

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No. EB-TCD-13-00006311
)	
Nationwide Long Distance Service, Inc.)	Account No.: 201532170008
)	
)	FRN: 0019546597

ADOPTING ORDER

Adopted: February 11, 2015

Released: February 11, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Nationwide Long Distance Service, Inc. (NLDS) switched consumers’ preferred long distance provider without authorization (“slamming”) and charged consumers for services that they had not authorized (“cramming”). The Bureau reviewed numerous consumer complaints against this company in which the consumers alleged that NLDS had either changed their preferred long distance carrier without their authorization or had charged them fees on their telephone bill for services without their authorization. Several complainants stated that they already had long distance service with an existing carrier and had no need of the additional long distance service for which NLDS had charged them. Slamming and cramming are deceptive business practices and the Commission is committed to protecting consumers against such unjust and unreasonable acts. NLDS admits that it engaged in slamming and cramming. To resolve this matter, NLDS will pay a civil penalty of \$216,000, implement a compliance plan, and file compliance reports with the Bureau for three years.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding NLDS’s compliance with Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act)¹ and Section 64.1120 of the Commission’s rules (Rules).²

3. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether NLDS possesses the basic qualifications, including those related to character, to hold or obtain any Commission licenses or authorization.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

¹ 47 U.S.C. §§ 201(b), 258.
² 47 C.F.R. § 64.1120.
³ 47 U.S.C. § 154(i).
⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Lewis J. Paper, Pillsbury Winthrop Shaw Pittman LLP, 1200 Seventeenth Street, NW, Washington, DC 20036-3006, attorney for Nationwide Long Distance Service, Inc.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, Nationwide Long Distance Service, Inc., and Back Office Support Systems, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into potential violations by Nationwide Long Distance Service, Inc. of Sections 201(b) and 258 of the Communications Act of 1934, as amended,¹ and Section 64.1120 of the Commission's rules.²

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" or "Communications Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Affiliate" shall have the same meaning defined in Section 3(2) of the Communications Act, 47 U.S.C. § 153(2).
 - (d) "Back Office Support Systems" or "BOSS" means Back Office Support Systems, Inc., its Affiliates, its predecessors-in-interest, its successors-in-interest, and any other entity that directly or indirectly offers or provides telecommunication services and that is directly or indirectly controlled by Martin J. Tibbitts, but solely with respect to services performed on behalf of NLDS.
 - (e) "Bill" means a Consumer's invoice (paper, electronic, or other means) issued by the Consumer's local exchange carrier, NLDS, or BOSS directly, or prepaid account, if applicable.
 - (f) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (g) "Clear and Conspicuous" means a statement in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, understandable, and/or capable of being heard. A statement may not contradict or be inconsistent with any other

¹ 47 U.S.C. §§ 201(b), 258.

² 47 C.F.R. § 64.1120.

information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains, or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- i. an audio disclosure must be delivered in a volume and cadence sufficient for a Consumer to hear and comprehend it;
 - ii. a text message, television, or internet disclosure must be of a type size, location, and shade, and remain on the screen for a duration sufficient for a Consumer to read and comprehend it based on the medium being used; and
 - iii. disclosures in a print advertisement or promotional material, including, but without limitation, a point of sale display or brochure materials directed to Consumers, must appear in a type size, contrast, and location sufficient for a Consumer to read and comprehend them.
- (h) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (i) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission.
- (j) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 15.
- (k) “Consumer” means any Person to whom NLDS provides service or otherwise engages to sell or attempts to sell services.
- (l) “Consumer Complaint” means any complaint, inquiry, or other notification NLDS and/or BOSS receives from a Consumer, a billing aggregator, a local exchange carrier, the Better Business Bureau, a state Attorney General, or a federal or state regulatory agency alleging that NLDS has:
- i. caused an Unauthorized Change; or
 - ii. misrepresented in any respect the type, nature, provision, delivery, price, or any other thing related to any NLDS product or service or the identity of the service provider during the marketing of any product or service.
- (m) “Covered Personnel” means all employees, contractors, and agents of each of NLDS and BOSS who perform, or supervise, oversee, or manage the performance of duties that relate to NLDS’s responsibilities under the Slamming Rules, Section 201(b) of the Act, and this Consent Decree, and includes customer service representatives, Sales Representatives, and Verifiers.
- (n) “DCIA” means collectively, the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, *et seq.* and all regulations and orders implementing the Debt Collection Improvement Act of 1996, including the Federal Claims Collection Standards, 31 C.F.R. Part 900 *et seq.* and the Commission’s debt collection Rules, 47 C.F.R. §1.1901, *et seq.*
- (o) “Effective Date” means the date on which the Bureau releases the Adopting Order.

- (p) “Express Informed Consent” means an affirmative act or statement giving unambiguous assent to a carrier change or charge for the purchase of a product or service that is made by a Consumer after receiving a Clear and Conspicuous disclosure of all material facts.
- (q) “Investigation” means the inquiry undertaken by the Bureau in File No. EB-TCD-12-00006311 commenced by the Bureau’s letter of inquiry, dated January 28, 2013.³
- (r) “Nationwide Long Distance Service,” “NLDS,” or “Company” means Nationwide Long Distance Service, Inc., its Affiliates, its predecessors-in-interest, and successors-in-interest, and any other entity that offers or provides telecommunications services that is directly or indirectly controlled by Andrea Hylan.
- (s) “Operating Procedures” means the procedures and compliance policies established by NLDS and BOSS to implement the Compliance Plan.
- (t) “Parties” means NLDS, BOSS, and the Bureau, each of which is a “Party.”
- (u) “Person” shall have the same meaning defined in Section 3(39) of the Communications Act, 47 U.S.C. § 153(39).
- (v) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (w) “Sales Representative” means each Person that NLDS and/or BOSS engages as an employee, contractor, or otherwise to sell, or attempt to sell, any NLDS service.
- (x) “Slamming Rules” means the Rules set forth at 47 C.F.R. § 64.1120 *et seq.*
- (y) “Unauthorized Change” shall have the meaning set forth in 47 C.F.R. § 64.1100(e).
- (z) “Unauthorized Charge” means a charge or other fee on a Consumer’s bill which has not been authorized by the Consumer.
- (aa) “Verifier” means each Person whom NLDS and/or BOSS engages to verify, or attempt to verify, that a Consumer has in fact authorized a carrier change to NLDS.

II. BACKGROUND

2. NLDS is a non-facilities-based interexchange carrier that, as a reseller, provides long distance service to Consumers. NLDS contracts with BOSS for back office support, including management of customer acquisition (including supervision of the third-party verification process), processing of new sales, oversight of federal and state regulatory compliance, and oversight of federal and state tax matters. NLDS and BOSS contract with Citadel Contact Systems, Inc. (CCS) for telemarketing services. BOSS and CCS are both located at 19992 Kelly Road, Harper Woods, Michigan 48225. BOSS and CCS are owned by Martin J. Tibbitts. Martin J. Tibbitts is the Chief Executive Officer and President of both BOSS and CCS. All correspondence from NLDS in response to consumer complaints is from Alicia G. Treder, the BOSS regulatory and compliance manager.

3. During the course of its investigation, the Bureau reviewed numerous Consumer

³ Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Alicia G. Treder, Regulatory and Compliance Manager, Back Office Support Systems, Inc. (Jan. 28, 2013) (on file in EB-TCD-12-00006311) (LOI).

Complaints filed with the Commission, various state regulatory agencies, and the Better Business Bureau (BBB). The complaints allege that NLDS charged Consumers for services that they had never authorized, or that it had switched a Consumer's preferred long distance provider without its, his, or her authorization. In some cases, complainants explained that they had no need for an additional long distance service because they already had long distance service with their existing carrier. As part of its investigation, the Bureau sent NLDS the LOI directing NLDS to provide Consumer Complaints and evidence of authorization for carrier changes, including third party verification (TPV) recordings. NLDS submitted responses to the LOI which generally asserted that NLDS had not instituted any Unauthorized Change or Unauthorized Charge.

4. Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."⁴ Section 64.1120 of the Commission's rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before obtaining authorization from the consumer; carriers can verify that authorization in one of three specified ways, including TPV.⁵ Section 64.1120(c)(3)(iii) requires that "all third party verification methods shall elicit, at a minimum . . . confirmation that the person on the call wants to make the carrier change; [and] confirmation that the person on the call understands that a carrier change . . . is being authorized."⁶ The third party verifier shall not include "any other misleading description of the transaction."⁷

5. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio] shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful . . ."⁸ The Commission has held that the inclusion of unauthorized charges and fees on consumers' telephone bills is an "unjust and unreasonable" practice under Section 201(b).

6. The Bureau alleges that NLDS violated:

- (a) Section 258 of the Act and Section 64.1120 of the Rules by submitting requests to switch Consumers' long distance service providers without verifying their authorization in accordance with the Commission's Slamming Rules ("slamming"); and
- (b) Section 201(b) of the Act by placing, or causing to be placed, Unauthorized Charges on Consumers' telephone bills ("cramming").

7. The Parties have negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

9. **Jurisdiction.** NLDS and BOSS (solely with respect to this Consent Decree) each agree that the Bureau, acting pursuant to delegated authority, has jurisdiction over them with respect to the

⁴ 47 U.S.C. § 258(a).

⁵ 47 C.F.R. § 64.1120(c)(1)-(3).

⁶ 47 C.F.R. § 64.1120(c)(3)(iii).

⁷ *Id.*

⁸ 47 U.S.C. § 201(b).

matters contained in this Consent Decree, and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. **Admission of Liability.** NLDS admits, solely for the purpose of this Consent Decree, and in express reliance on the provisions of paragraph 12 herein terminating the Investigation, that, notwithstanding its asserted good faith efforts to comply with the Act and the Rules, some of its actions violated Sections 201(b) and 258 of the Act, and Sections 64.1120 of the Rules.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of the Investigation, NLDS and BOSS each agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that absent new material evidence, it will not use the facts developed in the Investigation through the Effective Date (including any complaint based on a sale or the imposition of charges prior to the Effective Date, if such complaints were provided by NLDS to the FCC or were otherwise filed with the FCC prior to the Effective Date), or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or to take any action on its own motion against NLDS or BOSS concerning the matters that were the subject of the Investigation or with respect to NLDS's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

13. **General Prohibitions and Requirements.** Each of NLDS and BOSS shall:

- (a) not make, directly or indirectly, any deceptive, false, or misleading statement of any kind to any Consumer;
- (b) before submitting (or causing to be submitted) a request to change a Consumer's telecommunications service provider to NLDS:
 - i. obtain Express Informed Consent for such change, and NLDS and BOSS shall retain a record of such Express Informed Consent for a period of three years from the date NLDS or BOSS obtained such consent; and
 - ii. send that Consumer a written or electronic confirmation that:
 1. Clearly and Conspicuously notifies the Consumer that its, his, or her telecommunications service provider will be changed; and
 2. Clearly and Conspicuously identifies the name of the new telecommunications service provider, together with a description of the product, service, or provider change;
- (c) create a record of every telecommunications service provider change request that NLDS or BOSS submits (or causes to be submitted), which includes the date NLDS or BOSS submitted (or caused to be submitted) such request, together with a description of any terms and conditions associated with such change, and a copy of the written or electronic confirmation notice sent to the Consumer. NLDS and BOSS shall retain a record of each such carrier change for a period of three years from the date NLDS or BOSS submits (or

causes to be submitted) a request for such carrier change. NLDS and BOSS shall promptly provide all such records to the Bureau upon written request;

- (d) not charge any Consumer for any service after the date on which a Consumer cancels such service;
- (e) require each Sales Representative and each Verifier to use a script approved by NLDS and/or BOSS when carrying out his or her duties as a Sales Representative or Verifier. For a period of three years, NLDS and BOSS shall routinely monitor a random sample of sales calls to verify that the Sales Representative is complying with this Consent Decree. If any such script is in a language other than English, NLDS and/or BOSS shall provide an English translation of the script upon Commission request. The script for the Sales Representative shall require each Sales Representative:
 - i. to disclose, at the outset of any communication with any Consumer, that:
 - 1. the Sales Representative is not affiliated with the Consumer's current local, long distance, international, or other toll carrier; and
 - 2. the purpose of the call is to inquire whether the Consumer is authorized to make a change to and wishes to change its, his, or her long distance, international, or other toll service from its, his, or her current telecommunications service provider to NLDS.
 - ii. to refrain from instructing the Consumer in any way how it, he, or she should respond to a Verifier's questions (other than to suggest that the Consumer provide a clear "yes" or "no" answer to each question unless the Consumer does not understand the question, and, in that case, the Consumer should so advise the Verifier).

14. **Process for Resolving Consumer Complaints.** With respect to any Consumer Complaint NLDS or BOSS receives concerning an alleged Unauthorized Change, NLDS and BOSS shall:

- (a) within two (2) business days of receipt, contact the Consumer and immediately:
 - i. take all action necessary to cause the Consumer's service to be switched back to its, his, or her original telecommunications service provider (preferred provider), including submitting or executing any documents on behalf of the Consumer to effectuate such switch and reporting the change to the Consumer's preferred telecommunications service provider, and
 - ii. refund all charges that the Consumer incurred in connection with any Unauthorized Change.
- (b) for the term of this Consent Decree and one year thereafter, retain, in an accurate and easy-to-review format:
 - i. all documents evidencing or relating to all Consumer Complaints, including NLDS's and/or BOSS' response thereto; and
 - ii. all documents relating to Consumer Complaints involving alleged Unauthorized Charges for which NLDS or BOSS demonstrated that the Consumer provided Express Informed Consent, and all refunds/credits NLDS or BOSS provided the Consumer due to NLDS's or BOSS' inability to provide proof of Express

Informed Consent in response to such a claim by a Consumer.

Copies of documents retained pursuant to this subparagraph 14(b) shall be filed electronically with the Bureau within ten (10) business days of receipt of any Bureau request. Such documents shall at a minimum contain the following: all non-privileged writings, computer records, electronic or e-mail communications, and all written notes regarding such writings, verbal discussions, and electronic mail communications, as well as any relevant recordings made during telephone conversations relating to the document.

- (c) not, until such time as the provisions of paragraph 14(a) are satisfied,:
 - i. require the Consumer to pay the disputed charge or fee or, any charge relating to an alleged Unauthorized Change, including any related late charge or penalty;
 - ii. send the disputed charge or fee, or charge relating to an alleged Unauthorized Change, to collection; or
 - iii. make any adverse credit report based on non-payment of the disputed charge or fee, or any charge relating to the alleged Unauthorized Change.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, NLDS and BOSS each agree that, within thirty (30) days of the Effective Date, they shall develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws, including Sections 201(b) and 258 of the Act and Sections 64.1100 *et seq.* of the Rules, and with the terms and conditions of this Consent Decree. With respect to the Slamming Rules and requirements of Section 201(b), the following procedures, at a minimum, shall be implemented:

- (a) **Compliance Officer.** Within thirty (30) days of the Effective Date, NLDS and BOSS shall each designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth in this Consent Decree.
 - i. The Person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that NLDS and BOSS comply with the terms and conditions of the Compliance Plan and this Consent Decree, including the injunctive provisions.
 - ii. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, prior to assuming his/her duties, the Compliance Officer shall have specific knowledge of the Slamming Rules and the Commission's decisions related to carrier marketing practices, misrepresentations about a carrier's identity or the nature of its service, and inclusion of unauthorized charges on Consumers' telephone bills.
- (b) **Operating Procedures.** The Compliance Plan shall include Operating Procedures that the Compliance Officer and all Covered Personnel shall follow to ensure each of NLDS's and BOSS' compliance with this Consent Decree, the Slamming Rules, and Section 201(b) of the Communications Act.
- (c) **Compliance Manual.** Within thirty (30) days of the Effective Date, NLDS and BOSS shall develop, use, and maintain a Compliance Manual for use by each party, and shall distribute the same to all Covered Personnel. For any Person who becomes a Covered Personnel more than thirty (30) days after the Effective Date, NLDS and BOSS shall distribute the Compliance Manual to that Person within thirty (30) days after the date such Person becomes Covered Personnel, and prior to such Person engaging with Consumers with respect to NLDS's or BOSS' services.

- i. The Compliance Manual shall set forth and explain the requirements of Section 201(b) of the Act, the Slamming Rules, and this Consent Decree, and shall instruct Covered Personnel to consult and follow the Operating Procedures to ensure NLDS's and BOSS' compliance with the Communications Laws and this Consent Decree.
 - ii. The Compliance Manual shall require Covered Personnel to contact their supervisor and/or the Compliance Officer with any questions or concerns that arise with respect to NLDS's and/or BOSS' obligations under or compliance with the Communications Laws and this Consent Decree, and require any supervisor who receives such information from Covered Personnel to promptly notify the Compliance Officer.
 - iii. NLDS and BOSS shall each periodically review and revise the Compliance Manual to ensure that the information set forth therein remains current and complete.
 - iv. NLDS and BOSS shall (individually or collectively) distribute any revisions of the Compliance Manual to all Covered Personnel within thirty (30) days after any revisions have been made by NLDS and/or BOSS.
- (d) Compliance Training Program. Within thirty (30) days of the Effective Date, NLDS and BOSS shall establish, implement, and maintain a Compliance Training Program to ensure compliance with Section 201(b) of the Act, the Slamming Rules, and this Consent Decree.
- i. As part of the Compliance Training Program, Covered Personnel shall be advised of NLDS's and BOSS' obligations to report any noncompliance with Section 201(b) of the Act, the Slamming Rules, and this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer.
 - ii. All Covered Personnel shall be trained pursuant to the Compliance Training Program within thirty (30) days of the Effective Date, except that any Person who becomes a Covered Personnel at any time after the Effective Date shall be trained within thirty (30) days after the date such Person becomes a Covered Personnel.
 - iii. Beginning on the Effective Date, neither NLDS nor BOSS shall allow any Covered Personnel to interact with any Consumer about NLDS's or BOSS' service until they have trained the Covered Personnel and provided a copy of the Compliance Manual to such Covered Personnel.
 - iv. NLDS and BOSS shall conduct the Compliance Training Program at least annually and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

16. **Reporting Noncompliance to the Bureau.** Each of NLDS and BOSS (collectively or individually) shall report any noncompliance with Sections 201(b) and 258 of the Act, the Slamming Rules, or with the terms and conditions of this Consent Decree within fifteen (15) days after discovery of such noncompliance.

- (a) Such reports shall include a detailed explanation of:

- i. each instance of non-compliance;
- ii. the steps that each of NLDS and BOSS has taken or will take to remedy such non-compliance;
- iii. the schedule on which such remedial actions will be taken; and
- iv. the steps that each of NLDS and BOSS has taken or will take to prevent the recurrence of any such non-compliance.

- (b) All reports of non-compliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4C-224, Washington, DC 20554, with a copy submitted electronically to Mika.Savir@fcc.gov and Erica.McMahon@fcc.gov.

17. **Periodic Compliance Reports.** NLDS and BOSS (collectively or individually) shall file Compliance Reports with the Bureau three, six, twelve, eighteen, twenty-four, thirty, and thirty-six months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of each of NLDS's and BOSS's efforts during the relevant period (beginning on the Effective Date, and continuing through to the filing date of each report) to comply with the terms of the Consent Decree, Sections 201(b) and 258 of the Act, and the Slamming Rules.
- (b) Each Compliance Report shall also include a detailed description of any new or additional telecommunications companies owned, in whole or in part, by any of the present or past owners, shareholders, officers, or directors of NLDS and BOSS. The Compliance Report shall also include a description of any additional companies that provide management or telemarketing services for NLDS.
- (c) Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of each of NLDS and BOSS, stating that the Compliance Officer has personal knowledge that NLDS and BOSS:
 - i. have each established and implemented the Compliance Plan;
 - ii. have each utilized the Operating Procedures since the implementation of the Compliance Plan; and
 - iii. are each not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 16 of this Consent Decree.
- (d) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must be in the form set forth in Section 1.16 of the Rules,⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

⁹ 47 C.F.R. § 1.16.

- (e) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of NLDS and BOSS, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully:
- i. each instance of non-compliance;
 - ii. the steps each of NLDS and BOSS has taken or will take to remedy such non-compliance, including the schedule on which the proposed remedial actions will be taken; and
 - iii. the steps that each of NLDS and BOSS has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (f) All Compliance Reports shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4-C224, Washington, DC 20554, with copies submitted electronically to Mika.Savir@fcc.gov and Erica.McMahon@fcc.gov.

18. **Termination Date.** The obligations set forth in paragraphs 15 through 17 of this Consent Decree shall expire thirty-six months after the Effective Date.

19. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against BOSS, NLDS, or their affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by NLDS with the Communications Laws.

20. **Civil Penalty.** NLDS agrees to pay a civil penalty to the United States Treasury of two hundred sixteen thousand dollars (\$216,000), such payment to be made in twelve (12) monthly installments (each an Installment Payment). The first Installment Payment of eighteen thousand dollars (\$18,000) shall be made no later than thirty (30) calendar days after the Effective Date. Each subsequent Installment Payment shall be in the amount of eighteen thousand dollars (\$18,000) and shall be payable on the first business day of each month beginning with the third month following the Effective Date. The twelfth and last Installment Payment shall be made no later than the thirteenth month after the Effective Date. NLDS and BOSS acknowledge and agree that upon execution of this Consent Decree, the payment of the two hundred sixteen thousand dollars (\$216,000) shall become a "Claim" or "Debt" as defined in the DCIA.¹⁰ Upon an Event of Default by nonpayment (as described below in paragraph 21), BOSS shall pay the full amount of the remaining outstanding balance of the civil penalty in one lump-sum payment within ten days of written notice from the Bureau that an Event of Default by nonpayment has occurred and demand for payment. NLDS shall remain jointly and severally liable with BOSS for full payment of the civil penalty until such penalty is paid in full by either NLDS or BOSS pursuant to the terms this Consent Decree. BOSS agrees to pay the outstanding amount of the civil penalty upon an Event of Default without regard to the reason for the Event of Default and agrees to waive, and hereby waives, any and all legal and equitable defenses that it might otherwise have or could assert in connection with or related to its liability to pay the civil penalty as set out above. In addition to the above, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated against NLDS and

¹⁰ See, e.g., 31 U.S.C. § 3701(b).

BOSS. NLDS agrees, and BOSS agrees in any case where an Event of Default by nonpayment has occurred, that they will make the payments in United States Dollars without further demand or notice within the timeframe specified above. NLDS, and BOSS in any case where an Event of Default by nonpayment has occurred, shall also send electronic notification of payment on the date such payment is made to Johnny Drake, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission at Johnny.Drake@fcc.gov. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced in the caption of the Adopting Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹¹ When completing the FCC Form 159, NLDS shall enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions NLDS must follow based on the form of payment selected.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov, with any questions about methods of payment.

21. **Event of Default; Interest, Charges for Collection and Acceleration of Maturity Date.** NLDS and BOSS agree that an Event of Default by nonpayment shall occur upon the failure of NLDS to make any Installment Payment to the U.S. Treasury on or before the due date specified in paragraph 20. Upon an Event of Default, without further notice, demand, or presentment, all procedures for collection permitted by the Debt Collection Improvement Act of 1996¹² and other provisions of law¹³ may, at the Commission’s discretion, be initiated and (1) the then entire civil penalty amount, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; and (2) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (3) any administrative charge(s), including the costs of collection, litigation, and attorneys’ fees, are accelerated and shall become immediately due and payable, without notice, presentment, demand, protest, or notice

¹¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B.

¹³ See 31 C.F.R. Part 900, *et seq.*

of protest of any kind, all of which are waived by NLDS and BOSS.

22. **Waivers.** NLDS and BOSS waive any and all rights they 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 Bureau issues an Adopting Order as defined herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or Consent Decree, NLDS, BOSS, and the Bureau agree that they shall not contest the validity of the Consent Decree or the Adopting Order, and NLDS and BOSS shall waive any statutory right to a trial de novo. NLDS and BOSS each hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree. By its signature below, BOSS waives any right to receive a citation pursuant to Section 503(b)(5) of the Act (47 U.S.C. § 503(b)(5)) prior to the Commission taking enforcement action under Section 503 of the Act (47 U.S.C. § 503), and hereby acknowledges and agrees that this Consent Decree and accompanying Adopting Order satisfy the requirements of Section 503(b)(5) of the Act (47 U.S.C. § 503(b)(5)) in the event of a violation by BOSS of this Consent Decree.

23. **Invalidity.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

24. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except a Rule or an order specifically intended to revise the terms of this Consent Decree to which NLDS or BOSS, as applicable, does not expressly consent), such provision will be superseded by such Rule or Commission order.

25. **Acts or Omissions of Contractors and Agents.** NLDS and BOSS each acknowledge that the act, failure to act, or omission by any contractor, subcontractor, or agent of NLDS or BOSS, acting in such capacity, that results in a violation of the Act, Rules, or this Consent Decree constitutes an act, failure to act, or omission by NLDS or BOSS, as applicable.

26. **Successors and Assigns.** NLDS and BOSS agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

27. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties to the Investigation.

28. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of the Parties.

29. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

30. **Authorized Representative.** The individuals signing this Consent Decree on behalf of NLDS and BOSS represent and warrant that they are authorized by NLDS and BOSS respectively to execute this Consent Decree and to bind NLDS and BOSS respectively to the obligations set forth herein applicable to each of NLDS and/or BOSS. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

31. **Entire Agreement; Counterparts.** This Consent Decree (and any attachments) represents the full and complete terms of the settlement entered into by the Parties hereto. This Consent Decree may be signed in any number of counterparts (including by facsimile and electronic copy), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

For: Federal Communications Commission

Travis LeBlanc, Chief
Enforcement Bureau

Date

For: Nationwide Long Distance Service, Inc.

Andrea Hylan, President

Date

For: Back Office Support Systems, Inc.

Martin J. Tibbitts, President

Date