

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

In the Matter of	)	
	)	File No. EB-00-TC-006
AT&T Communications, Inc.	)	
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 200132170015

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: December 21, 2000

Released: December 21, 2000

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL),<sup>1</sup> we find that AT&T Communications, Inc. (AT&T) apparently willfully or repeatedly violated section 258 of the Communications Act of 1934, as amended (the Act),<sup>2</sup> as well as Commission rules and orders, by changing the designated preferred carriers for 14 telephone lines without the consumers' authorization, a practice commonly know as "slamming." Based upon our review of the facts and circumstances surrounding the violations, we find AT&T apparently liable for a forfeiture in the amount of \$40,000 for each of 12 violations and \$80,000 for each of two violations, resulting in a total proposed forfeiture amount of \$640,000.

**II. BACKGROUND**

2. Section 258 of the Act 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 procedures as the Commission shall prescribe."<sup>3</sup> Pursuant to section 258, carriers are thus barred from changing a consumer's

<sup>1</sup> See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. For a violation to be willful, it need not be intentional. *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>2</sup> 47 U.S.C. § 258.

<sup>3</sup> *Id.* The Commission's rules and orders prescribe that a carrier wishing to effectuate an authorized change in a consumer's designated preferred carrier shall submit the preferred carrier change order to an executing carrier, who is then obligated to make the change absent some indication that the request is not legitimate. See 47 C.F.R. §§ 64.1100, 64.1150. Sections 64.1100 and 64.1150 are now codified at section 64.1120. 65 FR 47678, 47690 (2000). Because the apparent violations occurred prior to November 28, 2000, the effective date of the revised

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preferred local or long distance carrier without first complying with the Commission's procedures, which are codified at section 64.1100 of the Commission's rules. Specifically, section 64.1150 lays out the various approved methods carriers can use to verify consumer requests to change a preferred telephone service provider.<sup>4</sup> For example, a carrier may elect to use a letter of agency (LOA) as the basis for submitting a carrier change order. Pursuant to section 64.1160, the LOA must be signed "by the subscriber to the telephone line(s) requesting the preferred carrier change."<sup>5</sup>

3. An alternative to LOA verification involves the use of an independent, third party to verify carrier change requests. If a carrier elects to use this method of verification, the carrier must ensure that "[t]he content of the verification . . . include[s] clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change."<sup>6</sup> Furthermore, section 64.1100 provides that "[w]here a carrier is selling more than one type of telecommunications service . . . that carrier must obtain separate authorization from the subscriber for each service sold."<sup>7</sup> This section also requires the carrier submitting a change request to "maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification."<sup>8</sup>

4. During the course of this year, the Commission has received over 1,000 consumer complaints<sup>9</sup> alleging that AT&T has switched the consumers' preferred telecommunications service provider without authorization. In response to the high volume of complaints against AT&T, Commission staff has investigated many of the allegations contained in the complaints. This enforcement action is based upon 12 of these consumer complaints (see Appendix A) involving 14 telephone lines.

### III. DISCUSSION

5. For purposes of assessing AT&T's apparent liability, the Commission must

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rules, sections 64.1100 and 64.1150 were the applicable Commission rules in effect during the relevant time period.

<sup>4</sup> See 47 C.F.R. § 64.1150.

<sup>5</sup> 47 C.F.R. § 64.1160(b). Effective November 28, 2000, section 64.1160 was redesignated as section 64.1130; see note 3, *supra*.

<sup>6</sup> 47 C.F.R. § 64.1150(d).

<sup>7</sup> 47 C.F.R. § 64.1100(b).

<sup>8</sup> 47 C.F.R. § 64.1100 (a)(1)(ii).

<sup>9</sup> From January 1, 2000 to September 22, 2000, the Commission's Consumer Information Bureau received 1,143 complaints alleging unauthorized preferred carrier changes by AT&T.

determine, on the basis of the available evidence, that 1) the complainant did not authorize a preferred-carrier change and 2) AT&T submitted a preferred-carrier change request to the complainant's local exchange carrier.<sup>10</sup> The statements contained in the 12 consumer complaints profiled in this NAL,<sup>11</sup> and AT&T's responses, provide strong evidence that AT&T converted 14 consumer lines without proper authorization. Indeed, AT&T does not dispute the consumers' statements in six of the cases.<sup>12</sup> Specifically, AT&T acknowledges that it did not obtain authorization for the carrier changes alleged in the complaints submitted by Ms. Phyllis Crawford, Mr. and Mrs. David Scott, Mr. and Mrs. Jon Schuerholz, Mr. Bernard Hanavan, Mr. David Dinerman, and Mr. Steven Rosenberg. In another five cases, AT&T has failed to provide sufficient evidence to rebut the allegations contained in the complaints submitted by Mr. and Mrs. Greg Ortega, Mr. Thomas Patterson, Ms. Teresa Plunkett, Ms. Mari Krumwiede and Mr. Robert Agnew. Finally, AT&T relied on an LOA that appears to contain a forged or falsified signature as the basis for converting two lines identified in Ms. Sophia Palacio's complaint. Each of these complaints is discussed below.

#### A. Undisputed Conversions

6. In a written complaint, Ms. Crawford alleges that AT&T switched her preferred long distance provider from MCI to AT&T without authorization.<sup>13</sup> Ms. Crawford states that she called AT&T on February 25, 2000, to inquire about AT&T's local service options. After she agreed to subscribe to AT&T's local service, Ms. Crawford says AT&T tried to convince her to select AT&T for her long distance service. Ms. Crawford, however, was not interested; as she recalls stating several times during the call, she was satisfied with MCI's calling plan and favorable international rates to the countries she called frequently.<sup>14</sup> Despite her explicit statements to AT&T that she was not interested in their long distance service, AT&T nevertheless switched Ms. Crawford's long distance service on March 2, 2000.<sup>15</sup> Ms. Crawford states that she

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<sup>10</sup> See 47 U.S.C. § 258; 47 C.F.R. §§ 64.1100, 64.1150. See also *Vista Service Corporation, Order of Forfeiture*, FCC 00-378, at ¶ 7 (rel. Oct. 23, 2000) *recon. pending*.

<sup>11</sup> See Appendix A.

<sup>12</sup> Catherine Seidel, Chief, Telecommunications Consumers Division (Division Chief), issued a series of letters of inquiry to AT&T, in which she provided copies of the complaints and directed AT&T to respond to the consumers' allegations. See Letter of Inquiry dated May 19, 2000, from Catherine Seidel, Division Chief, to Margaret R. Berry, District Manager, AT&T, and Letters of Inquiry dated July 24, 2000, September 22, 2000, October 12, 2000, October 30, 2000, from Catherine Seidel, Division Chief, to James Cicconi, General Counsel, AT&T. AT&T duly responded; see AT&T Responses dated July 26, 2000, August 14, 2000, August 16, 2000, October 13, 2000, November 3, 2000, and November 21, 2000.

<sup>13</sup> Complaint dated April 12, 2000, from Phyllis Crawford (Crawford Complaint).

<sup>14</sup> *Id.*

<sup>15</sup> AT&T Response dated August 16, 2000, from Peter H. Jacoby, General Attorney, to Catherine Seidel, Division Chief (August 16 Response).

first learned of the conversion when she failed to receive an expected call from an associate in India.<sup>16</sup> When Ms. Crawford eventually called the associate, she learned that her MCI “Call Home” option had been terminated because AT&T had switched her preferred long distance provider.<sup>17</sup> On March 22, 2000, Ms. Crawford called MCI to reinstate them as her long distance carrier.

7. Upon receipt of her March phone bill, Ms. Crawford called AT&T to discuss the conversion of her long distance service and the resultant higher charges. According to Ms. Crawford, AT&T said it would retrieve the tape recording of the call in which she purportedly verified the change request and advise Ms. Crawford of the results.<sup>18</sup> Ms. Crawford subsequently filed an informal complaint with the Commission.<sup>19</sup> Ms. Crawford also submitted a signed declaration attesting to the fact that she did not authorize the switch to AT&T long distance service.<sup>20</sup> Ms. Crawford’s declaration also notes that AT&T failed to provide her with information regarding the contents of the purported taped verification conversation.<sup>21</sup>

8. Commission staff forwarded Ms. Crawford’s complaint to AT&T and directed AT&T to respond to Ms. Crawford’s allegations.<sup>22</sup> AT&T replied that one of its representatives had spoken with Ms. Crawford on June 7 and had told her that the unauthorized conversion of her long distance service was due to “a processing error that caused both local and long distance service to be switched.”<sup>23</sup> Staff sent AT&T another letter of inquiry (LOI) on July 24, 2000, asking for a more detailed explanation of the processing error.<sup>24</sup> AT&T responded that it had manually processed Ms. Crawford’s order for local service because the electronic linkages

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<sup>16</sup> Crawford Complaint.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See* Declaration of Phyllis Crawford dated June 27, 2000.

<sup>21</sup> *Id.*

<sup>22</sup> *See* Letter of Inquiry dated May 19, 2000, from Catherine Seidel, Division Chief, to Margaret R. Berry, District Manager, AT&T (May 19 LOI).

<sup>23</sup> AT&T Response dated June 8, 2000, from Margaret R. Berry, District Manager, to Catherine Seidel, Division Chief (June 8 Response).

<sup>24</sup> *See* Letter of Inquiry dated July 24, 2000, from Catherine Seidel, Division Chief, to James Cicconi, General Counsel, AT&T (July 24 LOI).

between AT&T's telemarketer and third party verifier were temporarily inoperative.<sup>25</sup> AT&T further states that AT&T inadvertently ordered long distance service during the manual order processing.<sup>26</sup>

9. AT&T similarly admits changing Mr. Scott's long distance service without his consent. In his complaint, Mr. Scott states that he changed his local service provider to MediaOne, now AT&T Broadband,<sup>27</sup> on March 28, 2000.<sup>28</sup> Mr. Scott further notes that he did not change his long distance provider.<sup>29</sup> Mr. Scott states that when he received an invoice for AT&T long distance calls, he immediately called AT&T to inform them that he had not selected AT&T for long distance service. According to Mr. Scott, the AT&T representative would neither adjust the charges (which Mr. Scott claims were twice as high as MCI's) nor accept responsibility for the alleged slam.<sup>30</sup> Mr. Scott then filed a complaint with the Commission, which staff forwarded to AT&T.

10. AT&T responded to the complaint by stating that the long distance carrier change was the "result of a local phone company sending AT&T an install order to do so. No orders were initiated by AT&T or Mr. Scott."<sup>31</sup> But in a subsequent response to a second staff inquiry, AT&T states that MediaOne executed an order to provide both local and long distance service "at Mrs. Scott's request and with her authorization."<sup>32</sup> AT&T notes that the "local service authorization was recorded on MediaOne's voice log script,"<sup>33</sup> but provides no verification whatever of the claimed authorization for the long distance change. Rather, as the explanation for that change, AT&T merely states that "the telemarketing representative mistakenly used the voice log verification script for the local service request instead of the script for local and long distance

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<sup>25</sup> August 16 Response.

<sup>26</sup> *Id.*

<sup>27</sup> According to an AT&T press release dated August 23, 2000, several former MediaOne properties would begin doing business as AT&T Broadband Systems, effective August 23, 2000.

<sup>28</sup> Complaint dated May 15, 2000, from David S. Scott (Scott Complaint).

<sup>29</sup> Declaration of Mr. and Mrs. David Scott dated December 13, 2000.

<sup>30</sup> *Id.*

<sup>31</sup> AT&T Response dated July 26, 2000, from Margaret R. Berry, District Manager, to the Common Carrier Bureau, Enforcement Division (July 26 Response).

<sup>32</sup> AT&T Response dated August 14, 2000, from Eddie H. Cooper, Contract Attorney, to Catherine Seidel, Division Chief (August 14 Response).

<sup>33</sup> *Id.*

combined requests.”<sup>34</sup> Because Mr. Scott represents that he requested local service only, and AT&T’s verification records do not indicate otherwise, it appears that AT&T erred in ordering the long distance service, not in using the wrong script to verify the consumer’s request.

11. The four remaining undisputed complaints similarly allege that AT&T changed the consumers’ preferred telephone service provider without authorization. In response to the allegations contained in the complaints submitted by Ms. and Mrs. Schuerholz, Mr. Hanavan, Mr. Dinerman, and Mr. Rosenberg, AT&T concedes that it improperly changed the consumers’ preferred service providers. For example, Mrs. Schuerholz alleges that in July 2000, AT&T changed her and her husband’s preferred long distance service provider without consent.<sup>35</sup> In response to this allegation, AT&T admits that it improperly converted the Schuerholz’s long distance service “due to a coding error when the transaction [for local and regional toll] was processed,” so that “AT&T was also mistakenly selected as the interLATA carrier.”<sup>36</sup> Similarly, AT&T admits that it did not have authority to change Mr. Hanavan’s local toll service. In response to Mr. Hanavan’s allegation that AT&T converted his local toll service without permission,<sup>37</sup> AT&T acknowledges that one of its representatives had entered “inaccurate customer information under Mr. Hanavan’s telephone number on February 23, 2000.”<sup>38</sup>

12. AT&T states that similar errors resulted in improper changes to the Dinerman and Rosenberg accounts. AT&T concedes that Mr. Dinerman authorized AT&T to provide only his local service during a June 27, 2000 call with AT&T.<sup>39</sup> According to AT&T, a telemarketer from one of AT&T’s cable service affiliates apparently submitted an order incorrectly requesting that AT&T be designated as Mr. Dinerman’s preferred local, local toll, and long distance carrier.<sup>40</sup> AT&T states that an independent third party discovered the discrepancy when verifying Mr. Dinerman’s order for local service; AT&T, however, failed to reconcile the conflicting information and submitted the incorrect original order “due to a clerical error.”<sup>41</sup> AT&T thus

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<sup>34</sup> *Id.*

<sup>35</sup> Complaint from Esta Schuerholz dated August 10, 2000 (Schuerholz Complaint). Mrs. Schuerholz acknowledges that during an outbound telemarketing call, she did authorize AT&T to provide local and local toll service.

<sup>36</sup> AT&T Response dated October 13, 2000, from Peter H. Jacoby, General Attorney, to Catherine Seidel, Division Chief (October 13 Response).

<sup>37</sup> Complaint dated March 15, 2000, from Bernard L. Hanavan.

<sup>38</sup> July 26 Response.

<sup>39</sup> AT&T Response dated November 21, 2000, from Peter H. Jacoby, General Attorney, to Catherine Seidel, Division Chief (November 21 Response).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

improperly changed Mr. Dinerman's local toll and long distance carriers. Likewise, AT&T concedes that it did not obtain proper authorization to change Mr. Rosenberg's local toll service. According to Mr. Rosenberg, he called AT&T at the end of July 2000 and authorized AT&T to provide his long distance service only.<sup>42</sup> Mr. Rosenberg later received a bill for AT&T local toll service. In response to Mr. Rosenberg's allegation that he did not authorize AT&T to provide local toll service, AT&T admits that the "service choice was not properly verified."<sup>43</sup>

13. AT&T attributes its conversions of these consumers' six lines to inadvertent error or mistake. Even if we accept at face value AT&T's statements that these conversions were due to error or mistake, however, neither the Act nor our rules requires specific intent to violate the statute or rules.<sup>44</sup> The Commission has stated that:

holding carriers liable for both inadvertent and intentional unauthorized changes to subscribers' preferred carriers will reduce the overall incidence of slamming and is consistent with 258. We find that the rights of the consumer and the authorized carrier to remedies for slamming should not be affected by whether the slam was an intentional or accidental act. Regardless of the intent, or lack thereof, behind the unauthorized change, the consumer and the authorized carrier have suffered injury.<sup>45</sup>

Because the Act and our rules do not require us to find that a carrier had specific intent to violate the Act or our rules, we therefore find AT&T apparently liable for the unauthorized conversion of the six telephone lines identified by these six complainants.

## B. LOA Complaint

14. AT&T's response to an allegedly forged LOA fails to rebut the consumer's allegations. In a written complaint to the Commission, Ms. Palacio recounts that on February 28, 2000, MCI, her preferred carrier, advised her that two of her lines had been changed to AT&T.<sup>46</sup> Ms. Palacio then called her local provider and asked them to reinstate MCI as her long distance provider. She also called AT&T's executive complaint department to express her dissatisfaction

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<sup>42</sup> Complaint dated September 5, 2000, from Steven R. Rosenberg.

<sup>43</sup> AT&T Response dated November 3, 2000, from Kathleen M. Cronin, Senior Attorney, to Catherine Seidel, Division Chief (November 3 Response).

<sup>44</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket. No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (1998 Second Order & FNPRM).

<sup>45</sup> *Id.* at 1540.

<sup>46</sup> Complaint dated April 18, 2000, from Sophia Palacio d/b/a Palace Frame Company.

with the conversions and to close the accounts.

15. During the course of her communications with AT&T, Ms. Palacio requested a copy of the letter of authorization AT&T relied on as the basis of its purported authority to change her designated service provider. On or about March 22, 2000, AT&T faxed Ms. Palacio a copy of a signed LOA that included a copy of one of her business cards affixed next to the signature. Upon receipt of the faxed LOA, Ms. Palacio realized that the signature was not hers but that the business card was.<sup>47</sup> Ms. Palacio then recalled that a man and a woman had stopped by her business in February 2000 and asked if she would be interested in changing carriers. Ms. Palacio told them she was not interested, and when she watched the couple leave, she observed the woman take one of Ms. Palacio's business cards that was displayed on a counter.<sup>48</sup>

16. Commission staff forwarded Ms. Palacio's complaint to AT&T, along with a copy of the LOA and a request for a detailed response to Ms. Palacio's allegations (including the possibility of forgery).<sup>49</sup> In its response, AT&T states that it submitted orders to change the long distance and local toll carrier for both lines based on a written letter of authorization bearing the signature of Sophia Palacio.<sup>50</sup> AT&T acknowledges that the customer disputed the authorization and states that it credited all charges and closed the account on May 6, 2000.<sup>51</sup> AT&T offers no other evidence to rebut Ms. Palacio's allegation that AT&T changed her preferred carrier based on a forged LOA.

17. AT&T was aware that the LOA signature might have been forged as a result of Ms. Palacio's complaint and the Commission's inquiries. AT&T's response, however, did not address the possibility that the signature could have been forged. Our own examination of the signature on the LOA and the exemplar provided by the complainant leads us to conclude that there is little similarity between the signatures, thus supporting Ms. Palacio's allegations. We therefore find that the complainant has provided credible evidence that she did not authorize AT&T to provide local toll or long distance service for her two telephone lines, and we accept her allegations for purposes of this Notice.

### C. Remaining Complaints

18. For the remaining complaints that form the basis of this NAL, AT&T fails to

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Letter of Inquiry dated September 22, 2000, from Catherine Seidel, Division Chief, to James Cicconi, General Counsel, AT&T (September 22 LOI).

<sup>50</sup> October 13 Response.

<sup>51</sup> *Id.*

provide evidence sufficient to rebut the complainants' allegations that AT&T changed their service without consent. AT&T either fails to address the allegations, as charged in the complaints submitted by Mr. and Mrs. Ortega and Mr. Patterson, or fails to provide documentation that would establish its authority to submit a request to change the consumers' preferred carriers (see the complaints submitted by Ms. Plunkett, Ms. Krumwiede, and Mr. Agnew, discussed below). For example, in the case involving Mr. and Mrs. Ortega, AT&T states that on July 22, 2000, an independent, third party verifier spoke with a Dwight Lewis to confirm a request to change the Ortegases' long distance provider.<sup>52</sup> A few days later, the Ortegases' local carrier called to advise them that AT&T had been designated as their long distance carrier. Because neither of the Ortegases had requested a change of long distance carrier, the Ortegases called AT&T to protest the unauthorized conversion of their service.<sup>53</sup> AT&T responded to their complaint via the August 5 Letter and stated that AT&T's marketing representative had confirmed that one Dwight Lewis was authorized to make decisions regarding the Ortegases' account.<sup>54</sup> The Ortegases, however, state that they did not request a change and declare that they do not know anyone named Dwight Lewis.<sup>55</sup> When the Ortegases eventually received an AT&T bill addressed to Greg Ortega, they filed a complaint with the Commission.

19. AT&T's response to the Ortegases' allegation fails to rebut the Ortegases' assertion that Dwight Lewis was not authorized to change their service. In response to a Commission staff inquiry, AT&T states that the authorization was obtained during an outbound marketing call and that TeleTech, a third party verifier, confirmed the alleged change request.<sup>56</sup> In support of its statements, AT&T provided a copy of a TeleTech memo stating that Dwight Lewis authorized AT&T to provide long distance and local toll service.<sup>57</sup> The memo lists the Ortegases' telephone number but indicates that the "Customer (billing) Name" for the account was Dwight Lewis, not the Ortegases.<sup>58</sup> AT&T does not provide any other evidence to rebut the Ortegases' allegation. The fact that the Ortegases complained of the carrier change immediately upon learning of the conversion, coupled with AT&T's response that Dwight Lewis confirmed a change for an account billed to himself (as opposed to the Ortegases), leads us to conclude, for the purposes of this Notice, that the Ortegases did not authorize a change in carriers.

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<sup>52</sup> Letter dated August 5, 2000, from Stephanie Scow, AT&T Case Manager, to Greg Ortega (August 5 Letter).

<sup>53</sup> Complaint dated August 29, 2000, from Tracie Ortega.

<sup>54</sup> August 5 Letter.

<sup>55</sup> Declaration of Greg and Tracie Ortega dated September 27, 2000.

<sup>56</sup> October 13 Response.

<sup>57</sup> *Id.* at Appendix F.

<sup>58</sup> *Id.*

20. The complaint filed by Mr. Patterson mirrors the complaint filed by Mr. and Mrs. Ortega. Mr. Patterson states that AT&T changed his long distance carrier without his authorization.<sup>59</sup> Mr. Patterson became aware of the change when he received an AT&T long distance bill in January 2000. Mr. Patterson states that he promptly contacted AT&T to complain about the conversion, and states that AT&T advised him that the person who had the telephone number before Mr. Patterson was the one who requested the change.<sup>60</sup> Mr. Patterson states that he was perplexed by this explanation, however, because he has had the telephone number for the past four years.<sup>61</sup>

21. In response to a staff inquiry to AT&T regarding this allegation, AT&T states that it became Mr. Patterson's long distance service on December 27, 1999, based on the verified request provided by one Sam Carrillo.<sup>62</sup> Mr. Patterson, however, avers that he does not know anyone named Sam Carrillo.<sup>63</sup> In response to a second staff inquiry, AT&T explains that during an outbound sales call on December 23, 1999, one of its marketing representatives confirmed that Sam Carrillo was authorized to make changes to Mr. Patterson's account.<sup>64</sup> AT&T included a memorandum from TeleTech, a third party verifier, indicating that Sam Carrillo was the authorized party who confirmed the change request.<sup>65</sup> The third party verifier's memorandum, however, lists the "Customer (Billing Name)" as Sam Carrillo, not Mr. Patterson.<sup>66</sup> As in the case involving the Ortegas, Mr. Patterson's statements, coupled with AT&T's responses, lead us to conclude that, for purposes of this Notice, Mr. Patterson did not authorize AT&T to be his long distance carrier.

22. In her written complaint, Ms. Plunkett alleges that AT&T, her preferred long distance provider, converted her local service from Southwestern Bell (SWBT) without authorization.<sup>67</sup> Ms. Plunkett states that on March 24, 2000, her local service was disconnected

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<sup>59</sup> Declaration of Thomas H. Patterson dated June 6, 2000.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> AT&T Response dated April 26, 2000, from Margaret R. Berry, District Manager, to the Enforcement Bureau.

<sup>63</sup> Declaration of Thomas H. Patterson dated September 30, 2000.

<sup>64</sup> August 16 Response.

<sup>65</sup> *Id.* at Appendix C.

<sup>66</sup> *Id.*

<sup>67</sup> Complaint dated April 10, 2000, from Theresa M. Plunkett (Plunkett Complaint).

from SWBT and subsequently connected to AT&T, although she never authorized such a change.<sup>68</sup> According to Ms. Plunkett, she promptly called AT&T to request a disconnect; the representative said she would turn in a “slam form” and issue the disconnect order; and the rep assured Ms. Plunkett that she would not have to contact AT&T again regarding this matter.<sup>69</sup>

23. On March 31, one week after the alleged slam, Ms. Plunkett states that she spoke with SWBT, who advised her that AT&T had not yet completed the disconnect order.<sup>70</sup> Ms. Plunkett spoke to SWBT on April 5 and was again advised that AT&T had not completed the disconnect order.<sup>71</sup> By letter dated April 10, 2000, Ms. Plunkett asked the Federal Communications Commission to intervene on her behalf.<sup>72</sup> Staff forwarded Ms. Plunkett’s complaint to AT&T and directed AT&T to state whether it had submitted a request to change Ms. Plunkett’s preferred local telephone service provider and, if so, upon what authority.<sup>73</sup> AT&T’s response states that “Ms. Plunkett was not slammed to AT&T for local service” and that “an order was placed on February 28, 2000 for AT&T and the order became complete on March 24, 2000.”<sup>74</sup> AT&T further states that it issued Ms. Plunkett a \$51.80 credit for local service billing, and that “Ms. Plunkett’s account was forwarded to Dallas for an outploc [sic], to insure Ms. Plunkett’s lines are released from AT&T local service.”<sup>75</sup>

24. Commission staff issued a second letter to AT&T directing the company to provide more details regarding the conversion of Ms. Plunkett’s service.<sup>76</sup> AT&T’s second response indicates that it had implemented the change request on March 24, 2000, and states that J.C. Penney, an independent third party, verified the change request on February 8, 2000.<sup>77</sup> This response included what AT&T termed a “statement” from the verifier that purportedly confirmed

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> May 19 LOI.

<sup>74</sup> AT&T Response dated June 8, 2000, from Margaret R. Berry, District Manager, to Catherine Seidel, Division Chief.

<sup>75</sup> *Id.*

<sup>76</sup> July 24 LOI.

<sup>77</sup> August 16 Response.

the change request.<sup>78</sup> The proffered statement, however, consists of an unsigned sheet of paper with no letterhead and contains a table implying that on February 8, 2000, Teresa Plunkett had given a “pass” for local, intraLATA, and interLATA “TPV Type” categories.<sup>79</sup> AT&T provided no other documentation.

25. AT&T’s verification “statement” fails to rebut Ms. Plunkett’s contention that she did not authorize AT&T to provide her local service. First, the purported verification is unsigned, does not indicate when it was created, and does not state that it is an accurate representation of a contact with Ms. Plunkett. Nor does it indicate whether the verifier obtained separate verifications for each service offered, as required by our rules. Second, the accuracy of the purported authorization is questionable. Ms. Plunkett asserts that AT&T had been her designated long distance provider prior to February 8, 2000.<sup>80</sup> The document, however, indicates that on February 8, 2000, Ms. Plunkett provided a “pass” in the long distance category, as well as the local and local toll categories. AT&T apparently interpreted the term “pass” to mean that Ms. Plunkett authorized AT&T to become her preferred service provider for these services. Because AT&T was providing Ms. Plunkett’s long distance service prior to February 8, 2000, however, it is unclear to us that the term “pass” can be deemed an authorization to change carriers. Accordingly, for the reasons discussed above, we find that the purported verification does not provide confirmation that Ms. Plunkett authorized a preferred carrier change. We thus accept, for purposes of this Notice, Ms. Plunkett’s statement that she did not authorize AT&T to provide local service.

26. Similarly, AT&T fails to offer evidence sufficient to rebut the allegations contained in the complaints filed by Ms. Krumwiede and Mr. Agnew. Indeed, AT&T fails to provide any evidence of how it obtained authority to change three of these complainants’ lines. In her written complaint, Ms. Krumwiede states that she received a bill for AT&T local and long distance service in March 2000.<sup>81</sup> While Ms. Krumwiede acknowledges that she requested literature about AT&T’s One Rate plan in response to a telemarketing call she received in January, she did not authorize any change in her service providers.<sup>82</sup> After receiving a bill from AT&T, Ms. Krumwiede states that she called AT&T several times to correct the situation, but when AT&T had not resolved the matter by July, she filed a complaint with the Commission. In response to a

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<sup>78</sup> *Id.* at Appendix C.

<sup>79</sup> *Id.* See also Appendix B.

<sup>80</sup> See Plunkett Complaint. Southwestern Bell Telephone, Ms. Plunkett’s local carrier on February 8, 2000, corroborated Ms. Plunkett’s statement that AT&T was her designated long distance provider prior to February 8, 2000. See Letter dated May 30, 2000 from Bruce Logan, Associate Director - Appeals, SBC, to Catherine Seidel. See also Memo dated December 12, 2000 from Bruce Logan to Dana E. Leavitt, staff attorney.

<sup>81</sup> See Complaint dated July 27, 2000, from Mari Krumwiede.

<sup>82</sup> *Id.*

staff request for information regarding Ms. Krumwiede's allegations,<sup>83</sup> AT&T states that it "has been unable to date to retrieve the detailed evidence of the third party verification for this carrier selection due to a data corruption problem."<sup>84</sup> AT&T's inability to produce evidence supporting the purported authorization leads us to accept as true Ms. Krumwiede's statement that AT&T converted her local and long distance service without her consent.

27. Likewise, AT&T has failed to offer evidence to rebut Mr. Agnew's allegation that AT&T converted the local and long distance service of both his business and residential lines without proper authorization.<sup>85</sup> In response to a staff inquiry regarding these allegations, AT&T states that it changed Mr. Agnew's service "based on authorization provided during a telemarketing call to his business on April 5, 2000."<sup>86</sup> AT&T's August 16, 2000 response further states that it "has requested a copy of the authorization from the vendor and will provide results upon receipt."<sup>87</sup> To date, staff has not received any evidence related to Mr. Agnew's disputed verification. Therefore, in the absence of an argument or rebuttal evidence to the contrary, we conclude that AT&T has apparently changed the local and long distance service of Mr. Agnew's business and residential lines without proper authorization.

#### **D. Forfeiture Amount**

28. AT&T's actions, as described above, persuade us that a significant forfeiture is warranted against AT&T for its apparent willful or repeated violations of section 258 of the Act and the Commission's rules and orders.<sup>88</sup> These actions include: (1) the use of an apparently forged or falsified LOA to effect changes in long distance service; (2) the use of verbal authorizations from individuals who were apparently without authority to effectuate a change; and (3) the submission of apparently unauthorized carrier change orders.

29. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>89</sup> In exercising such authority, we are required to take

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<sup>83</sup> See Letter of Inquiry dated October 12, 2000, from Catherine Seidel, Division Chief, to James Cicconi, General Counsel, AT&T.

<sup>84</sup> November 3 Response.

<sup>85</sup> See Complaint dated June 21, 2000, from Robert Agnew.

<sup>86</sup> Letter dated August 9, 2000, from Margaret M. Berry, District Manager, to Enforcement Division, Common Carrier Bureau.

<sup>87</sup> *Id.*

<sup>88</sup> See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997).

<sup>89</sup> 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules to increase the

into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>90</sup> The Commission's forfeiture guidelines currently establish a standard forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.<sup>91</sup> These policies and guidelines, however, include upward adjustment criteria that warrant a higher forfeiture amount based on the particular facts and circumstances of the violation(s).<sup>92</sup> These include the egregiousness of the misconduct, ability or inability to pay, whether the violation was intentional, whether substantial harm resulted from the violations, history of compliance with Commission requirements, whether the violator realized substantial economic gain from the misconduct, and whether the violation is repeated or continuous.<sup>93</sup>

30. We note that on several occasions, the Commission has sternly admonished carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against any carrier found to have engaged in slamming, including through the use of forged LOAs.<sup>94</sup> More recently, the Commission has issued several NALs assessing forfeitures at \$80,000 per violation for the use of forged LOAs.<sup>95</sup> In those orders, the Commission found that the higher forfeiture amount was warranted by the egregiousness of

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maximum penalties to account for inflation since the last adjustment of the penalty rates. The new rates will apply to violations that occur after November 13, 2000. *In the Matter of Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation, Order*, FCC-347 (rel. Sep. 19, 2000).

<sup>90</sup> See 47 U.S.C. § 503(b)(2)(D).

<sup>91</sup> Section 503(b)(2)(B) provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license, permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(B). The Debt Collection Improvement Act of 1996 (DCIA), Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996), requires, however, that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. The current statutory maxima pursuant to Section 503(b)(2)(B) are \$110,000 and \$1,100,000 and have increased to \$120,000 and \$1,200,000 respectively, for violations occurring after November 13, 2000. See note 89, *supra*.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* See also 47 U.S.C. § 503(b)(2)(D).

<sup>94</sup> See, e.g., *Nationwide Long Distance, Inc. NAL*, 11 FCC Rcd 3087, 3089 (Com. Car. Bur. 1996). The Commission has also emphasized on numerous occasions that the actions of a carrier's marketing agents do not relieve a carrier of its independent obligation to ensure compliance with the rules. Rather, under the Communications Act, the acts or omissions of an agent or other person acting for a common carrier are deemed to be the acts or omissions of the carrier itself. See 47 U.S.C. § 217; see also *Heartline Communications, Inc.* 11 FCC Rcd 18487, 18494 (1996).

<sup>95</sup> *Brittan Communications International Corp.*, 15 FCC Rcd 4852 (2000) (*Brittan Forfeiture Order*); *Amer-I-Net Services Corp.*, 15 FCC Rcd 3118 (2000) (*Amer-I-Net Forfeiture Order*); *All American Telephone Company, Inc.*, 13 FCC Rcd 15040 (1998).

misconduct.<sup>96</sup>

31. In the instant case, the evidence before us indicates that AT&T has apparently willfully or repeatedly changed consumers' preferred telecommunications service providers without proper authorization. Moreover, in one of the complaints before us, it appears that AT&T relied on a forged LOA which, as we have explained in earlier NALs, we find to be a particularly egregious form of slamming.<sup>97</sup> We thus find that the upward adjustment criterion related to egregious misconduct is applicable in this case. Based on the facts alleged by Ms. Palacio, we conclude that it is appropriate to propose a forfeiture amount that is double the base amount contained in our forfeiture guidelines for the two lines AT&T converted based on a forged LOA. Because AT&T converted two telephone numbers without proper authorization, we find that AT&T has committed two separate violations. We thus propose a forfeiture of \$80,000 for each violation resulting from AT&T's reliance on a forged LOA, or \$160,000.

32. For each of the remaining 12 violations, we will apply the \$40,000 base slamming forfeiture amount, or \$480,000. Thus, we find that AT&T is apparently liable for a total proposed forfeiture of \$640,000 for the unauthorized conversion of 14 telephone lines. AT&T will have the opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>98</sup>

33. We note that this case involves several instances in which the consumer authorized AT&T to provide one type of service, and then apparently had additional unauthorized services switched by AT&T.<sup>99</sup> We remind AT&T and other carriers that they must obtain separate authorization from the subscriber for each type of service for which the carrier requests a change.

#### IV. CONCLUSIONS AND ORDERING CLAUSES

34. We have determined that AT&T has apparently violated section 258 of the Act and the Commission's preferred carrier change rules and orders<sup>100</sup> by converting the preferred telephone service providers for 14 telephone lines identified in the 12 consumer complaints discussed above, on the dates and in the manner described herein. We have further determined that AT&T Communications, Inc. is apparently liable for forfeitures in the amount of \$80,000 for

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<sup>96</sup> See, e.g., *Brittan Forfeiture Order*, 15 FCC Rcd at 4855.

<sup>97</sup> See *Amer-I-Net Forfeiture Order*, 15 FCC Rcd at 3119, 3122; See also *Excel Telecommunications Incorporated*, 11 FCC Rcd 19765, 19767 (Com. Car. Bur. 1996).

<sup>98</sup> See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>99</sup> See, e.g., the Crawford, Scott, Schuerholz, and Plunkett Complaints.

<sup>100</sup> 47 U.S.C. § 258; 47 C.F.R. §§ 64.1100, 64.1150. See also *1998 Second Order & FNPRM*, 14 FCC Rcd 1508; *Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 10674 (1997) (*1997 FNPRM & Order on reconsideration.*).

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each of the two conversions based on an apparently forged letter of agency, and \$40,000 for each of the remaining 12 violations, resulting in a total forfeiture amount of \$640,000.

35. Accordingly, IT IS ORDERED, pursuant to section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that AT&T Communications, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$640,000 for willful or repeated violations of section 258 of the Act<sup>101</sup> and the Commission's preferred carrier change rules and orders as described in the paragraphs above.<sup>102</sup>

36. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, AT&T Communications, Inc. SHALL PAY the full amount of the proposed forfeiture<sup>103</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

37. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to, AT&T Communications, Inc., 295 North Maple Avenue, Basking Ridge, New Jersey, 07920.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>101</sup> 47 U.S.C. § 258.

<sup>102</sup> See 47 C.F.R. §§ 64.1100, 64.1150; 1998 Second Order & FNPRM; 14 FCC Rcd 1508; 1997 FNPRM & Order on reconsideration, 12 FCC Rcd 10674.

<sup>103</sup> The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. AT&T should include the reference "NAL/Acct. No. 200132170015" on AT&T Communications, Inc.'s check or money order. Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.



**Customer's TPV Record**

**Federal Communications Commission**

**FCC 00-446**

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