were designed to take the profit out of slamming.<sup>4</sup> The Commission applied the rules to all wireline carriers,<sup>5</sup> and modified its existing requirements for the authorization and verification of preferred carrier changes.<sup>6</sup>

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.<sup>7</sup> 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

---

<sup>1</sup> See Petition for Reconsideration of Qwest (filed December 1, 2008) (*Petition*), seeking reconsideration of *Qwest Communications, Inc., Complaint regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, 23 FCC Rcd 15757 (2008) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

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

<sup>4</sup> 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.

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

<sup>6</sup> See *id.* at 1549, para. 66.

<sup>7</sup> 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).

provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>8</sup>

4. The Commission also adopted liability rules for carriers that engage in slamming.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

5. The Commission received a complaint on June 12, 2008, alleging that Complainant's telecommunications service provider had been changed from Qwest to AT&T Corporation (AT&T) without Complainant's authorization.<sup>12</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>13</sup> the Division notified AT&T of the complaint.<sup>14</sup> Based on AT&T's response, and pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>15</sup> the Division notified Qwest of the complaint.<sup>16</sup> Qwest failed to respond within 30 days of receipt of the complaint, as required by our rules.<sup>17</sup> Because Qwest failed to respond to the complaint, the Division found that Qwest violated the Commission's carrier change rules.<sup>18</sup> Qwest seeks reconsideration of the *Division Order*.

## II. DISCUSSION

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

---

<sup>8</sup> 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.

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>10</sup> 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).

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>12</sup> Informal Complaint No. IC 08-S0293796, filed June 12, 2008.

<sup>13</sup> 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).

<sup>14</sup> See Notice of Informal Complaint No. 08-S0293796 to AT&T from the Deputy Chief, Division, CGB, dated June 27, 2008.

<sup>15</sup> 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).

<sup>16</sup> See Notice of Informal Complaint No. IC 08-S0293796 to Qwest from the Deputy Chief, Division, CGB, dated August 13, 2007. AT&T's response to the complaint was also sent to Qwest with the complaint.

<sup>17</sup> See 47 C.F.R. § 64.1150(d).

<sup>18</sup> See *Division Order* at 2.

7. We find that Qwest failed to respond to the complaint within 30 days.<sup>19</sup> In its *Petition*, Qwest explains that it did not respond to the complaint within the required 30 day time frame because its mail room staff lost the complaint.<sup>20</sup> Qwest theorizes that this may have occurred because the Division did not include a cover letter with the complaint.<sup>21</sup> Qwest claims that without a cover letter, its mail room staff did not know to whom within Qwest to forward the complaint.<sup>22</sup> We find Qwest's argument unpersuasive.<sup>23</sup> Qwest's only evidence in support of its theory is that, several months after the complaint was sent to Qwest and after the *Division Order* was released, Qwest asked for certain documents to be faxed to Qwest, and that the documents it received did not include a cover letter.<sup>24</sup>

8. We disagree with Qwest that the lack of a cover letter included with the requested documents mitigates the fact that it did not respond to the complaint within the required 30-day time frame. On October 31, 2008, after the release of the *Division Order*, Qwest informally requested that the Division staff send documents regarding the complaint to Qwest.<sup>25</sup> Specifically, Qwest asked for "the complaint" and "the certified mail receipt showing where it was sent."<sup>26</sup> Division staff faxed the requested documents as a courtesy to Qwest on November 6, 2008.<sup>27</sup> The fact that a cover letter may not have been faxed to Qwest on November 6, 2008, is irrelevant to determining whether or not Qwest responded to the complaint within 30 days after it received the complaint.

---

<sup>19</sup> Qwest argues that because Qwest is the authorized carrier for Complainant, Qwest "has not been engaged in any unlawful carrier-change activity." See *Petition* at 3. However, 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. See 47 C.F.R. § 64.1150(d). Thus, Qwest's argument that it could not have violated the Commission's carrier change rules simply because Qwest is the authorized carrier is incorrect.

<sup>20</sup> See *Petition* at 3. Qwest's response suggests that it was most likely a lack of internal Qwest mailroom training that caused the complaint to be lost after it was received by Qwest. Qwest admits that the documents sent to Qwest were "separated from the envelope" and once separated, Qwest "had no idea where the communication went to." See *Petition* at 2-3. Even after Qwest's mailroom staff separated the documents from the envelope, Qwest's mailroom staff could have ascertained the purpose of the mailing. We note that apart from the cover letter, the first page of the complaint reads: "Federal Communications Commission," "Slamming Complaint Form 501," and in large type, "For Slamming Complaints Only." In addition, AT&T's response that accompanied the complaint sent to Qwest included the word "SLAM" in capital letters on the first page and includes a duplicate of all the questions in the Division's cover letter sent to AT&T.

<sup>21</sup> See *id.* at 2.

<sup>22</sup> See *id.* at 3.

<sup>23</sup> We note that it is the Division's established practice to include a cover letter with all carrier change complaints. In addition, the paper file for each carrier change complaint contains a chronological copy of all official documents received and sent regarding that complaint. The paper file for this complaint contains a copy of the cover letter sent to Qwest dated August 8, 2008.

<sup>24</sup> See *Petition* at 3-4. See e-mail from Brenda Spence, Executive Regulatory Escalations Analyst, Qwest Communications, Inc., (Brenda Spence) to Slamming@fcc.gov, dated October 31, 2008 (*stating* "Today I received the notice below, yet I have no record of ever receiving anything on this complaint[.] Can I get a copy of the complaint and the certified mail receipt showing where it was sent? Thank you[.]")

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> See e-mail from Brenda Spence to Selina Ayers, Telecommunications Mediation and Policy Specialist, CGB (Selina Ayers), dated November 6, 2008, acknowledging the receipt of the faxed documents. See also *Petition* at 3 (*citing* the fax it received from Division staff).

9. We agree with the Division that Qwest violated the Commission's carrier change rules by not responding to the complaint within 30 days, and we find that Qwest provides no mitigating circumstances for not responding to the complaint.<sup>28</sup> Thus, we affirm the finding of the *Division Order* that Qwest violated the Commission's carrier change rules and we deny the *Petition*.

### III. ORDERING CLAUSES

10. 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 Qwest Communications on December 1, 2008, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau

---

<sup>28</sup> We note that Qwest still has not provided a response to the complaint.