

submitting a carrier change request. For those carriers who use an independent third party for verification, the Commission's rules require that the verification method confirm at least six things: 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 change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. The rules also require that carriers keep audio records of the verification for a minimum of two years after obtaining such verification. Finally, the Commission's rules require that where a carrier "is selling more than one type of telecommunications service * * * that carrier must obtain separate authorization from the subscriber for each service sold * * *. Each authorization must be verified separately from any other authorizations obtained in the same solicitation."

16. BOI did not submit any evidence of authorization or verification regarding the consumer complaints cited in the Enforcement Bureau's Letter of Inquiry. It appears that BOI has therefore apparently failed to meet its burden to rebut complainants' assertions that BOI changed their preferred carriers in violation of the Act and the Commission's rules. In this record, BOI appears to have provided no evidence to justify the preferred carrier changes it apparently made. There is no need to refer to the tapes BOI provided to the Maine Public Utilities Commission, since BOI did not provide these tapes to the Commission's staff as justification for their changes of the consumers' preferred carriers. Even if the Commission were to consider the five tapes BOI submitted to the Maine Public Utilities Commission, however, these tapes show that BOI does not gather the critical information that our rules require. For example, the tapes do not confirm in an acceptable manner that the person is authorized to make the change and, most significantly, do not confirm the switch of the authorized carrier. First, the tapes do not verify the names of the consumers' prior carriers which were affected by the change, as required under the Commission's rules, nor do the tapes of Paul Brackett, Beatrice Violette, and Laura Crowley verify the telephone number to be switched. Second, the statement in the tapes by the third party verifier that "You are authorized and giving permission to Business Options to change the long distance phone service, correct?" confusingly combines

questions as to whether the person is the authorized decision maker and whether the person is choosing BOI as his or her preferred carrier. Finally, in two instances, Paul Brackett and Laura Crowley, it appears that the consumer did not understand what the verifier was saying. Paul Brackett only responded "Uh-huh" to all of the verifier's questions. It appears that such an answer was not sufficient to permit the verifier to know whether Mr. Brackett agreed to change service providers. Laura Crowley asked the verifier whether there would be a change to her phone bill, and the verifier only replied that she was just verifying what the telemarketer had told the consumer. It appears from this colloquy that Ms. Crowley believed that her service was not going to change. It appears that in neither case were the consumer's answers clear enough to verify that they indeed wanted BOI's service.

17. The above examples appear to show a pattern of verification that falls egregiously short of the requirements in the Commission's rules, either because they omit certain requirements or because they pose questions in such a way that the consumer is confused and the consumer's intent cannot be verified. Accordingly, the tapes that BOI submitted to the Maine Public Utilities Commission do not appear to be sufficient to rebut the allegations in the complaints that BOI changed the preferred carriers of the five consumers without proper authorization.

18. For the remaining three complaints that were filed with the Commission, BOI failed to provide a tape or any other evidence, beyond its denial that "no one representing BOI has changed the preferred carrier as specified in the complaints" after April 1, to rebut the allegations in the complaints. Based on this failure, it appears that BOI is liable for changing the preferred carriers of those consumers without authorization. As we discussed above, our rules require carriers to keep audio records of third-party verification for a minimum of two years after obtaining the verification. BOI has not produced evidence to show that it used third-party verification or any of the other verification methods that the Commission's rules allow. Furthermore, based on the evidence of its practices shown by the several "verification" tapes discussed above, it is reasonable to assume that any verification BOI might have obtained would likely fall egregiously short of the requirements in our rules. Therefore, even if BOI used a third-party verifier, BOI still would not likely have

sufficient evidence to rebut the allegations in the complaints that it changed the preferred carriers of the remaining three consumers without prior authorization.

19. Section 64.1195 of the Commission's rules requires that any telecommunications carrier providing interstate telecommunications service on or after the effective date of the rule (March 1, 2001) shall submit an FCC Form 499-A. BOI was a telecommunications carrier on or after the effective date of the rule. BOI failed to respond to a request to provide evidence that it had submitted this report. Nor do the Commission's files contain any evidence that BOI has filed this report. The Commission therefore finds that BOI has apparently failed to file FCC Form 499-A, in violation of section 64.1195. Section 64.1195 specifically provides for revocation of operating authority for failure to comply with its provisions.

20. BOI's application for authorization appears to show that BOI did not meet its obligations as a common carrier to adequately notify its customers of the discontinuance or seek Commission approval before it discontinued service, in apparent violation of section 214(a) of the Act and sections 63.71 and 63.505 of the Commission's rules.

21. Under the Act and our rules, it is clear that a telecommunications carrier must receive Commission authorization and provide the required notice to its customers before it may discontinue service to those customers. The service of approximately 200 BOI customers in Vermont was apparently terminated by December 21, 2002. It appears that BOI did not file any application until the day before its discontinuance, and never gave customers notice of their right to protest. Further, as stated above, it appears that the reasons that BOI gave for its failure to comply with Commission rules, *i.e.*, its ignorance of such rules and its compliance with requirements of the State of Vermont, were not true. The Stipulation BOI signed with Vermont was executed in September 2002. Therefore, it appears that at that time BOI knew or should have known that in the near future, it would have to file an application for discontinuance and provide notice to its customers. In view of the foregoing facts, it appears that BOI willfully or repeatedly discontinued service without Commission authorization in violation of section 214(a) of the Act and sections 63.71 and 63.505 of the Commission's rules.

22. The Administrative Law Judge is directed to determine whether BOI willfully or repeatedly has made