

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Long Distance Consolidated Billing Company) File No.: EB-TCD-14-00017401
) NAL/Acct. No.: 201532170015
) FRN: 0004337499

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 30, 2015

Released: July 30, 2015

By the Commission:

I. INTRODUCTION

1. We propose a penalty of \$2,400,000 against Long Distance Consolidated Billing Company (LDCB or Company) for submitting requests to switch consumers' preferred regional toll carriers without their authorization (commonly known as slamming) and placing unauthorized charges (commonly known as cramming) for its long distance service on consumers' telephone bills. Slamming and cramming are deceptive business practices. LDCB also deceptively marketed its services to consumers as part of its apparent slamming and cramming scheme. We take this action after reviewing numerous consumer complaints against LDCB, 30 of which arise from apparent slams, crams, and misrepresentations that took place within the twelve-month period prior to the release of this notice of apparent liability (NAL). Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of \$2,400,000.

II. BACKGROUND

2. LDCB¹ is a non-facilities based interexchange carrier that is authorized to provide domestic and international long distance telecommunications service.² The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) reviewed more than 70 complaints against LDCB that consumers filed with the Commission, state regulatory agencies, the Better Business Bureau (BBB), and directly with LDCB or its billing aggregator.³ Bureau staff also contacted many complainants to discuss the complaints and their experience with LDCB. All of the complainants contend that LDCB switched their long distance service⁴ without their authorization or charged them for service they did not

¹ According to the FCC Form 499-A filed by LDCB on April 1, 2015, the Company is a toll reseller with offices located at 4010 W. Walton Blvd., Suite B, Waterford, MI 48329. LDCB's President is Jan M. Lowe.

² See ITC-214-19960425-00002 (previous file no. ITC-96-136, granted Apr. 25, 1996).

³ See consumer complaints on file in EB-TCD-14-00017401.

⁴ See telephone bills from consumers on file in EB-TCD-14-00017401.

⁴ Although some complainants may have originally filed complaints for an unauthorized change in their long distance carrier, our review of LDCB's third party verifications found in several cases that LDCB did not obtain valid authorizations for regional toll service. See infra, para 15. We note that the Commission has previously used the term "regional toll" synonymously with intraLATA. See In the Matter of Application by Bell Atlantic New York

request, and many allege that LDCB's telemarketer deceptively claimed to be calling on behalf of the complainant's existing carrier.

3. Based on complaints from consumers stating that LDCB fraudulently charged them for long distance service, the Bureau initiated an investigation of LDCB and issued a letter of inquiry (LOI) to the Company on November 24, 2014.⁵ The LOI sought information about LDCB's business practices and instructed the Company to produce various documents and records, including evidence that it had complied with the Commission's verification procedures prior to switching consumers' long distance service providers. LDCB initially responded to the LOI on December 22, 2014.⁶

III. DISCUSSION

4. We find that LDCB apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act),⁷ and Section 64.1120 of the Commission's rules (Rules).⁸ Specifically, as discussed more fully below, we charge LDCB with apparently violating (i) Section 201(b) of the Act by misrepresenting its identity to 11 consumers in order to deceive them into believing its telemarketing call was from the consumer's existing carrier; (ii) Section 258 of the Act and Section 64.1120 of the Rules by submitting 15 requests to switch consumers' preferred regional toll carriers without authorization verified in compliance with the Commission's verification procedures; and (iii) Section 201(b) of the Act for placing 23 unauthorized charges on consumers' telephone bills. Accordingly, we propose a forfeiture of \$2,400,000 for the apparent violations that occurred within the 12 months prior to the release date of this NAL.⁹

A. LDCB Deceptively Marketed its Service in Apparent Violation of Section 201(b) of the Act

5. 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 [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."¹⁰ The Commission has held that unfair and deceptive marketing practices by interstate common carriers generally, and misrepresentations about a carrier's identity or the nature of its service to obtain a consumer's authorization to change his or her

For Authorization Under Section 271 of the Communications Act to Provide In-Region, Interlata Service in the State Of New York, 15 FCC Rcd. 3953, 4144, para. 382 (1999); *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 New York Tel. Co., d/b/a Bell Atl.-New York*, 14 FCC Rcd. 12230, 12333, para. 6. (1999).

⁵ See Letter from Kristi Thompson, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to LDCB (Nov. 24, 2014) (on file in EB-TCD-14-00017401) (LOI).

⁶ See Letter from Cheng-Yi Liu, Fletcher, Heald & Hildreth, to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 22, 2014) (on file in EB-TCD-14-00017401) (LOI Response). LDCB filed supplemental LOI responses on January 22 and 30, 2015, and May 1, 2015. See Letter from Cheng-Yi Liu, Fletcher, Heald & Hildreth, to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 22, 2015) (on file in EB-TCD-14-00017401) (First Supplemental LOI Response); Letter from Cheng-Yi Liu, Fletcher, Heald & Hildreth, to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 30, 2015) (on file in EB-TCD-14-00017401); Letter from Cheng-Yi Liu, Fletcher, Heald & Hildreth, to Mika Savir, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 1, 2015) (on file in EB-TCD-14-00017401) (Third Supplemental LOI Response).

⁷ 47 U.S.C. §§ 201(b), 258.

⁸ 47 C.F.R. § 64.1120.

⁹ The Appendix identifies the 30 complaints, evidencing 49 apparent violations of the Act occurring in the last year that underlie the proposed forfeiture.

¹⁰ 47 U.S.C. § 201(b).

preferred long distance carrier specifically, constitute unjust and unreasonable practices under Section 201(b) of the Act.¹¹

6. The evidence demonstrates that LDCB's telemarketers often made misrepresentations to complainants and repeatedly concealed the fact that they were calling on behalf of LDCB in order to switch consumers' provider to LDCB. Instead of identifying their affiliation with LDCB, they deceived consumers into believing that they were calling on behalf of the customers' existing providers and claimed to simply be seeking authorization to change the service consumers had with such existing providers. Eleven of the thirty consumers who were slammed or crammed and whose complaints support this NAL contend that LDCB's telemarketer pretended that he or she was calling from the complainant's own carrier and they had never heard of LDCB before discovering the charges on their telephone bills.

7. For example, Complainant Muston of Houston Duplicator Services explained:

I received a call from a gentleman who posed as a representative of AT&T. He said that I needed to go through the phone verification process for my long distance phone service. Then, he connected me with the service to record my responses. When I did not hear AT&T in the recording, I stopped the process and was reconnected with the gentleman who had initially called me. He reassured me that, even though the name wasn't AT&T, that it really was AT&T that was being represented, just trust him. So, I was reconnected with the phone verification process and proceeded with the recording . . . I immediately called AT&T and told them how I'd been 'tricked' into changing my LD service."¹²

Complainant Thompson similarly received a call from an LDCB telemarketer claiming to be with AT&T. "The caller identified himself as Mario from ATT. He gave me a long story about how ATT had to change my long distance carrier or I would receive two bills."¹³ Mr. Thompson stated that "I asked 'Mario' specifically if he worked for AT&T and he said yes My complaint is that whoever was calling for Long Distance Consolidated Billing fraudulently identified themselves as an AT&T employee."¹⁴

8. Other consumers also described receiving deceptive telemarketing calls from LDCB. Complainant Jones from Controlled Hydronics, Inc., wrote, "[W]e received a call stating that they were a representative from Century Link and that they were updating our long distance carrier and billing. Come to find out they were not from Century Link."¹⁵ Complainant Hof of Hof Construction stated, "There was a conversation with someone who presented himself as an AT&T representative with a way to save on our long distance bill. We stepped through the steps to get this lower rate and at no time were we told this was actually changing our long distance carrier."¹⁶ Complainant Savoie of Louisiana Auto Collision

¹¹ See *Bus. Disc. Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461, 14469, para. 17 (2000) (*BDP Forfeiture Order*), *aff'd in relevant part on reconsideration*, 15 FCC Rcd 24396 (2000); *Cent. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517, 5520, para. 7 (2014) (*Central NAL*); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823, 825-26, para. 7 (2014) (*USTLD NAL*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17198-99, para. 7 (2013) (*CTI NAL*); *Advantage Telecomms. Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6849, para. 16 (2013) (*Advantage NAL*); *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16502, para. 9 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16491, para. 7 (2012) (*Preferred NAL*).

¹² Complaint from Houston Duplicator Services.

¹³ Complaint from B. Thompson. Mr. Thompson's complaint is not included in the proposed forfeiture calculation and therefore is not identified in the Appendix.

¹⁴ *Id.*

¹⁵ Complaint from Controlled Hydronics, Inc.

¹⁶ Complaint from Hof Construction.

similarly believed he was speaking with his current provider, stating that “[a] rep. of Long Distance Consolidated Billing told us she was with my provider (Cox). I asked [three] times. [Three] times she told me that she was with AT&T/Cox. Told me Cox was sold to AT&T [and] that they were requested to change my carrier Never said she was [with] LDCB. I questioned her again—she assured me she was with Cox.”¹⁷

9. In his slamming complaint against LDCB, a representative of Davis Auto Body explained that he also received a call from LDCB “giving the impression they were from Verizon [and] needed to correct an error on their part. They stated that we had an overcharge on our Verizon account of 13 cents per min[ute] and it should be 5 cents per minute on our long distance calls. In order to correct this [they said] it must be OK’d and lied to my employee stating her boss had named and authorized her to O.K. this. This was a complete lie.”¹⁸ Complainant Johnston of Your T-Shirt Man was contacted by LDCB and “led to believe I was talking to an AT&T agent. He told me that my service plans would remain exactly the same but, they were offering a service that would simplify our bill. I had no idea he was with a different carrier. I agreed to what I was told . . . [that it] would not change anything other than the way our bill would appear. We received our monthly statement [] and was horrified to see that I had been deceived.”¹⁹

10. In some cases, LDCB’s deception resulted in substantial financial harm to consumers. Complainant Laursen of Machines in Motion stated that “LDCB identified themselves as AT&T (our phone service carrier at that time). LDCB stated that they had a new phone service plan that would save us money. None of what LDCB said was true. Plus we had an older AT&T service plan that was in fact cheaper. Due to the actions of LDCB we are unable to restore our lower cost plan with AT&T.”²⁰

11. The content of multiple complaints demonstrates that LDCB, through its telemarketers, apparently misrepresented itself to be AT&T, Century Link, or other carriers in several instances and is evidence that LDCB was engaged in deceptive conduct. The record shows that these were not mere errors by LDCB and its agent whereby the Company mistakenly verified the carrier switch with someone who was not authorized to make the switch or the result of a miscommunication with a consumer. Instead, the record establishes intentional misconduct where LDCB, through its telemarketers, pretended to call from the consumer’s own carrier. There is no evidence that any of the complainants (or anyone else in their household or place of business) wanted to make a carrier change to LDCB.

12. LDCB has not produced any evidence demonstrating that its telemarketers did not misrepresent LDCB’s identity, the purpose of the call, or the nature of the transactions between the Company and the 11 consumers identified in the Appendix. Rather, the Company maintains that it requires its telemarketers [REDACTED].²¹ Despite these policies, LDCB received numerous complaints from consumers who claimed LDCB’s telemarketer told them he or she was calling on behalf of or was affiliated with their current provider and could lower their long distance rates; yet the Company failed to prevent such

¹⁷ Complaint from Louisiana Auto Collision. The complaint for Louisiana Auto Collision is not included in the proposed forfeiture calculation and therefore is not identified in the Appendix.

¹⁸ Complaint from Davis Auto Body.

¹⁹ Complaint from Your T-Shirt Man.

²⁰ Complaint from Machines in Motion; *see also* Complaint from Low Cost Self Storage (“I would never have agreed to make such a change [to LDCB]. I had a 2-year Verizon Business Solutions bundle that required me to use Verizon for long distance service. When I received this month’s bill Verizon cancelled my bundle and my charges for service from them more than doubled. In addition, I was charged a \$50 early termination fee.”).

²¹ First Supplemental LOI Response at 2.

misrepresentations from continuing.²² The complaints regarding LDCB's deceptive marketing span the course of over a year; therefore, it appears that LDCB was aware of and benefited financially from its telemarketers' acts. Under Section 217 of the Act,²³ LDCB is liable for the acts of its third-party telemarketers.²⁴ Accordingly, we find LDCB in apparent violation of Section 201(b) of the Act, for engaging in deceptive and fraudulent practices by representing to 11 complainants that it was calling on behalf of their existing long distance carriers.

B. LDCB Submitted Unauthorized Requests to Switch Consumers' Regional Toll Carriers in Apparent Violation of Section 258 of the Act and Section 64.1120 of the Rules

13. 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."²⁵ Section 64.1120 of the Rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before obtaining authorization from the consumer; carriers can verify that authorization in one of three specified ways, including third party verification (TPV).²⁶ If a carrier relies on TPV, as LDCB does, the independent verifiers must, among other things, confirm that the consumers with whom they are speaking: (i) have the authority to change the carrier associated with their telephone number; (ii) in fact wish to change carriers; and (iii) understand that they are authorizing a carrier change.²⁷

14. The evidence demonstrates that LDCB apparently violated Section 258 of the Act and Section 64.1120 of the Rules by submitting 15 requests to switch the complainants' preferred providers of telecommunications services without proper authorization verified in accordance with the Rules. The Rules require that "any description of the carrier change transaction . . . shall not be misleading," and verifiers must convey explicitly that "the consumers will have authorized a carrier change, and not, for

²² [REDACTED]

Response at 3.

First Supplemental LOI

First Supplemental LOI Response at 3.

²³ See 47 U.S.C. § 217. Section 217 imposes liability on a carrier for the acts and omissions of its agents simply if those agents act within the scope of their employment; a carrier's knowledge of its agents' misdeeds is not required. See, e.g., *Preferred NAL*, 27 FCC Rcd at 16491, para. 6 (finding a carrier apparently liable for deceptive marketing practices of the third party telemarketers); *Silv Commc'n Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5185, para. 14 (2010) (*Silv NAL*) (same). In any event, LDCB has not claimed or produced any evidence that it was unaware of its telemarketer's or third party verifier's actions or that the Company should not be held responsible for those actions.

²⁴ According to LDCB, [REDACTED]

See LOI Response at 5.

²⁵ 47 U.S.C. § 258(a).

²⁶ 47 C.F.R. § 64.1120(c)(1)–(3) (a carrier may also verify authorization by obtaining the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 or by obtaining confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically).

²⁷ 47 C.F.R. § 64.1120(c)(3)(iii).

instance, an upgrade in existing service.”²⁸ Accordingly, the Commission has found an authorization to provide “service” is not sufficient to confirm that the consumer wants to make a carrier change.²⁹

15. Our rules require that a carrier obtain separate authorizations for each service sold.³⁰ In this case, LDCB submitted requests to change two separate services for each consumer: long distance (interLATA) and regional toll (intraLATA).³¹ We have reviewed the TPV recordings that LDCB submitted with its response to the LOI.³² In each case, LDCB’s verifier asks the person on the call if he or she authorized LDCB to provide “service” for regional toll calls and at no time confirmed whether he or she authorized a *carrier change* for regional toll service. Moreover, the Consumer & Governmental Affairs Bureau (CGB) has previously found LDCB in violation of the Commission’s carrier change rules for using nearly identical misleading language.³³

16. We therefore find that LDCB apparently violated Section 258 of the Act and Section 64.1120 of the Rules by submitting requests to switch 15 consumers’ preferred providers of telecommunications services without proper authorization verified in accordance with the Rules.

C. LDCB Placed Unauthorized Charges on Consumers’ Telephone Bills in Apparent Violation of Section 201(b)

17. Section 201(b) of the Act makes it unlawful for a carrier, including LDCB, to engage in any practice in connection with its provision of a telecommunications service that is unjust and unreasonable.³⁴ The Commission has found that the inclusion of unauthorized charges and fees on consumers’ telephone bills (i.e., cramming) is an “unjust and unreasonable” practice under Section 201(b).³⁵ Cramming can occur either when third parties place unauthorized charges on consumers’ local or wireless telephone bills or when carriers place unauthorized charges on the telephone bills of their own

²⁸ 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*, Fourth Report and Order, 23 FCC Rcd 493, 501, para. 19 (2008) (footnotes omitted). Moreover, as the Commission has previously noted and as we explain above, third party verifier scripts “should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.” *Id.* (citing *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*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

²⁹ See, e.g., *USTLD NAL*, 29 FCC Rcd at 827, para. 10; *CTI NAL*, 28 FCC Rcd at 17200, paras 11–12 (2013); *Veza Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 4821, 4823, para. 4 (CGB 2014).

³⁰ 47 C.F.R. § 64.1120(b).

³¹ The Commission has previously used the term “regional toll” synonymously with intraLATA. See *Application by Bell Atlantic New York For Authorization Under Section 271 of the Communications Act to Provide In-Region, Interlata Service in the State Of New York*, 15 FCC Rcd. 3953, 4144, para. 382 (1999); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 New York Tel. Co., d/b/a Bell Atl.-New York*, 14 FCC Rcd. 12230, 12333, para. 6. (1999).

³² See CDs provided with the LOI Response and the Third Supplemental LOI Response.

³³ See *Long Distance Consol. Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 3387, 3389, para. 4 (CGB 2013).

³⁴ 47 U.S.C. § 201(b).

³⁵ See, e.g., *Central NAL*, 29 FCC Rcd at 5523, para. 14; *USTLD NAL*, 29 FCC Rcd at 829–30, para. 14; *CTI NAL*, 28 FCC Rcd at 17292, para. 15; *Advantage NAL*, 28 FCC Rcd 6843, 6850, para. 17; see also *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that the company’s practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

customers. In either case, any assessment of an unauthorized charge on a telephone bill or for a telecommunications service is an “unjust and unreasonable” practice under Section 201(b) of the Act.³⁶

18. We have reviewed the evidence in the record, including consumers’ complaints and their telephone bills, as well as LDCB’s responses to complaints, and find that the charges LDCB caused to be placed on complainants’ telephone bills were unauthorized in apparent violation of Section 201(b) of the Act. All of the complainants maintain that they neither requested nor agreed to service provided by LDCB, and therefore that they were billed for service that they never authorized.³⁷ Complainant [REDACTED] stated, [REDACTED]

[REDACTED]³⁸ Complainant Gardner of RFM Seating also maintained that her company did not authorize LDCB’s service: “LDCB began sending invoices to our [] facility for long distance charges that we never agreed to or signed up for. When I phoned [LDCB] I was told that an employee at our facility [] agreed to the charges. This was not the case . . . he agreed to nothing.”³⁹

19. As we have said on several occasions in prior cases, a carrier that engages in an initial slam that leads to a subsequent cram violates both Sections 258 and 201(b) of the Act for slamming and cramming.⁴⁰ In such cases we may exercise our authority to assess forfeitures for both types of violations.⁴¹ Accordingly, we find that LDCB apparently violated Section 201(b) for the unauthorized charges it placed on 23 consumers’ telephone bills.⁴²

D. Proposed Forfeiture

20. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”⁴³ Here, Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against LDCB of up to a statutory maximum of \$160,000 for a single act or failure to act.⁴⁴ In exercising our forfeiture authority, we must consider “the nature, circumstances, extent, and

³⁶ See, e.g., *Central NAL*, 29 FCC Rcd at 5523, para. 14.

³⁷ See, e.g., Complaints from [REDACTED], Boschert Equipment Co., Clean Smart Janitorial, and Reed’s Seeds Garden Center.

³⁸ Complaint from [REDACTED].

³⁹ Complaint from RFM Seating. The Complaint from RFM Seating is not included in the proposed forfeiture calculation and therefore is not identified in the Appendix.

⁴⁰ See *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056, 9063, para. 19 (2014); *Advantage NAL*, 28 FCC Rcd at 6850, para. 18 n.48.

⁴¹ See *Central NAL*, 29 FCC Rcd at 5529, para. 25 n.83; *USTLD NAL*, 29 FCC Rcd at 835–836, para. 24 n.93; *CTI NAL*, 28 FCC Rcd at 17208, para. 26, n.78. For those consumers whose slams took place outside the statute of limitations, we are proposing a forfeiture based only on the unlawful cramming that took place within the last 12 months.

⁴² In some of these cases, the evidence shows that LDCB did not submit a request to change the complainant’s long distance service provider, but nevertheless began charging the complainant for monthly service that was not authorized. See information provided by complainants’ LECs on file in EB-TCD-14-00017401. These complainants are identified in the Appendix as [REDACTED], Downs Crane & Hoist, Mabel’s, LLC, [REDACTED], and C. Sullivan.

⁴³ See 47 U.S.C. § 503(b).

⁴⁴ See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990,

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.”⁴⁵ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁴⁶ Under these 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.⁴⁷

21. Section 1.80(b) of the Rules sets a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.⁴⁸ Although the guidelines provide no base forfeiture for cramming, the Commission has established through case law a base forfeiture of \$40,000 for cramming violations.⁴⁹ As discussed above, the Commission can assess separate forfeitures for an unlawful carrier change request and for any unauthorized charges that result from that unlawful carrier change request.⁵⁰ However, where LDCB submitted the unlawful carrier change request more than a year prior to the date of this NAL, we assess a forfeiture not for the slam, but for the unauthorized charges LDCB placed on the consumers’ telephone bills after the Company slammed them and within the last 12 months.⁵¹ Similarly, in those cases where LDCB did not submit a request to change the consumer’s preferred carrier,⁵² but nevertheless charged the consumer for service without authorization, we assess a forfeiture for the cram only.⁵³ Applying the \$40,000 base forfeiture to each of the 38 slamming and cramming violations⁵⁴ that occurred within the last 12 months results in a proposed forfeiture of \$1,520,000.

Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49370–01 (2013) (setting Sept. 13, 2013, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect,” we apply the forfeiture penalties in effect at the time the violation took place. 28 U.S.C. § 2461 note (6). Here, because the apparent violations at issue occurred after September 13, 2013, the applicable maximum penalties are based on the Commission’s most recent inflation adjustment.

⁴⁵ *See* 47 U.S.C. § 503(b)(2)(E).

⁴⁶ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

⁴⁷ *Id.*

⁴⁸ *See* 47 C.F.R. § 1.80, Appendix A, Section I.

⁴⁹ *See LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for each cramming violation imposed by the Commission in the forfeiture order).

⁵⁰ *See supra* para. 19.

⁵¹ The consumers whom LDCB crammed after it initially slammed them are identified in the Appendix.

⁵² *See supra*, note 42.

⁵³ The Commission has made clear that each unauthorized charge a carrier places on a consumer’s bill—or cram—constitutes a separate and distinct violation of Section 201(b). *See CTI NAL*, 28 FCC Rcd at 17208, para. 26 (citing *NOS Commc’ns, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001)). Based on the record in the instant case, we decline to exercise our discretion in that way at this time, but we caution other carriers that the Commission is committed to aggressive enforcement of its rules, especially in addressing the protections afforded consumers.

⁵⁴ A slamming violation occurs whenever a carrier submits an unlawful request to change service providers regardless of whether the change actually takes place. *See* 47 U.S.C. § 258(a) (“[n]o telecommunications carrier shall 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 [the Commission’s] verification procedures. . . .”).

22. Given the facts presented here, and consistent with prior cramming and slamming enforcement actions, we conclude that a significant upward adjustment to the base forfeiture penalty is warranted for the apparent cramming and slamming violations at issue here that are coupled with direct evidence of deceptive marketing. In past slamming and cramming cases that also include misrepresentation complaints, we have upwardly adjusted those base forfeiture penalties by \$80,000, and we have repeatedly warned carriers that “we may propose more significant forfeitures in the future as high as necessary, within the range of our statutory authority, to ensure that such companies do not charge consumers for unauthorized services.”⁵⁵ As discussed above, numerous complainants contend that LDCB’s telemarketer pretended to be calling from the complainant’s own carrier and that prior to discovering charges from LDCB on their telephone bills, the complainants had never heard of LDCB. The complainants’ allegations of deceptive marketing over the course of more than a year support our finding that LDCB is conducting business in a fraudulent manner. We also take into account the fact that we have issued numerous orders against LDCB for slamming violations;⁵⁶ therefore, the Company was on actual notice that such conduct violated the Act and our Rules.⁵⁷ Accordingly, we propose to upwardly adjust the penalty by \$80,000 for each of the 11 apparent slamming and cramming violations that occurred in the past 12 months and for which LDCB apparently misrepresented its identity to the consumer. This upward adjustment results in an additional \$880,000 to the proposed forfeiture.

IV. CONCLUSION

23. Based on the facts and record before us, we have determined that LDCB has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act and Section 64.1120 of the Rules and we propose a forfeiture amount of \$2,400,000.

V. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁵⁸ and Section 1.80 of the Rules,⁵⁹ Long Distance Consolidated Billing Company is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of two million four hundred thousand dollars (\$2,400,000) for willful and repeated violations of Sections 201(b) and 258 of the Act,⁶⁰ and Section 64.1120 of the Rules.⁶¹

25. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,⁶² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Long Distance

⁵⁵ See, e.g., *USTLD NAL*, 29 FCC Rcd at 837, para. 27 (citing cases); *Central NAL*, 29 FCC Rcd at 5531, para. 28; *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

⁵⁶ CGB has issued more than 50 orders granting slamming complaints against LDCB for the same or similar violations of the Commission’s third party verification requirements. See, e.g., *Long Distance Consol. Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 3387, 3389, para. 4 (CGB 2013); *Long Distance Consol. Billing Co., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 7269, 7271, para. 4 (CGB 2012); *Long Distance Consol. Billing Co., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 26 FCC Rcd 15558, 15560, para. 4 (CGB 2011).

⁵⁷ See, e.g., *Central NAL*, 29 FCC Rcd at 5531, para. 28; *USTLD NAL*, 29 FCC Rcd at 837, para. 27; *CTI NAL*, 28 FCC Rcd at 17209, para. 29; *Advantage NAL*, 28 FCC Rcd at 6855–56, para. 30; *Main Street Telephone Company, Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 8853, 8861, para. 24 (2011).

⁵⁸ 47 U.S.C. § 503(b).

⁵⁹ 47 C.F.R. § 1.80.

⁶⁰ 47 U.S.C. §§ 201(b), 258.

⁶¹ 47 C.F.R. § 64.1120.

⁶² 47 C.F.R. § 1.80.

Consolidated Billing Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 28 and 29 below.

26. 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. Long Distance Consolidated Billing Company 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.⁶³ 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 that should be followed based on the form of payment selected:

- 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. 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.

27. Any request for making full payment over time 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 20554.⁶⁴ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

28. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.⁶⁵ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th 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 12th Street, SW, Washington, DC 20554, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Mika Savir and Erica McMahon at mika.savir@fcc.gov and erica.mcmahon@fcc.gov.

29. 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

⁶³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁶⁴ See 47 C.F.R. § 1.1914.

⁶⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

(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.

30. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Long Distance Consolidated Billing Company's attorney, Cheng-Yi Liu, Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Apparent violations of Sections 258 and 201(b) of the Act			
	Complainant	Date of carrier change and/or date charge placed on consumer's bill	Apparent violation(s)
1.	Just Glocks, Inc.	8/1/14; 9/1/14	Section 258 slam; Section 201(b) cram
2.	Davis Auto Body	8/11/14; 10/22/14	Section 201(b) misrepresentation; Section 258 slam; Section 201(b) cram
3.	Low Cost Self Storage	8/15/14; 10/13/14	Section 201(b) misrepresentation; Section 258 slam; Section 201(b) cram
4.	Cleansmart Janitorial	8/28/14	Section 258 slam
5.	Miller Studios	8/28/14; 10/10/14	Section 201(b) misrepresentation; Section 258 slam; Section 201(b) cram
6.	Washburn Farm & Home Supply	8/29/14	Section 201(b) misrepresentation; Section 201(b) cram
7.	██████████	9/1/14	Section 201(b) cram
8.	Controlled Hydronics	9/1/14	Section 201(b) misrepresentation; Section 201(b) cram
9.	██████████	9/2/14	Section 201(b) cram
10.	Roll Easy Garage	9/5/14; 11/27/14	Section 258 slam; Section 201(b) cram
11.	██████████	9/18/14	Section 258 slam
12.	██████████	9/18/14; 12/25/14	Section 258 slam; Section 201(b) cram
13.	Reed's Seeds Garden Center	9/19/14	Section 201(b) cram
14.	██████████	9/20/14	Section 201(b) cram
15.	Your T-Shirt Man	9/22/14	Section 201(b) misrepresentation; Section 201(b) cram
16.	Machines in Motion	9/29/14	Section 201(b) misrepresentation; Section 258 slam
17.	McFee Tailored Pets	10/8/14; 12/1/14	Section 258 slam; Section 201(b) cram
18.	██████████	10/13/14	Section 201(b) cram
19.	Boschert Equipment	10/14/14	Section 258 slam
20.	██████████	10/16/14	Section 201(b) cram

21.	C. Sullivan	10/19/14	Section 201(b) misrepresentation; Section 201(b) cram
22.	[REDACTED]	11/1/14	Section 201(b) cram
23.	[REDACTED]	11/3/14	Section 201(b) cram
24.	Hof Construction	11/7/14	Section 201(b) misrepresentation; Section 258 slam
25.	[REDACTED]	11/28/14	Section 201(b) cram
26.	Houston Duplicator Services	12/17/14	Section 201(b) misrepresentation; Section 258 slam
27.	Hi Tech Heat Treating	12/30/14	Section 258 slam
28.	Downs Crane & Hoist	1/11/15	Section 201(b) cram
29.	L. Reyna	2/10/15; 4/7/15	Section 258 slam; Section 201(b) cram
30.	Mabel's LLC	2/19/15	Section 201(b) misrepresentation; Section 201(b) cram