

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

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

**FORFEITURE ORDER**

**Adopted: March 19, 2019**

**Released: March 21, 2019**

By the Commission: Commissioner O’Rielly approving in part, dissenting in part, and issuing a separate statement.

**I. INTRODUCTION**

1. We impose a penalty of \$2,320,000 against Long Distance Consolidated Billing Company (LDCB or Company) for changing consumers’ long distance carriers without proper authorization, a practice commonly known as “slamming,” and charging consumers for service that they never authorized, a practice commonly known as “cramming.” In addition, we find that LDCB’s telemarketers engaged in deceptive marketing practices by impersonating consumers’ existing long distance carriers and misrepresenting the true nature of their sales calls. 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. After reviewing LDCB’s response to the *Notice of Apparent Liability for Forfeiture (NAL)*, we find reason to reduce the proposed penalty by \$80,000 and we therefore assess a forfeiture of \$2,320,000.

**II. BACKGROUND**

2. The Federal Communications Commission’s (Commission’s or FCC’s) Enforcement Bureau (Bureau) initiated an investigation of LDCB<sup>1</sup> after reviewing more than 70 complaints filed against the Company by consumers, many of whom are small businesses. The complaints alleged a pattern of misconduct whereby LDCB misrepresented its identity or the nature of its sales calls when marketing its long distance service to consumers. LDCB used the “authorizations” fraudulently obtained through this misconduct to change the consumers’ long distance carriers and bill them for LDCB’s service.

3. On July 30, 2015, the Commission unanimously adopted an *NAL*<sup>2</sup> proposing a \$2,400,000 forfeiture against LDCB for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act), and Section 64.1120 of the Commission’s rules (Rules).<sup>3</sup> 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

<sup>1</sup> LDCB is a non-facilities based interexchange carrier with offices at 4010 W. Walton Blvd, Suite B, Waterford, MI 48329. LDCB’s President is Jan M. Lowe.

<sup>2</sup> The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Long Distance Consolidated Billing Company*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664, 8664-65, paras. 2-3 (2015) (*NAL*).

<sup>3</sup> *Id.* See 47 U.S.C. §§ 201(b), 258; 47 CFR § 64.1120.

consumer's existing carrier and/or otherwise misrepresenting the purpose of the telemarketing call;<sup>4</sup> and (ii) placing unauthorized charges for service on consumers' local telephone bills.<sup>5</sup> In addition, the Commission found that LDCB 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.<sup>6</sup> The *NAL* ordered LDCB 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.<sup>7</sup>

4. On September 28, 2015, LDCB filed a response to the *NAL*, arguing that the *NAL* should be canceled or the forfeiture reduced.<sup>8</sup> The Company contends that: (i) its telemarketers acted beyond the scope of their authority when making misrepresentations to consumers;<sup>9</sup> (ii) imposing liability on LDCB for the improper sales pitches of its telemarketers is problematic from a First Amendment perspective, as the Commission "seeks to enforce content-based restrictions on speech;"<sup>10</sup> (iii) it did not slam consumers because its third party verification (TPV) recordings comply with the Rules;<sup>11</sup> (iv) it should not be liable for cramming violations because the TPV recordings show that consumers authorized a carrier change;<sup>12</sup> (v) the Commission's enforcement action violates due process requirements;<sup>13</sup> and (vi) five of the forty-nine violations are barred by the statute of limitations.<sup>14</sup> LDCB also argues that the proposed forfeiture is excessive and disproportionate to LDCB's ability to pay.<sup>15</sup>

5. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>16</sup> Section 1.80 of the Commission's rules (Rules),<sup>17</sup>

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<sup>4</sup> *NAL*, 30 FCC Rcd at 8666-68, paras. 5-12.

<sup>5</sup> *Id.* at 8669-70, paras. 17-19.

<sup>6</sup> *Id.* at 8668-69, paras. 13-16.

<sup>7</sup> *Id.* at 8672-73, para. 25.

<sup>8</sup> See Statement of Long Distance Consolidated Billing Co. Seeking Cancellation or Substantial Reduction of Proposed Forfeiture (Sept. 28, 2015) (on file in EB-TCD-14-00017401) (*NAL* Response). LDCB requested and was granted an extension of time, until September 28, 2015, to file a response to the *NAL*. See E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Cheng-yi Liu, Fletcher, Heald & Hildreth, P.L.C., Counsel for Long Distance Consolidated Billing Company (Aug. 4, 2015, 15:40 ET). LDCB filed a supplement to its *NAL* Response on May 13, 2016, and although the supplement was filed after the 30-day filing deadline, we address the additional arguments raised in the supplement. See Supplement to Statement Seeking Cancellation or Substantial Reduction of Proposed Forfeiture (May 13, 2016) (on file in EB-TCD-14-00017401) (Supplemental *NAL* Response).

<sup>9</sup> *NAL* Response at 1-14; Supplemental *NAL* Response at 1-6.

<sup>10</sup> Supplemental *NAL* Response at 6.

<sup>11</sup> *NAL* Response at 1-7.

<sup>12</sup> *Id.* at 8-9.

<sup>13</sup> Supplemental *NAL* Response at 9-11.

<sup>14</sup> *NAL* Response at 9-10.

<sup>15</sup> *Id.* at 14-16.

<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 CFR § 1.80.

and the Commission's *Forfeiture Policy Statement*.<sup>18</sup> When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>19</sup>

### III. DISCUSSION

6. We have fully considered LDCB's response to the *NAL*. Based on the preponderance of the evidence, including the consistent statements from consumers who filed complaints against LDCB, we conclude that LDCB violated Section 201(b) of the Act by making misrepresentations to 11 consumers<sup>20</sup> and placing unauthorized charges on 23 consumers' telephone bills.<sup>21</sup> We also affirm the findings in the *NAL* that LDCB violated Section 258 of the Act and Section 64.1120(c)(3) of the Rules by failing to follow the Commission's TPV requirements with respect to 15 consumers.<sup>22</sup> With the exception of LDCB's argument that two slamming violations occurred outside of the Commission's one-year statute of limitations, we find none of them persuasive. We therefore assess a forfeiture of \$2,320,000 for these violations.

#### A. LDCB Violated Section 201(b) of the Act

7. 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."<sup>23</sup>

##### 1. LDCB Violated Section 201(b) of the Act by Deceptively Marketing its Service to Consumers

8. 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 that are made to obtain a consumer's authorization to change his or her preferred long distance carrier, are unjust and unreasonable practices under Section 201(b) of the Act.<sup>24</sup> We affirm the findings of the *NAL*

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<sup>18</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>19</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>20</sup> *NAL*, 30 FCC Rcd at 8665-68, paras. 5-12.

<sup>21</sup> *Id.* at 8669-70, paras. 17-19. LDCB caused the charges to be placed on consumers' AT&T, CenturyLink, and Verizon telephone bills through its contract with billing aggregator, BSG Clearing Solutions. AT&T, CenturyLink, and Verizon placed the charges on the telephone bills of their customers. Section 201(b) applies whether a carrier places the charges on a consumer's telephone bill directly or indirectly through the billing carrier.

<sup>22</sup> *Id.* at 8668-69, paras. 13-16.

<sup>23</sup> 47 U.S.C. § 201(b).

<sup>24</sup> *See, e.g., Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723, 3725, para. 7 (2017) (*Advantage Forfeiture Order*); *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) (*BDP Forfeiture Order*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16491, para. 7 (2012) (*Preferred NAL*); *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*). Consistent with prior Commission decisions, 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. *See, e.g., Implementation of the Subscriber Carrier Selection Changes Provisions of the* (continued....)

that LDCB violated Section 201(b) by engaging in deceptive marketing practices in an effort to obtain authorization to change the long distance carriers of 11 consumers.<sup>25</sup> The contents of the 11 consumer complaints show, by a preponderance of the evidence,<sup>26</sup> that LDCB (through its telemarketers) violated Section 201(b). We find that the complainants' statements about their experiences with LDCB's telemarketers constitute reliable evidence of LDCB's Section 201(b) violations.<sup>27</sup>

9. LDCB does not directly refute this evidence; instead the Company argues that the apparent misrepresentations, "if true," are the result of the unauthorized actions of its third-party "independent contractors" acting beyond the scope of their authority.<sup>28</sup> The Company maintains that it provides a policy manual and sales script to its telemarketers to ensure that they market LDCB's service lawfully.<sup>29</sup> LDCB argues that Section 217 of the Act provides that a carrier can only be liable for the acts of its agent "acting within the scope of his employment;"<sup>30</sup> that imposing liability on LDCB is barred by "common principles of agency law" because the telemarketers were independent contractors, not employees of LDCB, and did not have either actual or apparent authority to engage in deceptive marketing.<sup>31</sup> LDCB also contends that, upon becoming made aware of a problem, it took corrective action by directing a "rogue" telemarketing company to terminate sales representatives suspected of misrepresenting LDCB's service to consumers.<sup>32</sup> Finally, LDCB argues that its TPV recordings are evidence that the consumers' allegations of misrepresentations are "potentially suspect," and that consumers had not been deceived to believe the transaction "involved anything other than a carrier change to LDCB."<sup>33</sup> We find none of these arguments persuasive and accordingly reject all of them.

10. The Commission has repeatedly held that carriers are responsible for the conduct of third parties acting on the carrier's behalf,<sup>34</sup> including telemarketers who are independent contractors.<sup>35</sup> LDCB

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*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.

<sup>25</sup> *NAL*, 30 FCC Rcd at 8665-68, paras. 5-12.

<sup>26</sup> The use of the "preponderance of the evidence" standard is the traditional standard in civil and administrative proceedings and is the one contemplated by the Administrative Procedure Act. 5 U.S.C. § 556(d). *See* 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*).

<sup>27</sup> *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").

<sup>28</sup> *NAL Response* at 11.

<sup>29</sup> *Id.* at 12.

<sup>30</sup> *Id.*

<sup>31</sup> Supplemental *NAL Response* at 1-5.

<sup>32</sup> *NAL Response* at 13.

<sup>33</sup> *Id.* at 13-14. Specifically, LDCB argues that its verifiers: "(1) disclosed that the purpose of the verification call was to 'obtain authorization for a carrier change to [LDCB], . . .'; (2) confirmed that the caller was 'authorized to make this carrier change . . .'; (3) confirmed an intention to make a carrier change; (4) confirmed authorization for the carrier changes; and (5) informed the caller that '[t]he call you received was made by a representative of [LDCB] which is independent of your local telephone company.'"

<sup>34</sup> *See Eure Family Ltd. Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000)

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is not relieved of liability simply because it provided its telemarketers with a policy manual and sales script and directed its telemarketers to market its service “through lawful means.”<sup>36</sup> LDCB essentially argues that its telemarketers must not have followed its sales script because the script contained no misrepresentations.<sup>37</sup> That issue may be a dispute between LDCB and its contractors,<sup>38</sup> but it is not a defense to a statutory or rule violation. Section 217 of the Act deems “the act, omission or failure of any . . . person acting for or employed by” any carrier to be the act, omission or failure of that carrier.<sup>39</sup> This language extends to entities acting on behalf of LDCB in marketing the Company’s services. The question under Section 217 is not whether these individuals were acting consistently with LDCB policy manuals, but whether they were acting “within the scope of their employment” as LDCB’s agents. To hold that Section 217 does not extend to independent contractors acting inconsistently with the carrier’s policy would create a loophole in the requirements of the Act and frustrate clear legislative intent.<sup>40</sup> The evidence shows that despite LDCB’s policy manual and “mandatory, approved sales script,”<sup>41</sup> LDCB’s telemarketers misrepresented their identity and the purpose of their sales calls to at least 11 consumers.<sup>42</sup> They did so on behalf of LDCB in an effort to switch consumers’ carriers to LDCB. The misrepresentations by LDCB’s telemarketers were made for the benefit of LDCB and within the scope of their engagement with LDCB (to enroll new customers). We therefore hold LDCB responsible for such misrepresentations.

11. We also reject LDCB’s claim that the Commission cannot hold LDCB liable for deceptive marketing because it cannot demonstrate that LDCB was aware of its telemarketers’

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(*LDDI MO&O*); *Vista Services Corp.*, Order of Forfeiture, 15 FCC Rcd 20646, 20650, para. 9 (2000) (*Vista Forfeiture Order*); *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); *see also Silv NAL*, 25 FCC Rcd at 5180, para. 5 & n.18.

<sup>35</sup> *See, e.g., Vista Forfeiture Order*, 15 FCC Rcd at 20650, para. 9; *Preferred Forfeiture Order*, 30 FCC Rcd at 13724, para. 26; *United NAL*, 27 FCC Rcd at 16502, para. 8 (each holding that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors); *Silv NAL*, 25 FCC Rcd at 5185, para. 14 (“[T]he Commission has held carriers to be responsible for the failures of their telemarketers and third party verification companies to obtain proper authorization and verification for changes made to consumers’ primary carriers.”).

<sup>36</sup> *See NAL Response* at 12.

<sup>37</sup> *See id.* at 7-8.

<sup>38</sup> *See Independent Contractor Agreements Attach. 27*, Letter from Cheng-yi Lui, Fletcher, Heald & Hildreth, P.L.C., Counsel for Long Distance Consolidated Billing Company, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 22, 2014) (on file in EB-TCD-14-00017401).

<sup>39</sup> *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 LDDI MO&O*, 15 FCC Rcd at 3300, para. 9; *Silv NAL*, 25 FCC Rcd at 5180, para. 5 & n.18.

<sup>40</sup> *See LDDI MO&O*, 15 FCC Rcd at 3300, para. 9 (“Congress’s clear intent in enacting section 217 was to ensure that common carriers not flout their statutory duties by delegating them to third parties”); *Vista Forfeiture Order*, 15 FCC Rcd at 20650, para. 9.

<sup>41</sup> *NAL Response* at 12.

<sup>42</sup> Additional consumers whose complaints pre-dated the *NAL* also alleged that LDCB’s telemarketers misrepresented their identity and the purpose of the call. *See Consumer complaints against LDCB* on file in EB-TCD-14-00017401.

misconduct.<sup>43</sup> The evidence shows that LDCB, in fact, had knowledge that its telemarketers were acting improperly. LDCB received numerous complaints from consumers informing LDCB that its telemarketers told them they were calling on behalf of or were affiliated with those consumers' current providers. In June 2014, a representative of Power Pro filed a complaint against LDCB stating:

I received a call from this company telling me that Century Link was moving everyone to consolidated billing and that since I already had everything through Century Link nothing would change on my bill. I very specifically asked at least twice if they were Century Link because I didn't want to change companies and he assured me they were . . . I am very upset that Long Distance Consolidated Billing Co. out right lied to me. . . .<sup>44</sup>

Months later, consumers were still complaining about LDCB's deceptive marketing practices. In January, 2015, Houston Duplicator Services explained that LDCB's telemarketer called the business and pretended to be calling from AT&T:

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.<sup>45</sup>

12. Further, an alleged lack of knowledge regarding its telemarketers' conduct or any precautions LDCB claims it has taken does not relieve the Company of liability.<sup>46</sup> As the Commission explained in the *Vista Forfeiture Order*, "[n]either Vista's alleged lack of knowledge or suspicions regarding its telemarketers' conduct nor the fact that Vista may have taken steps to prevent fraudulent schemes, exonerates the company. . . . '[W]illfully,' as employed in section 503(b) of the Act, does not require a demonstration that Vista knew it was acting unlawfully."<sup>47</sup> Thus, LDCB's alleged lack of knowledge would not relieve the Company of liability, but this lack of knowledge is not supported by the evidence in the record. After receiving similar complaints over the course of more than one year,<sup>48</sup> there is no evidence that LDCB took action to ensure the misrepresentations stopped. Instead, and despite the fact that LDCB was on notice of such misrepresentations, LDCB continued to do business with the telemarketing company involved. In response to complaints, LDCB said that while it "recognize[d] that there can sometimes be certain problems associated with telemarketing," the Company had a TPV recording evidencing the consumer's authorization to switch carriers to LDCB.<sup>49</sup> After the Bureau

<sup>43</sup> Supplemental NAL Response at 4–6.

<sup>44</sup> Complaint from Power Pro, Inc. (filed June 23, 2014). *See* Complaint from Platinum Auto Works (filed Jan. 8, 2014) (stating that LDCB misrepresented themselves to the company).

<sup>45</sup> Complaint from Houston Duplicator Services (filed Jan. 29, 2015).

<sup>46</sup> *See Vista Forfeiture Order*, 15 FCC Rcd at 20650, para. 10.

<sup>47</sup> *Id.* (footnotes omitted).

<sup>48</sup> *See generally* Complaints on file in EB-TCD-14-00017401, most of which were either received by a regulatory agency and sent to LDCB or were received by LDCB directly from consumers. Although the violations involving misrepresentations discussed in the *NAL* occurred between August 11, 2014, and February 19, 2015 (*See NAL*, 30 FCC Rcd at 8675, Appendix), the record includes complaints alleging misrepresentations by LDCB's telemarketers going back to January 2014.

<sup>49</sup> *See, e.g.*, Letter from April Copeman, Regulatory Compliance Director, LDCB, to Veronica Etheridge, Analyst, FCC Consumer & Governmental Affairs Bureau at 2 (June 8, 2015) (on file in EB-TCD-14-00017401); Letter from  
(continued....)

initiated its investigation, the Company claimed to have unsuccessfully requested that the telemarketing company at issue terminate employees for misconduct.<sup>50</sup> LDCB's efforts in this regard were insufficient, untimely, and do not excuse LDCB from liability for the misrepresentations at issue.

13. LDCB argues that imposing liability on LDCB for the improper sales pitches of its telemarketers is also problematic from a First Amendment<sup>51</sup> perspective, as the Commission "seeks to enforce content-based restrictions on speech."<sup>52</sup> The Company maintains that the First Amendment prevents the Commission from imposing any penalty on LDCB unless it can demonstrate that LDCB itself knowingly engaged in or was otherwise complicit in the alleged misconduct.<sup>53</sup> LDCB cites one case, *In re Grand Jury Matter, Gronowicz*,<sup>54</sup> for the proposition that the government may not impose liability on a speaker without proof of scienter. LDCB's reliance on *Gronowicz* is misplaced. The court in *Gronowicz* stated that "false statements made intentionally receive no first amendment protection in the post-publication sanctioning context."<sup>55</sup> The court also noted that "[f]raud is false speech in the purest sense, an intentional lie made to induce reliance."<sup>56</sup> The court concluded that Gronowicz could be prosecuted for misrepresentations about the book he had written.<sup>57</sup> Nothing in *Gronowicz* supports LDCB's claim that deceptive marketing (by its agents or otherwise) is protected speech under the First Amendment. Further, as discussed above, LDCB's assertion that it did not know about the telemarketers' deception<sup>58</sup> is contradicted by the evidence in the record, i.e., LDCB was served with the consumer complaints, knew about the misrepresentations, and benefitted financially from its telemarketers' acts.<sup>59</sup> Nevertheless LDCB continued to employ the telemarketers that perpetrated the misrepresentations.

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April Copeman, Regulatory Compliance Director, LDCB, to the Public Utility Commission of Texas at 2 (Oct. 24, 2014) (on file in EB-TCD-14-00017401) (responding to the complaints filed by Hof Construction and [REDACTED] and each stating that "as proof that LDCB submitted the PIC change with proper authorization, an independent third party verification recording was made with the consent of the complainant to record the phone call. . . . In the recording, an independent third party verification receives the consumer's intent and consent to a change in long distance service provider and it was clearly ascertained"). See also generally Letters from April Copeman, Regulatory Compliance Director, LDCB, to various regulatory agencies, in response to additional consumer complaints (on file in EB-TCD-14-00017401).

<sup>50</sup> See Letter from Cheng-yi Lui, Fletcher, Heald & Hildreth, P.L.C., Counsel for Long Distance Consolidated Billing Company, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 15, 2015) (explaining that [REDACTED]). LDCB contends, however, that the telemarketing company simply assigned different identification numbers to certain representatives instead of terminating them. NAL Response at 13.

<sup>51</sup> U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.").

<sup>52</sup> Supplemental NAL Response at 6.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> *Grand Jury Matter, Gronowicz*, 764 F.2d 983, 988 (3<sup>rd</sup> Cir. 1985) (*Gronowicz*).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Supplemental NAL Response at 6. LDCB argues strenuously that the Commission "imagined scienter" on the part of LDCB. *Id.* However, it is undisputed that LDCB was served with the consumer complaints and thus was on actual notice of the misrepresentations by its telemarketers.

<sup>59</sup> See *NAL*, 30 FCC Rcd at 8668, para. 12.

14. We also find unpersuasive LDCB's argument that its TPV recordings demonstrate that consumers were not deceived.<sup>60</sup> As noted above, LDCB hired telemarketers to solicit consumers to switch from their existing long distance carriers to LDCB.<sup>61</sup> After a telemarketer allegedly obtained a consumer's consent to switch carriers, the call was transferred to a third party to verify the switch. LDCB asserts that the recordings of the verification call (which do not include the sales portion of the call) "serve as evidence that the allegations of apparent misrepresentations are potentially suspect" and "uncorroborated."<sup>62</sup>

15. We disagree with LDCB that the TPV recordings it submitted to the Commission automatically disprove that unlawful misrepresentations were made during the separate telemarketing calls. First, and most importantly, this argument suggests that a misrepresentation constitutes a violation of Section 201(b) only if a consumer is actually deceived or harmed. Section 201(b), however, has no requirement that a practice must create actual deception or cause harm in order to find that it is unjust or unreasonable.<sup>63</sup> A practice is unjust or unreasonable based on the conduct at issue, not a subjective examination of its impact on each individual consumer or whether a particular consumer was in fact misled. Finding violations based on the impact of the misconduct on each individual customer, would create unacceptable uncertainty about whether or not a practice would violate the law in regard to a particular consumer. Thus, a violation of Section 201(b) turns on the question of whether a carrier's practice (in the instant case, that a misrepresentation was made) is an unjust or unreasonable practice "in connection with" a communications service.<sup>64</sup>

16. Even if we were to accept the argument that the TPV call "cleared up" the original misrepresentation in the minds of affected consumers as to the identity of the carrier, it does not change the fact that, through its telemarketers, LDCB engaged in an unjust and unreasonable practice in the first instance and the violation of the Act could not be "cured" by the reliance on the subsequent TPV call. Regardless, the record in this case underscores that the TPV calls did not cure the initial misrepresentation. Specifically, we affirm the finding in the *NAL* that the complaints themselves demonstrate that the verifier did not cure or clarify the misrepresentations in the consumers' minds.<sup>65</sup> These complaints are reliable, in part, because while they contain unique descriptions of consumers' interactions with LDCB or its contractors, they are detailed, consistent but not duplicative, and specific.<sup>66</sup>

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<sup>60</sup> See *NAL* Response at 13-14; Supplemental *NAL* Response at 8-11. 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 Rules. See 47 CFR § 64.1120(c)(3).

<sup>61</sup> See *supra* para. 8.

<sup>62</sup> *NAL* Response at 13.

<sup>63</sup> See 47 U.S.C. § 201(b).

<sup>64</sup> 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 complaint proceedings in determining the amount of damages, but that issue is not necessarily relevant in the enforcement context. As opposed to damages assessed in the complaint context, which are intended to make a particular member of the public whole, fines for wrongful conduct assessed in the enforcement context are designed to protect the public.

<sup>65</sup> *NAL*, 30 FCC Rcd at 8667-68, paras. 11-12.

<sup>66</sup> *Id.* See *Advantage Forfeiture Order*, 32 FCC Rcd at 3725, para. 7; *Preferred Forfeiture Order*, 30 FCC Rcd at 13722-23, para. 23 (each finding that the consumer complaints were credible because they were detailed, consistent, and specific).



As we explained in the *NAL*, the complaints show that “LDCB, through its telemarketers, apparently misrepresented itself to be AT&T, CenturyLink, or other carriers . . . and is evidence that LDCB was engaged in deceptive conduct.”<sup>67</sup> In their complaints, the consumers allege that they changed carriers based on LDCB’s misrepresentations, and the TPV recordings contain no evidence that consumers believed LDCB 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.

17. Accordingly, based on the preponderance of the evidence, including consistent statements from credible consumers who filed contemporaneous complaints against LDCB, we affirm the findings in the *NAL* that LDCB made misrepresentations to 11 consumers, in violation of Section 201(b) of the Act.

## 2. LDCB Violated Section 201(b) of the Act by Placing Unauthorized Charges on Consumers’ Telephone Bills

18. Cramming can occur either when third parties place or cause unauthorized charges to be placed on consumers’ local telephone bills, or when billing carriers place unauthorized charges on the telephone bills of their customers for their services or those of a third party.<sup>68</sup> 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.<sup>69</sup>

19. The Commission found in the *NAL* that LDCB placed unauthorized charges on 23 consumers’ local telephone bills.<sup>70</sup> Each of the 23 complainants maintained that they neither requested nor agreed to service provided by LDCB, and therefore that they were billed for service that they never authorized. The Commission noted in the *NAL* that 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.<sup>71</sup> In such cases we may exercise our authority to assess forfeitures for both types of violations.<sup>72</sup>

<sup>67</sup> *NAL*, 30 FCC Rcd at 8667, para. 11.

<sup>68</sup> See *Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 14; see also *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); *Main Street Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8853-54, para. 2 (2011) (*Main Street NAL*).

<sup>69</sup> 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, 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).

<sup>70</sup> See *NAL*, 30 FCC Rcd at 8669-70, paras. 17-19.

<sup>71</sup> See *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056, 9063, para. 19 (2014), Forfeiture Order, 30 FCC Rcd 2539 (2015); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6850, para. 18 n.48 (2013) (*Advantage NAL*), Forfeiture Order, 32 FCC Rcd 3723.

<sup>72</sup> See *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517, 5529, para. 25 & n.83, Forfeiture Order, 31 FCC Rcd 10392 (2016) (*Central Forfeiture Order*); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823, 835-36, para. 24 & n.93, Forfeiture Order, 31 FCC Rcd 10413 (2016) (*USTLD Forfeiture Order*); *Consumer Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17208, para. 26 & n.78, Forfeiture Order, 31 FCC Rcd 10435 (2016) (*CTI Forfeiture Order*). For those consumers whose slams took place outside the one-year statute of limitations period, the Commission proposed a forfeiture based only on the unlawful cramming that took place within the 12 months from the release date of the *NAL*.

20. The only evidence LDCB offers as proof that it obtained authorization from consumers to charge them are its TPV recordings.<sup>73</sup> LDCB argues that because its TPV recordings show that LDCB did not slam consumers, it therefore could not have crammed such consumers.<sup>74</sup> As discussed in detail below, we find that LDCB'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.<sup>75</sup> In addition, in this case, each of the complainants denies that he or she wanted to switch their business' long distance service providers to LDCB,<sup>76</sup> and many of them allege LDCB's telemarketer lied to them about who they were and why they were calling, immediately before the "verification" recording. Thus, based on a preponderance of the evidence, we affirm the findings in the *NAL* that LDCB placed unauthorized charges on 23 consumers' telephone bills, in violation of Section 201(b) of the Act.<sup>77</sup>

**B. LDCB Violated Section 258 of the Act and Section 64.1120 of the Rules by Slamming Consumers**

21. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup>

22. LDCB argues that it did not violate Section 258 of the Act or Section 64.1120 of the Rules because "the context provided by the sequence of questions contained in LDCB's TPV script leaves no room for confusion that consumers authorized a carrier change for regional toll service."<sup>81</sup> Specifically, LDCB argues that its verifier makes a number of statements and asks certain questions to "set the stage" for confirming a carrier change to LDCB for regional toll service.<sup>82</sup> LDCB contends that the Commission is imposing an "improper burden" on LDCB by requiring the Company to ask a consumer during the verification process whether he or she authorizes a "carrier change," rather than a

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<sup>73</sup> *NAL* Response at 14.

<sup>74</sup> Supplemental *NAL* Response at 7-8. LDCB contends that the Commission relies on unsworn "self-serving statements" from complainants which are contradicted by LDCB's TPV recordings. *Id.* at 9. As the Commission has stated on several occasions, it need not rely on sworn statements when enforcing the Act and, as discussed above, we find the complainants' statements credible. *See supra* para. 7.

<sup>75</sup> *See infra* paras. 21-22.

<sup>76</sup> As noted in the *NAL*, in many cases, LDCB did not complete the carrier switch and therefore was not providing any service to the consumer, yet the Company billed them on a monthly basis anyway. *NAL*, 30 FCC Rcd at 8670, para. 19 & n.42.

<sup>77</sup> *Id.* at 8669-70, paras. 17-19.

<sup>78</sup> 47 U.S.C. § 258(a).

<sup>79</sup> 47 CFR § 64.1120(c)(1)-(3).

<sup>80</sup> *Id.* § 64.1120(c)(3)(iii).

<sup>81</sup> *NAL* Response at 3.

<sup>82</sup> *Id.* at 4.

“service change.”<sup>83</sup> It also contends that its verifier asking consumers if they “also authorize [LDCB] to provide service for your regional toll calls?” was not misleading as the *NAL* asserts.<sup>84</sup> We disagree. As discussed above, Section 64.1120(c)(3) of the Rules sets forth detailed procedures for carriers using TPV to verify consumer authorization. The carrier’s verifier must confirm that the person on the call wants and authorizes a *carrier change*—not just an upgrade to existing service, bill consolidation, or any other transaction, including a change in service.<sup>85</sup>

23. As we discussed in the *NAL*, the purpose of the verification procedures is to confirm that the consumer has authorized a carrier change.<sup>86</sup> Verifying authorization to provide “service” is not sufficient to confirm that the consumer wants to make a carrier change.<sup>87</sup> The Commission has explained 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.”<sup>88</sup> Thus, “the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”<sup>89</sup> LDCB’s characterization of the Commission’s findings as “flawed” because the Commission is requiring LDCB to use the words “carrier change”<sup>90</sup> does not persuade us to alter our finding that LDCB’s TPVs did not comply with these Rules. Providing “context” for the consumer through other questions and statements does not elicit the consumer’s authorization for a carrier change as the Rules require. As we have stated on numerous occasions, this rule is crucial to protect consumers particularly where the complainants contend that they did not intend to change carriers at all.<sup>91</sup> We therefore affirm the findings in the *NAL* that LDCB 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 15 consumers.

### C. LDCB Was Not Denied Due Process

24. LDCB argues that the Commission’s enforcement action against LDCB is “arbitrary and capricious” and poses “due process problems.”<sup>92</sup> LDCB contends that in two orders dating back to 2010,

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<sup>83</sup> *Id.* at 2.

<sup>84</sup> *Id.* at 4. In support of its argument, LDCB states that when contacting complainants to discuss their complaints, the Bureau used a script that referred to “an unauthorized switch of your telephone service.” It therefore maintains that its verifier’s characterization of the switch on the TPV call as a change in service could not have been misleading. *NAL* Response at 5–6. LDCB is confusing excerpts of statements made by staff to consumers in discussing their slamming complaints (*after* the slam had occurred and the consumer filed the complaint) with the specific requirements in the Commission’s rules regarding the verification of a carrier change. The conversations between Bureau staff and consumers regarding their experiences with LDCB are not relevant to whether LDCB’s TPVs complied with the Commission’s specific verification requirements at the time of the sales call.

<sup>85</sup> 47 CFR § 64.1120(c)(3)(iii).

<sup>86</sup> *NAL*, 30 FCC Rcd at 8668-69, para. 14.

<sup>87</sup> *Id.*

<sup>88</sup> *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).

<sup>89</sup> *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)).

<sup>90</sup> *NAL* Response at 2-4.

<sup>91</sup> *See, e.g., Silv NAL*, 25 FCC Rcd at 5184, para. 12.

<sup>92</sup> Supplemental *NAL* Response at 9-10.

the Commission's Consumer & Governmental Affairs Bureau (CGB) found a valid authorized carrier change when analyzing TPV recordings identical to those at issue in the *NAL*.<sup>93</sup> Thus, LDCB contends that imposing liability on LDCB would violate the Due Process Clause of the Fifth Amendment because the Commission failed to give fair notice that its conduct was unlawful.<sup>94</sup> We disagree. To satisfy the due process requirements of the Fifth Amendment<sup>95</sup> when a punishment is being imposed, the statute or regulation in question must include standards that can be enforced equitably, as well as "provide a person of ordinary intelligence fair notice of what is prohibited. . . ."<sup>96</sup> In the *NAL*, the Commission explained that in each of the TPVs at issue, "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."<sup>97</sup> The *NAL* explained that in 2013, CGB found such language to violate the Commission's verification procedures.<sup>98</sup> LDCB argues that the 2013 CGB order referenced in the *NAL* does not find fault with the particular question cited in the *NAL*.<sup>99</sup> However, the primary point of the 2013 CGB order, which superseded any prior precedent, was to make clear to LDCB that confirming a change in service is not the equivalent to confirming a carrier change. Specifically, CGB stated:

The Commission's rules require that the verification elicit, amongst other things, confirmation that the person on the call is "authorized to make the carrier change." In each of the TPVs at issue, the verifier instead asks the person on the call "are you the authorized person to have Long Distance Consolidated Billing provide this new long distance service for the business location?" A switch from one carrier to another carrier differs from merely making changes to the customer's service.<sup>100</sup>

Consequently, this 2013 CGB order put LDCB on notice that it needed to change its TPVs to bring them into compliance. We therefore conclude that LDCB was on notice since 2013 that its verification language violated the Commission's rules, and we reject its argument that it was denied due process.

25. LDCB further contends that it was denied due process because the Commission relied on unsworn statements from complainants, rather than on the TPV recordings LDCB produced.<sup>101</sup> We disagree. The *NAL* was primarily based on consumer complaints the Bureau reviewed—a process similar

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<sup>93</sup> *NAL* Response at 6-7.

<sup>94</sup> *Id.* at 7 & n.26.

<sup>95</sup> U.S. Const. amend. V ("No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.").

<sup>96</sup> *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (citing *United States v. Williams*, 553 U.S. 285, 304 (2008)).

<sup>97</sup> *NAL*, 30 FCC Rcd at 8669, para. 15.

<sup>98</sup> *Id.* (citing *Long Distance Consolidated Billing Co.*, Complaints Regarding Unauthorized Changed of Subscriber's Telecommunications Carrier, Order, 28 FCC Rcd 3387, 3389, para. 4 (CGB 2013) (granting five complaints) (*2013 CGB Order*)).

<sup>99</sup> *NAL* Response at 6.

<sup>100</sup> *2013 CGB Order*, 28 FCC Rcd at 3389, para. 4 (footnotes omitted).

<sup>101</sup> Supplemental *NAL* Response at 9-10.

to that used in other recent slamming and cramming investigations.<sup>102</sup> We disagree with LDCB's characterization of the violations as "bogus cramming allegations on top of bogus slamming allegations."<sup>103</sup> LDCB had more than enough information about the complaints upon which the *NAL*'s proposed forfeiture was based to allow it to rebut the *NAL*'s findings and contest the complainants' assertions in its *NAL* Response. Nonetheless, the Company did not submit evidence refuting those complaints. We also considered LDCB's TPV recordings and determined that they were defective and invalid for failing to comply with the Commission's verification procedures. We therefore found, based on a preponderance of the evidence, that consumers did not authorize LDCB's service and that LDCB had, in fact, slammed them.

26. LDCB also questions the fairness of the Commission's "system" because, according to LDCB, the Bureau contacted complainants to discuss their complaints, using a script that contains an "underlying presumption" that the complainant was slammed.<sup>104</sup> We disagree. The Bureau initiated its investigation of LDCB, and the Commission made its apparent findings in the *NAL*, based on consumers' statements in their complaints and other evidence in the record regarding LDCB's switching of consumers' carriers and charges it placed on their telephone bills. LDCB possessed all of the complaints; in fact, LDCB provided many of the complaints in response to the Bureau's Letter of Inquiry. The Bureau contacted consumers after reviewing their complaints in an effort to assess the credibility of the complainants and to gather additional information, such as copies of any telephone bills, or to determine whether the consumer paid the LDCB bill or received a refund of the LDCB charges.<sup>105</sup> For example, following up on his complaint, S. Yoss of Miller Studios e-mailed the Bureau stating,

I was the person who originally received the call from [LDCB] . . . As I previously indicated I was lead to believe that the party calling was a representative of Time Warner Business Class. We have been a long time customer of Time Warner . . . and with our current contract have unlimited free long distance service within the continental United States. With this kind of arrangement we would have no reason to change long distance providers. This has now become a nightmare trying to get the lines back with Time Warner. As of this writing we have not had long distance service now for four days,

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<sup>102</sup> See, e.g., *Central NAL*, 29 FCC Rcd at 5518, para. 3; *Advantage NAL*, 28 FCC Rcd at 6845, para. 6; *United NAL*, 27 FCC Rcd at 16500, para. 3; *Preferred NAL*, 27 FCC Rcd at 16489, para. 2; *Silv NAL*, 25 FCC Rcd at 5179, para. 2.

<sup>103</sup> Supplemental *NAL* Response at 12.

<sup>104</sup> Supplemental *NAL* Response at 11. LDCB incorrectly states that LDCB obtained information regarding the Commission's interactions with complainants due to a Freedom of Information Act request. In fact, after the *NAL* was issued, LDCB e-mailed its request for materials evidencing the Bureau's communications with complainants, and the Bureau provided the information to LDCB to ensure that the Company had the complete investigative record in order to respond to the *NAL*. See Letter from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Cheng-yi Liu, Fletcher, Heald & Hildreth, P.L.C., Counsel for Long Distance Consolidated Billing Company (Aug. 25, 2015) (on file in EB-TCD-14-00017401).

<sup>105</sup> For instance, the owner of Hi-Tech confirmed for Bureau staff that LDCB had changed her carrier on three separate occasions but that the company had received a credit for the unauthorized charges and was no longer being billed by LDCB. See E-mail from Latashia Middleton, Enforcement Analyst, Telecommunications Consumers Division, FCC Enforcement Bureau, to Karen Tom, Hi-Tech (Apr. 15, 2015; 18:09 ET) (on file in EB-TCD-14-00017401 and provided to LDCB). Similarly, the owner of Asset Management Group e-mailed, saying, "[a]ttached are December through February billings from USBI on behalf of LDCB. They started billing us last July and there were no charges on our March 2015 AT&T bill. We received a \$45 credit on the February billing, so they took us for \$75. I know it's not a lot of money, but the fact that they represented themselves as AT&T employees is just not right." See E-mail from Tom Potter, Asset Management Group, to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 21, 2015, 19:18 ET) (on file in EB-TCD-14-00017401 and provided to LDCB).

which is a big problem for a manufacturing company. My only hope is that something can be done with this organization, and their ability to scam/slam other companies is eliminated.<sup>106</sup>

Mr. Yoss's e-mail and similar communications from complainants reinforced what they had previously stated in their complaints. Accordingly, we find that the Commission's enforcement process has been fair to LDCB, that LDCB had sufficient information to respond to the *NAL*'s apparent findings, and that LDCB was not denied due process.

#### D. The Forfeiture Amount

27. After considering the evidence in the record, the relevant statutory factors, the Commission's *Forfeiture Policy Statement*,<sup>107</sup> and the arguments advanced by LDCB in its *NAL* Response, we find that LDCB is liable for a total forfeiture of \$2,320,000. As explained in the *NAL*, the Commission applied the \$40,000 base forfeiture amount to each of the 38 apparent cramming and slamming violations which resulted in a total forfeiture of \$1,520,000.<sup>108</sup> The Commission then proposed to triple the base forfeiture for each of the 11 crams and slams that involved misrepresentations—making the penalty for each such violation \$120,000.<sup>109</sup> This increased the proposed forfeiture to \$2,400,000.<sup>110</sup> LDCB argues that the Commission's proposed forfeiture of \$2,400,000 is excessive, that LDCB is unable to pay the forfeiture, and that "a substantial reduction of the proposed forfeiture is necessary to account for LDCB's size and inability to pay."<sup>111</sup> We disagree for the reasons set forth below.

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.<sup>112</sup> In this case, 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 \$160,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,575,000 for a single act or failure to act by common carriers.<sup>113</sup> In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and,

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<sup>106</sup> E-mail from S. Yoss, Miller Studios, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Oct. 31, 2014, 17:02 ET) (on file in EB-TCD-14-00017401 and provided to LDCB).

<sup>107</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27.

<sup>108</sup> *NAL*, 30 FCC Rcd at 8671, para. 21.

<sup>109</sup> *Id.* at 8672, para. 22.

<sup>110</sup> *Id.*

<sup>111</sup> *NAL* Response at 15-16.

<sup>112</sup> See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

<sup>113</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). Although the Commission most recently adjusted its penalties to account for inflation in 2018, here we apply the adjusted penalties in effect at the time the *NAL* was issued. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (EB 2013). Accordingly, these amounts reflect the 2013 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. The Commission most recently amended its relevant rules on January 5, 2018, effective February 1, 2018. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-12, 33 FCC Rcd 46 (EB 2018); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 83 Fed. Reg. 4600-01 (Feb. 1, 2018).

with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>114</sup> The Commission carefully considered these factors in the *NAL*,<sup>115</sup> and we do so again here.

**1. A Reduction in the Forfeiture is Appropriate for Two of the Slamming Violations**

29. Section 503(b)(6) of the Act authorizes the Commission to assess a forfeiture for violations that occurred within one year preceding the issuance of an *NAL*.<sup>116</sup> LDCB argues that the violations associated with five complainants occurred prior to the one-year statute of limitations period and thus, no forfeiture may be imposed for those violations.<sup>117</sup> Specifically, LDCB asserts that its marketing calls (and thus the misrepresentations made by LDCB’s telemarketers) for three complainants occurred before July 30, 2014, the date that is one year prior to the release date of the *NAL*, and thus were outside of the one-year statute of limitations. LDCB also asserts that the dates on which the Company submitted the carrier change requests for two complainants were more than one year prior to the issuance of the *NAL*.<sup>118</sup>

30. Upon further review of the evidence in the record, we agree with LDCB that the slams it perpetrated on Just Glocks, Inc. and ██████████ occurred more than a year before the release of the *NAL*. While we find that LDCB submitted the requests to change the carriers of Just Glocks and ██████████ without the businesses’ authorization verified in compliance with the Rules, it did so outside of the Commission’s one-year statute of limitations period; thus, we cannot assess forfeitures associated with those two violations.<sup>119</sup> We therefore reduce the proposed forfeiture by \$80,000, resulting in an amount of \$2,320,000.

31. We find, however, that the timing of the Section 201(b) misrepresentation violations associated with the complaints filed by Controlled Hydronics, Your T-Shirt Man, and Mabel’s, LLC, have no bearing on our assessment of the underlying proposed forfeiture for those complaints. As explained in the *NAL*, the Commission proposed the base forfeiture amount of \$40,000 for each slam and cram by LDCB.<sup>120</sup> Controlled Hydronics was crammed on September 1, 2014; Your T-Shirt Man was crammed on September 22, 2014; and Mabel’s, LLC was crammed on February 19, 2015 (all within the one-year statute of limitations). The Commission did not propose a separate forfeiture for LDCB’s misrepresentations associated with the complaints; rather, the Commission upwardly adjusted the base forfeiture to account for the Company’s deceptive marketing conduct.<sup>121</sup> In fashioning the penalty to apply for LDCB’s slamming and cramming violations, the Commission took into account the Company’s misconduct that occurred at earlier times.<sup>122</sup>

<sup>114</sup> 47 U.S.C. § 503(b)(2)(E). See 47 CFR § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

<sup>115</sup> *NAL*, 30 FCC Rcd at 8670-72, paras. 20-22.

<sup>116</sup> 47 U.S.C. § 503(b)(6).

<sup>117</sup> *NAL* Response at 9-10 & Exh. I.

<sup>118</sup> *Id.*

<sup>119</sup> The *NAL* also found that LDCB crammed charges onto the telephone bills of Just Glocks within the one-year statute of limitations period; thus, the Commission can assess a forfeiture for the Section 201(b) cramming violation associated with the Just Glocks complaint.

<sup>120</sup> *NAL*, 30 FCC Rcd at 8671, para. 21.

<sup>121</sup> *Id.* at 8672, para. 22.

<sup>122</sup> See *Sandhill Communications*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17762, 17769 & n.45 (EB 2010) (“Section 503(b)(6) does not . . . bar the Commission from assessing whether . . . conduct prior to [the  
(continued....)”)

## 2. LDCB's Ability to Pay is Only One Factor in the Commission's Forfeiture Analysis

32. LDCB argues that the Commission's proposed forfeiture is excessive and that the Company is unable to pay the forfeiture.<sup>123</sup> LDCB provided federal tax returns for 2012, 2013, and 2014,<sup>124</sup> and contends that [REDACTED]

[REDACTED]<sup>125</sup> <sup>126</sup> Although the Commission has used the prior three years of tax returns as one way to benchmark an inability to pay, we also recognize that income may represent only a small fraction of a wrongdoer's wealth.<sup>127</sup> Thus, simply reviewing the tax returns in themselves may not fully address whether the wrongdoer is able to pay the proposed forfeiture.<sup>128</sup> However, even if we assume that LDCB lacks other financial assets beyond those identified in its tax returns, the analysis does not end there. In this case, a substantial penalty is appropriate nonetheless because LDCB's claimed inability to pay is one factor that is greatly outweighed by the other balancing factors that we must consider when assessing a forfeiture.

## 3. The Commission Must Account for LDCB's Egregious Misconduct and Record of Non-compliance

33. As the Commission has stated previously, the Act requires us to consider factors beyond a company's financial condition, e.g. "the nature, circumstances, extent, and gravity of the violation" as well as "the degree of culpability, any history of prior offenses . . . and such other matters as justice may

(Continued from previous page) \_\_\_\_\_  
statute of limitations period] apparently violated the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period."); see also *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8701, para. 28 (2007) (citing *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671, para. 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1386, 1388, para. 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 11 FCC 2d 193, 195, para. 6 (1967)).

<sup>123</sup> NAL Response at 30.

<sup>124</sup> See *id.* at Exhibit II.

<sup>125</sup> *Id.* at 15.

<sup>126</sup> *Id.* LDCB states that the Commission precedent has capped monetary forfeitures for alleged slamming violations at approximately 8% of gross revenues based upon consideration of a company's ability to pay. NAL Response at 16 (citing *Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389 (2000)). Contrary to LDCB's position, in other slamming and cramming cases, the Commission found that the carrier's egregious conduct outweighed the carrier's inability to pay and thus exercised its discretion not to reduce the proposed forfeiture based on the carrier's financial condition alone. See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3736-37, para. 34; *CTI Forfeiture Order*, 31 FCC Rcd at 10453-54, paras. 42-43; *Central Forfeiture Order*, 31 FCC Rcd at 10410-11, paras. 42-44; *USTLD Forfeiture Order*, 31 FCC Rcd at 10431-33, paras. 41-43.

<sup>127</sup> [REDACTED]  
See NAL Response, Exh. II.

<sup>128</sup> See, e.g., *United States v. Elizabeth Mastropierro, et. al.*, 931 F.2d 905, 906-07 (D.C. Cir. 1991) (When considering ability to pay in applying the sentencing guidelines, the court recognized "the appellants are currently without substantial assets or gainful employment and therefore unable to pay the full fines immediately, we nevertheless conclude that the record supports the judge's implicit finding that they can obtain employment and pay the fines over time."); See also *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, para. 44 (2018) (*Abramovich Forfeiture Order*).



require.”<sup>129</sup> As explained in the *NAL*, we find LDCB’s actions egregious, as evidenced by the fact that it repeatedly deceived consumers in order to facilitate changing their preferred long distance providers without authorization verified in compliance with the Commission’s rules and placing unauthorized charges for its service on consumers’ telephone bills.<sup>130</sup> In 11 of the complaints included in the *NAL*, LDCB misled consumers to believe that the Company was calling on behalf of the consumers’ current carriers. Additional consumers alleged similar deceptive misconduct by LDCB that occurred prior to the time period covered by the *NAL*.<sup>131</sup> LDCB received these consumer complaints, yet the record shows that the Company took little action to correct the deceptive behavior or terminate its relationship with the telemarketing company. The complaints regarding LDCB’s deceptive marketing spanned the course of over a year; therefore, it appears that LDCB was aware of and benefited financially from its telemarketers’ acts. We have found this same type of willful and repeated use of deceptive marketing practices to be particularly egregious in other investigations.<sup>132</sup> LDCB was on notice that such misrepresentations to consumers may result in substantial forfeiture amounts.<sup>133</sup> In addition, we must consider the substantial harm LDCB caused consumers. LDCB 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.<sup>134</sup>

34. Finally, we must consider LDCB’s history of noncompliance. In 2005, the Bureau initiated an investigation of LDCB based on complaints from consumers who alleged LDCB had changed their preferred carriers without authorization.<sup>135</sup> The Bureau subsequently entered into a consent decree with LDCB, which was signed by LDCB’s President Jan Lowe, requiring that LDCB’s sales representatives will make no misleading statements to consumers and that its sales scripts will alert the consumers that their long distance service providers will be changed.<sup>136</sup> The same type of slams by LDCB in 2005 are also at issue here, revealing a pattern of violations by LDCB. That the conduct by LDCB at issue in this enforcement action was expressly prohibited in the 2006 consent decree<sup>137</sup> is evidence that LDCB’s conduct is egregious, continuous, and repeated.

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<sup>129</sup> 47 U.S.C. § 503(b)(2)(E). See 47 CFR § 1.80(b)(4); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

<sup>130</sup> See *Preferred Forfeiture Order*, 30 FCC Rcd at 13725, para. 29 (finding the 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).

<sup>131</sup> See consumer complaints on file in EB-TCD-14-00017401.

<sup>132</sup> See, e.g., *Central Forfeiture Order*, 31 FCC Rcd at 10408-09, paras. 40-41; *CTI Forfeiture Order*, 31 FCC Rcd at 10451-54, paras. 39-42; *Preferred Forfeiture Order*, 30 FCC Rcd at 13725, para. 29; *United NAL*, 27 FCC Rcd at 16505-06, paras. 17-18 (finding the 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).

<sup>133</sup> See *Preferred NAL*, 27 FCC Rcd 16489, 16494-95, paras. 14-15; *United NAL*, 27 FCC Rcd at 16505-06, paras. 17-18; *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

<sup>134</sup> 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).

<sup>135</sup> See *Long Distance Consolidated Billing Co., Verification of Orders for Telecommunications Service*, Order and Consent Decree, 21 FCC Rcd 11907 (2006) (on file in EB-04-TC-147).

<sup>136</sup> *Id.* at 11910, paras. 8-9.

<sup>137</sup> *Id.* at 11910-11, paras. 8-13.

35. We have previously rejected inability to pay claims in similar cases where it is outweighed by a pattern of recurring misconduct or otherwise egregious violations.<sup>138</sup> In such cases, forfeitures must also be sufficient to protect the interests of consumers and deter future violations.<sup>139</sup> Carriers cannot expect that paying forfeitures will simply be the cost of doing business. This is the second time the Commission has had to expend resources to investigate and address egregious misconduct by LDCB. Therefore, in light of LDCB's egregious and repeated misconduct of the same rules that were the subject of the 2006 consent decree, a higher forfeiture relative to LDCB's gross revenues is warranted.

36. Accordingly, after weighing the various factors described above, we determine that the forfeiture proposed in the *NAL* should be adjusted as discussed above, and we assess a forfeiture of \$2,320,000 for LDCB's willful and repeated violations of Sections 201(b) and 258 of the Act and Section 64.1120 of the Rules. We find that, based on the evidence in the record, the amount appropriately reflects the nature, circumstances, extent, and gravity of LDCB's violations, as well as its history of prior offenses. Notwithstanding the arguments advanced by LDCB, we find that the statutory factors were appropriately applied in this case. Our decision not to downward adjust based on inability to pay is consistent with prior precedent<sup>140</sup> and reflects the circumstances present in this case.

#### IV. CONCLUSION

37. Based on the record before us and in light of the applicable statutory factors, we conclude that LDCB willfully and repeatedly violated Sections 201(b) and 258 of the Act and Section 64.1120 of the Rules by changing the preferred carriers of 15 consumers without authorization verified in accordance with the Commission's verification procedures; charging 23 consumers for service without authorization, and, in 11 of those instances, making misrepresentations to the consumers. Accordingly, we assess a forfeiture of \$2,320,000.

#### V. ORDERING CLAUSES

38. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>141</sup> and Section 1.80 of the Rules,<sup>142</sup> Long Distance Consolidated Billing Company **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two million three hundred twenty thousand dollars (\$2,320,000) for willfully and repeatedly violating Sections 201(b) and 258 of the Act and Section 64.1120 of the Rules.

39. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>143</sup> If the forfeiture is

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<sup>138</sup> See, e.g., *CTI Forfeiture Order*, 31 FCC Rcd at 10454, para. 43; *Central Forfeiture Order*, 31 FCC Rcd at 10411, para. 44; *USTLD Forfeiture Order*, 31 FCC Rcd at 10433, para. 43 (each rejecting inability to pay claims in light of the carriers' egregious misconduct which included slamming, cramming, and deceptive marketing); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras 32-33 (2015) (acknowledging that "standing alone, Purple's financial documents might support a reduction" but finding after applying the balancing factors no reduction was warranted).

<sup>139</sup> See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3736-37, para. 34; *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133, 8142, para. 19 (2001).

<sup>140</sup> See, e.g., *Abramovich Forfeiture Order*, 33 FCC Rcd at 4680, para. 48; *CTI Forfeiture Order*, 31 FCC Rcd at 10454, para. 43; *Central Forfeiture Order*, 31 FCC Rcd at 10411, para. 44; *USTLD Forfeiture Order*, 31 FCC Rcd at 10433, para. 43.

<sup>141</sup> 47 U.S.C. § 503(b).

<sup>142</sup> 47 CFR § 1.80.

<sup>143</sup> *Id.*

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.<sup>144</sup>

40. 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 Lisa Williford at [lisa.williford@fcc.gov](mailto: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.<sup>145</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions 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.

41. 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.<sup>146</sup> 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](mailto:ARINQUIRIES@fcc.gov).

42. **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 Long Distance Consolidated Billing Company’s attorney, Cheng-yi Liu, Fletcher, Heald & Hildreth, P.L.C., 1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>144</sup> 47 U.S.C. § 504(a).

<sup>145</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>146</sup> See 47 CFR § 1.1914.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART, DISSENTING IN PART**

Re: *Long Distance Consolidated Billing Company*, File No.: EB-TCD-14-00017401 NAL/Acct. No.: 201532170015 FRN: 0004337499.

The Commission took a positive step last June when it finally adopted express rules against “slamming” and “cramming,” in implementation of section 258 of the Communications Act. This was a vast improvement over the previous administration’s approach of relying on vague section 201(b) authority and engaging in retroactive rulemaking through enforcement actions.

While I am glad that we finally have rules on the books, and approve of this item in part, I reluctantly cannot join the item’s finding that the company is liable for cramming. According to the reasoning laid out, by changing consumers’ carriers without proper authorization, Long Distance *ipso facto* placed unauthorized charges on their telephone bills. In other words, by engaging in slamming, the carrier automatically engaged in cramming as well. But this suggests that both types of conduct can be subsumed under the same anti-cramming rule, and thus logically undermines the purpose of having a separate prohibition against slamming.

Further, as I have said in the past, I am opposed to imposing additional fines for cramming purportedly arising from a slamming transaction, ostensibly for the sake of levying a greater penalty. Doing so is unnecessary and counter-productive, especially when the liable carrier has demonstrated an inability to pay. It would seem to make much more sense—particularly from a consumer protection point of view—to revoke the carrier’s 214 authorization than to impose a multimillion dollar fine that could ultimately be merely symbolic.