

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
LDC Telecommunications, Inc.) File No.: EB-TCD-12-000004201
) FRN: 0004337556

ADMONISHMENT ORDER

Adopted: October 14, 2016

Released: October 14, 2016

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We hereby admonish LDC Telecommunications, Inc. (LDC or Company) for willful and repeated violations of Section 258 of the Communications Act of 1934, as amended (Communications Act or Act), and Sections 64.1120 and 64.1150 of the Commission’s rules (Rules). As discussed below, based on the record, we find that LDC changed the preferred carriers of numerous consumers without proper authorization, a practice commonly known as “slamming,” and failed to respond to seven slamming complaints. We also find that LDC violated an order of the Commission to timely produce information and documents in response to an Enforcement Bureau (Bureau) Letter of Inquiry (LOI) issued pursuant to delegated authority. LDC’s failure to respond properly to a Commission order exhibits contempt for the Commission’s authority and threatens to compromise the Commission’s ability to investigate violations. In light of the evidence in the record that LDC has insufficient revenue to pay a forfeiture order and the Commission’s revocation of LDC’s 214 authorizations, we exercise our discretion to terminate this proceeding with an admonishment to LDC.

II. BACKGROUND

2. At the time of the violations, LDC was a non-facilities based interexchange carrier authorized to provide domestic and international long distance telecommunications service.2 The Bureau initiated an investigation of LDC after reviewing numerous complaints from consumers alleging they had been slammed by LDC or charged by LDC for service they did not authorize. Most of the consumer complaints were filed with the Commission’s Consumer & Governmental Affairs Bureau (CGB).3 CGB sent LDC 44 slamming complaints between January 2008 and March 2012. LDC failed to respond to 39 of those complaints and CGB issued orders granting the complaints and finding that those consumers had

1 This case was formerly assigned the file number EB-11-TC-105. In January 2012, the Telecommunications Consumers Division assigned the case a new file number.

2 According to the Commission’s records and publicly available information, LDC has offices at 2451 McMullen Booth Road, Suite 200, Clearwater, FL 33759. LDC holds a Section 214 authorization to provide facilities-based and resold international telecommunications services. See ITC-214-20080523-00238, Public Notice, “International Authorizations Granted: Section 214 Applications (47 CFR § 63.18); Section 310(b)(4) Requests” (Jan. 2, 2009). LDC has not, however, updated its FCC Form 499 information since June 25, 2013.

3 In addition, the Bureau obtained slamming complaints from other sources such as the Federal Trade Commission (FTC) and the Better Business Bureau (BBB).

been slammed.⁴ For the five complaints to which LDC did respond, CGB determined that LDC failed to provide evidence of an authorized carrier change and issued orders granting the complaints.⁵

3. Due to the significant number of slamming complaints filed with the Commission, the Bureau sent LDC a letter of inquiry (LOI) on October 13, 2011, ordering LDC to provide certain information and documents relating to potential violations of the Commission's carrier change rules.⁶ LDC did not respond to the LOI. Accordingly, on January 18, 2012, the Bureau issued a Notice of Apparent Liability (*Failure to Respond NAL*) against LDC for violating a Bureau order.⁷ On February 6, 2012, LDC filed a response to the *Failure to Respond NAL*.⁸ In its response, LDC argued that it had timely mailed its LOI response "but for whatever reason, the response was not received" by the Commission.⁹

4. On August 30, 2012, the Commission issued another Notice of Apparent Liability for Forfeiture (*Slamming NAL*)¹⁰ to LDC in which it determined that the Company had apparently failed to obtain authorization before submitting 27 preferred carrier change requests and had apparently failed to respond to seven slamming complaints served on the Company by CGB. The Commission proposed a forfeiture of \$40,000 for each of the unauthorized carrier changes and \$4,000 for failure to respond to each of the seven slamming complaints, for a total proposed forfeiture of \$1,108,000.¹¹

5. The *Slamming NAL* ordered LDC, within thirty (30) days, to pay the proposed forfeiture amount or submit evidence or arguments in response to the *Slamming NAL* showing that no forfeiture

⁴ The failure of LDC to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation. See 47 CFR § 64.1150(d).

⁵ See *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 12472 (CGB 2010); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11478 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11337 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 10256 (CGB 2008); *LDC Telecommunications, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 8486 (CGB 2008).

⁶ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to LDC Telecommunications, Inc., Attn: Sean Connors (Oct. 13, 2011) (LOI).

⁷ See *LDC Telecommunications, Inc., Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd 300 (2012) (*Failure to Respond NAL*) (proposing a \$25,000 forfeiture against LDC for failing to respond to the Bureau's LOI). LDC ultimately responded to the Bureau's LOI. See E-mail from Sean Connors, President, LDC Telecommunications, Inc., to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 3, 2012, 11:12 ET) (LOI Response); E-mails from Sean Connors, President, LDC Telecommunications, Inc., to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 8, 2012, 10:42 and 10:46 ET); E-mail from Richard Clark, Chief Operating Officer, LDC Telecommunications, Inc., to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 3, 2012, 13:03 ET) (Supplemental LOI Response); E-mails from Richard Clark, Chief Operating Officer, LDC Telecommunications, Inc., to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 9, 2012, 11:37, 13:52, 13:57 ET) (Second Supplemental Response).

⁸ See Letter from Sean Connors, President, LDC Telecommunications, Inc., to Marlene Dortch, Secretary, FCC and Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 7, 2012) (Response to *Failure to Respond NAL*).

⁹ *Id.*

¹⁰ *LDC Telecommunications, Inc., Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd 10789 (2012) (*Slamming NAL*).

¹¹ *Slamming NAL*, 27 FCC Rcd at 10794-95, para. 16.

should be imposed or that some lesser amount should be assessed.¹² On September 28, 2012, LDC filed a response to the *Slamming NAL*, seeking dismissal, cancellation, or reduction of the proposed forfeiture amount, claiming: that it complied with the Commission's third party verification rules; that many complaints resulted from a billing change and not a change in the consumer's long distance service; that the statute of limitations barred certain complaints identified in the *Slamming NAL*; and that the proposed forfeiture violated the Commission's "ability to pay" jurisprudence.¹³ After review of the record, we find these arguments unpersuasive and, although a monetary forfeiture is consistent with past precedent and warranted for these violations, in light of the evidence in the record that LDC is unable to pay a forfeiture¹⁴ and the Commission's revocation of LDC's 214 authorizations,¹⁵ we admonish LDC for failing to comply with the Act, Rules, and a Commission order.

III. DISCUSSION

6. We find that LDC violated the Act,¹⁶ the Rules,¹⁷ and a Commission order when it: (i) failed to obtain authorization before submitting carrier change requests, in accordance with the Commission's verification rules; (ii) failed to respond to slamming complaints served on LDC by CGB; and (iii) failed to timely and fully respond to a Commission letter of inquiry to produce certain information and documents in connection with the Bureau's investigation.¹⁸

A. LDC Violated Section 258 of the Act and Sections 64.1120 and 64.1150 of the Rules

7. LDC Violated Section 258 of the Act and Sections 64.1120 and 64.1150 of the Rules. Section 258 of the Act prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with the Commission's verification procedures.¹⁹ Section 64.1120(a) of the Rules provides that no carrier "shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) [a]uthorization from the subscriber; and (ii) [v]erification of that authorization in accordance with the procedures prescribed in this section."²⁰ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 of the Rules; (2) obtain confirmation from the subscriber via a toll-free number provided

¹² *Id.* at 10795, para. 19.

¹³ See Statement Seeking Reduction or Cancellation of Proposed Forfeiture, LDC Telecommunications, Inc. (Sept. 28, 2012) (*Slamming NAL* Response). LDC requested and was granted an extension of time, until November 9, 2012, to supplement its response. See Supplement to Statement Seeking Reduction or Cancellation of Proposed Forfeiture, LDC Telecommunications, Inc. (Nov. 9, 2012) (Supplemental NAL Response).

¹⁴ In a sworn letter dated January 18, 2016, LDC's then-acting president, Sean Connors, certified to the Commission that "as of December 31, 2015, LDC is no longer offering telecommunications services to any customers and has terminated business." Letter from Sean Connors, President, LDC Telecommunications, Inc., to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 18, 2016). In the event that LDC offers service to customers, LDC and Sean Connors, who personally certified to the Commission that LDC has terminated its business, may be found jointly and severally liable for further penalties for failure to make truthful and accurate statements to the Commission in the course of an investigation or adjudicatory matter within the Commission's jurisdiction. 47 CFR § 1.17.

¹⁵ *LDC Telecommunications, Inc.*, Revocation Order, DA 16-1184 (EB Oct. 14, 2016).

¹⁶ 47 U.S.C. § 258.

¹⁷ 47 CFR §§ 64.1120, 64.1150(d).

¹⁸ 47 CFR §§ 0.111, 0.311.

¹⁹ 47 U.S.C. § 258(a).

²⁰ 47 CFR § 64.1120(a)(1)(i), (ii).

exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.²¹

8. For third party verification (TPV), the Rules require that the verification method confirm: the identity of the subscriber; that the person on the call is authorized to make the carrier change; 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.²² In addition, Section 64.1120(c)(3)(iii) of the Rules prohibits the TPV from including any "misleading description of the transaction. . . ."²³ Carriers must keep audio records of the verification for a minimum of two years.²⁴

9. Each of the 27 consumers who filed the complaints that formed the basis of the *Slamming NAL* contended that LDC changed their preferred carriers or charged them for service without authorization.²⁵ LDC provided three TPV recordings purportedly showing that three complainants had authorized service with LDC. However, in each of the three TPVs, the verifier did not confirm that the consumer wanted to switch carriers and did not confirm the telephone number that the consumer wanted to switch as required by the Rules.²⁶ Instead, the verifier simply told the consumers that they would be "receiving one bill from [their] local phone compan[ies] being billed on behalf of LDC Telecom as [their] long distance billing service provider." LDC's verifier also stated that the call was being recorded "for accuracy and quality assurance" and suggested that LDC was going to be the complainants' "long distance *billing* service provider." These statements do not alert consumers that they are agreeing to a carrier change and, in fact, suggest that LDC is simply providing a billing service. The *Slamming NAL* concluded that, based on the evidence in the record, LDC apparently willfully and repeatedly violated Section 258 of the Act and Section 64.1120 of the Rules by submitting carrier change orders without authorization.²⁷ In its NAL Response, LDC denied that it had slammed consumers and contended that its third party verifier "refused to cooperate with LDC in providing evidence."²⁸ Therefore, LDC argued, it "is without the ability to obtain necessary TPV recording or dates of solicitation."²⁹

10. LDC also claimed in its NAL Response that three of the slams found by the Commission were not carrier changes but customer bills.³⁰ Due to the lack of information provided by LDC as a result of its failure to respond to the Bureau's investigation and the fact that we are issuing this Admonishment Order rather than imposing a forfeiture, we do not need to decide the issue claimed by LDC in its response. Further, LDC has produced insufficient TPVs in response to only three slamming complaints, leaving the remaining 24 slamming complaints uncontested. Therefore, we conclude, based on a preponderance of evidence in the record, that LDC willfully and repeatedly violated Section 258 of the Act and Section 64.1120 of the Rules by submitting carrier change orders without proper authorization.

²¹ 47 CFR § 64.1120(c).

²² 47 CFR § 64.1120(c)(3)(iii).

²³ *Id.*

²⁴ 47 CFR § 64.1120(c)(3)(iv).

²⁵ *Slamming NAL*, 27 FCC Rcd at 10791, para. 7.

²⁶ With respect to the other 24 consumers whose complaints form the basis of the *Slamming NAL*, LDC provided no verification tapes or other evidence of authorization to change their preferred carriers, in violation of the Rules.

²⁷ *Slamming NAL*, 27 FCC Rcd at 10791, para. 7.

²⁸ NAL Response at 6.

²⁹ *Id.*

³⁰ *Id.* at 6-7.

B. LDC Violated Section 64.1150(d) of the Rules by Failing to Respond to Slamming Complaints

11. LDC Violated Section 64.1150(d) of the Rules. Section 64.1150(d) of the Commission's rules provides, in pertinent part, that "[n]ot more than 30 days after notification of the [slamming] complaint . . . the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change."³¹ This rule also provides that "[f]ailure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation."³²

12. CGB sent LDC 44 slamming complaints between January 2008 and March 2012. LDC failed to respond to 39 of those complaints, in violation of Section 64.1150(d); seven of these complaints were included in the Bureau's investigation. We conclude, based on a preponderance of evidence in the record, that LDC willfully and repeatedly violated Section 64.1150(d) of the Rules by failing to respond to slamming complaints.

C. LDC Violated a Commission Order by Failing to Timely and Completely Respond to a Letter of Inquiry

13. LDC violated a Commission order by ignoring a letter of inquiry. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers such as LDC to provide the information and documents sought by the Bureau's LOI. Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."³³ Section 218 authorizes the Commission to "obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."³⁴ Section 403 states that "[t]he Commission shall have the same powers and authority to proceed with any inquiry . . . including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had."³⁵

14. The Bureau sent LDC an LOI on October 13, 2011, which ordered LDC to provide certain information and documents relating to potential violations of the Commission's carrier change rules. The Bureau directed LDC to respond within twenty (20) calendar days from the date of the LOI. The Bureau sent the LOI via certified mail with a return receipt requested to LDC's headquarters. LDC received and signed for the LOI on October 17, 2011.³⁶ LDC failed to respond to the LOI by the November 2, 2011 deadline. On November 4, 2011, the Bureau sent a letter via certified mail with a return receipt requested to LDC advising that the deadline for the LOI response had passed and giving LDC until November 14, 2011 to respond.³⁷ LDC received and signed for the letter on November 7,

³¹ 47 CFR § 64.1150(d).

³² *Id.*

³³ 47 U.S.C. § 154(i).

³⁴ 47 U.S.C. § 218.

³⁵ 47 U.S.C. § 403.

³⁶ The Clearwater, FL post office stamped the return receipt card October 17, 2011. The card was apparently signed by Kaitlyn Laird.

³⁷ See Letter from Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to LDC Telecommunications, Inc., Attention: Sean Connors (Nov. 4, 2011). The letter stated, "[t]he LOI the Bureau directed to LDC served as a legal order of the Commission to produce the requested information and documents. LDC's failure to provide the requested information and documents sought within the time and manner specified will be considered a violation of a Commission order and could result in a Notice of Apparent Liability."

2011³⁸ but failed to respond. On January 18, 2012, due to LDC's failure to provide the documents and information sought, the Bureau released the *Failure to Respond NAL* for LDC's apparent violations of a Commission order. Although LDC claims that it responded to the LOI "in October 2011,"³⁹ it provides no proof of such response, and no response was received by the Commission.

15. We conclude, based on a preponderance of evidence in the record, that LDC willfully and repeatedly violated a Commission order by failing to timely and completely respond to an LOI, as set forth in the *Failure to Respond NAL*.

IV. CONCLUSION

16. We have determined, based upon a preponderance of evidence in the record, that LDC willfully and repeatedly: (i) violated Section 258 of the Act and Section 64.1120 of the Rules by submitting carrier change orders without proper authorization; (ii) violated Section 64.1150(d) of the Rules by failing to respond to slamming complaints; and (iii) violated a Commission order by failing to timely and completely respond to the LOI ordering LDC to produce certain information and documents in connection with a Bureau investigation. Although a monetary forfeiture is consistent with past precedent and warranted for these violations, in light of the evidence in the record that LDC is unable to pay a forfeiture and the Commission's revocation of LDC's 214 authorizations, we instead exercise our discretion to admonish LDC for these violations.

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that LDC Telecommunications, Inc. **IS ADMONISHED** for willfully violating Section 258 of the Act,⁴⁰ Sections 64.1120 and 64.1150(d) of the Rules,⁴¹ and a Commission order by submitting carrier change orders without proper authorization, failing to respond to slamming complaints, and failing to timely respond to a letter of inquiry.

18. **IT IS FURTHER ORDERED** that a copy of this Admonishment Order shall be sent by first class and certified mail, return receipt requested, to LDC Telecommunications, Inc., Attention: Sean Connors and Richard Clark, 2451 McMullen Booth Road, Suite 200, Clearwater, Florida 33759 and to LDC Telecommunications, Inc., c/o CT Corporation, 1025 Vermont Ave., NW, Washington DC.

FEDERAL COMMUNICATIONS COMMISSION

Phillip Rosario
Deputy Chief
Enforcement Bureau

³⁸ The Clearwater, FL post office stamped the return receipt card November 7, 2011. The card was apparently signed by Kaitlyn Laird.

³⁹ See LOI Response at 1.

⁴⁰ 47 U.S.C. § 258.

⁴¹ 47 CFR §§ 64.1120, 64.1150(d).