

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

In the Matter of)	
)	File No. EB-03-TC-075
LCR Telecommunications, LLC)	NAL/Acct. No.: 200532170002
)	FRN: 0004981361
Verification of Orders for)	
Telecommunications Service)	

ORDER

Adopted: November 29, 2004

Released: December 1, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we terminate an investigation into potential violations by LCR Telecommunications, LLC (“LCR”) of sections 201(b) and 258 of the Communications Act of 1934, as amended (“the Act”),¹ as well as Commission rules and orders, in connection with changing the designated preferred carrier of consumers without their authorization and verification, a practice commonly known as “slamming.”²

2. The Enforcement Bureau and LCR have negotiated the terms of a Consent Decree that would terminate the Bureau’s investigation. A copy of the Consent Decree is attached hereto and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We find that the public interest would be served by approving the Consent Decree and terminating the captioned investigation.

4. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Act, 47 U.S.C. § 154(i), and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree is ADOPTED.

5. IT IS FURTHERED ORDERED that the above captioned proceeding is TERMINATED.

FEDERAL COMMUNICAITONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹ 47 U.S.C. §§ 201(b), 258.

² “Slamming” refers to the submission or execution of a change in a subscriber’s selection of a telecommunications service provider without following the Commission’s authorization and verification rules. *See generally* 47 C.F.R. §§ 64.1100-64.1195.

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and LCR Telecommunications, LLC (“LCR”),¹ by their authorized representatives, hereby enter into this Consent Decree to resolve an investigation by the Bureau regarding possible non-compliance with the requirements of sections 201(b) and 258 of the Communications Act of 1934, as amended, (the “Act”), and section 64.1120 of the Commission’s rules.²

2. The Bureau initiated this investigation based on consumer complaints filed with the Commission and numerous state agencies.³ A review of the complaints indicated that LCR may have submitted preferred carrier changes on behalf of consumers without following the Commission’s verification procedures. Specifically, it appears that LCR’s telemarketing agents may have submitted preferred carrier changes affecting 18 subscribers by facilitating fraudulent verification recordings. The Bureau inquired about these practices in Letters of Inquiry issued to LCR,⁴ and LCR responded to these inquiries.⁵

II. DEFINITIONS

3. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally

¹LCR’s business address is 100 West Big Beaver Road, Suite 200, Troy, MI 48084. LCR is a nationwide reseller of international, interstate, and intrastate interexchange telecommunications 1+, 10-10-xxxx, and 1-800 services.

²47 U.S.C. §§ 201(b), 258; 47 C.F.R. § 64.1120.

³Agencies in the following states participated in this investigation: Arizona, Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Iowa, Maine, Missouri, Minnesota, New Jersey, New Mexico, Ohio, Pennsylvania, Texas, Vermont, Virginia, and Washington.

⁴See Letter from Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission to Martin Tibbitts, Managing Member, LCR Telecommunications, LLC (Feb. 17, 2004); Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission to Martin Tibbitts, Managing Member, LCR Telecommunications, LLC (July 30, 2004).

⁵See Letter from Thomas K. Crowe, Gregory E. Kunkle, Counsel for LCR Telecommunications, LLC to Edward Hayes, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Apr. 1, 2004); Letter from Thomas K. Crowe, Gregory E. Kunkle, Counsel for LCR Telecommunications, LLC to Edward Hayes, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Aug. 31, 2004).

terminating the above-captioned Investigation.

- b. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- c. "Effective Date" means the date on which the Bureau adopts the Adopting Order.
- d. The "FCC" or the "Commission" means the Federal Communications Commission and all Bureaus and Offices of the Commission, including the Enforcement Bureau.
- e. "Investigation" means the investigation commenced by the Bureau's Letter of Inquiry dated February 17, 2004,⁶ together with slamming complaints received by the Commission prior to the Effective Date.
- f. "LCR" or the "Company" means LCR Telecommunications, LLC, and its subsidiaries.
- g. "Marketing" means to attempt to sell intraLATA toll, interLATA, or international telecommunications services through means such as telemarketing, direct mail marketing, selling through field sales representatives, multi-level marketing arrangements, or the equivalent.
- h. "Parties" mean LCR and the Bureau.

III. AGREEMENT

4. LCR agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

5. LCR represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. LCR further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative as a true act and deed, as of the date affixed next to said representative's signature. Said representative and LCR respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a member of LCR, and on behalf of LCR, and that, by his/her signature, said representative is binding LCR to the terms and conditions of this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. The Bureau agrees that, in the absence of new material evidence, it will not initiate on its own motion any other enforcement action against LCR concerning matters that were the subject of this Investigation, or seek on its own motion any administrative or other penalties from LCR based on this Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action otherwise authorized by the Act.

7. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or non-compliance with the requirements of the Act and Commission rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree LCR does not admit or deny

⁶See *supra* note 4.

liability for violating the Act and Commission rules in connection with the matters that are the subject of this Consent Decree.

8. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, LCR shall make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of five hundred thousand dollars (\$500,000.00). The payment shall be made within thirty (30) calendar days of the Effective Date. The payment shall be made by check, wire transfer, or money order drawn to the order of Federal Communications Commission, and the check, wire transfer, or money order shall refer to the NAL Acct. No. and FRN No. identified above. If LCR makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. If LCR chooses to make these payments by wire transfer, payment may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

9. LCR agrees that, to the extent that it has not already done so, the Company will cease marketing to existing and prospective customers. LCR further agrees that should it choose to discontinue interLATA, intraLATA toll, or international telecommunications services, the Company will file timely applications with the Commission pursuant to section 214 of the Act, 47 U.S.C. § 214, and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, and all relevant state authorities. LCR agrees to notify the Bureau via e-mail and US mail to the attention of the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington, D.C. 20554, within ten (10) days prior to submitting any application, registration or request to the Commission pursuant to section 214 of the Act or section 63.71 of the Commission's rules. For a period of two years from the Effective Date, the Company's officers and principals⁷ shall not have an ownership stake or be principals or officers in any company, other than LCR, which sells, offers, or provides interLATA, intraLATA toll, or international telecommunications services.

10. LCR represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree. LCR agrees to notify the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington D.C. 20554, at least thirty (30) days prior to the effective date of any material change in LCR's legal status or corporate structure, including but not limited to any merger, incorporation, dissolution, assignment, or transfer of its subscriber/customer base. Nothing in this Consent Decree shall be deemed to be an obligation by LCR to disclose to the Bureau "material inside information," as that term is defined in applicable securities laws and regulations.

11. LCR agrees to provide a written report ("Compliance Report") to the Bureau six (6) months from the Effective Date describing its compliance with this Consent Decree. The Compliance Report shall provide the number of accounts or lines billed by LCR on a monthly basis for the six month period covered by the Compliance Report. LCR also agrees to submit to the Bureau additional Compliance Reports twelve (12) and twenty-four (24) months from the Effective Date. All Compliance Reports shall be submitted to the Bureau via e-mail and US mail to the attention of the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington, D.C. 20554.

⁷See E-mail from David Hepp, Director of Customer Service, LCR Telecommunications, LLC to Sharon Lee, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Division (Nov. 9, 2004) (listing all current officers, principals, and owners of LCR).

12. LCR agrees to maintain and make available to the Bureau, within 20 business days of receipt of any written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree.

13. LCR waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition, or modification.

14. LCR's agreement to enter into this Consent Decree is expressly contingent upon the issuance of an Order by the Bureau that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

15. In the event that any court of competent jurisdiction renders this Consent Decree invalid, it shall become null and void and may not be used in any manner in any legal proceeding.

16. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, that provision will be superseded by such Commission rule or order.

17. By this Consent Decree, LCR does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for, and implementation of LCR's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Consent Decree, and no waiver of such privileges is made by this Consent Decree.

18. If either party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither LCR nor the Commission will contest the validity of the Consent Decree or Adopting Order, and LCR and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

19. LCR agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

20. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

For LCR Telecommunications, LLC

By: _____
David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission

By: _____
Martin J. Tibbitts,
Managing Member
LCR Telecommunications, LLC

Date

Date