

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	File No.: EB-TCD-12-00000800
	)	
United Telecom, Inc.	)	NAL/Acct. No.: 201332170007
	)	
Apparent Liability for Forfeiture	)	FRN: 0013390000

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 19, 2012**

**Released: December 20, 2012**

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that United Telecom, Inc. (United or Company)<sup>1</sup> apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act),<sup>2</sup> and Section 64.1120 of the Commission's rules.<sup>3</sup> As discussed in more detail below, we find that United has apparently changed the preferred telecommunications service providers of a number of consumers without their authorization, a practice commonly known as "slamming."<sup>4</sup> The conduct here is especially egregious because in six of the instances of slamming on which this NAL is based, United appears to have effectuated the carrier change by making misrepresentations to consumers, including representations that United was the consumer's own carrier and that United was calling to make an adjustment to the consumer's account to save him or her money. Moreover, in two of the instances of slamming on which this NAL is based, United appears to have fabricated third party verification<sup>5</sup> audio recordings to make it appear that these consumers authorized the carrier change. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of one million, forty thousand dollars (\$1,040,000).

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<sup>1</sup> According to the Commission's records and publicly available information, United's offices are located at 3550 Wilshire Ave., 17<sup>th</sup> Floor, Los Angeles, CA 90010. United's owner and president is Sapina Quayum and the vice president is Imtiaz Hossain. United is authorized to provide resold international telecommunications services. *See* ITC-214-20060925-00442, Public Notice, "International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests" (Dec. 7, 2006).

<sup>2</sup> 47 U.S.C. §§ 201(b), 258.

<sup>3</sup> 47 C.F.R. § 64.1120.

<sup>4</sup> The NAL is based on the ten complainants identified in the Appendix.

<sup>5</sup> Third party verification, or TPV, is one of the methods a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. The TPV procedures involve verification of a consumer's oral authorization to change preferred carriers by an independent third party. This verification must strictly comply with Section 64.1120(c)(3) of the Commission's rules, 47 C.F.R. § 64.1120(c)(3).

## II. BACKGROUND

2. United is a non-facilities-based interexchange carrier based in Los Angeles, California and operating in 32 states<sup>6</sup> and the Northern Mariana Islands. The Commission has received numerous slamming complaints against United. Pursuant to standard Commission processes,<sup>7</sup> the agency's Consumer & Governmental Affairs Bureau (CGB) served many of these complaints on United and directed it to respond to the allegations and provide evidence of an authorized change in the subscriber's selection of a telecommunications service provider. Recently, CGB issued orders granting four complaints against United, finding that the Company failed to provide evidence of an authorized carrier change.<sup>8</sup>

3. The Enforcement Bureau (Bureau) initiated an investigation of United after reviewing complaints filed with the Commission.<sup>9</sup> As part of its investigation, the Bureau sent United a letter of inquiry on February 21, 2012, directing the Company to answer a number of questions regarding its business practices and its compliance with various Commission rules.<sup>10</sup> United submitted a response to the LOI on March 29, 2012.<sup>11</sup> With its response, United provided numerous complaints from consumers who alleged that they had been slammed. As part of its investigation, the Bureau also received slamming complaints from other sources such as various state agencies and the Better Business Bureau.

## III. DISCUSSION

### A. Apparent Violations of Section 201(b)

4. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service

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<sup>6</sup> United has agreed not to do business in the state of Oregon as part of an agreement to settle allegations of slamming and other misconduct. See “Long Distance Telephone Plan Provider Must Stop Doing Business in Oregon,” Oregon Department of Justice, Attorney General John Kroger (June 8, 2011), <http://www.doj.state.or.us/releases/2011/rel060811.shtml>.

<sup>7</sup> See 47 C.F.R. § 64.1150(c), (d).

<sup>8</sup> See *United Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5758 (CGB 2012); *United Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5753 (CGB 2012); *United Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC 8994 (CGB 2012). During the course of this investigation, the Bureau reviewed all of the complaints and associated TPVs (if provided) that form the basis of this NAL and concluded that slamming violations occurred in all ten instances.

<sup>9</sup> The Bureau initially became aware of slamming complaints against United during an investigation of a telecommunications company owned by the husband of United's owner. See *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010) (slamming investigation) (*Silv NAL*). This case and the *Silv NAL* involve similar apparent misrepresentations.

<sup>10</sup> Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Sapina Quayum, United Telecom, Inc. (Feb. 21, 2012) (on file in EB-TCD-12-00000800) (LOI).

<sup>11</sup> Letter from United Telecom, Inc. to Federal Communications Commission (Mar. 29, 2012) (on file in EB-TCD-12-00000800) (Response to LOI). United submitted a supplemental response to the LOI on May 4, 2012. See Letter from Imtiaz Hossain, Vice President, United Telecom, Inc., to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (May 4, 2012) (on file in EB-TCD-12-00000800) (Supplemental Response to LOI). The Bureau specifically requested further information from United, but received no response. See Email from Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau, to United Telecom, Inc. (July 26, 2012) (on file in EB-TCD-12-00000800).

[by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”<sup>12</sup> The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b) of the Act.<sup>13</sup> In particular, the Commission has found that a carrier violates Section 201(b) by effectuating a change to a consumer’s preferred carrier through deception about its identity, or the nature of its service.<sup>14</sup>

5. We find that United apparently violated Section 201(b) by engaging in deceptive practices in connection with changes to the preferred carriers of eight consumers. These apparently deceptive practices took two forms. First, United’s telemarketer apparently misrepresented its identity and the nature of the transaction in which it sought to engage consumers. Second, United apparently fabricated the TPV recordings associated with certain complainants to make it appear that they had authorized a change in their preferred carrier when in fact they had not. We find that these deceptive, fraudulent practices are unjust and unreasonable practices that apparently violate Section 201(b) of the Act.

### 1. Apparent Misrepresentations by United’s Telemarketer

6. In six of the violations on which this NAL is based, the complainants allege that United’s telemarketer claimed to be, or be affiliated with, the consumer’s current long distance carrier. For example, according to the president of Graffiti’s Pizza and Italian Café: “In December of 2011 a person called the business claiming to be with AT&T saying that they were calling to make us aware [that] the name on the bill would be changing but that nothing else would change.”<sup>15</sup> Complainant Toro explained that United’s telemarketer “called me and said that they were part of AT&T and they could save me money. . . .”<sup>16</sup> Still more complainants offered similar stories.<sup>17</sup>

7. United’s telemarketer also apparently misled some consumers into believing that their current long distance carrier was no longer offering long distance service or had merged with United. For

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<sup>12</sup> 47 U.S.C. § 201(b).

<sup>13</sup> See, e.g., *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*BDP Forfeiture Order*) (finding that the company violated Section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (*TRAC*) (recognizing that Section 201(b) provides a cause of action against carriers for failing to convey sufficient information about their rates, practices, and range of services).

<sup>14</sup> See *Silv NAL*, 25 FCC Rcd at 5180-5182, paras. 5-7.

<sup>15</sup> Complaint from Graffiti’s Pizza and Italian Café.

<sup>16</sup> Complaint from E. Toro.

<sup>17</sup> Complaint from Howard County Physical Therapy (telemarketer “was very insistent that she was from Verizon”); Complaint from Rachel The Desk Set, Inc. (telemarketer claimed to be from AT&T); Complaint from Seahorse Scuba (telemarketer claimed to be from Verizon). The Commission is empowered to propose a forfeiture penalty for violations that occurred within one year preceding the issuance of an NAL, see *infra* n.50. Thus, this NAL is based on the complaints of consumers, identified in the Appendix, who allege to have been slammed within the past year. The Commission, however, has reviewed similar complaints during the course of this investigation. For example, several other complainants stated that United’s telemarketer claimed to be from AT&T. See Complaints All Good Sports; American Home Health Care; At Home Care Solutions, Inc.; Calorie Logic; Dentistry at Springhurst; DPS Company, LLC; EA3 Auto Locators; Key Link, Inc.; Nowa Technologies; Parker Security System; Remax Royal.

example, one complainant said that United's telemarketer claimed that United "was now the official carrier for AT&T."<sup>18</sup> Other complainants identified told similar stories.<sup>19</sup>

8. The Commission has ruled on numerous occasions that carriers are responsible for the conduct of third parties acting on the carrier's behalf, including third party marketers.<sup>20</sup> The Commission has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.<sup>21</sup> United has not provided any evidence that its third party telemarketer was acting outside the scope of its engagement or employment. Thus, pursuant to Section 217 of the Act, we find the acts of United's third party telemarketer to be the acts of United.

9. United has not produced credible evidence that any of these complainants in fact authorized a change in his or her provider. United either has not produced any verification of consumer authorization at all, or produced verifications that are deficient, as explained below. Thus, based on the above, we conclude that United apparently violated Section 201(b) of the Act by changing the preferred carriers of six of the complainants identified in the Appendix through making material misrepresentations about United's identity and/or the purpose of its calls, and therefore without cognizable authorization from such complainants.<sup>22</sup>

## 2. Apparent Fabricated Third Party Verification Recordings

10. According to two other consumers upon whose complaints this NAL is based, United, or its agent,<sup>23</sup> apparently fabricated the TPVs to make it appear that the consumer authorized the carrier change. One complainant states that United's verifier "played a recorded message that I supposedly approved to make them my long distance provider. It was clearly evident that the person impersonating me was not me. In fact they asked the person to verify my mother[']s maiden name [to] which the person responded Bonner? That is not my mother[']s maiden name."<sup>24</sup> Another complainant suggests that

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<sup>18</sup> Complaint from Omni Swivel International ("I asked 4 times if she was working for AT&T and all 4 times the answer was "YES, I work for AT&T").

<sup>19</sup> Again, the Commission has received complaints about similar conduct that occurred over a year ago. For example, several other complaints stated that United's telemarketer claimed that United had merged with AT&T or was providing AT&T's long distance service. *See* Complaints of 5 Boys N Me Candle Company; Amma Design; Beyond Bronze; CARE Medical Billing, Inc.; Jessup Foot and Ankle Specialists; Milestone Investment; Social Inbox Corp.; Team Worldwide.

<sup>20</sup> *See Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000); *see also* 47 U.S.C. § 217 ("[t]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall . . . be deemed to be the act, omission, or failure of such carrier or user as well as that of the person.").

<sup>21</sup> *See Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863–21864, para. 7 (2002) (*citing American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (Wireless Bur., Enf. and Cons. Inf. Div., 1997)).

<sup>22</sup> Two of the other complainants identified in the Appendix specifically allege that the carrier change was not authorized and that they were unaware of the slam until they saw their telephone bills. *See* Complaint from JC Smith, LLC; Complaint from Avignone, Banick & Williams.

<sup>23</sup> As noted above, the acts, omissions, or failures of United's third party verifier, acting within the scope of its employment, are "deemed to be the act[s], omission[s], or failure[s] of [United] . . . as well as that of the [verifier]." 47 U.S.C. § 217; *see supra* para. 8.

<sup>24</sup> Complaint from All Sports Officials, LLC.

United or its telemarketer fabricated the TPV recording to make it appear that a “manager” “authorize[d]” the carrier change; instead, the conversation United’s telemarketer had with the manager’s husband (on the premises, doing some maintenance work), who did not authorize a carrier change but instead specifically told the telemarketer that he “had no authority over anything” and the telemarketer needed to speak with the manager or someone in the main office to approve a change in the long distance service.<sup>25</sup>

11. United provided no evidence to disprove these complainants’ assertions that the TPV recordings in question were fabricated. It denied receiving complaints of fabricated verification recordings,<sup>26</sup> but in fact the company received copies of all complaints filed with the Commission, state commissions, and the Better Business Bureau, and provided the Bureau with many of those complaints. United even addressed this issue in a letter in response to one of the complaints.<sup>27</sup> Thus, based on the above, we conclude that United apparently violated Section 201(b) of the Act by fabricating the TPVs for two of the complainants to make it appear that the consumers authorized the carrier change when they did not.

#### **B. Apparent Violations of Section 258 of the Act and Section 64.1120 of the Commission’s Rules**

12. In addition to the Section 201(b) violations, we find that United apparently violated Section 258 of the Act. 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 verification procedures as the Commission shall prescribe.”<sup>28</sup> Pursuant to Section 258, the Commission has adopted implementing rules. Section 64.1120(c) provides that a carrier must verify a change in one of three ways: (1) obtain the subscriber’s written or electronically signed authorization in a format that meets the requirements of Section 64.1130;<sup>29</sup> (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically;<sup>30</sup> or (3) utilize an independent third party to verify the subscriber’s order in accordance with certain requirements.<sup>31</sup>

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<sup>25</sup> Complaint from Opportunity Knocks. Several other complaints that arose out of incidents that occurred more than one year prior to the release date of this NAL contain similar allegations of fabricated TPVs. *See* Complaints of Alpha Park; Berosik Trucking; Electronics Service Co. of Hamlet, LLC; Helton Insurance Agency; Kooler Ice; Patriot Restoration; Peak Sign Solutions; Title Solution Services, Inc.

<sup>26</sup> Response to LOI at 5.

<sup>27</sup> Letter from Vickie Anderson, Regulatory Liaison Coordinator, United Telecom, Inc. to Philip W. Cooke, Chief, Compliance and Public Information Bureau, Montana Public Service Commission (July 12, 2011) included in the Peak Sign Solutions Complaint.

<sup>28</sup> 47 U.S.C. § 258(a). The Commission has found that a submitting carrier violates Section 258 of the Act when it effectuates a change in a consumer’s preferred carrier through engaging in deceptive practices, such as misrepresentations about its identity, designed to prevent the consumer from understanding that the submitting carrier is, in fact, seeking to change the consumer’s preferred carrier. *See BDP Forfeiture Order*, 15 FCC Rcd at 14467, para. 12 (the Commission found that “BDP knew, or should have known, that consumers acting reasonably under these circumstances would be misled or confused by BDP’s telemarketing calls and that therefore, consumers were not authorizing a PIC change.”).

<sup>29</sup> 47 C.F.R. § 64.1120(c)(1).

<sup>30</sup> 47 C.F.R. § 64.1120(c)(2).

<sup>31</sup> 47 C.F.R. § 64.1120(c)(3). For these requirements, *see infra* para. 14.

13. With respect to five consumers upon whose complaints this NAL is based, United has not provided any of the three kinds of required verification.<sup>32</sup> In the absence of one of the required forms of verification, we also find that United apparently violated Section 258 of the Act and Section 64.1120(c) of the Commission's rules by changing the preferred providers of these complainants without their authorization.<sup>33</sup>

14. Section 64.1120(c)(3) sets forth detailed procedures that carriers electing to use TPV procedures must follow. Among other specific requirements, the carrier's verifier must confirm that "the person on the call is authorized to make the carrier change," and must ensure that "any description of interLATA service . . . convey[s] that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable."<sup>34</sup> The requirements were adopted to ensure that consumers understand precisely the service changes they are approving and to increase consumer confidence, decrease the administrative costs for carriers, and alleviate the enforcement burden on the Commission.<sup>35</sup>

15. We have reviewed the TPV recordings for five carrier changes that United provided, and find that they do not satisfy the requirements of the rule. In all of these TPV recordings, the United verifiers only confirmed that the complainants wanted to switch state-to-state interLATA service, and failed to obtain separate authorization from complainants to switch their *intrastate* interLATA service.<sup>36</sup> In addition, in several instances, the verifier only asked the subscriber if he or she was "authorized by the telephone account owner to make changes to and incur charges on this telephone account," but failed to inquire whether he or she was authorized to make a *carrier change*.<sup>37</sup> The requirements that the verifier confirm that the person on the call is authorized to make a carrier change and clearly describe the services being changed are crucial to ensure that there is no confusion or ambiguity about the proposed switch.<sup>38</sup> We find that, especially where consumers contend that they did not intend to change carriers at all, and

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<sup>32</sup> See Complaints from Howard County Physical Therapy, Rachel the Desk Set, Seahorse Scuba, E. Toro, and Avignone, Banick & Williams.

<sup>33</sup> See 47 C.F.R. § 64.1150(d) ("Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.").

<sup>34</sup> 47 C.F.R. § 64.1120(c)(3)(iii). A local access and transport area, or LATA, can cross over state boundaries. Some states have more than one LATA. LATAs can exist in multiple area codes and an area code can be in more than one LATA. An intrastate call can be an interLATA toll call.

<sup>35</sup> See *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, Fourth Report and Order, 23 FCC Rcd 493, 493, para. 1 (2008) (*Fourth Report and Order*). See also *Consumer Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, 27 FCC Rcd 5340, 5341-42, para. 5 (CGB 2012) (reiterating that any description of the carrier change transaction must not be misleading).

<sup>36</sup> See, e.g., *New Century Telecom, Inc., Complaints regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 5911, 5913, para. 4 (CGB 2010) (CGB found that the TPVs did not include intrastate interLATA service and concluded that the verifier did not obtain authorization to switch interLATA service.).

<sup>37</sup> See, e.g., *United Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5753 (CGB 2012) (granting six complaints against United, including the complaint filed by Graffiti's Pizza, due to the verifier's failure to ask about a carrier change); *United Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 8994 (CGB 2012) (same issue, regarding Opportunity Knocks and All Sports Officials complaints). Other complaints provided by United had this error as well. See, e.g., Complaint from JC Smith, LLC.

<sup>38</sup> See *Fourth Report and Order*, 23 FCC Rcd at 501, paras. 18 and 19.

that United in fact misled them, enforcement of these rules is critical to consumer protection.<sup>39</sup> We therefore conclude that United apparently violated Section 258(a) of the Act and Section 64.1120(c)(3) of the Commission's rules by failing to follow all of the Commission's third party verification requirements with respect to all ten complainants.<sup>40</sup>

#### IV. PROPOSED FORFEITURE

16. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.<sup>41</sup> Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>42</sup> For a violation to be willful, it need not be intentional.<sup>43</sup> In exercising our forfeiture 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>44</sup> In addition, the Commission has established forfeiture guidelines, which set forth base penalties for certain violations, and identify criteria that we consider in exercising our discretion to adjust the base upward or downward.<sup>45</sup> Pursuant to the guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>46</sup>

17. The Commission's forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.<sup>47</sup> In prior enforcement actions, the Commission has warned carriers that misrepresentations such as the ones in the instant case are serious and that future violations may receive significant upward adjustments. For example, most recently, in the *Silv NAL*, the Commission stated that "[c]arriers should be on notice that the Commission considers violations such as the ones discussed herein to be serious and that future violations may receive significant upward

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<sup>39</sup> See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

<sup>40</sup> See, e.g., *New Century Telecom, Inc., Complaints regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 5911, 5913, para. 4 (CGB 2010) (finding that TPV recordings did not include references to intrastate interLATA service and concluding that verifier did not obtain authorization to switch interLATA service); *United Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5758 (CGB 2012).

<sup>41</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(2).

<sup>42</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). *Amendment of Section 1.80 of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

<sup>43</sup> *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

<sup>44</sup> See 47 U.S.C. § 503(b)(2)(E); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*).

<sup>45</sup> 47 C.F.R. § 1.80(b)(8).

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

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

adjustments.”<sup>48</sup> The misrepresentations and fabricated TPVs discussed above—which all took place after the *Silv NAL* was released—are particularly egregious.<sup>49</sup>

18. Applying the \$40,000 base forfeiture to each of the ten apparent slamming violations upon which this NAL is based would result in a forfeiture of \$400,000. In this case, however, United’s conduct was particularly egregious, as demonstrated by our conclusion that the company also violated Section 201(b) of the Act in six of the ten cases at issue by misleading consumers into believing that United was calling on behalf of their current carrier or was taking over the long distance service provided by their current carrier. We also find United’s conduct egregious with respect to fabricating two TPV recordings in an apparent attempt to conceal its unlawful practices. We further note that United appears to have engaged in this kind of deception repeatedly.<sup>50</sup> The Commission may consider prior offenses to establish the context for determining an appropriate forfeiture amount.<sup>51</sup> We therefore find that a significant upward adjustment is appropriate here.<sup>52</sup> In light of United’s repeated egregious conduct, and given that we specifically addressed in the *Silv NAL* two years ago the very kind of misrepresentation at issue here, we propose to triple the base forfeiture of \$40,000 for each of the eight egregious violations at issue in this NAL—the slams involving misrepresentation and fabricated TPVs—making the penalty for each such violation \$120,000. We recognize that this adjustment is greater than that the Commission has imposed in other cases involving similar conduct, but we find that an overall penalty of this magnitude is appropriate given our prior warnings, most recently, to individuals linked to United, and the apparently

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<sup>48</sup> *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

<sup>49</sup> The apparent misrepresentations discussed in the *Silv NAL* are similar to those discussed here, which is particularly relevant given the relationship between the two companies. United asserts that it has no affiliations with other telecommunications companies, *see* Response to LOI at 1; however, the owner of *Silv Communication* is the husband of the president of United, *see* Response to LOI at 5. In addition, the same group of individuals—SK Golam Ahia, Sapina Quayum, Aminur Rahman, Faisal Aziz, Imtiaz Hossain, Kazi Hossain, Mohideen Sinnalebbe, Elizabeth Sinnalebbe, Maria Zepeda, and others—apparently are involved in United as well as *America Net, LLC* and *Silv Communication*, and the third party verification company, *Seone Network, Inc.*, used by all three companies. (Mr. Aziz may have used the name “Mal Azaz” in providing *Seone Network, Inc.* TPVs.) This relationship among the companies and individuals—which raises the issue of the independence of the TPV company, among other things—was discussed in the *America Net, LLC* proceeding before the Public Utilities Commission of California, *In the Matter of the Application of America Net, LLC for Certificate of Public Convenience and Necessity to Provide Resold Interexchange Telecommunications Services within the State of California*, Application 11-04-005. *America Net* contended to the California Public Utilities Commission, as United contends to us, that it “is not affiliated with any other company.”

<sup>50</sup> The ten complainants identified in the Appendix are those who identified slamming incidents within the twelve months preceding the NAL. Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), empowers the Commission only to assess a penalty for violations that occurred in the year preceding the issuance of an NAL. In fashioning the penalty to apply for such violations, however, the Commission may take into account conduct that occurred at earlier times. Thus, in determining the forfeiture to assess for United’s apparent violations with respect to these 10 consumers, we consider its apparent deceptive conduct with respect to other consumers as well. *See supra* notes 17, 19, 25.

<sup>51</sup> *See Sandhill Communications*, Notice of Apparent Liability, 25 FCC Rcd 17762, 17769, n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company’s conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period); *see also InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8701, para. 28 (2007) citing *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671, para. 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1386, 1388, para. 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 11 FCC 2d 193, 195, para. 6 (1967).

<sup>52</sup> 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17116, Appendix A, Section II.

egregious and repeated violations at issue here. Thus, the total forfeiture we propose for United's conduct is \$1,040,000.<sup>53</sup>

## V. CONCLUSION

19. Based on the facts and record before us, we have determined that United Telecom, Inc. has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended, and Section 64.1120 of the Commission's rules.

## VI. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that United Telecom, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of one million, forty thousand dollars (\$1,040,000), for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(b), 258, and Section 64.1120 of the Commission's rules, 47 C.F.R. § 64.1120.

21. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,<sup>54</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, United Telecom, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. United Telecom, Inc. shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>55</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

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

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<sup>53</sup> In the *BDP Forfeiture Order*, the telemarketer represented that it was affiliated with the customers' existing carriers. *BDP Forfeiture Order*, 15 FCC Rcd at 14468, para. 15. The Commission found that the telemarketer repeatedly deceived consumers as to BDP's identity and the nature of its service, and imposed a \$40,000 forfeiture for each instance of slamming and an additional \$40,000 forfeiture for each instance in which BDP engaged in an unjust and unreasonable telemarketing practice.

<sup>54</sup> 47 C.F.R. § 1.80.

<sup>55</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.<sup>56</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

23. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau—Telecommunications Consumers Division, and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

24. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the Company at 3550 Wilshire Blvd., 17<sup>th</sup> Floor, Los Angeles, CA 90010.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>56</sup> See 47 C.F.R. § 1.1914.

## APPENDIX

<b>Complainant</b>	<b>Date of slam</b>	<b>Violation(s)</b>
R. Metzger on behalf of Rachel The Desk Set, Inc.	1/5/12	Section 258; Section 201(b)
E. Dykens on behalf of Graffiti's Pizza and Italian Café 12-S3365922	1/10/12	Section 258; Section 201(b)
K. Smith on behalf of JC Smith, LLC	1/10/12	Section 258
Omni Swivel International	1/27/12	Section 258; Section 201(b)
M. Wilson on behalf of Howard County Physical Therapy	2/1/12	Section 258; Section 201(b)
M. Whitt on behalf of Opportunity Knocks 12-S003419	2/2/12	Section 258; Section 201(b)
J. Hummel on behalf of Seahorse Scuba	3/27/12	Section 258; Section 201(b)
D. Helmsetter on behalf of All Sports Officials, LLC 12-S003424	5/18/12	Section 258; Section 201(b)
E. Toro 12-S3470351	6/6/12	Section 258; Section 201(b)
C. Williams on behalf of Avignone, Banick, and Williams 12-C00426519	7/25/12	Section 258