

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

In the Matter of)
Long Distance Consolidated) File No. EB-04-TC-147
Billing Co.) NAL/Acct.: 200732170003
Verification of Orders for) FRN:0004337499
Telecommunications Service)

ORDER

Adopted: October 25, 2006

Released: October 25, 2006

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission ("FCC" or "Commission") and Long Distance Consolidated Billing Co. ("LDCB"). The Consent Decree terminates an investigation into potential violations by LDCB 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 LDCB have negotiated the terms of a Consent Decree that would resolve this matter and 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 adopting the Consent Decree and terminating the above-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 COMMUNICATIONS COMMISSION

Kris A. Monteith
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 Long Distance Consolidated Billing Co. (“LDCB”),¹ by their authorized representatives, hereby enter into this Consent Decree to resolve the Bureau’s investigation (the “Investigation”) 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

II. BACKGROUND

2. The Bureau sent a letter of inquiry (“LOI”) to LDCB on January 28, 2005, concerning Consumer Complaints filed with the Commission indicating that LDCB may have submitted preferred carrier changes on behalf of consumers without following the Commission’s verification procedures.³ The LOI directed LDCB, among other things, to provide information regarding both its telemarketing and third party verification practices, as well as copies of any complaints that LDCB received from a regulatory authority (other than the FCC) or directly from consumers, from April 1, 2004 through January 28, 2005, alleging that the preferred carrier for a consumer’s local, intraLATA toll, or long distance services were changed without the consumer’s permission, or “slammed,” after receiving a call from LDCB or a LDCB telemarketing contractor. The LOI directed LDCB to support its response with pertinent documentation and affidavits.

3. LDCB provided its written response on March 11, 2005, and supplemented its response on April 12, 2005, and November 22, 2005.⁴

¹ LDCB’s business address is 145 S. Livernois Road, Suite 199, Rochester, MI 48307. LDCB is a nationwide reseller of international, interstate, and intrastate interexchange telecommunications services.

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

³ See Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission to Ms. Jan M. Lowe, President, Long Distance Consolidated Billing Co. (Jan. 28, 2005).

⁴ See Letter from Thomas K. Crowe, Gregory E. Kunkle, Counsel for Long Distance Consolidated Billing Co. to David Hunt, Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Mar. 11, 2005); Letter from Thomas K. Crowe, Gregory E. Kunkle, Counsel for Long Distance Consolidated Billing Co. to David Hunt, Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Apr. 12, 2005); Letter from Thomas K. Crowe, Gregory E. Kunkle, Counsel for Long Distance Consolidated Billing Co. to Edward Hayes, Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (Nov. 22, 2005).

III. DEFINITIONS

4. 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 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 releases the Adopting Order.
 - d. The "FCC" or the "Commission" means the Federal Communications Commission.
 - e. "Investigation" means the investigation commenced by the Bureau's letter of inquiry dated January 28, 2005,⁵ regarding LDCB's possible noncompliance with sections 201 and 258 of the Act and section 64.1120 of the Commission's rules.
 - f. "LDCB" or "Company" means Long Distance Consolidated Billing Co., and any affiliate, d/b/a, predecessor-in-interest, parent companies, and any direct or indirect subsidiaries of such companies, or other affiliated companies or businesses and their successors and assigns.
 - g. "Parties" means LDCB and the Bureau.
 - h. "Consumer Complaint" means any complaint LDCB receives directly from a consumer or LDCB receives from a federal or state regulatory agency alleging that LDCB has changed the consumer's preferred carrier without authorization or that the consumer was misled about the nature of LDCB's services during the marketing of the services.

VI. AGREEMENT

5. LDCB agrees that the Commission and its delegated authority, the Bureau, have jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. LDCB 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. LDCB 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 LDCB respectively affirm and warrant that said representative is acting in her capacity and within her authority as a member of LDCB, and on behalf of LDCB, and that, by her signature, said representative is binding LDCB to the terms and conditions of this Consent Decree.

7. 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 LDCB concerning matters that were the

⁵ See *supra* note 3.

subject of this Investigation, or seek on its own motion any administrative or other penalties from LDCB 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, or to take any action otherwise authorized by the Act. In consideration of the termination of the Investigation, LDCB agrees to the following terms and conditions of this Consent Decree:

8. Misleading Sales Calls. No sales representative will make a sales call that is misleading in any material respect. For example, such calls will not represent, suggest, or imply:

- i. that the company calling the consumer is any company other than LDCB;
- ii. that the purpose of the sales call is anything other than offering the consumer long distance service and a bill consolidating service;
- iii. that the call will not result in a change of the consumer's long distance carrier;
- iv. that another carrier (or the consumer's current carrier) cannot make or complete certain long distance calls; or,
- v. that the call is only for the purpose of verifying or confirming the consumer's current service.

9. Revised Scripts. LDCB will revise its sales and third party verification (TPV) scripts within thirty (30) calendar days of the Effective Date. The sales script will be revised to alert the consumer that his/her long distance provider will be changed. LDCB will revise the TPV script to elicit clearly the consumer's approval to switch service providers.

10. Consumer Remedies. LDCB will promptly and in good faith address and resolve all Consumer Complaints in a reasonable manner. In all cases where LDCB concludes that misleading statements were made by a sales representative, it will contact the consumer and provide appropriate remedies, including assistance to the customer in returning to his preferred carrier and reasonable credits or refunds for charges incurred as permitted by applicable federal and state laws or regulations. Further, LDCB will have all Consumer Complaints regarding an alleged unauthorized switch of service providers addressed by specially-trained customer service representatives. When a consumer calls alleging an unauthorized preferred carrier change, the consumer will be forwarded to LDCB representatives with special training in the subject matter. Wherever possible, the consumer's concern will be addressed during the first call. In those cases where it is necessary to arrange to call the consumer back or have the consumer leave a message for that purpose, LDCB will ensure that the consumer's call is returned by a specially-trained representative within twenty-four (24) hours.

11. Customer Service Record Retention. LDCB will retain records of Consumer Complaints and customer service responses, including consumer credits, for the term of the Consent Decree. These records will be made available to the Bureau within twenty (20) days of any request from the Bureau. Such Consumer Complaint records shall include all written Consumer Complaints filed directly with LDCB and those Consumer Complaints filed against, or otherwise submitted to, LDCB in any local, state, or federal jurisdiction. The record of Consumer Complaints shall include the name, address, and telephone number of each complainant, LDCB's response, and the final disposition of each such Consumer Complaint. For the purposes of this provision, Consumer Complaint records shall include all writings, computer records, electronic or e-mail communications, and all written notes regarding such complaints. LDCB will maintain such records in an accurate and easy-to-review format.

12. Sales Training Materials. LDCB will implement a new policy manual ("Manual") within thirty (30) calendar days of the Effective Date. The Manual will prohibit any activity that violates any federal or state law, misrepresents the sales caller's identity or purpose, or involves any other false, misleading, untrue, or incomplete statements. The Manual will impose a "zero tolerance" policy for acts of misrepresentation and violation of the policies and requirements in the Manual, and provide that LDCB

may immediately terminate its relationship with any employee, affiliate, agent, contractor or any other individual or entity acting on behalf of, or for the benefit of, LDCB which violates any policy or requirement described in the Manual. Within sixty (60) days of the Effective Date, all existing marketing agents will be required to review the Manual and each new marketing agent will review it as a part of his initial training. In addition, LDCB's "zero tolerance" policy regarding slamming and deceptive marketing practices (or any other violation of the Manual) will be emphasized to all such sales representatives.

The activity prohibited by the Manual will include, but will not be limited to:

- i. Any activity which violates any federal or state law or results in violation of any regulation enacted by any federal or state governmental body including the FCC or any state public utilities commission. Any activity which would constitute a violation of federal or state slamming or cramming laws is strictly prohibited; and,
- ii. Any act of misrepresentation or fraud made in relation to LDCB's services, rates, surcharges, terms, and conditions. This may include, but is not limited to, the following:
 - (1) claiming that a sales call is for a purpose other than to sell LDCB's long distance services;
 - (2) claiming to be affiliated with or working for any telecommunications carrier or any company other than LDCB;
 - (3) failing to identify adequately the marketing representative or LDCB on a sales call; and,
 - (4) making any false, untrue, misleading, or incomplete statements.

13. Marketing Contracts. Any marketing contracts LDCB enters into with sales marketing companies will require that the marketing companies agree to abide by all applicable federal and state laws and regulations. The marketing contracts will allow LDCB, in its sole discretion, to terminate the contract upon any accusation, against the marketer, of illegal conduct, including misrepresentation.

14. Counsel Review. Prior to effectuating any Manual controlling the marketing or sale of LDCB's long distance or bill consolidation services, or implementing changes to its sales or TPV scripts, LDCB will submit the same to legal counsel for review and advice regarding conformity with the requirements of the Consent Decree and all applicable federal and state laws and regulations. Such counsel shall have experience with federal telecommunications and consumer protection laws, including the law relating to fraudulent, deceptive, unconscionable and unfair acts or practices.

15. Notice of Consent Decree. Within thirty (30) calendar days of the Effective Date, LDCB will thoroughly review the substantive requirements and procedures set forth in the Consent Decree with its directors and officers, and with managers, employees, agents, and persons associated with LDCB who are responsible for implementing the obligations contained herein. LDCB will, within thirty (30) calendar days of the Effective Date, deliver to each of its current directors and officers, and to all managers, employees, agents, and persons associated with the LDCB having sales, marketing/advertising, operational or customer service responsibility with respect to LDCB's long distance and consolidated billing services, written instructions as to their respective responsibilities in connection with LDCB's compliance and obligations under this Consent Decree. LDCB will distribute such instructions to all its future directors and officers wherever located, and to all future managing marketing personnel.

16. Business Records Demonstrating Compliance. LDCB will maintain and make available to the Bureau, within twenty (20) calendar days of receipt of any request from the Bureau, business records demonstrating compliance with the terms and provisions of the Consent Decree.

17. Term of Consent Decree. Three (3) years from the Effective Date.

18. 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 by LDCB with the requirements of the Act or the Commission's rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, LDCB does not admit or deny any noncompliance, violation, or liability for violating the Act or Commission's rules and orders in connection with the matters that are the subject of this Consent Decree.

19. In further consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, LDCB agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of eighty-five thousand dollars (\$85,000.00). The payment shall be made in four equal installments over a twelve (12) month period, that will begin on the Effective Date. The first installment of \$21,250.00 shall be made within three (3) months of the Effective Date. The second installment of \$21,250.00 shall be made within six (6) months of the Effective Date. The third installment of \$21,250.00 shall be made within nine (9) months of the Effective Date. The fourth and final payment of \$21,250.00 shall be made within twelve (12) months of the Effective Date. Payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania, 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Please include your NAL/Acct. No. with your wire transfer remittance.

20. LDCB 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. LDCB agrees to notify the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, at least thirty (30) calendar days prior to the effective date of any material change in LDCB'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 LDCB to disclose to the Bureau "material inside information," as that term is defined in applicable securities laws and regulations.

21. LDCB agrees to provide a written report ("Compliance Report") to the Bureau six (6) months from the Effective Date describing its compliance efforts with this Consent Decree. LDCB also agrees to submit to the Bureau additional Compliance Reports twelve (12), twenty-four (24), and thirty-six (36) months from the Effective Date. These Compliance Reports will also quantify the number of Consumer Complaints regarding marketing or slamming, filed with the Commission or a state public utilities commission, received by LDCB during the period covered by the Report. All Compliance Reports shall be submitted to the Bureau via e-mail and U.S. mail to the attention of the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

22. LDCB'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.

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

24. 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.

25. 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.

26. By this Consent Decree, LDCB 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 LDCB’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.

27. 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 LDCB nor the Commission will contest the validity of the Consent Decree or Adopting Order, and LDCB 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.

28. LDCB 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.

29. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

For Long Distance Consolidated Billing Co.

By: _____
Kris A. Monteith
Chief, Enforcement Bureau
Federal Communications Commission

By: _____
Jan Lowe
President
Long Distance Consolidated Billing Co.

Date

Date