**Before the**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

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| In the Matter of  Twin City Capital, LLC  d/b/a Small Business America  Complaint Regarding  Unauthorized Change of  Subscriber’s Telecommunications Carrier | )  ) Complaint No.2783434  )  )  ) DA 19-344  )  ) |

**PETITION FOR RECONSIDERATION**

**TAKEN PURSUANT TO DELEGATED AUTHORITY**

Twin City Capital, LLC d/b/a Small Business America (“TCC”), hereby petitions the Federal Communications Commission (“Commission”) pursuant to 47 CFR 1.106 of the Commission’s rules, respectfully requesting review and reconsideration of the *Order (“Order”)* in the above-captioned matter, released on April 29, 2019 by the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (“Bureau”) pursuant to delegated authority.[[1]](#footnote-1) Specifically, TCC requests that the Bureau modify its ruling and deny the Complaint based upon (a) a finding that the Complaint is barred by Section 415(b) of the Communications Act of 1934, as amended (the “Act”)[[2]](#footnote-2), and/or that (b) TCC’s response[[3]](#footnote-3) and information provided to the Commission regarding the Complainant’s account with TCC provided evidence for the Commission to concluded that TCC’s actions did not result in violation of the Commission’s carrier change rules.[[4]](#footnote-4)

1. The Commission notified TCC of an Informal Complaint (Complaint No. 2783434)[[5]](#footnote-5) set forth in the *Order* alleging that TCC changed the telecommunications service provider without Complainant’s authorization, in violation of the Commission’s rules.

2. Through its Attorney, TCC responded to the Informal Complaint providing its information available regarding the account of the Complainant. Included in its response to the Commission, TCC provided in part the following information: (a) that TCC verified the order to change long distance service through appropriately qualified and independent third party verification service pursuant to Section 64.1120 of the Commission’s Rules, 47 C.F.R. § 64.1120 (b) that the verification was completed on September 22, 2009 (c) that TCC had provided service to the Complainant since 2009; (d) that through the end of 2017, the charges for the Complainant’s services provided by TCC were included on the Complainant’s local telephone company billing statement; and (e) that TCC began to bill its customers directly in 2018.[[6]](#footnote-6) A verification recording was not included with the response.

3. The *Order* in the above-entitled matter, released April 29, 2019, noted that TCC “failed to provide any proof of authorization, including a TPV recording”. The *Order* stated that the failure “to provide proof of verified authorization is presumed to be clear and convincing evidence of a violation.”[[7]](#footnote-7)

4. TCC submits the Complaint should have been dismissed pursuant to the two-year statute of limitations contained in Section 415(b) of the Communications Act of 1934, which requires complaints against carriers for the recovery of damages not based on overcharges to be filed within two years.[[8]](#footnote-8) In its response to the Commission, TCC provided notice to the Commission that the Complainant had been a customer of TCC since 2009.

5. TCC submits that it was not required to retain a copy of the verification recording beyond 2011. The Commission’s rules regarding preservation of records of verification requires that they be retained for two years[[9]](#footnote-9). In its implementation of these rules, the Commission explained that it would not require carriers to retain records of verification for longer than two years because “any person desiring to file a complaint with the Commission alleging a violation of the Act must do so within two years of the alleged violation.”[[10]](#footnote-10) The Commission’s rules regarding an investigation to an allegation of an unauthorized change in preferred carrier state that a “failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.”[[11]](#footnote-11) TCC submits that the required proof of verification applies to those complaints which are filed within the required two-year limitation on actions. TCC responded to the Complaint as required and provided the relevant information required[[12]](#footnote-12) for the Commission to conclude that TCC was no longer required to retain a copy of the verification recording and, therefore, providing for the Commission to conclude that TCC’s actions did not result in an unauthorized change in Complainant’s telecommunications service provider.

7. Based on the record before the Commission, TCC requests that the Commission reconsider the *Order* and dismiss the Complaint. Specifically, TCC requests that the Commission deny the Complaint based on a finding that the Complaint is barred by Section 415(b) of the Act, that the Commission’s rules require only that carriers preserve records of verification for a period of two years, and that TCC’s actions did not result in a violation of the carrier change rules.

Respectfully submitted,

By

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1. *In re Twin City Capital, LLC d/b/a Small Business America; Complaint Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier,* Order, DA 19-344, Complaint No. 2783434 (rel. April 29, 2019) [↑](#footnote-ref-1)
2. 47 U.S.C. § 415(b) [↑](#footnote-ref-2)
3. *See* Twin City Response to Informal Complaint No. 2783434, filed Oct. 25, 2018. [↑](#footnote-ref-3)
4. *See* 47 C.F.R. §§ 64.1100-64.1190. [↑](#footnote-ref-4)
5. *See* Informal Complaint No. 2783434, filed Sept. 9, 2018. [↑](#footnote-ref-5)
6. *See* Twin City Response to Informal Complaint No. 2783434, filed Oct. 25, 2018. [↑](#footnote-ref-6)
7. *Order* at para. 3. [↑](#footnote-ref-7)
8. 47 U.S.C. § 415(b) (“All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after...”) [↑](#footnote-ref-8)
9. 47 CFR § 64.1120(c)(3)(iv) [↑](#footnote-ref-9)
10. *In re 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*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1554 (1998) (citing Section 415(b) of the Act) (“*Second Report and Order*”) [↑](#footnote-ref-10)
11. 47 CFR § 64.1150 (d) [↑](#footnote-ref-11)
12. *See* Twin City Response to Informal Complaint No. 2783434, filed Oct. 25, 2018 (notifying the Commission that the verification occurred in 2009). [↑](#footnote-ref-12)