

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

In the Matter of	)	
	)	File No. EB-00-TC-164
America's Tele-Network Corp.	)	
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 200132170016

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE  
 AND ORDER**

Adopted: March 12, 2001

Released: March 13, 2001

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL),<sup>1</sup> we find that America's Tele-Network Corporation (ATNC) 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 of 16 consumers without their authorization, a practice commonly know as "slamming." Based upon our review of the facts and circumstances surrounding the violations, we find ATNC apparently liable for a forfeiture in the amount of \$1,020,000.

2. Last year, the Commission received 263 consumer complaints against ATNC. Commission staff investigated many of these allegations, directing ATNC to provide proof that it had verified the complainants' conversions<sup>3</sup> in accordance with the Commission's rules. Based on the complaints received and the documents and tapes ATNC has provided, we conclude that

<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). See also *Implementation of the Subscriber Carrier Selection Changes Provisions of the 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)(1998 Second Report and Order).

<sup>2</sup> 47 U.S.C. § 258.

<sup>3</sup> Letters of Inquiry from Catherine Seidel, Chief, Telecommunications Consumers Division (TCD), Enforcement Bureau, Federal Communications Commission, to John W. Little, c/o Charles H. Helein, Esq., dated October 6, 2000 and October 27, 2000.

ATNC has apparently violated section 258 of the Act and sections 64.1100 and 64.1150 of the Commission's rules.<sup>4</sup> Accordingly, we propose a fine of \$40,000 for each of 17 apparent violations represented by the 16 consumer complaints listed in Appendix A, for a forfeiture of \$680,000. We further propose increasing the fine by 50% based upon ATNC's apparent pattern of intentional and egregious misconduct, for a total proposed forfeiture of \$1,020,000.

## II. BACKGROUND

3. ATNC is a nationwide reseller of long distance telephone services<sup>5</sup> and is headquartered in Roswell, Georgia.<sup>6</sup> Counsel for ATNC states that the company uses telemarketers to solicit consumer change request orders<sup>7</sup> and then confirms those authorizations via an automated system<sup>8</sup> operated by an independent third party.<sup>9</sup> Apparently, ATNC's telemarketer dials a toll-free number to connect the consumer to the verifier's automated voice-response unit (VRU), which records the consumer's purported verification. Counsel states that ATNC connects the consumer to the verifier "right after the telemarketing call to ensure that the change is voluntary and authorized."<sup>10</sup> The ATNC telemarketer remains on the line while the consumer responds to the VRU prompts.<sup>11</sup>

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<sup>4</sup> 47 U.S.C. § 258; 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 rules, sections 64.1100 and 64.1150 were the applicable Commission rules in effect during the relevant time period.

<sup>5</sup> Letter dated December 11, 2000, from Charles H. Helein, Esq., ATNC counsel, to Dana E. Leavitt, staff attorney, Telecommunications Consumers Division (TCD), Enforcement Bureau, Federal Communications Commission (December 11 Response).

<sup>6</sup> Dun & Bradstreet report number 93-388-6905 dated January 29, 2001. According to the report, John W. Little started the company in 1995.

<sup>7</sup> Response dated October 20, 2000 from Craig Riegler and Kirk Salzman, The Helein Law Group, P.C., to Dana Leavitt, TCD (October 20 Response).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 10. Counsel for ATNC states that Federal Communications Group, Inc., (F.C.G.), of Bellevue, Washington, provides verification services for ATNC.

<sup>10</sup> October 20 Response at 10.

<sup>11</sup> ATNC provided 13 audio tape recordings of the purported verifications for the following complainants: Ms. Baxter, Ms. Berger, Mr. Braucksieker, Ms. Chase, Mr. Espinoza, Ms. Garcia, Ms. Gatto, Ms. Hovieda, Mr. Padron, Ms. Pastrana, Ms. Ruiz, Mr. Valcarcel, and Ms. Valdez. The tapes apparently have captured the voices of the complainants, various ATNC telemarketers, and a pre-recorded female "voice" associated with the voice-response unit.

4. All of the complaints forming the basis of this NAL contain allegations that ATNC did not verify the purported authorizations. For illustrative purposes, we profile three complaints that may shed light on ATNC's marketing and verification procedures. On May 11, 2000, Amber Baxter filed a complaint with the Commission, alleging that ATNC switched her preferred long distance provider from AT&T to ATNC without authorization.<sup>12</sup> In support of that complaint, Ms. Baxter also filed a declaration, which stated in part:

On April 6, 2000, I received a telephone call from a telemarketer claiming to be with AT&T. [The telemarketer] said her name was Kacey Williams and knew that I had the AT&T 7-cent plan. [Ms. Williams] said that some customers had been over-billed and that she was going to send me a \$100 check courtesy of AT&T. I became very suspicious and asked again if she was with AT&T. [Ms. Williams] confirmed this several times. I questioned Kacey why AT&T wouldn't credit my phone bill. She said that this was the reason for the call. She said that they had to 'simply' confirm my name and address with a third party verifier in order to send the check. I answered the verifier by saying "yes" to name and address, then confirmed by giving my birthda[te]. The third party verifier was a recording. At no time did I give ATNC permission, verbal or otherwise, to change my long distance service. I hung up and immediately called AT&T. The AT&T representative informed me that they were not mailing out any such checks.

When I received my May telephone bill, I realized that my long distance service had been changed to ATNC without my permission. . . . On May 12, 2000, I called ATNC and spoke with Desiree Jones. She insisted that I had knowledge of the switch . . . because I had talked with a third party verifier. Ms. Jones also denied that ATNC had misrepresented themselves as AT&T. I told Ms. Jones that I was going to file a complaint. She responded 'fine, we have a recording where you agree to be switched.'<sup>13</sup>

5. On September 12, 2000, Jose Valcarcel filed a complaint with the Commission alleging that ATNC had converted his long distance carrier from AT&T to ATNC. In support of the complaint, Mr. Valcarcel subsequently filed a declaration, in which he states that an ATN telemarketer called him on June 28, 2000, offering to switch his long distance telephone account from AT&T to ATNC in exchange for \$100.<sup>14</sup> Mr. Valcarcel states he declined the offer. On August 4, 2000, however, he received a telephone bill from ATNC for \$285.37. Upon learning of the conversion, Mr. Valcarcel contacted ATNC to advise them that he had not authorized the change.<sup>15</sup> According to Mr. Valcarcel, ATNC stated that he had authorized the switch, and they

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<sup>12</sup> Complaint dated May 11, 2000, from Amber Baxter.

<sup>13</sup> Declaration dated February 14, 2001, from Amber Baxter.

<sup>14</sup> Declaration dated February 5, 2001 from Jose Valcarcel.

<sup>15</sup> *Id.*

played a recording of his conversation with a telemarketer. While Mr. Valcarcel concedes that he “had answered ‘yes’ to a few questions” (i.e. his date of birth and whether he was a legal resident of Key Largo), he avers that he did not authorize ATNC to change his long distance provider.<sup>16</sup>

6. On November 8, 2000, David Womack filed a complaint with the Commission alleging that ATNC had changed his preferred long distance provider not once, but twice, during the fall of 2000. In support of his complaint, Mr. Womack filed a declaration with the Commission on February 26, 2001, in which he describes the circumstances surrounding the two conversions.<sup>17</sup> Mr. Womack states that he first learned of the initial conversion sometime in late September 2000, when his preferred long distance carrier, MCI, called to find out why he had changed carriers. Mr. Womack states that he didn’t recall speaking with any ATNC telemarketers and was thus unaware that his designated long distance carrier had been changed. After speaking with MCI about this unauthorized conversion, Mr. Womack directed his local carrier, Verizon, to change his service back to MCI.<sup>18</sup> Mr. Womack eventually received an invoice from ATNC but, despite numerous attempts to contact the carrier, never reached anyone. This scenario recurred at the beginning of November, when Mr. Womack received another call from MCI asking why he had changed carriers. Mr. Womack again contacted Verizon, who restored MCI as his preferred carrier on November 8, 2000.<sup>19</sup>

7. Based on the facts alleged in these and the other 13 complaints at issue, staff forwarded to ATNC the names and phone numbers of the complainants<sup>20</sup> and directed ATNC to provide sworn, written responses to general inquiries regarding ATNC’s marketing and verification procedures and to provide specific evidence pertaining to the disputed verifications. In response, ATNC provided a copy of its verification script and 13 audio tape recordings representing “the entire recorded conversation between the telemarketing agent and the consumer.”<sup>21</sup> (ATNC states that it is unable to forward the verification tape for Mr. Womack<sup>22</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> Declaration dated February 26, 2001 from David Womack.

<sup>18</sup> In response to a letter of inquiry regarding changes to Mr. Womack’s service, Verizon stated that it had processed carrier-initiated requests to change his preferred long distance provider on September 26, 2000, and again on November 3, 2000. *See* letter dated February 14, 2001, from Marie Breslin, Director, Federal Regulatory Affairs, Verizon, to Catherine Seidel, Chief, TCD.

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

<sup>20</sup> *See* note 4, *supra*.

<sup>21</sup> December 11 Response.

<sup>22</sup> *See* Response dated February 12, 2001, from Kirk Salzman, Esq., The Helein Law Group, P.C., to Dana E. Leavitt, TCD.

and that the tapes for Ms. Ayersmann and Ms. Park were damaged.<sup>23</sup>) ATNC also described two promotions it had offered during the relevant time period and provided a copy of the marketing script its telemarketers had used.<sup>24</sup> One promotion offered consumers “a \$100 check for those persons who became an ATN customer and utilized ATN’s services for a period of at least 180 days.”<sup>25</sup> The other promotion offered a calling card with 100 free minutes of usage, which was enclosed in ATNC’s welcome package.<sup>26</sup>

### III. DISCUSSION

8. 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>27</sup> The rules the Commission adopted prescribe that no carrier “shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) Authorization from the subscriber and (ii) Verification of that authorization in accordance with the procedures prescribed in § 64.1150.”<sup>28</sup> The Commission’s rules thus expressly bar telecommunications providers from changing a consumer’s preferred carrier without first obtaining the consumer’s consent, and then confirming that consent.

9. The Commission’s rules provide some latitude in the methods carriers can use to obtain consumer authorizations and verifications of carrier change requests. For example, a carrier may elect to use telemarketing representatives or direct face-to-face contact to solicit consumer authorizations for carrier-change requests. The carrier can then elect to verify that authorization through one of three options, including the use of an independent third party. There is no latitude, however, in the requirement that carriers obtain both authorization and verification prior to submitting a carrier change request. Thus, for those carriers who use an independent third party to verify the consumer’s authorization, our rules require that “[t]he content of the verification . . . include **clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change.**”<sup>29</sup> The rules are similarly clear that:

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<sup>23</sup> Response dated November 9, 2000, from Craig Riegler and Kirk Salzman, The Helein Law Group, P.C., to Dana E. Leavitt, TCD (November 9 Response)..

<sup>24</sup> October 20 Response at 10.

<sup>25</sup> *Id.*

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

<sup>27</sup> 47 U.S.C. § 258.

<sup>28</sup> 47 C.F.R. §§ 64.1100(a)(1)(i); 64.1100(a)(1)(ii). The Commission adopted these rules on December 17, 1998 in the *Second Report and Order*, and the rules became effective February 16, 1999 (64 FR 7759).

<sup>29</sup> 47 C.F.R. § 64.1150(d) (emphasis added).

[w]here a carrier is selling more than one type of telecommunications service [e.g., local exchange service, regional toll, or interstate long distance], . . . that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. **Each authorization must be verified separately from any other authorizations obtained in the same solicitation . . . in accordance the verification procedures prescribed.**<sup>30</sup>

Carriers must also “maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.”<sup>31</sup>

10. All of the consumers who filed the complaints that form the basis of this NAL state unequivocally that they did not authorize ATNC to change their designated, preferred long distance providers.<sup>32</sup> ATNC does not dispute that it changed the complainants’ preferred carrier selections. ATNC does, however, contend that the complainants authorized the change requests and that ATNC verified the authorizations. Specifically, ATNC asserts that its verification procedures comply with our rules because they produce “clear and conspicuous confirmation” that the consumer has authorized a carrier change. As discussed below, we disagree.

#### A. Verification Script

11. Counsel for ATNC confirm that the following verification script<sup>33</sup> was the only script used during the period January 1, 2000 through October 7, 2000, the date ATNC states it voluntarily stopped marketing its services.<sup>34</sup> The script is published in its entirety [for clarity, we have numbered each clause]:

Customer Rep Dials FCG’s 800#

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<sup>30</sup> 47 C.F.R. § 64.1100(b) (emphasis added).

<sup>31</sup> 47 C.F.R. § 64.1100 (a)(1)(ii).

<sup>32</sup> See Declarations filed by Amber Baxter (February 14, 2001), Jose Valcarcel (February 5, 2001) and David Womack (February 26, 2001). See also informal complaints filed by Maryann Ayersmann (June 27, 2000), Susan Berger (September 1, 2000), Diana Brake (April 25, 2000), Lee Braucksieker (May 30, 2000), Judith Chase (June 14, 2000), Rubidio Espinoza (August 21, 2000), Imelda Garcia (May 5, 2000), Caroline Gatto (March 27, 2000), Farah Hovieda (May 19, 2000), Ernesto Padron (September 20, 2000), Sarita Park (June 8, 2000), Lisette Pastrana (May 16, 2000), Maria Ruiz (August 15, 2000), and Ana Valdez (August 23, 2000).

<sup>33</sup> ATNC’s president, John Little, drafted the verification script with the help of F.C.G. personnel. See November 9 Response.

<sup>34</sup> Counsel for ATNC states that “ATN stopped marketing its services [nationwide] on or about October 7, 2000. In large part, this was due to the Enforcement Bureau’s civil investigative demand (“CID”). Prior, ATN had been stopping its marketing practices in those states where it knew it had a problem.” December 11 Response.

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Rep Enters 5 digit Room & Rep #

Bring customer online, then press “1” to begin verification.

[1.] Automated message: Thank you for choosing America’s Tele-Network as your long distance and local provider. In addition to the \$100.00 check awarded once you have been online for 180 days, you have been selected to receive a free bonus gift . . . a 100 minute pre-paid calling card! Please answer the following questions. When finished with each of your responses, press one to continue or nine to re-record.

[2.] At the tone, please say your name and address clearly. Spell your name if necessary.

[3.] Are you authorized to choose America’s Tele-Network as your long distance and local long distance provider? Please say “YES” at the tone.

[4.] To confirm your identity, at the tone please state your Date of Birth or your mother’s maiden name.

[5.] Your Welcome package will be sent to you, which will include any information you need.<sup>35</sup>

12. None of the 13 tapes ATNC submitted to Commission staff included the introduction thanking the customer for selecting ATNC and advising the consumer of the disclaimers associated with receiving the \$100 check (clause 1). Instead, 12 of the tapes begin at the point where the voice-response unit asks for the consumer’s name and address (clause 2). Twelve of these 13 tapes record an affirmative response to the question “are you authorized to select” ATNC (clause 3). The two tapes for Ms. Garcia and Ms. Pastrana, however, indicate consumer confusion regarding that question. Ms. Garcia replied to the question “are you authorized to select” ATNC by stating in Spanish “I do not know what that is.” The ATNC agent responded by stating in English the initials “A.T.N.,” and then stating in Spanish: “I believe that they translate it in Spanish ‘A.T.N.’” Ms. Garcia then responded yes. There was similar confusion regarding the purported verification of Lisette Pastrana’s account. According to the tape, ATNC spoke with Lisette Pastrana’s mother, Adelaida. In response to the question “are you authorized to select” ATNC, Adelaida started to provide her name but then changed her mind and provided her daughter’s name, Lisette Pastrana. When asked for the zip code, Adelaida stated “Let me see. Let me find a letter because you know. . . .” The ATNC agent again asked whether Adelaida was authorized to select ATNC, and the tape contained an abrupt “yes.”

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<sup>35</sup>

November 9 Response, Exhibit 1.

13. The remaining tape differs from the others in that the tape begins with a male ATNC agent questioning the consumer, Ms. Hovieda. In that purported verification, the agent begins the conversation by stating “O.K., say your name the way you want it on the check.” Ms. Hovieda provided her name and address, and then the tape cuts to the automated VRU question “are you authorized to select” ATNC (clause 3). No response to this question was recorded.

14. In 1991, when the Commission first proposed the option of using third-party verification, we published a sample verification script.<sup>36</sup> The script includes the following relevant disclosures and questions to be read to the consumer: “Hello, my name is \_\_\_\_\_ from \_\_\_\_\_, an independent verification company. I’m calling to confirm your order for [carrier name] long distance service.” “Did you . . . recently receive a call asking you to select [carrier name] as your long distance company?” “I’d like to confirm that you have selected [carrier name] to carry long distance calls.” “I will now process the order.”<sup>37</sup> The sample script thus provides a model of what the Commission deemed acceptable verification language: the verifier states that she is calling to confirm an order for “XYZ” company’s long distance service and, more importantly, expressly asks the consumer to verify that statement.

15. When compared to this standard, ATNC’s verification script is clearly deficient. First, the statement “thank you for choosing America’s Tele-Network as your long distance and local provider” merely conveys ATNC’S hope or presumption that the consumer has authorized a change. This clause does not directly elicit the consumer’s confirmation that he actually intends to authorize a carrier change. Second, the clause “are you authorized to choose America’s Tele-Network as your long distance provider” merely elicits confirmation that ATNC is speaking to someone with authority to request a change, not whether the consumer authorizes a change.<sup>38</sup>

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<sup>36</sup> See *American Telephone and Telegraph Company; Petition for Rulemaking*, RM 7245, Notice of Proposed Rulemaking, 6 FCC Rcd 1689, Appendix A (1991)(1991 Rulemaking).

<sup>37</sup> See Appendix B for a copy of the entire sample script.

<sup>38</sup> The Commission has previously determined that asking a consumer if he or she is “authorized” to request a carrier change does not produce clear and conspicuous confirmation that the consumer is actually *authorizing* a carrier change request. See *Coleman Enterprises, Inc., d/b/a Local Long Distance, Inc., Notice of Apparent Liability for Forfeiture*, 14 FCC Rcd 13786 (1999), where the Commission found purported verification language such as “are you the authorized person to have Local Long Distance provide long distance service?” deficient. The Commission noted that “at no time during the ‘verification’ is the consumer directly asked if he or she is authorizing” a carrier change, as mandated by the Commission’s rules. Moreover, ATNC was aware that its own verification script was problematic at least as early as August 18, 1998, when the Alabama Public Service Commission (PSC) issued a show cause hearing as to why ATNC’s operating authority should not be revoked, based on 63 slamming complaints. ATNC and the PSC resolved the matter in November 1998, when the PSC adopted a settlement order based on ATNC’s promise to, *inter alia*, submit all telemarketing and verification scripts to the PSC for review. When the PSC continued to receive an excessive number of slamming complaints after adopting the settlement order, however, the PSC scheduled the show cause hearing for March 7, 2000. The hearing was triggered by ATNC’s apparent failure to comply with the terms of the settlement order, including an apparent failure to submit verification scripts to the PSC for review. Testimony of Ray Paul Richards adduced at the hearing reveals that ATNC’s verification asked Mr. Richards whether he was authorized to change carriers, but “did not ask if he was actually authorizing the change of service to ATN.” See *Alabama Public Service*

Furthermore, the script directs the consumer to respond “yes” to that question. Finally, the script does not elicit two separate confirmations for a change in local long distance and interstate long distance, as required by our rules.<sup>39</sup> In short, the verification script is void of any “clear and conspicuous confirmation,” *i.e.*, an unambiguous, definitive, direct response from the consumer that he or she is confirming a request that ATNC provide telephone service. Such basic deficiencies raise serious questions as to the legitimacy of ATNC’s purportedly verified change orders. These deficiencies are made even more serious by ATNC’s apparent failure to follow its defective script.

#### B. ATNC’s Verification Process

16. ATNC contends that one must look at the “net impression” conveyed by both the verification and telemarketing scripts to determine whether a reasonable consumer would understand the nature of the solicitation.<sup>40</sup> According to counsel, “ATN finds it improbable that any reasonable person would not understand the intentions of ATN and what product they were selling,” based on the language of both the verification and telemarketing scripts.<sup>41</sup>

17. By invoking “the intentions of ATN” in defense of its verification process, ATNC demonstrates a fundamental misunderstanding of the purpose of the Commission’s verification rules: to provide consumers with an opportunity, separate from the solicitation, to confirm the consumer’s intent to authorize a change in telecommunications providers. Our rules and orders are quite explicit that authorization and verification are two separate and distinct functions, not a continuous process as ATNC suggests. To find otherwise would undermine the very rationale for requiring verification, which is to curb overzealous telemarketers from presuming a sale. Our verification rules thus provide the consumer an additional opportunity to comprehend the import of the oral offer and to confirm his or her request to change carriers, if such change was intended.

18. Moreover, it is anything but clear that by completing ATNC’s verification process consumers would understand that they have changed carriers. For example, the agent who spoke with Ms. Hovieda indicated that he wanted her name and address in order to send her a check, not to establish an ATNC billing account. Ms. Hovieda duly provided her name and address. Notably, she did not respond to the oblique inquiry into whether she was authorized to select ATNC. The “net impression” conveyed to us by Ms. Hovieda’s recorded conversation is that she expected to receive a check, not authorize a carrier change.

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*Commission v. America’s Tele-Network, Corp.*, Docket Number 25084, May 25, 2000.

<sup>39</sup> 47 C.F.R. § 64.1100(b).

<sup>40</sup> November 9 Response at 13.

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

19. Ms. Amber Baxter's complaint corroborates our impression that ATNC did not make clear the nature of the call. According to Ms. Baxter, she believed she was providing her name and address in order to receive a refund check, not to confirm an authorization to change carriers. The tape ATNC provided did not contain the preamble thanking the consumer for selecting ATNC and advising her that she had to remain on-line for 180 days before receiving the check. We similarly note the call to Ms. Garcia and her evident confusion regarding the meaning of the initials "ATN" in response to the question "are you authorized to choose America's TeleNetwork as your long distance and local provider." ATNC likewise failed to obtain authorization to convert Lisette Pastrana's carrier. Finally, ATNC did not provide any evidence to rebut the allegations of Ms. Ayermann, Ms. Park, and Mr. Womack, and the evidence ATNC did provide for the remaining complainants fails to demonstrate that ATNC obtained clear and conspicuous confirmation that the consumers authorized a carrier change.

#### IV. FORFEITURE AMOUNT

20. 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>42</sup> In exercising such authority, we are required to take 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>43</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>44</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>45</sup> These include the egregiousness of the misconduct, ability or inability to pay, whether the violation was intentional, whether substantial

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<sup>42</sup> 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules to increase the 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>43</sup> See 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087.

<sup>44</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 44, *supra*.

<sup>45</sup> See 47 U.S.C. § 503(b)(2)(D). See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17100-01 (1997); *recon denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

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>46</sup> As provided by the Commission's rules, the Commission and its staff retain the discretion to issue a higher or lower forfeiture, as permitted by statute.<sup>47</sup>

21. On several occasions, the Commission has sternly warned 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.<sup>48</sup> In the instant case, the evidence before us indicates that ATNC has apparently willfully and repeatedly changed consumers' preferred telecommunications service providers without their consent. ATNC's apparent intentional failure to verify the purported authorizations to switch the preferred carriers of the 16 consumers identified in this NAL convinces us that a significant forfeiture is warranted, notwithstanding ATNC's decision to cease marketing. ATNC's verification script is, on its face, grossly deficient in that it does not elicit a "clear and conspicuous" confirmation that the consumer is authorizing a carrier change. Nor does the script elicit separate verification from any other authorizations obtained in the same solicitation. ATNC could not provide proof that it had verified the disputed changes alleged by three of the complainants, one of whom states that ATNC slammed him twice (one incident occurring after the date ATNC represented it had ceased its marketing operations). As for the tapes ATNC did provide, two fail to establish that ATNC was speaking with the subscriber (the Hovieda and Pastrana tapes), and the remaining tapes demonstrate that ATNC's script failed to elicit a "clear and conspicuous" confirmation of the consumers' purported change requests, as required by our rules.

22. ATNC acknowledges that its "fundamental problem and it's [sic] failure in doing business as a telecommunications service provider stem from a lack of obtaining quality personnel in the three most important parts of its business: (a) customer service; (b) marketing; and (c) MIS department."<sup>49</sup> We would add to this list an apparent failure to institute procedures that conform to Commission requirements. The gross deficiencies of ATNC's verification process, coupled

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<sup>46</sup> *Id.*

<sup>47</sup> *See* 47 C.F.R. § 1.80(b)(4).

<sup>48</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).

<sup>49</sup> December 11 Response. Counsel for ATNC provided a list of "state administrative actions that ATN has been party to" during the last two years: Mississippi Public Service Commission (PSC); California (actions taken by both the Public Utilities Commission and the Orange County District Attorney's office); Indiana Utility Regulatory Commission [in a settlement reached January 11, 2000, ATNC agreed to cease marketing in Indiana for six months and pay \$50,000 for unauthorized conversions of consumers preferred carriers; *see* Docket Number 41546 SC01, consolidated with Docket Number 41546 SC01]; State of Arkansas; Tennessee Regulatory Authority; South Carolina Public Service Commission; Oklahoma Corporation Commission; Iowa (actions taken by both the Iowa Utilities Board and the Iowa Office of the Attorney General); Florida Public Service Commission; Kentucky Public Service Commission; and the Alabama Public Service Commission.

with its inability to produce clear evidence that it properly obtained and verified the carrier changes at issue, lead us to conclude that ATNC apparently intentionally and egregiously violated section 64.1100 and 64.1150 of the Commission's rules and orders. We thus find that the upward adjustment criterion related to intentional and egregious misconduct is applicable in this case. We therefore propose applying the base forfeiture amount of \$40,000 for each of the 17 apparent violations of section 258 of the Act and sections 64.1100 and 64.1150 of the Commission's rules, or \$680,000, and increasing this amount by 50%, for a total proposed forfeiture of \$1,020,000. ATNC 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>50</sup>

23. We note that ATNC has represented to the Commission that it has ceased all telemarketing activity. If and when ATNC resumes such activity, we direct the company to inform the Commission in advance and to file with the Commission a compliance plan that details actions ATNC will take and procedures it will establish and follow to comply with the Act and the Commission's rules and orders. The Commission will monitor closely the level and content of consumer complaints to determine whether the changes in ATNC's practices result in fewer unauthorized carrier changes. Continued violations of our rules could result in issuance of a show cause order why ATNC's operating authority should not be revoked.<sup>51</sup>

## V. CONCLUSIONS AND ORDERING CLAUSES

24. We have determined that America's Tele-Network Corp has apparently violated section 258 of the Act and the Commission's preferred carrier change rules and orders<sup>52</sup> by converting the preferred telephone service providers of 16 consumers identified in the complaints discussed above, on the dates and in the manner described herein. We have further determined that America's Tele-Network Corp is apparently liable for a forfeiture in the amount of \$40,000 for each of 17 apparent violations. ATNC's apparent intentional and repeated misconduct represents a gross dereliction of its verification obligations; accordingly, we propose increasing the forfeiture by 50%, resulting in a total proposed forfeiture of \$1,020,000.

25. 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 America's Tele-Network Corp IS HEREBY NOTIFIED of an Apparent Liability for

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<sup>50</sup> See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>51</sup> See *CNN, Inc., et al*, Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 8547 (1997) (the "Fletcher Companies").

<sup>52</sup> 47 U.S.C. § 258; 47 C.F.R. §§ 64.1100, 64.1150. See also *Second Report and Order*, 14 FCC Rcd 1508 (1998) and *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997)(*1997 FNPRM & Order on Reconsideration*).

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Forfeiture in the amount of \$1,020,000 for willful or repeated violations of section 258 of the Act<sup>53</sup> and the Commission's preferred carrier change rules and orders as described in the paragraphs above.<sup>54</sup>

26. 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, America's Tele-Network Corp. SHALL PAY the full amount of the proposed forfeiture<sup>55</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

27. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 218, that, in the event that America's Tele-Network Corp engages in any telemarketing activity after the date of issuance of this Notice, it shall inform the Commission in advance and SHALL FILE with the Commission, within thirty (30) days of engaging in such activity, a compliance plan detailing the actions America's Tele-Network Corp will take and the procedures it will establish to ensure compliance with section 258 of the Act and the Commission's rules and orders relating to preferred carrier changes. The compliance plan shall set forth the revisions America's Tele-Network Corp shall make to bring its marketing and verification scripts into compliance with the Act and the Commission's preferred carrier change rules and orders.

28. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture and Order SHALL BE SENT by certified mail to America's Tele-Network Corp. in care of Charles H. Helein, Esq., The Helein Law Group, P.C., 8180 Greensboro Drive, Suite 700, McLean, Virginia 22102, and to 720 Hembree Place, Roswell, Georgia 30076, attention: John W. Little, President.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>53</sup> 47 U.S.C. § 258.

<sup>54</sup> See 47 C.F.R. §§ 64.1100, 64.1150; see also *1998 Second Report and Order*; *1997 FNPRM & Order on Reconsideration*.

<sup>55</sup> The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. ATNC should include the reference "NAL/Acct. No. 200132170016" on America's Tele-Network Corp'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. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.



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**APPENDIX B****Sample Script for Third Party Verification  
1991 Rulemaking, 6 FCC Rcd 1689, Appendix A**

Hello, my name is \_\_\_\_\_ from \_\_\_\_\_, an independent verification company. I'm calling to confirm your order for [IXC] long distance service.

Q1. I'd like to confirm your name, address and telephone number(s). IF AVAILABLE ON SCREEN, READ BACK. Is that correct? TAKE ANY CORRECTIONS. IF NOT ON SCREEN, ASK FOR EACH ITEM AND RECORD.

Q1.A Did you or another person in your household recently receive a call asking you to select [IXC] as your long distance company?

Q2. I'd to like confirm that you have decided to select [IXC] to carry long distance calls from this (these) telephone(s). Is that correct?

Q3. I'd like to confirm that you are an adult resident of this household. Is that correct? IF QUESTIONED BY CUSTOMER, MAY STATE THAT PURPOSE IS TO DETERMINE IF YOU ARE A DECISION MAKER FOR LONG DISTANCE SERVICE FOR THE HOUSEHOLD.

Q4. I'd like to confirm that you were advised that the local telephone company may charge a fee for switching to [IC]. Is that correct? IF CUSTOMER ASKS HOW MUCH, VERIFIER MAY STATE AMOUNT FROM LEC TARIFFS.

Q5. Finally, to show that I've spoken to you, please give me the last four digits of your Social Security Number. RECORD INFORMATION; IF CUSTOMER REFUSES, TRY DATE OF BIRTH OR MOTHER'S MAIDEN NAME.

I will now process the order. Thank you and goodbye.

IF RESPONSE IS NEGATIVE ON ANY ITEM, INFORM CUSTOMER THAT YOU CANNOT PROCESS THE ORDER AND THAT THE CUSTOMER MAY SPEAK DIRECTLY WITH IXC OR MAY CALL THE LOCAL PHONE COMPANY TO ORDER THE SWITCH IN SERVICE TO THE IXC. ANY QUESTIONS (EXCEPT THOSE IN THE Q AND A) ABOUT THE LONG DISTANCE SERVICES OR RATES ARE TO BE REFERRED BACK TO THE IXC.

Would you like me to return you to an IXC representative? IF YES, THE CALL CAN GO BACK TO THE IXC REPRESENTATIVE.