

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

In the Matter of)	
)	File No. ENF 98-09
All American Telephone, Inc.)	
)	NAL/Acct. No. 816EF0008
Apparent Liability for Forfeiture)	

ORDER OF FORFEITURE

Adopted: September 5, 2001

Released: September 10, 2001

By the Commission:

I. INTRODUCTION

1. In this Order, we assess a forfeiture of \$920,000 against All American Telephone, Inc. (All American) for willful or repeated violations of the Communications Act of 1934, as amended (the Act), and our rules and orders. We find that All American willfully or repeatedly violated section 258 of the Act¹ and the Commission's related rules² and orders³ by changing the

¹ Section 258 states in pertinent part that "no telecommunications carrier shall submit . . . 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." 47 U.S.C. § 258.

² 47 C.F.R. §§ 64.1100, 64.1150. Sections 64.1100 and 64.1150 are now codified at section 64.1120 of the Commission's rules. 65 FR 47678, 47690 (2000). Because All American's apparent violations occurred prior to November 28, 2000, the effective date of the revised rules, sections 64.1100 and 64.1150 were the applicable Commission rules in effect during the relevant time period.

³ *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, First Order on Reconsideration*, FCC 00-135 (rel. May 3, 2000); *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, Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), stayed in nonrelevant part, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999) (*Stay Order*); *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 10674 (1997); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (*LOA Order*), stayed in part, 11 FCC Rcd 856 (1995) (*In-Bound Stay Order*); *Policies and Rules concerning Changing Long Distance Carriers*, 7 FCC Rcd 1038 (1992) (*PIC Change Order*), recon. denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture-Related Tariffs*, 101 FCC Rcd 911 (1985) (*Allocation Order*), recon. denied, 102 FCC2d 503 (1985);

preferred interexchange carriers (PICs) designated by 12 consumers without their authorization, a practice commonly referred to as “slamming.” We find All American’s slamming violations particularly egregious because All American, in requesting local exchange carriers (LECs) to make the PIC changes, relied on Letters of Authorization (LOAs) that contained forgeries of the signatures of consumers.

II. BACKGROUND

2. The facts and circumstances leading to the issuance of our July 6, 1998 Notice of Apparent Liability (NAL)⁴ are fully recited in the NAL and need not be reiterated at length. Between September 1997 and March 1998, the Commission received numerous written consumer complaints alleging slamming by All American. The Commission investigated 13 of these complaints. Each complainant contended that All American had converted his or her designated PIC without authorization through the apparent use of falsified or forged LOAs. All of the complainants provided sworn statements and evidence in support of their complaints.

3. Following an investigation of the above complaints, which included an opportunity for All American to respond to the allegations raised by complainants, the Commission issued the *All American NAL*. The Commission found that All American’s failure to obtain the complainants’ authorization before submitting PIC-change requests apparently violated section 258 of the Act and the Commission’s rules and orders against slamming.⁵ In addition, the Commission determined that the complainants had provided compelling evidence that All American apparently relied on falsified or forged LOAs in effecting these unauthorized conversions. Indeed, the Commission noted that several complainants had provided evidence that “information on the purported LOA is incorrect, or, as in the case of a purported signature by Ms. Kitay’s deceased husband, is clearly fabricated.”⁶

4. In view of the facts and circumstances surrounding All American’s apparent slamming violations, the Commission found that All American was apparently liable for a proposed forfeiture of \$80,000 for each of the 13 unauthorized conversions, resulting in a total forfeiture amount of \$1,040,000.⁷ In proposing this forfeiture, the Commission stated that,

Investigation of Access and Divestiture-Related Tariffs, 101 FCC 2d 935 (Com.Car.Bur. 1985) (*Waiver Order*), *recon. denied*, 102 FCC 2d 503 (1985).

⁴ See *All American Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 15040 (1998) (*All American NAL*).

⁵ *Id.* at 15040.

⁶ *Id.* at 15048.

⁷ The Commission has authority pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), 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. For a violation to be willful, it need not be intentional. *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *Implementation of the Subscriber Carrier Selection Changes Provisions of the*

despite the Commission's earlier warnings to interexchange carriers about the use of forged LOAs, All American had apparently willfully or repeatedly engaged in a clear pattern of fraudulent conduct to intentionally slam consumers.⁸ The Commission noted that this pattern of conduct distinguished the case from prior NALs involving forged LOAs, and therefore justified the \$80,000 forfeiture amount for each of the unauthorized conversions.⁹

III. DISCUSSION

5. While All American does not deny that it submitted PIC-change orders to the complainants' local exchange carriers, the company contends that we should rescind the proposed forfeiture with regard to all 13 slamming complaints in the record because the Commission failed to establish the "element of intent necessary to sustain a forgery finding."¹⁰ All American further asserts that the Commission should not consider the Saines and Varughese complaints in its forfeiture calculation because neither complaint specifically alleged that All American forged the signatures at issue.¹¹ Further, All American contends that it has expert testimony proving that the signature on the Joyce LOA was not, in fact, forged.¹² Finally, All American argues that even if it is found liable, the proposed forfeiture is excessive in light of: 1) Commission precedent; 2) All American's asserted history of compliance; and 3) All American's alleged inability to pay the fine. We take these arguments in turn.

A. Imposition of a Forfeiture

6. All American contends that it cannot be held liable for any of the 13 alleged slamming violations because the Commission failed to present evidence that All American intended to defraud consumers through the use of apparently forged or falsified LOAs.¹³ We disagree. First, section 258 of the Act imposes liability on a carrier responsible for submitting an unauthorized charge, regardless of intent.¹⁴ Further, the Commission has stated on numerous

Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Second Report and Order, 14 FCC Rcd 1508, 1539 (1998).

⁸ *All American NAL*, 13 FCC Rcd at 15050.

⁹ *Id.*

¹⁰ Response at 16-17. All American also erroneously contends that the *NAL* did not cite All American for apparent violations of the Commission's rules against slamming, but only for relying "on LOAs apparently containing forgeries . . ." *Id.* at 5-6. To the contrary, the *NAL* found apparent violations of the Commission's slamming rules and orders, as well as the Act. *See All American NAL*, 13 FCC Rcd at 15040.

¹¹ Response at 13-16.

¹² *Id.* at 10-13.

¹³ *Id.* at 16-17.

¹⁴ 47 U.S.C. § 258 (stating, in pertinent part, that "[n]o telecommunications carrier shall submit . . . 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."); *see also Implementation of the*

occasions that a carrier's alleged lack of knowledge concerning forged LOAs does not exonerate the carrier.¹⁵ Even if All American's marketing agents forged the LOAs at issue, without the company's actual knowledge, section 217 of the Act provides that a carrier such as All American is nevertheless liable for its agents' actions.¹⁶

7. As the Commission stated in earlier forfeiture orders, it has long been established that the word "willfully," as used in section 503(b) of the Act, does not require a demonstration that the carrier knew that it was acting unlawfully.¹⁷ Rather, section 503(b) requires only a finding that the carrier knew it was doing the acts in question and that the acts were not accidental.¹⁸ We find here that All American knew it was submitting the changes, and reject All American's claim that it is not liable for the violations because it lacked actual knowledge that the LOAs were forged or that its actions would defraud consumers.¹⁹ Furthermore, we note that section 503(b) authorizes the Commission to assess forfeitures for willful *or repeated* violations of the Act.²⁰ The record supports a finding that All American's violations were repeated, as well as willful, within the meaning of the Act.²¹

8. Moreover, All American's argument must fail under the express terms of section 258 and our implementing rules, which prohibit the submission of unauthorized PIC changes. For purposes of determining All American's liability for slamming violations, we need not determine whether All American, its marketing agents, or some other party forged or signed the LOAs at issue here. Rather, we need only find (1) that the complainants did not authorize the PIC changes by signing the LOAs, and (2) that All American submitted these unauthorized PIC changes to the complainants' LECs.²² As noted in the *NAL*, All American concedes that it used the LOAs in

Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 14 FCC Rcd 1508, 1539 (1998).

¹⁵ See, e.g., *Qwest Communications Int'l, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 182 (1999).

¹⁶ See 47 U.S.C. § 217.

¹⁷ See, e.g., *Amer-I-Net Services Corporation*, Order of Forfeiture, 15 FCC Rcd 3118 (2000) (*Amer-I-Net Services Corporation Forfeiture Order*).

¹⁸ *Id.*

¹⁹ Nor do we find merit in All American's suggestion that forged LOAs should somehow be more acceptable to the Commission because we previously acknowledged that forgeries are an industry-wide problem. Response at 7-8. If anything, the fact that falsified and forged LOAs are a widespread -- and well-publicized -- problem makes them even more egregious when they occur.

²⁰ 47 U.S.C. § 503(b) (emphasis added).

²¹ See *supra* note 7.

²² The Commission's rules and orders require that a carrier wishing to effectuate an authorized change in a consumer's designated preferred carrier submit the 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. Section 64.1150 specifies the various methods that carriers can use to verify consumer requests to change a preferred carrier. For example, a carrier may elect to use a letter of agency (LOA) as the basis for submitting a carrier change order.

question in submitting PIC changes for the complainants.²³ Further, the complainants contend that they did not authorize the LOAs relied upon by All American, and many have noted that the LOAs at issue bear erroneous dates, misspelled or incorrect names, and other indicia of falsification or forgery.²⁴ With the exception of the three complaints discussed below, All American has submitted no evidence to counter the complainants' assertions that they were slammed, or that the LOAs were forged or falsified. Therefore, we conclude that, except to the extent discussed below, All American is liable for each of the proposed slamming violations discussed in the NAL.

B. Contested LOAs

1. Saines Complaint

9. All American asks the Commission to exclude the Saines complaint from its forfeiture calculation.²⁵ All American claims that the record lacks adequate evidence that the Saines LOA was forged. Noting that the Commission determined that its "own review of signatures . . . demonstrates that there is little similarity between the purported signatures on LOAs and the exemplars provided by the complainants,"²⁶ All American argues that the Federal Rules of Evidence preclude the Commission from rendering an opinion concerning the authenticity of Ms. Saines' signature.²⁷ All American asserts that under the Federal Rules of Evidence, non-expert testimony as to handwriting is permissible only when "based upon familiarity not acquired for purposes of the litigation."²⁸

10. All American's contentions do not persuade us to alter our determination that All American slammed Ms. Saines in violation of the Act and our rules and orders. The record demonstrates that Ms. Saines never authorized a PIC change in accordance with our rules and orders.²⁹ As we found in the NAL, the Saines LOA bears an incorrect zip code, as well as a signature that does not resemble Ms. Saines' signature on her complaint.³⁰ The record also includes a sworn statement from Ms. Saines alleging that "[t]he signature on the [LOA] form is a forgery. I did not sign the form. My age and the zip code written on the form are also

Pursuant to section 64.1150, the LOA must be signed "by the subscriber to the telephone line(s) requesting the preferred carrier change." See 47 C.F.R. § 64.1150.

²³ See *All American NAL*, 13 FCC Rcd at 15042.

²⁴ *Id.* at 15048.

²⁵ Response at 13-16.

²⁶ *All American NAL*, 13 FCC Rcd at 15048.

²⁷ Response at 15.

²⁸ *Id.* (citing Fed. R.Evid. 901(b)(2), (3)).

²⁹ *Id.*

³⁰ *All American NAL*, 13 FCC Rcd at 15048.

incorrect.”³¹ Second, All American concedes that it used the LOA in question in submitting a PIC change for Ms. Saines. In light of the foregoing, we conclude that the record supports a finding that All American used a forged LOA to effect a switch of Ms. Saines’ long distance service provider, in violation of section 258 of the Act.

11. We reject All American’s claim that the Federal Rules of Evidence bar us from finding a discrepancy between the purported signatures on the Saines LOA and the exemplar provided by Ms. Saines. As an initial matter, the rules cited by All American are inapposite: there is no issue here concerning the “testimony” of a “non-expert”³² about the authenticity of Ms. Saines’ handwriting.³³ To the extent that All American is arguing that the Commission reached an improper legal conclusion concerning the signatures at issue, we disagree. It was within the Commission’s discretion under section 503(b) of the Act to observe the difference in the signatures submitted as belonging to Ms. Saines.³⁴ Moreover, we note that the Commission made its determination in the absence of any evidence to counter Ms. Saines’ sworn declaration³⁵ that the signature on the LOA a forgery, and that her age and zip code written on the form are incorrect.³⁶

2. Varughese Complaint

12. In its Response, All American concedes that Mr. Varughese did not sign the LOA, and that the LOA instead bears the signature of an individual named “Sara Thomas.”³⁷ Nevertheless, All American argues that the Commission should have obtained an allegation of forgery from Mr. Varughese or an authenticated signature of Sara Thomas in order to demonstrate that the LOA at issue was in fact forged.³⁸

13. We find that the record contains uncontradicted evidence that All American switched Mr. Varughese’s long distance service provider without his authorization, in violation of section 258 of the Act and the Commission’s slamming rules and orders. However, we agree that it is unclear from the record whether All American used a forged or falsified LOA to effect this unauthorized switch. Accordingly, we will reduce the forfeiture amount of the Varughese slamming violation from \$80,000 to \$40,000, the standard forfeiture amount for slamming violations.

³¹ See Saines Declaration (Aug. 14, 1998).

³² Presumably, All American uses this term to refer to the Commission.

³³ Moreover, even if the rule cited by All American applies here, the Commission has stated that the Federal Rules of Evidence may be “relaxed if the ends of justice will be better served by so doing.” See 47 C.F.R. § 1.351.

³⁴ See 47 U.S.C. § 503(b)(2)(D).

³⁵ See Saines Declaration (Aug. 14, 1998).

³⁶ See *All American NAL*, 13 FCC Rcd at 15048-49.

³⁷ Response at 42.

³⁸ Response at 14.

3. Joyce Complaint

14. All American argues that the Commission should exclude the Joyce Complaint from its calculation of All American's forfeiture.³⁹ All American contends that Ms. Joyce's declaration does not support the proposed penalty,⁴⁰ despite Ms. Joyce's contention that she did not sign the LOA, and that the LOA bears numerous mistakes, including an incorrect age.⁴¹ All American also presents evidence from two handwriting experts who concluded that the signature on the Joyce LOA was genuine by comparing the signature on the LOA with Ms. Joyce's complaint and declaration to the Commission.⁴² While this evidence is not conclusive, for purposes of this proceeding we will not include this complaint in our forfeiture calculation in light of the conflicting evidence in the record. Accordingly, we reduce the amount of the forfeiture by \$80,000.

C. Appropriateness of Assessed Forfeiture Amount

15. All American argues that even if it is found liable for a forfeiture, the Commission's proposed penalty should be substantially reduced. All American contends that the Commission impermissibly based the proposed forfeiture amount on the Commission's *Forfeiture Policy Statement*⁴³ when only three complaints stem from facts that occurred after the *Forfeiture Policy Statement* was released.⁴⁴ All American asserts that the *Policy Statement* recommends a standard \$40,000 forfeiture amount for slamming violations. Moreover, All American argues, the proposed \$80,000 fine for forgery violations is disproportionate compared to forfeitures the Commission imposed on other carriers⁴⁵ who had engaged in egregious slamming conduct.⁴⁶

³⁹ Response at 10.

⁴⁰ *Id.* at 11. All American claims that Ms. Joyce did not "definitively assert" that her signature is a forfeiture, instead stating that, "[t]o the best of [her] recollection," she did not sign LOA. *Id.*

⁴¹ See Joyce Declaration at 1-2.

⁴² *Id.* at 10-13.

⁴³ See *The 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), *recon. denied*, CC Docket No. 95-6 (rel. Dec. 28, 1999) (*Forfeiture Policy Statement*). The *Forfeiture Policy Statement* was effective on October 14, 1997.

⁴⁴ Response at 27.

⁴⁵ *Id.* at 19-26 (citing, for example, the *CCN Revocation Order*, 13 FCC Rcd 13599 (1998), in which the Commission, in addition to revoking the Fletcher Companies' operating authority, imposed forfeitures of \$15,000 per slamming complaint plus an additional \$5,000 for each instance where Fletcher failed to respond to the Commission's notices of informal complaint).

⁴⁶ Response at 23 (citing *LCI International Worldwide Telecommunications*, Notice of Apparent Liability for Forfeiture, 10 FCC Rcd 11451 (Com.Car.Bur. 1995)).

Finally, All American contends that its history of compliance and its inability to pay warrant a reduction of the proposed penalty.⁴⁷

16. We reject All American's contentions, and conclude that the proposed penalty is appropriate and fully supported by applicable precedent. The Commission based its forfeiture on 13 independent slamming complaints against All American, and rests on a calculation of \$80,000 for each instance in which All American engaged in slamming by relying on forged or falsified LOAs. As discussed below, this determination is consistent with: 1) our discretion under section 503(b) of the Act; 2) the Commission's *Forfeiture Policy Statement*; and 3) other Commission enforcement actions aimed at egregious slamming conduct involving forged or falsified LOAs.⁴⁸

17. Contrary to All American's assertion, the *Forfeiture Policy Statement* does not circumscribe our well-established section 503(b) authority to assess an \$80,000 forfeiture amount for forgery complaints. At the time of the violations at issue, section 503(b) of the Act authorized 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 under the Act.⁴⁹ When the Commission issued the *Forfeiture Policy Statement* in 1997, it was merely to provide guidelines for assessing monetary forfeitures under section 503(b) of the Act.⁵⁰ Under these guidelines, the Commission established base forfeiture amounts for a wide range of violations, including a \$40,000 standard forfeiture amount for slamming. Significantly, however, we retained the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in section 503(b) of the Act. Moreover, the *Forfeiture Policy Statement* specifically provides that the base forfeiture amount can be increased by "upward adjustment criteria" such as the egregiousness of the misconduct at issue.⁵¹ Accordingly, while All American is correct in asserting that many of the complaints at issue in the *NAL* stem from facts originating before the effective date of the *Forfeiture Policy Statement*, All American's argument is of no legal significance. The *guidelines* in the *Forfeiture Policy Statement* are just that: an aid to exercising discretionary authority that the Commission has possessed since section 503(b) was adopted in 1934.

18. Nor do we find merit in All American's claim that the proposed \$80,000 forfeiture amount is inconsistent with forfeitures we have imposed on other carriers who have engaged in slamming through the use of forged or falsified LOAs. First, All American's reference to the *CCN Revocation Order*⁵² is inapposite. That case involved revocation of the Fletcher Companies'

⁴⁷ Response at 34-36.

⁴⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

⁴⁹ See 47 C.F.R. § 1.80. The Commission subsequently amended its rules to increase the maximum penalties to account for inflation. The revised penalties apply to violations that occurred 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. Sept. 19, 2000).

⁵⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17090.

⁵¹ *Id.*

⁵² *CCN Revocation Order*, 13 FCC Rcd 13599, 13608 n.50 (1998).

operating authority *in addition to* the imposition of monetary penalties, which is not the situation here. We likewise reject All American's comparisons to other cases adopted prior to the All American proceeding. The Commission has discretion to decide in a particular case that violations should result in a higher level of forfeiture than in the past. In the *All American NAL*, we noted our prior warnings to carriers that we would take "swift and decisive enforcement action, including the imposition of substantial monetary fines, against any carrier found to have engaged in slamming, particularly the practice of relying on forged LOAs."⁵³ When, despite those prior warnings, we received numerous slamming complaints against All American that demonstrated a clear pattern of conduct to slam consumers through the use of forged and falsified LOAs (including a purported signature from a complainant's deceased husband), we exercised our discretion to impose forfeitures of \$80,000 for each instance in which All American had used forged or falsified LOAs to slam the complainants.⁵⁴ Since the release of the *All American NAL*, we have imposed similar forfeitures in other proceedings involving egregious slamming violations.⁵⁵ Indeed, the Commission's subsequent policies and procedures have consistently reflected a forfeiture amount of \$80,000 per forged LOA because we continue to find forgeries to be particularly egregious slamming violations.⁵⁶

C. Assessment Factors for Forfeiture Amount

1. History of Compliance

19. All American further argues that a reduction in the proposed forfeiture is warranted because it has a history of compliance before the Commission.⁵⁷ Even though All American appears

⁵³ *All American NAL*, 13 FCC Rcd at 15050.

⁵⁴ *Id.* at 15051.

⁵⁵ *See, e.g., BDP NAL*, 14 FCC Rcd at 348 (finding apparent liability for a forfeiture of \$80,000 for each unauthorized conversion of 30 complainants through deceptive marketing practices, for a total forfeiture of \$2,400,000); *Amer-I-Net Services Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 3118 (2000)(finding apparent liability for a forfeiture of of \$80,000 for, *inter alia*, each of 16 forgery complaints, for a total of \$1,360,000); *Brittan Communications International Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 4852 (2000) (finding apparent liability for, *inter alia*, a forfeiture of \$80,000 for each of 12 forgery complaints, for a total forfeiture of \$1,120,000); *American Telephone and Telegraph Corporation*, Notice of Apparent Liability for Forfeiture, FCC 00-446 (rel. Dec. 21, 2000) (finding, *inter alia*, apparent liability for \$80,000 forfeiture for each of 2 violations resulting from AT&T's reliance on forged LOAs); *Vista Group Int'l, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 13814 (1999) (finding apparent liability for \$80,000 forfeiture for, *inter alia*, each of seven complaints involving deceptive marketing practices, for a total of \$1,000,000); *Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 13786 (1999)(finding apparent liability for \$80,000 forfeiture for each unauthorized conversion of 14 complainants through deceptive marketing practices, for a total forfeiture of \$1,120,000); *Qwest Communications NAL*, 14 FCC Rcd 182 (1999) (finding apparent liability for, *inter alia*, \$80,000 forfeiture for each of 22 forgery complaints, contributing to a total forfeiture of \$2,080,000).

⁵⁶ *See supra* note 55.

⁵⁷ Response at 34-35. The Commission's *Forfeiture Policy Statement* provides that a history of overall compliance is one of the factors the Commission may take into account in its consideration of downward adjustment of a

not to have been the subject of other official action by the Commission, the complaints for which the NAL was issued reflect an egregious pattern of slamming conduct. When we view this pattern of violations over such a short time period, we are convinced that it would be inappropriate to reduce the forfeiture based on All American's asserted "history of compliance."

2. Ability to Pay

20. All American last argues that payment of the proposed forfeiture would "severely impact All American's ability to provide service" and could cause All American to discontinue its operations.⁵⁸ All American submits that the proposed forfeiture represents approximately 6 percent of its 1997 gross revenues, and that it suffered a net operating loss for 1997. Finally, All American notes that due to the problems leading up to the NAL, All American has been under new management since June 25, 1998. According to All American, new management has made some changes that have resulted in a cash flow shortage that would "further impact All American's ability to pay the full amount of the forfeiture."⁵⁹

21. We decline to reduce the forfeiture based on All American's arguments. We have consistently held that an appropriate indicator of a carrier's ability to pay a forfeiture is its gross revenues.⁶⁰ While All American states in a footnote that its 1997 gross revenues were \$18,032,982,⁶¹ All American fails to provide any supporting documentation or affidavits to support its claim. We therefore determine that All American has not met its burden of proof on this issue.⁶² Nor has All American provided any documentation to support its assertion that the proposed forfeiture should be reduced in light of its \$2,000 net operating loss for 1997.⁶³ The record must contain more than such unsupported statements in order for the Commission to evaluate the effect of financial indicators such as a carrier's gross revenues or net losses.

IV. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that All American Telephone Company, Inc. SHALL FORFEIT to the United States Government the sum of nine hundred twenty thousand dollars (\$920,000) for violating Section 258 of the Act, 47 U.S.C. § 258, as

forfeiture. *Forfeiture Policy Statement*, 12 FCC Rcd at 17116. Ironically, All American previously argued that the *Forfeiture Policy Statement* did not apply to the instant proceeding. See Response at 27.

⁵⁸ Response at 35-36.

⁵⁹ *Id.* at 36.

⁶⁰ See, e.g., *Target Telecom Forfeiture Order*, Order of Forfeiture, 13 FCC Rcd 4456, 4464 (Com.Car.Bur. 1998).

⁶¹ Response at 36 n.107.

⁶² See, e.g., *Long Distance Services, Inc.*, Order of Forfeiture, 13 FCC Rcd 4444, 4452 (Com.Car.Bur. 1998) (*LDS Forfeiture Order*).

⁶³ Response at 36.

well as the Commission's rules and orders governing preferred interexchange carrier conversions. Payment shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days from the release of this order.⁶⁴ If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.

23. **IT IS FURTHER ORDERED** that a copy of this Order of Forfeiture shall be sent by certified United States mail to Mr. Ronald C. Darnell, All American Telephone, Inc., 9001 Airport Freeway, Suite 570, Fort Worth, Texas, 76180.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁶⁴ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on the All American Telephone Company, Inc.'s check or money order to "NAL/Acct. No. 816EF0008." Such remittance must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.