

Before the Federal Communications Commission
Washington, DC 20554

In the Matter of)		
Peak Communications, Inc.)		
Complaint Regarding)	Complaint Nos.	1548718
Unauthorized Change of)		1852336
Subscriber's Telecommunications Carrier)		

PETITION FOR RECONSIDERATION

Peak Communications, Inc. ("Peak" or "Company"), pursuant to Section 1.106 of the Rules of the Federal Communications Commission ("FCC" or "Commission"),¹ respectfully requests that the Consumer and Governmental Affairs Bureau reconsider the Order released by its Consumer Policy Division ("Division") on May 24, 2019,² and dismiss the Complaints in the above-captioned complaints, which the Division granted, stating that Peak violated the Commission's slamming rules for failing to confirm that the customers on the line with the third-party verifiers were authorized to make a change in carrier for service.

Peak did confirm that the Complainants were authorized to make changes, including carrier changes, to the telecommunications accounts, and confirmed that they were changing carriers through the third-party verification process using non-misleading, clear language, as required by Commission Rules.³

¹ 47 C.F.R. § 1.106.

² *In re Peak Communications, Inc.*, Order, DA 19-464, Rel. May 24, 2019 ("Order"). As stated in its initial responses to both these Complaints, Peak has credited both accounts in full and they were closed. The Complainant in Complaint No. 1548718 canceled his service within 30 days of signing up for service and was issued a credit in full when his account was closed. The Complainant in Complaint No. 1852336 was a customer for less than 90 days and was issued a credit in full for services rendered.

³ 47 C.F.R. § 64.1120(c)(3)(iii).

I. Background

Peak is a small, family-owned interexchange carrier founded in 1998, which provides interstate interexchange telecommunications services to consumers under blanket 214 authority by the Commission, and is authorized to provide intrastate interexchange and toll services in Arkansas, California, and Colorado. The Company also provides unregulated interexchange services in Utah and Virginia.

Peak has entered into contractual relationships with telemarketing companies to market its services, and also engages an independent third-party verification company to confirm the customer's voluntary change of carrier, in accordance with Commission rules.⁴ Recordings of these third-party verifications ("TPVs") are kept for a minimum of two years, and for an additional year if the customer lodges a complaint with the Commission against Peak. This TPV retention policy conforms to all legal and regulatory requirements.

On April 15, 2018, a customer filed an informal complaint with the Commission alleging that Peak changed his toll and long-distance provider to Peak without his authorization ("Complaint 1548718"). Peak filed a timely response to Complaint 1548718 on May 11, 2017. Similarly, a separate customer filed a similar complaint with the Commission on August 15, 2017 ("Complaint 1582336"), and Peak filed a timely response to Complaint 1582336 on September 11, 2017.

In both responses, Peak indicated that it had a valid TPV for each of these customers, and that despite this, in the interest of maintaining good customer relations, Peak had credited their

⁴ 47 C.F.R. § 64.1120(c)(3).

accounts in full, and requested that the Commission close these complaints as a result of the credits issued and termination of these accounts.⁵

II. Peak's Third-Party Verifications Meet the Requirements of the Commission's Rules.

Peak has developed a script provided to its third-party verifiers based upon the requirements outlined in the Commission's Rules.⁶ Through a series of clear and concise questions, verifiers confirm: (1) that the customer is authorized to make a change in carrier on the account; (2) the billing telephone numbers ("BTN") that are subject to the carrier change; and (3) that the customer understands that he or she is authorizing a change in the carrier that provides some or all of his or her telecommunications services, as applicable. Peak's third-party verifier states that they can only accept a "yes" or "no" answer to each question. Once the third-party verifier receives a negative answer to any question, the TPV is discontinued, and the customer is not moved to Peak for service.

Peak's TPV script states at the outset: "We are an independent third party retained to verify your selection of Peak Communications *as your new service provider* and selection of Peak Communication's Rate Calling Plan for your local toll and long distance service. For your security and to prevent any errors, this conversation is being recorded and will require less than a

⁵ In other words, Peak exceeded what the Division required in Paragraph 5 of the Order, inasmuch as Peak credited all amounts owed by these two customers, not just amounts owed for the first 30 days of service and any charges above the rates of the customers' previous carrier.

⁶ 47 C.F.R. § 64.1120(c)(3)(iii) requires that at a minimum the TPV contain, "[T]he date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized; the names of the carriers affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved (including a brief description of a service about which the subscriber demonstrates confusion regarding the nature of that service)."

minute of your time. Is that OK?”⁷ This clearly and explicitly states the nature of the call, and that it is the intent of the customer is to confirm that he or she will be changing their service provider.⁸ The verifier pauses to allow the customer to answer in the affirmative before proceeding. If the verifier receives a negative response to this initial portion, the TPV is terminated.

The verifier then proceeds to verify the identity of the authorized consumer: “I need to confirm that I am speaking with Mr./Mrs. [Name of Customer], And that you are 18 years or older and authorized by the telephone account owner to make changes and to incur charges on this telephone account.”⁹ Importantly, this is the only portion of the TPVs included in the Division’s Order, and taken with the statement regarding the purpose of the call at the outset of the TPV, and the confirmation from the customer that it is permissive to proceed with the TPV, confirms that the party on the line is authorized to make a carrier change.

The TPVs then require an affirmative response to the following question: “And do you understand that by completing this verification, a change in the company that provides your local toll services and your long distance services, which includes state-to-state, international and certain intrastate calls, will be authorized?”¹⁰ The verifier goes on to ask the customer “The telephone number you intend to switch from your local toll and long distance provider to Peak Communications local toll and long distance service is [BTN Provided], is that correct?” Finally, the verifier concludes the TPV by stating, “And the purpose of this call is to **confirm**

⁷ See Peak Communications TPV Script, page 1, provided as **Exhibit A**. (emphasis added)

⁸ Compare to *In Re: Reliant Commc'ns, Inc.*, Order, DA 19-252, Rel. April 4, 2009, No. 11-S3283512, 2019 WL 1495078, at *2 (OHMSV Apr. 4, 2019), where the stated purpose of the call was to “confirm a change to your service as well as to facilitate accurate data.”

⁹ *Id.*

¹⁰ *Id.* The script also elicits separate authorizations for both local toll and interstate and international calling services.

your selection of this service and your intent to switch service providers by giving us your complete date of birth.”¹¹ None of these other requests are cited or even addressed in the Order.

The Commission does not have prescribed language for TPVs, but instead requires that “the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”¹² The TPV must elicit, among other things, that the customer intends to change carriers for his or her service, that the customer on the line is authorized to make a change of carrier to the account, and that any description of the carrier change is not misleading.¹³ If a person is authorized to “make changes and incur charges” on an account, especially if he or she is the named account holder, that person is as a *de facto* matter, authorized to change the carrier providing service to that account. Further, the consumer is asked several times if he or she is agreeing to a change in carrier or service provider for their telecommunications services. Based upon the totality of the circumstances -- including the introductory explanation of the nature of the call at which time the verifier clearly states that the purpose of the call is for the customer to change telephone services providers; the verifier receiving affirmation from the customer that the call is intended to verify a change in carrier; the caller indicating that he or she is authorized to make changes to the account; and the number of times where the third-party verifier requires an affirmative response that the customer acknowledges and understands that the verification will result in a change in their service provider-- it is more than reasonable for a carrier to believe a person is authorized to make a

¹¹ *Id.* (Emphasis added)

¹² *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies & Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, 14 F.C.C. Rcd. 1508, 1553 ¶72 (1998).

¹³ 47 C.F.R. § 64.1120(c)(iii).

carrier change to an account if they affirm through these steps that the consumer is authorized to make changes to the account, and to complete the verification process.

III. The Complainants Affirmatively Approved a Carrier Change

In both of the complaints outlined in the Order, the Division disregarded, or failed to adequately consider, the outset of the call at which time it is clearly stated that the purpose of the call is to authorize a change in carrier, and further language immediately following confirming that the individual on the line is authorized to make changes, including carrier changes, or to incur charges on the account. Both Complainants affirmatively responded to each of the questions posed by the third-party verifier. The verifier confirms and clearly states several times that the authorization will result in the change of service provider for toll and interstate and international telecommunications services in clear and unambiguous language. Neither Complainant informed or corrected the third-party verifier by stating that they were unable to change the long-distance carrier on the account, after having already affirmed that they were authorized to make changes on the accounts, and confirming this authorization by providing their dates of birth. Accordingly, Peak's TPVs were perfectly acceptable under Commission Rules, contrary to the Bureau's May 24, 2019 Order.

IV. Conclusion

For the reasons shown above, Peak requests that the Bureau reconsider its May 24, 2019 Order and deny Complaints 1548718 and 1852336. Specifically, Peak requests that the Bureau deny the Complaints based upon a finding that the TPVs provided by Peak to the Commission affirm that the customers authorized a carrier change for toll and long-distance services to Peak.

Respectfully submitted,

PEAK COMMUNICATIONS, INC.

A handwritten signature in blue ink, reading "Katherine E. Barker Marshall", is positioned above a horizontal line.

By: Katherine E. Barker Marshall
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Date: June 24, 2019

Exhibit A
Peak Communications, Inc.
Third-Party Verification Script



1442 E. Lincoln Avenue, #479, Orange, CA 92865 | tel 877.853.7325 | www.peakcomm.com

Peak One Rate Plus

TPV Verification Script

Hello, this is [your first name] with [Agency].

May I have the consumer's main billing telephone number?

And the consumer's first and last name?

What is the consumer's Street Address? Is there an apartment number?

What is the city, state and zip code?

What is your 5 digit agent code?

Rep, your reference number is [Reference/Confirmation Number]

Rep, please clear the line at this time. Thank you.

The date of this verification is (date) and it is (time).

Hello, Mr/Mrs. This is [say your first name] verifier number [XXX] with [Agency] a Third Party Verification. We are an independent third party retained to verify your selection of Peak Communications as your new service provider, and selection of Peak Communication's 1 Rate Calling Plan for your local toll and long distance service. For your security and to prevent any errors, this conversation is being recorded and will require less than a minute of your time. Is that OK?

Going Forward, I am only allowed to accept clear, "Yes/No" answers.

Now I need to confirm that I am speaking with Mr/Mrs [Name of customer]

And that you are 18 years old or older and authorized by the telephone account owner to make changes and to incur charges on this telephone account?

And do you understand that the call you just received was made by a representative of Peak Communications, which is not affiliated with your local phone company?

And do you understand that by completing this verification, a change in the company that provides your local toll service and your long distance service, which includes state-to-state, international and certain intrastate calls, will be authorized?

The telephone number you intend to switch from your current local toll and long distance provider to Peak Communications local toll and long distance service is [BTN Provided], is that correct?

Are there any additional telephone numbers on this account that you are asking to be switched to Peak Communications?

May I have the first number? [Repeat number to consumer]. Is that correct?

May I have the second number? [Repeat number to consumer]. Is that correct?



1442 E. Lincoln Avenue, #479, Orange, CA 92865 | tel 877.853.7325 | www.peakcomm.com

May I have the third number? [Repeat number to consumer]. Is that correct?

May I have the fourth number? [Repeat number to consumer]. Is that correct?

Do you confirm that you want to change your local toll service for this telephone number or numbers to Peak Communications?

And do you confirm that you want to change your long distance service, which includes state-to-state, international and certain intrastate calls, for this telephone number or numbers to Peak Communications?

With Peak Communication's 1 Rate Calling Plan, you will receive the low rate of 6.5 cents per minute on all of your local toll and long distance calls within the continental US, 24 hours a day, 7 days a week, with a low monthly service charge of only \$9.95 per line. And the purpose of this call is to confirm your selection of this service and your intent to switch service providers by giving us your complete date of birth. May I have your birth date please?

"For your convenience, charges for the Peak 1 Rate Calling Plan will appear on the USBI page of your local telephone bill as being billed on behalf of Peak Communications.

Should you have any questions, to make changes, to request a credit for a switching fee charged by your prior carrier, or to cancel your Peak 1 Rate Calling Plan, please call our customer service at 877-851-7325 or write to us at 1442 E. Lincoln Ave, #479, Orange, CA 92865.

Thank you for choosing Peak Communications. We will be completing this verification by calling you back in 30 seconds."

Call back

Hi Mr/Mrs [Customer Name], this is [your first name] with [Agency]. On behalf of Peak Communications we want to welcome you to the service and inform you that your welcome package containing the Peak 1 Rate Calling Plan information will arrive within approximately two weeks. Once again, thank you. Goodbye.

Certificate of Service

I, Katherine Barker Marshall, hereby certify on this the 24th day of June, 2019, have caused the Petition for Reconsideration of Peak Communications, Inc. regarding Complaint Numbers 1548718 and 1852336 was served on the following listed individuals by the following methods:

Via ECFS:

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Via First Class U.S. Mail, Postage Prepaid:

Complainant – Complaint No. 1548718
[Address Withheld]

Complainant – Complaint No. 1852336
[Address Withheld]

Via E-Mail:

Kurt Schroeder, Division Chief
Consumer Policy Division
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