

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

In the Matter of)	
)	
Advantage Telecommunications Corp.)	File No.: EB-TCD-12-00004803
)	NAL/Acct. No.: 201332170013
)	FRN: 0005077730

FORFEITURE ORDER

Adopted: April 24, 2017

Released: April 25, 2017

By the Commission: Commissioner O’Rielly concurring in part and dissenting in part.

I. INTRODUCTION

1. We impose a penalty of \$1,000,000 against Advantage Telecommunications Corp. (Advantage or Company) for “slamming” consumers by changing their long distance carriers without proper authorization and “cramming” unauthorized charges onto their bills. In addition, we find that Advantage’s telemarketers engaged in deceptive marketing practices by pretending to be calling on behalf of consumers’ existing long distance carriers and misrepresenting the true nature of sales calls. We also find that Advantage violated the Commission’s truth-in-billing rules by failing to clearly and plainly describe charges on consumers’ telephone bills. Slamming and cramming are deceptive business practices that result in consumers paying for services they never requested and then expending great time and personal effort to return to their preferred carriers. These practices are made even more egregious where, as here, they are coupled with deceptive marketing and billing. After reviewing Advantage’s response to the *Notice of Apparent Liability for Forfeiture (NAL)*, including three years of tax returns, we affirm the findings of the *NAL* and assess a reduced forfeiture amount of \$1,000,000 based on the Company’s demonstrated inability to pay and other statutory factors.

II. BACKGROUND

2. The Commission’s Enforcement Bureau (Bureau) initiated an investigation of Advantage¹ after reviewing numerous complaints filed by small business consumers against the Company. Taken together, the complaints alleged a pattern whereby Advantage misrepresented its identity or the nature of its calls when marketing its long distance service to consumers in order to obtain their authorization to change long distance carriers and bill consumers for Advantage’s service.

3. On May 9, 2013, the Commission issued an *NAL*² proposing a \$7,600,000 forfeiture against Advantage for willful and repeated violations of Sections 201(b) and 258 of the Communications

¹ Advantage is a non-facilities based interexchange carrier with offices at 3001 Aloma Avenue, Suite 304, Winter Park, Florida 32792. Advantage’s owner and chief executive officer, Robert Sorrentino, is also owner of two other toll resellers, Reduced Rate Long Distance, LLC, and Reliant Communications, Inc., and former toll reseller Horizon Telecom, Inc. See Letter from Andrew B. Lustigman, Counsel to Advantage Telecommunications Corp., to Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 3 (Nov. 30, 2012) (on file in EB-TCD-12-00004803) (stating that Sorrentino is the owner of Advantage, Reduced Rate, and Reliant Communications).

² The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6843-45, paras. 2-5 (2013) (*NAL*).

Act of 1934, as amended (Act), and Sections 64.1120 and 64.2401(b) of the Commission's rules (Rules).³ In the *NAL*, the Commission found that the Company apparently violated Section 201(b) of the Act by (i) deceptively marketing its long distance service to consumers by misrepresenting itself as the consumer's existing carrier and/or misrepresenting the purpose of the telemarketing call; and (ii) placing unauthorized charges for service on consumers' local telephone bills or on telephone bills issued directly by Advantage.⁴ In addition, the Commission found that Advantage apparently violated Section 258 of the Act and Section 64.1120 of the Rules by submitting requests to switch consumers' long distance service providers without their authorization.⁵ Finally, the Commission found that Advantage violated Section 64.2401(b) of the Commission's truth-in-billing rules by failing to clearly and plainly describe certain charges on its bills.⁶ The *NAL* ordered Advantage to, within 30 days, either pay the proposed forfeiture amount or submit evidence or arguments in response to the *NAL* that no forfeiture should be imposed or that some lesser amount should be assessed.⁷

4. On June 10, 2013, Advantage filed a response to the *NAL*.⁸ Advantage makes a number of arguments as to why the *NAL* should be canceled or reduced. The Company contends that (i) its third party verification (TPV) recordings show that Advantage did not deceive consumers and that its marketing safeguards prevented any deception by its telemarketers; (ii) it did not cram consumers because its TPV recordings show that consumers authorized service, and any mistakes that occurred when charging consumers were unintentional; (iii) it should not be liable for slamming because the Commission failed to consider all aspects of the TPV recordings; and (iv) its bills did not violate the truth-in-billing rules because they were merely statements for unpaid charges which are not subject to the Rules.⁹

III. DISCUSSION

5. Based on the preponderance of the evidence, including consistent statements from consumers who filed complaints against Advantage, we affirm the findings in the *NAL* that Advantage violated Section 201(b) of the Act by making misrepresentations to 38 consumers¹⁰ and placing unauthorized charges on 56 consumers' telephone bills.¹¹ We also affirm the findings in the *NAL* that Advantage violated Section 258 of the Act and Section 64.1120(c)(3) of the Rules by failing to follow all of the Commission's third-party verification requirements with respect to eight consumers.¹² Finally, we affirm the findings in the *NAL* that Advantage violated Section 64.2401(b) of the Rules with respect to 50 bills it sent to consumers.¹³

³ *Id.*; see 47 U.S.C. §§ 201(b), 258; 47 CFR §§ 64.1120, 64.2401(b).

⁴ *NAL*, 28 FCC Rcd at 6845, para. 7.

⁵ *Id.*

⁶ *Id.* at 6846, para. 8.

⁷ *Id.* at 6857-58, para. 35.

⁸ See Written Statement in Response to Notice of Apparent Liability for Forfeiture, Advantage Telecommunications Corp. (June 10, 2013) (on file in EB-TCD-12-00004803) (*NAL* Response).

⁹ *Id.* at 4-37.

¹⁰ *NAL*, 28 FCC Rcd at 6849, para. 16.

¹¹ *Id.* at 6852, para. 21. Advantage placed charges on consumers' local telephone bills (e.g., AT&T, Verizon), or on bills directly sent to consumers. *Id.* at 6849, para. 17. Section 201(b) applies whether a carrier places the charges on a consumer's telephone bill directly or indirectly through the local billing carrier. *Id.* at 6850, para. 17.

¹² *Id.* at 6853-54, para. 25.

¹³ *Id.* at 6854, 6857, paras. 27 and 32.

A. Advantage Violated Section 201(b) of the Act

6. 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.”¹⁴

1. Advantage Deceptively Marketed its Service to Consumers

7. The Commission has held that unfair and deceptive marketing practices by interstate common carriers, including misrepresentations about a carrier’s identity or the nature of its service made to obtain a consumer’s authorization to change his or her preferred long distance carrier, constitute unjust and unreasonable practices under Section 201(b) of the Act.¹⁵ We affirm the findings of the *NAL* that Advantage violated Section 201(b) by engaging in deceptive marketing practices in an effort to obtain authorization to change the long distance carriers of 38 consumers.¹⁶ The contents of the 38 consumer complaints show, by a preponderance of the evidence,¹⁷ that Advantage (through its telemarketers) violated Section 201(b). We find that the complainants’ descriptions of the telemarketers’ statements constitute credible evidence of Advantage’s Section 201(b) violations. These 38 complaints are detailed, consistent but not duplicative, and specific, and we find them to be more credible than Advantage’s claims to the contrary.¹⁸

8. Advantage does not directly refute this evidence; instead the Company argues that the Commission did not allege that Advantage *itself* misrepresented the purpose of the call or the affiliation of the caller, and that it had reason to believe that its telemarketers were acting properly.¹⁹ Advantage contends that when there was an indication of a problem, it took corrective action by terminating five individual marketers for misrepresentations.²⁰ Advantage also argues that the Commission unfairly shifted the burden of proof onto Advantage because the Commission is requiring the Company to “disprove a negative proposition (*i.e.*, prove that a misrepresentation by its marketers did not occur...)”

¹⁴ 47 U.S.C. § 201(b).

¹⁵ See, e.g., *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13718, para. 16 (2015) (*Preferred Forfeiture Order*); *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461, 14469, para. 17 (2000); *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16502, para. 9 (2012) (*United NAL*); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180-82, paras. 5-7 (2010) (*Silv NAL*). Our Section 201(b) authority relevant here to address the telemarketing practices of an interexchange carrier for or in connection with its telecommunications service is not limited by the enactment of Section 258 of the Act, consistent with prior Commission decisions. See, e.g., *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, 1554-55, para. 77 (1998) (in the context of a rulemaking implementing Section 258, interpreting Section 201(b) authority to remain available to address deceptive sales tactics); see also *Preferred Forfeiture Order*, 30 FCC Rcd at 13718, n.54.

¹⁶ *NAL*, 28 FCC Rcd at 6849, para. 16.

¹⁷ The use of the “preponderance of the evidence” standard is the traditional evidentiary standard in civil and administrative proceedings and is the one contemplated by the Administrative Procedure Act. 5 U.S.C. § 556(d); see also 47 CFR § 1.80(f)(4) (the Commission may issue a forfeiture order upon consideration of all relevant information available to it); *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (applying preponderance of the evidence standard in reviewing Bureau-level *NAL*).

¹⁸ See, e.g., *Preferred Forfeiture Order*, 30 FCC Rcd at 13719, 13722-23, paras. 17, 23 (finding that consumer complaints were reliable because they were detailed, consistent but not duplicative, and specific).

¹⁹ See *NAL* Response at 7-8. Advantage thus argues that there is no basis for the Commission’s finding of a willful violation of Section 201(b). *Id.*

²⁰ *Id.* at 6-7.

and that the Commission is penalizing Advantage for not recording the sales calls in their entirety. Finally, Advantage contends that its third party verifiers' scripts and recordings of the conversations between the consumers and verifiers is evidence that consumers were not deceived.²¹ We find none of these arguments persuasive and accordingly reject them.

9. Advantage is responsible for the misrepresentations at issue here. At least 38 consumers²² explained in their complaints that Advantage's telemarketers made misrepresentations to them in the course of conversations to sign them up as Advantage's customers. As a carrier, Advantage is responsible for the conduct of third parties acting on its behalf,²³ including the acts and omissions of its employees, independent contractors and agents.²⁴ It is therefore irrelevant that Advantage *itself* did not make the misrepresentations to consumers; Advantage was responsible for the acts and omissions of its independent contractors and agents, *i.e.*, its telemarketers.

10. Further, the evidence shows that Advantage was aware that its telemarketers were acting improperly. Advantage received numerous complaints from consumers who alleged that Advantage's telemarketers told them they were calling on behalf of or were affiliated with those consumers' current providers.²⁵ From faxes and e-mails Advantage provided, it appears that the Company requested that three telemarketers be terminated in early 2012 due to such misrepresentations.²⁶ However, consumers claimed Advantage's telemarketers engaged in deceptive marketing throughout all of 2012 and into early 2013.²⁷ These terminations in early 2012 demonstrate that Advantage was aware that misrepresentations were occurring and that corrective action was needed; however, the telemarketer misrepresentations continued long after the terminations took place.²⁸ Further, Advantage's suggestion that the Commission is punishing it for not recording sales calls is misplaced. The Rules do not require a carrier to record sales calls and the NAL asserts no violation for failure to record a sales call. Carriers like Advantage, however, are required to take the necessary steps to ensure their services are marketed truthfully. And in this case, despite the fact that Advantage was on notice that its service was being marketed under false pretenses, Advantage ignored consumers' allegations and responded to their complaints by telling them that the

²¹ *Id.* at 9-10. Specifically, Advantage argues that the question by the third party verifier, "do you understand that the representative called you on behalf of Advantage, which is not affiliated with your local telephone company, correct?" and, according to Advantage, the consumer's answer in the affirmative contradicts the evidence that the consumer was deceived by the telemarketer. *Id.* at 10.

²² Additional consumers whose complaints were filed more than a year before the release date of the NAL also alleged that Advantage's telemarketers misrepresented their identity and the purpose of the call. *See NAL*, 28 FCC Rcd at 6845, para. 6 (explaining that the Commission reviewed 165 complaints, although only 64 formed the basis of the NAL).

²³ *See* 47 U.S.C. § 217 ("[T]he act, omission, or failure of any . . . agent[] or other person acting for or employed by any common carrier . . . within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier . . ."); *see also Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000) (*LDDI MO&O*); *Silv NAL*, 25 FCC Rcd at 5180, para. 5 & n.18.

²⁴ *See Eure Family Ltd. Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (1997); *Triad Broadcasting Co., Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984).

²⁵ *See NAL*, 28 FCC Rcd at 6849, para. 16.

²⁶ *See NAL Response*, Exh. D.

²⁷ *See NAL*, 28 FCC Rcd at 6860, Appendix.

²⁸ *See, e.g.*, Complaints from Nebraska Thoroughbred Breeders Association, Country Traditions, Moster Turf, Sir Pizza of Troy, and Arizona Family Karate (each complainant alleging that Advantage's telemarketer made misrepresentations to them between August 2012 and January 2013).

Company had a TPV recording evidencing the consumer's authorization to switch carriers to Advantage.²⁹

11. We also find unpersuasive Advantage's argument that its TPV recordings demonstrate that consumers were not deceived.³⁰ As noted above, Advantage hired telemarketers to solicit consumers to switch from their existing long distance carriers to Advantage.³¹ After a telemarketer allegedly obtained a consumer's consent to switch carriers, the call was transferred to a third party to verify the switch. Advantage asserts that the TPV recordings (which do not include the sales portion of the call) "undermine[] any claim that consumers . . . believed they were speaking with representatives of their existing carriers."³²

12. We disagree with Advantage that the submitted TPV recordings of consumers disprove that unlawful misrepresentations were made during the telemarketing calls. Prior to the TPV process, the telemarketers in their sales calls misrepresented Advantage's affiliation with the consumers' then-current carriers, and we are not convinced that questions posed during the separate TPV call could have provided enough information to consumers to cure those misrepresentations.³³ First, and most importantly, this argument suggests that a misrepresentation (or any practice found to be unjust or unreasonable) under Section 201(b) constitutes a violation only if a consumer is actually deceived or harmed. Section 201(b), however, has no requirement.³⁴ And logically so. We are not required to allow a deceptive practice to continue until consumers are actually harmed before taking enforcement action. Thus, a violation of Section 201(b) turns on the question of whether a carrier practice is unjust or unreasonable "in connection with" a communications service.³⁵ Second, even assuming, as Advantage argues, that the TPV call somehow "cleared up" the original misrepresentation in the minds of the affected consumers as to the identity of the carrier, it does not change the fact that through its telemarketers Advantage was engaged in an unjust and unreasonable practice in the first instance and that violation of Section 201(b) of the Act could not be "cured" by the subsequent TPV call. Regardless, the record in this case underscores that the TPV calls did not clear up the initial misrepresentation. Specifically, we find that the complaints themselves demonstrate that the verifier did not cure or clarify the misrepresentations in the consumers' minds. In their complaints, the consumers allege that their carriers had been changed based on

²⁹ See Letters from Advantage responding to consumer complaints (on file in EB-TCD-12-00004803). TPV is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. TPV must comply with Section 64.1120(c)(3) of the Commission's rules. See 47 CFR § 64.1120(c)(3).

³⁰ See NAL Response at 9-10.

³¹ See *supra* para. 8.

³² NAL Response at 10.

³³ Advantage also argues that its call-back procedures should have clarified its identity to consumers. *Id.* at 8. For the reasons set forth in para. 12, we disagree that this contention is relevant to the issue of whether the Company's telemarketers made misrepresentations to consumers.

³⁴ See 47 U.S.C. § 201(b).

³⁵ Moreover, enforcement matters arising under Section 503 likewise have no "actual harm" requirement—all that is needed to support a forfeiture penalty in a Section 503 proceeding is a determination that the Company has willfully or repeatedly failed to comply with a provision of the Act or an FCC order. See 47 U.S.C. § 503(b)(1)(B); see also *Madison Communications, Inc.*, Order, 8 FCC Rcd 1759, 1760, para. 7 (1993) ("The fact that no actual harm was demonstrated does not affect our determination that this was a serious violation justifying a significant forfeiture."). Furthermore, we note that forfeiture proceedings are distinct from complaint proceedings. The issue of whether consumers are deceived by a misrepresentation may be relevant in a complaint proceedings in determining the amount of damages, but that issue is not necessarily relevant in the enforcement context. In the enforcement context, fines for wrongful conduct are assessed to protect the public, as opposed to damages assessed in the complaint context to make a particular member of the public whole.

Advantage's misrepresentations, and the TPV recordings contain no evidence that consumers believed Advantage was a separate entity from their existing carriers. Thus, the TPV recordings do not disprove the violation of Section 201(b) stemming from these misrepresentations.

13. Finally, we disagree with Advantage that its sales scripts, telemarketing safeguards, and anti-slamming policies prevented misrepresentations, or in any way relieved Advantage of its statutory and regulatory obligations.³⁶ The evidence shows that these alleged safeguards failed. Advantage essentially argues that its telemarketers must not have followed its sales scripts because the scripts contained no misrepresentations.³⁷ That issue may be a dispute between Advantage and its contractors,³⁸ but it is not a defense to a statutory or rule violation. Advantage is responsible for the actions of contractors acting for or on its behalf.³⁹ Based on the preponderance of the evidence, including consistent statements from consumers who filed complaints against Advantage, we affirm the findings in the *NAL* that Advantage made misrepresentations to 38 consumers, in violation of Section 201(b) of the Act.

2. Advantage Placed Unauthorized Charges on Consumers' Telephone Bills (Cramming)

14. Cramming can occur either when third parties place or cause to be placed unauthorized charges on consumers' local telephone bills or when billing carriers place unauthorized charges on the telephone bills of their own customers for their own services or those of a third party.⁴⁰ In either case, any assessment of an unauthorized charge or fee on a telephone bill or for a telecommunications service is an "unjust and unreasonable" practice under Section 201(b) of the Act.⁴¹

15. The Commission found in the *NAL* that Advantage placed charges on 56 consumers' local telephone bills or bills Advantage sent them directly for services they did not authorize.⁴² While Advantage may have sought the consumers' authorization to change their preferred long distance providers (in the slamming context), the Commission treated the complaints as Section 201(b) cramming violations because either Advantage never switched the consumers' preferred carriers, or Advantage continued to bill them without authorization after the affected consumers returned to their preferred carriers.⁴³

16. Advantage first argues that the Commission did not provide proper notice of what the Company is accused of because the *NAL* does not specify exactly which or how many of the cramming violations resulted from a failed carrier switch or from charges Advantage assessed after the consumer

³⁶ See *NAL* Response at 5.

³⁷ See *id.* at 7-8.

³⁸ See *id.*, Exh. A (Advantage Telecommunications Sales Script).

³⁹ See 47 U.S.C. § 217.

⁴⁰ See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437, 4439, paras. 1, 6 (2012); see also *Main Street Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8853-54, para. 2 (2011) (*Main Street NAL*).

⁴¹ See, e.g., *LDDI MO&O*, 15 FCC Rcd at 3302, para. 14 (finding 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); see also *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558, 15564, 15567, paras. 12 and 16 (2012); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8870, para. 22 (2011); *Main Street NAL*, 26 FCC Rcd at 8859, para. 21; *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, 8849, para. 20 (2011); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, 8880, para. 21 (2011).

⁴² See *NAL*, 28 FCC Rcd at 6849-50, paras. 17-18.

⁴³ *Id.* at 6850, para. 18.

was able to switch away from Advantage and return to his or her preferred carrier.⁴⁴ This information, however, would have been sent to Advantage from its underlying wholesale carrier when the consumer's local exchange carrier (LEC) either rejected the carrier switch or returned the consumer to his or her preferred carrier at the consumer's request.⁴⁵ Regardless, the issue is irrelevant to whether any of the consumers authorized Advantage to charge them for service in the first place.⁴⁶ The only evidence Advantage points to as proof that it obtained authorization from consumers to charge them are its TPV recordings.⁴⁷ As discussed in detail below, we find that Advantage's TPV recordings did not comply with the Commission's verification rules, which are meant to verify that a consumer previously authorized a carrier change.⁴⁸ In this case, each of the complainants denies that he or she wanted to switch their long distance service providers to Advantage.⁴⁹

17. Advantage admits that "mistakes do occur" and that the failure to switch some of the complainants to Advantage was the result of the confusing and unreliable Transaction Code Status Indicator (or TCSI) process, which "often makes it difficult [for Advantage] to determine what actually occurred" after it submits a telephone number to be switched.⁵⁰ The fact that the process for changing a consumer's carrier may at times have been confusing to Advantage is no defense to charging consumers for service they did not authorize. Similarly, Advantage's argument that because some consumers failed to notify Advantage (instead of their LEC) that they were cancelling Advantage's service and returning to their preferred carriers, Advantage "naturally continued to bill [them]" is unavailing.⁵¹ Advantage fails to provide any evidence that these consumers authorized Advantage's service.

18. Finally, Advantage suggests that certain consumers who stated they did not authorize Advantage's service are not credible.⁵² Advantage characterizes these consumers as "customers" and claims they filed complaints after "using" its service for many months.⁵³ Assuming Advantage became the consumers' carrier many months prior to the date they filed a complaint does not mean they authorized Advantage's service. Indeed, complainants confirm in their complaints that they had never heard of Advantage before discovering the charges and did not know that their preferred carrier had been switched to Advantage. Thus, we affirm the findings in the *NAL* that Advantage placed unauthorized charges on 56 consumers' telephone bills, in violation of Section 201(b) of the Act.⁵⁴

B. Advantage Violated Section 258 of the Act and Section 64.1120 of the Rules (Slamming)

19. 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

⁴⁴ NAL Response at 14.

⁴⁵ See *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17206, para. 21 (2013) (explaining that the reseller's underlying carrier routinely provides information to the reseller regarding all transactions on the reseller's end-users' accounts).

⁴⁶ See *NAL*, 28 FCC Rcd at 6852, para. 21.

⁴⁷ NAL Response at 14.

⁴⁸ See *infra* paras. 19-21.

⁴⁹ As noted in the *NAL*, in many cases, Advantage did not complete the carrier switch and therefore was not providing any service to the consumer, yet the Company billed them anyway. *NAL*, 28 FCC Rcd at 6844, para. 2.

⁵⁰ NAL Response at 15-17.

⁵¹ *Id.* at 19.

⁵² *Id.* at 17.

⁵³ *Id.* at n.8.

⁵⁴ *NAL*, 28 FCC Rcd at 6849-50, paras. 17-18.

toll service except in accordance with such verification procedures as the Commission shall prescribe.”⁵⁵ Section 64.1120 of the Rules prohibits carriers from submitting a request to change a consumer’s preferred provider of telecommunications services before verifying authorization from the consumer; carriers can verify that authorization in one of three specified ways, including TPV.⁵⁶ If a carrier relies on TPV, the verifier must be independent of the carrier and, among other things, must confirm that the consumer with whom the verifier is speaking: (i) has the authority to change the carrier associated with the telephone number in question, (ii) in fact wishes to change carriers, and (iii) understands that he or she is authorizing a carrier change.⁵⁷

20. Advantage argues that it did not violate Section 258 of the Act or Section 64.1120 of the Rules because, “when taken in their entirety, the third party verifications clearly demonstrate Advantage did not mislead its customers, who were made fully aware that the purpose of the call was to change the business’ preferred carrier.”⁵⁸ The Company further contends that the Commission failed to consider the overall impression and content of the TPV recordings, and instead erroneously focuses on “isolated phrases or statements.”⁵⁹ We disagree. As discussed above, Section 64.1120(c)(3) of the Rules sets forth detailed procedures that carriers using TPV to verify consumer authorization must follow. The carrier’s verifier must confirm that the person on the call wants and authorizes a *carrier change*—not an upgrade to existing service, bill consolidation, or any other transaction.⁶⁰ Advantage acknowledges, however, that its verifiers told the consumers that the purpose of the verification was to confirm “this change in *service*” and asked the consumers if they were authorizing Advantage to “change [their] long distance *service*. . . .”⁶¹

21. As we discussed in the *NAL*, the purpose of the verification procedure is to confirm that the consumer has authorized a *carrier change*.⁶² The Commission explained in its *Slamming Fourth Report and Order* that “some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose.”⁶³ Thus, “the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”⁶⁴ Advantage’s characterization of the Commission’s findings as “parsing out isolated portions of recordings”⁶⁵ does not change the fact that its TPVs did not comply with these Rules. While these violations may appear to be technical in nature, in this case where credible complainants contend that they did not intend to change carriers at all, this rule is crucial to protect consumers.⁶⁶ We therefore affirm the

⁵⁵ 47 U.S.C. § 258(a).

⁵⁶ 47 CFR § 64.1120(c)(1)-(3).

⁵⁷ *Id.* § 64.1120(c)(3)(iii).

⁵⁸ *NAL* Response at 12.

⁵⁹ *Id.* at 13.

⁶⁰ 47 CFR § 64.1120(c)(3)(iii).

⁶¹ *NAL* Response at 12 (emphasis added).

⁶² *NAL*, 28 FCC Rcd at 6853-54, paras. 24-25.

⁶³ *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) (*Slamming Fourth Report and Order*).

⁶⁴ *Id.* (quoting *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)).

⁶⁵ *NAL* Response at 13.

⁶⁶ See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

findings in the *NAL* that Advantage violated Section 258 of the Act and Section 64.1120(c)(3) of the Rules by failing to follow all of the Commission's third party verification requirements with respect to eight consumers.

C. Advantage Violated the Commission's Truth-in-Billing Rules

22. We also affirm the findings in the *NAL* that where Advantage billed consumers directly, it failed to clearly and plainly describe the charges, in violation of Section 64.2401(b) of the Commission's "truth-in-billing" rules.⁶⁷ Under these rules, "[c]harges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received"⁶⁸ The purpose of the truth-in-billing rules is "to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service."⁶⁹ In addition, the rules are "intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service."⁷⁰

23. In the *NAL*, the Commission found that Advantage's descriptions of the charges it billed directly to consumers were not sufficiently clear or specific to aid them in assessing the bills, as the Rules require.⁷¹ Advantage's bills included charges identified as "MRC," "CCRF," and "PICC," with no indication of what these acronyms represent; nor was there any plain language description of the charges Advantage was assessing.⁷² Advantage first argues that 37 of the 50 bills the Commission found to have violated the Rules "were not bills at all."⁷³ Rather, it claims they were statements sent for "collections purposes" after Advantage did not receive payments from the consumers' LECs, and therefore are not subject to the truth-in-billing regulations.⁷⁴ We disagree.

24. Based on our review of the record before us, we find that the statements Advantage mailed to consumers were, in fact, bills for telecommunications service. All of Advantage's bills are identified as "invoices" and say nothing about the statement being a collection notice or a follow-up notice to a LEC bill.⁷⁵ In fact, most of the consumers received multiple bills directly from Advantage

⁶⁷ *NAL*, 28 FCC Rcd at 6854-55, para. 27.

⁶⁸ 47 CFR § 64.2401(b).

⁶⁹ *Id.* § 64.2400.

⁷⁰ *Id.*

⁷¹ *NAL*, 28 FCC Rcd at 6854-55, para. 27.

⁷² Many complainants stated they had no idea what Advantage was charging them for based on the bills they received. *See, e.g.*, Complaint [REDACTED]; Complaint from Dycor USA, Better Business Bureau; Complaint from Albion Bowling Center, FCC 12-C00427608.

⁷³ *NAL* Response at 20. Advantage says these 37 consumers were previously billed by their LECs for Advantage's service, although Advantage provides no evidence of the LEC billings. Further, as explained below, it is not clear from Advantage's *NAL* Response whether the remaining 13 consumers were billed for Advantage's charges through their LECs.

⁷⁴ *Id.* Advantage seems to suggest that the remaining 13 consumers received bills directly from Advantage without first being billed by their LECs, likely because Advantage did not complete the carrier switch and simply began billing the consumers for service.

⁷⁵ Advantage asserts that "the customer likely did not understand that the statement it received from Advantage was Advantage's effort to collect a bill which had already been sent to the customer by the LEC." *NAL* Response at 21-22.

with different amounts due,⁷⁶ demonstrating that Advantage was not simply billing consumers for past amounts due, but for new charges and fees. As discussed in the *NAL*, these bills itemized the new charges as “MRC,” “CCRF,” and “PICC,” and failed to provide consumers with clear, plain language descriptions of the charges necessary for them to determine what they were being billed for.⁷⁷ Indeed, consumers believed these notices to be “bills” from Advantage. P. Yingling of Barlow Road Repairs said that she “received a bill in the mail from Advantage Telecommunications Corp for calls that were not made . . . I want this bill cancelled, and I do not want any further billings from Advantage.”⁷⁸ [REDACTED] received a bill from Advantage that “included amounts, but no explanation of charges, no numbers called, call times or length of calls.”⁷⁹ Like these complainants, many consumers had never heard of Advantage and were unaware that their service had been switched to Advantage and thus only became aware of the charges when they received a bill directly from Advantage. Further, while Advantage attempts to characterize its bills as “collection notices,” the label does not change the fact that these were bills issued by Advantage for Advantage’s telecommunications services and as such must comply with Section 64.2401(b) of the Commission’s “truth-in-billing” rules. Advantage had a separate process for trying to collect payments it claimed it was owed. As noted in the *NAL*,⁸⁰ Advantage often referred consumers to a collections agency, which sent a separate notice to consumers that was clearly identified as a “Collection” notice from a “Debt Collector.”⁸¹

25. Even assuming that Advantage had previously charged consumers through their LEC bills for the same charges it later billed consumers for directly (which Advantage has failed to demonstrate), the truth-in-billing rules would still apply. Save for two narrow exceptions not at issue here, the Rules are explicit that they apply to “*all* bills containing charges for intrastate or interstate services.”⁸² Advantage contends that it is the responsibility of the LEC issuing a consumer’s local telephone bill to ensure that Advantage’s charges are clearly described; however, it also states that Advantage cannot know and does not have any control over what a LEC places on consumers’ LEC bills.⁸³ Advantage cannot have it both ways and conveniently characterize a bill for service as a collection notice simply to avoid compliance with the Rules.

26. Finally, Advantage’s argument also fails to consider that the charges it billed consumers were unauthorized. The invoices Advantage sent to customers were bills for telecommunications “services,” and therefore must contain “a brief, clear, non-misleading, plain language description of the service or services rendered.”⁸⁴ Advantage’s bills included no such descriptions, and consumers confirmed that they were confused by the charges that appeared on Advantage’s bills because they had

⁷⁶ Many of these bills are included in the Appendix to the *NAL*; others were not included as they were dated outside of the one-year statute of limitations period.

⁷⁷ For instance, the bills include a new charge for “CCRF” that is dated the same date as the bill itself. *See, e.g.*, Advantage bills sent to the Counseling and Enrichment Center; Swatch Works; JM Building Remodeling Company, Inc.; George Popper, PhD.; Benna Sherman, PhD.

⁷⁸ See Complaint from Barlow Road Repairs.

⁷⁹ [REDACTED]

⁸⁰ *See NAL*, 28 FCC Rcd at 6851-52, para. 20.

⁸¹ *See* Notice to Summit Financial Consulting from First Federal Credit Control, Inc.; Notice to JM Building Remodeling Company, Inc. from First Federal Credit Control, Inc. (on file in EB-TCD-12-00004803).

⁸² 47 CFR § 64.2400(b) (emphasis added).

⁸³ *NAL* Response at 23. Advantage asserts that presumably the LECs defined the acronyms for particular charges on their bills, and thus consumers would have become familiar with the same acronyms that Advantage used on its direct bills. *NAL* Response at 23-24. For the reasons discussed above, we reject this argument.

⁸⁴ *See* 47 CFR § 64.2401(b). Advantage’s bills did not include just past due amounts that the Company previously billed for, but contained new charges as well. *See supra* note 76.

not authorized the Company's services and the bills contained insufficient information describing such charges.⁸⁵ When the consumers discovered the unauthorized charges, cancelled Advantage's service, and received a credit or refund from the LEC for the unauthorized charges, Advantage nonetheless continued to pursue payment by directly sending the consumers bills for these disputed charges and new charges. The Advantage bills (mailed long after the initial LEC bill containing the unauthorized charges) had no information about the specific charges and in some cases were sent many months after the consumers had received a credit from the LEC for the unauthorized charges. This failure to include a non-misleading plain language description of the charges sufficiently clear so as to allow consumers the ability to ascertain what the charges were for is in direct violation of Section 64.2401 of the Commission's "truth-in-billing" rules. We therefore affirm the findings in the *NAL* that Advantage violated Section 64.2401(b) of the Rules with respect to 50 bills it sent to consumers.⁸⁶

D. The Forfeiture Amount

27. After considering the relevant statutory factors, the Commission's *Forfeiture Policy Statement*,⁸⁷ and the arguments advanced by Advantage in its *NAL* Response, we find that Advantage is liable for a total forfeiture of \$1,000,000. As explained in the *NAL*, the Commission applied the \$40,000 base forfeiture to each of the 64 apparent cramming and slamming violations which resulted in a total forfeiture of \$2,560,000.⁸⁸ The Commission then proposed to triple the base forfeiture for each of the 38 crams and slams involving misrepresentation—making the penalty for each such violation \$120,000.⁸⁹ This increased the proposed forfeiture to \$5,600,000.⁹⁰ In addition, the Commission proposed a \$40,000 forfeiture for each telephone bill Advantage sent to consumers without adequate description of the charges assessed. Applying the \$40,000 base forfeiture to the 50 telephone bills at issue resulted in an additional \$2,000,000, bringing the total proposed forfeiture to \$7,600,000.⁹¹ Advantage argues that the Commission's proposed forfeiture of \$7,600,000 is excessive, that Advantage is unable to pay the forfeiture, and that the forfeiture should be reduced to an amount "proportionate to Advantage's gross revenues."⁹²

28. Section 503(b)(1) of the Act provides, in relevant part, 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.⁹³ At the time the violations at issue in the instant case took place, Section 503(b)(2)(B) of the Act and Section 1.80 of the Rules authorized the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act by

⁸⁵ See *NAL*, 28 FCC Rcd at 6854, para. 27 & n.78 (quoting complainant [REDACTED], who received a bill from Advantage that "included amounts, but no explanation of charges, no numbers called, call times or length of calls").

⁸⁶ *NAL*, 28 FCC Rcd at 6854, 6857, paras. 2, 32.

⁸⁷ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100, para. 27 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

⁸⁸ *NAL*, 28 FCC Rcd at 6855, para. 30.

⁸⁹ *Id.* at 6856, para. 30.

⁹⁰ *Id.*

⁹¹ *Id.* at 6857, para. 32.

⁹² *NAL* Response at 30.

⁹³ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

common carriers.⁹⁴ 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.”⁹⁵ The Commission carefully considered these factors in the *NAL*,⁹⁶ and we do so again here.

1. Advantage’s Demonstrated Inability to Pay Warrants a Partial Reduction of the Forfeiture

29. Advantage argues that the Commission’s proposed forfeiture of \$7,600,000 is excessive and that the Company is unable to pay the forfeiture.⁹⁷ Advantage acknowledges that the Commission “has repeatedly held that a carrier’s gross revenue is the most relevant factor” in considering the ability of a carrier to pay a proposed forfeiture.⁹⁸ It maintains, however, that the Commission’s analysis of Advantage’s ability to pay should rely upon the Company’s net revenues,⁹⁹ including the *NAL*’s impact on Advantage’s financial condition, in determining its ability to pay.¹⁰⁰ In support of its inability to pay argument, the Company provided three years of tax returns.¹⁰¹

⁹⁴ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) (\$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, 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 amended its relevant rules on December 30, 2016, effective January 24, 2017. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 82 Fed. Reg. 8170 (January 24, 2017). Here, the applicable maximum penalties are based on the Commission’s inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

⁹⁵ 47 U.S.C. § 503(b)(2)(E); see also 47 CFR § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

⁹⁶ *NAL*, 28 FCC Rcd at 6855-57, paras. 28-32.

⁹⁷ *NAL* Response at 30.

⁹⁸ *Id.* at 33 (citing *LDDI MO&O*, 15 FCC Rcd at 3305, para. 22).

⁹⁹ *Id.* at 35-36. Advantage points to specific expenses that it argues the Commission must consider, including its “network costs (*i.e.*, charges paid to Advantage’s underlying carriers for the services it resells), marketing and other operational expenses (e.g., customer service, verification costs, costs associated with billing services, etc.), and costs associated with regulatory compliance (e.g., Universal Service Fund contributions, FCC regulatory fees, professional fees, etc.), among others.” *Id.*

¹⁰⁰ *Id.* at 36-37. Advantage contends that Verizon and CenturyLink terminated all billing on behalf of Advantage “immediately” after the *NAL* was released. *Id.* at 36. It further contends that one of its creditors found the *NAL* constituted a breach of a lending agreement with Advantage, and thus issued a notice of default demanding immediate payment from Advantage. *Id.* We find that these arguments do not require any further reduction in the forfeiture penalty. As described below, our ability to pay analysis relies on Advantage’s gross revenues from 2011, 2012, and 2013. See *infra* para. 31 & n.104 (explaining that we relied on Advantage’s 2011, 2012, and 2013 tax returns in calculating gross revenues). Any possible impact the *NAL* had on Advantage’s gross revenues beginning in May 2013 has therefore already been factored into our analysis. That one of Advantage’s creditors asserts that Advantage is in breach of contract is a private dispute wholly separate from this enforcement proceeding into which this Commission will not wade.

¹⁰¹ See *id.*, Exhs. E, F, G, and H. Advantage later supplemented its response with its 2012 and 2013 tax returns. See E-mail from Andrew B. Lustigman, Counsel to Advantage, to Erica H. McMahan, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 8, 2014, 12:21 PM); E-mail from Andrew B. Lustigman, Counsel to Advantage, to Erica H. McMahan, Attorney-Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 18, 2015, 2:40 PM).

30. While we understand that a company has operating costs and other expenses, we reject the notion that our analysis should rely on net revenue when determining a company's ability to pay. As Advantage concedes in its NAL response, the Commission has repeatedly held that gross revenue is the most relevant factor when considering a company's ability to pay a proposed forfeiture.¹⁰² The reasons for our reliance on gross revenue are twofold. First, relying on net revenues eliminates the economic incentives for companies to use the most cost-effective options in running their businesses. In an enforcement action like this against Advantage, we are imposing a forfeiture precisely because the target of our investigation engaged in illegal practices in violation of the Communications Act. If our analysis were to rely on net revenue as the indicator of a company's ability to pay, it would provide companies like Advantage with strong incentives to "gold plate" operating and other expenses to ensure that their balance sheets reflect an inability to pay fines when they are caught breaking the law. Using gross revenue as the indicator of ability to pay avoids these problems. Second, and equally important, asking us to look at operating and other expenses rather than gross revenue requires Commission staff to engage in a detailed review of a company's expenses to determine their purpose and legitimacy. Such a review necessarily involves Commission staff second guessing a carrier's business and financial choices. We continue to believe that we should avoid substituting our judgment for the business decisions of a company,¹⁰³ including its decisions related to particular costs and expenses. Relying on gross revenue eliminates the potential for gamesmanship to avoid fines and Commission staff having to review and then condone or disapprove of particular business decisions. For these reasons, we reject Advantage's request that our analysis rely on its operating and other expenses, and instead elect to follow our past precedent. Accordingly, we affirm that a company's gross revenues are "the best indicator of [its ability] to pay a forfeiture."¹⁰⁴

31. After applying our established ability to pay precedent to the facts here, we find that the \$7,600,000 forfeiture proposed in the NAL should be partially reduced. In this case, Advantage's tax returns show that the average of the Company's gross revenues over a three-year period was far less than the proposed forfeiture amount.¹⁰⁵ As discussed below, however, Advantage's ability to pay is only one factor we must consider when determining the appropriate forfeiture to impose. We must consider the totality of the circumstances of this case and thus conclude that only a partial reduction of the forfeiture is warranted.

2. Advantage's Egregious Misconduct and Substantial Harm to Consumers

32. The Act requires us to consider factors beyond a company's financial condition. As stated in the NAL, we find Advantage's actions egregious, as evidenced by the fact that it repeatedly changed consumers' preferred long distance providers without authorization verified in compliance with the Commission's verification procedures and placed unauthorized charges for its service on consumers'

¹⁰² See *Unipoint Technologies, Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, paras. 29-30 (2014); *LDDI MO&O*, 15 FCC Rcd at 3305, para. 22.

¹⁰³ See, e.g., *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5981-83, para. 19 (2010) ("Although the Commission has a responsibility to consider the financial qualifications of the transferee, it is not the Commission's role to substitute its business judgment for that of the applicants or the market: rather, the relevant question here is whether Frontier has the requisite financial qualifications to hold and use these Commission licenses and authorizations in the public interest.").

¹⁰⁴ See *LDDI MO&O*, 15 FCC Rcd at 3305, para. 22 ("[W]e have repeatedly held that a carrier's gross revenues are the best indicator of its ability to pay a forfeiture"); see also *PJB Communications of Virginia, Inc.*, Notice of Apparent Liability for Forfeiture, 7 FCC Rcd 2088, 2089, para. 8 (1992) (finding that gross receipts are a "very useful yardstick" in analyzing a company's financial condition for forfeiture purposes).

¹⁰⁵ See Advantage's 2011, 2012, and 2013 tax returns (on file in EB-TCD-12-00004803).

telephone bills.¹⁰⁶ In 38 of the complaints included in the *NAL*, Advantage misled consumers to believe that the Company was calling on behalf of the consumers' current carriers. Additional consumers alleged similar deceptive misconduct by Advantage that occurred prior to the time covered by the *NAL*.¹⁰⁷ Advantage received these consumer complaints, yet the record shows that the Company took little action to correct the fraudulent behavior or terminate its relationship with the telemarketing company. The complaints regarding Advantage's deceptive marketing spanned the course of over a year; therefore, it appears that Advantage was aware of and benefited financially from its telemarketers' acts, and had more than sufficient time to terminate its relationship with its telemarketers during the relevant statute of limitations period. We have found this same type of willful and repeated use of deceptive marketing practices to be particularly egregious in other investigations.¹⁰⁸ Advantage was on notice that such misrepresentations to consumers may result in substantial forfeiture amounts.¹⁰⁹

33. In addition, we must consider the substantial harm Advantage caused consumers. The record shows that despite having cancelled service with Advantage, many consumers contend that Advantage continued to charge them for monthly service, other fees, and taxes. Advantage billed these consumers directly for the unauthorized charges, often many months after it switched their service and long after the consumers had returned to their preferred carriers.¹¹⁰ In many cases, Advantage refused to refund the unauthorized charges, and in some, the Company referred the consumer to a collections agency.¹¹¹ Advantage forced consumers to spend significant time and energy to return to their preferred carriers, obtain refunds to which they were entitled, and respond to collections agencies.¹¹²

34. A company's inability to pay is one factor we must consider in assessing a forfeiture against a carrier for violations of the Act and the Rules. However, forfeitures must also be sufficient to protect the interests of consumers and deter future violations.¹¹³ Carriers cannot expect that paying forfeitures is simply the "cost of doing business."¹¹⁴ Accordingly, after weighing the various factors

¹⁰⁶ See *Preferred Forfeiture Order*, 30 FCC Rcd at 13725-26, para. 29 (finding company's actions egregious, as evidenced by the fact that it repeatedly engaged in misrepresentation and changed consumers' preferred long distance providers without properly verifying their authorization).

¹⁰⁷ See consumer complaints on file in EB-TCD-12-00004803; see also *NAL*, 28 FCC Rcd at 6849, para. 15 n.41.

¹⁰⁸ See, e.g., *United NAL*, 27 FCC Rcd at 16505-06, paras. 17-18 (finding company's deceptive conduct particularly egregious because it repeatedly misled consumers into believing it was calling on behalf of their current carriers); *Silv NAL*, 25 FCC Rcd at 5186, para. 16 (finding company's conduct particularly egregious in light of the misrepresentations made by the company's telemarketers).

¹⁰⁹ See *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16494-95, paras. 14-15 (2012); *United NAL*, 27 FCC Rcd at 16505-06, paras. 17-18; *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

¹¹⁰ See *NAL*, 28 FCC Rcd at 6851-52, para. 20.

¹¹¹ See *id.* at 6850-52, paras. 19 and 20.

¹¹² See, e.g., *Main Street NAL*, 26 FCC Rcd at 8859, 8861, paras. 19-20, 24 (in calculating the proposed forfeiture the Commission considered the difficulty consumers experienced in attempting to obtain refunds).

¹¹³ See, e.g., *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133, 8142, para. 19 (2001).

¹¹⁴ We also note as we did in the *NAL* that the owner, president, and CEO of Advantage, Robert Sorrentino, is also the owner of Reduced Rate Long Distance (Reduced Rate) and former telecommunications provider Horizon Telecom, Inc. (Horizon). The Bureau issued an *NAL* against Reduced Rate for apparently failing to respond to consumer complaints served on the company and another *NAL* to Horizon for apparently violating the Commission's carrier change rules, *i.e.*, slamming. See *Reduced Rate Long Distance, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2697, 2699, paras. 6-7 (EB 2008); *Horizon Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3485, 3491, paras. 15-17 (2008). The Bureau entered into a consent decree with Horizon and Reduced Rate, which was signed by Sorrentino, agreeing to a significant reduction in the proposed forfeitures based on the companies' inability to pay in exchange for their agreement to implement a compliance

(continued....)

described above, we determine that the forfeiture proposed in the *NAL* should be adjusted, and we assess a forfeiture of \$1,000,000 for Advantage's willful and repeated violations of Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401(b) of the Rules. We find that, based on the evidence in the record, the amount appropriately reflects the nature, circumstances, extent, and gravity of Advantage's violations, as well as the Company's ability to pay.¹¹⁵

IV. CONCLUSION

35. Based on the record before us and in light of the applicable statutory factors, including a carrier's ability to pay, we conclude that Advantage willfully and repeatedly violated Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401(b) of the Rules by changing the preferred carriers of eight consumers without authorization verified in accordance with the Commission's verification procedures; charging 56 consumers for service without authorization, and, in 38 of those instances, making misrepresentations to the consumers; and issuing telephone bills that failed to comply with the truth-in-billing rules. Accordingly, we reduce the forfeiture proposed in the *NAL* and now impose a \$1,000,000 penalty.

V. ORDERING CLAUSES

36. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹¹⁶ and Section 1.80 of the Rules,¹¹⁷ Advantage Telecommunications Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one million dollars (\$1,000,000) for willfully and repeatedly violating Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401(b) of the Rules.

37. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release date of this Forfeiture Order.¹¹⁸ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹¹⁹

38. 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. Advantage Telecommunications Corp. shall send electronic notification of payment to Lisa Williford at lisa.williford@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.¹²⁰ 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:

(Continued from previous page) _____
plan. See *Horizon Telecom, Inc. and Reduced Rate Long Distance, LLC*, Adopting Order and Consent Decree, 27 FCC Rcd 2998, 3000, 3010, paras. 1 and 14 (EB 2012). This is the third time consumers have been harmed by these kinds of abuses by Sorrentino's companies and the third time the Commission has had to expend resources to investigate and address alleged misconduct by Sorrentino's companies. See *NAL*, 28 FCC Rcd at 6856, para. 30, n.94.

¹¹⁵ See 47 U.S.C. § 503(b)(2)(E); see also 47 CFR § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

¹¹⁶ 47 U.S.C. § 503(b).

¹¹⁷ 47 CFR § 1.80.

¹¹⁸ *Id.*

¹¹⁹ 47 U.S.C. § 504(a).

¹²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

39. 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 20554.¹²¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

40. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Advantage Telecommunications Corp.'s attorney, Andrew Lustigman, Olshan, Frome, Wolosky, LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹²¹ See 47 CFR § 1.1914.