Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Tele Circuit Network Corporation	)	File No. EB-TCD-17-00023953
	)	NAL/Acct. No.: 201832170002
	)	FRN: 0008800690
	)	
	)	
	)	
	)	

FORFEITURE ORDER

Adopted: April 22, 2021 **Released: April 23, 2021**

By the Commission: Acting Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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Heading Paragraph #

I. INTRODUCTION

1. In this Order, the Federal Communications Commission (FCC or Commission) adopts the findings in the Notice of Apparent Liability (*Tele Circuit Notice* or *Notice*)[1] that Tele Circuit Network Corporation (Tele Circuit or Company) engaged in slamming and cramming,[2] made misrepresentations to

[1] Tele Circuit Network Corporation, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 4379 (2018) (*Tele Circuit Notice* or *Notice*). The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

[2] A company engages in slamming when it changes a consumer's preferred telecommunications service provider, to itself, without that consumer's proper, verified authorization. Oftentimes, a slammer also places unauthorized charges (such as unauthorized long-distance service) on the consumer's telephone bill. Adding unauthorized charges to a customer's bill is a practice known as cramming. Slamming and cramming cause consumers to invest (continued….)

consumers, and violated a Commission order by failing to produce certain information and documents relating to the Company's business practices. The Company's misconduct harmed elderly and infirm consumers, in some cases leaving them without telephone service for extended periods of time—with Tele Circuit refusing to reinstate service until the crammed charges were paid in full. These practices violated sections 201(b) and 258 of the Communications Act of 1934, as amended (the Act), and section 64.1120 of the Commission's rules.[3] After reviewing Tele Circuit's response to the *Notice*, we decline to find that the Company violated section 1.17(a)(2) of the Commission's rules and reduce the proposed penalty by $1,178,322, and therefore impose a forfeiture of $4,145,000.

II. BACKGROUND

A. Legal Framework

2. *Section 201(b) of the Act*. Section 201(b) provides the Commission with authority to protect consumers from unjust and unreasonable practices.[4] The Commission has consistently held that unfair and deceptive marketing practices by interstate common carriers are unjust and unreasonable practices under section 201(b) of the Act, 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.[5] The Commission has reiterated this numerous times in both its slamming[6] and cramming[7] decisions, creating a long-standing precedent.[8] When a carrier assesses an unauthorized charge or fee on a telephone bill or for a telecommunications service, it commits an "unjust or unreasonable" practice under section 201(b) of the Act.[9]

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significant time and effort to undo unwanted carrier changes, reverse unauthorized charges, and file complaints with law enforcement agencies.

[3] 47 U.S.C. §§ 201(b), 258; 47 CFR § 64.1120.

[4] 47 U.S.C. § 201(b).

[5] *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, 14468, para. 15 (2000) (*BDP Forfeiture Order*). 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 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.

[6] *See, e.g.*, *Preferred Forfeiture Order*, 30 FCC Rcd at 13714-23, paras. 9-24.

[7] *See, e.g.*, *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558, 15567-69, paras. 17-22 (2012) (*Telseven Notice*), *aff'd*, Forfeiture Order, 31 FCC Rcd 1639 (2016) (*Telseven Forfeiture Order*).

[8] Highlighting the continuing problem with carriers misrepresenting who they are and why they are calling, the Commission recently codified the section 201(b) prohibition on material misrepresentations on sales calls. *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Report and Order, 33 FCC Rcd 5773, 5778-81, paras. 17-23 (2018) (*Protecting Consumers Order*); 47 CFR § 64.1120(a)(1)(i)(A).

[9] *See, e.g.*, *Long Distance Direct, Inc*., Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (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 Notice, LLC*, 27 FCC Rcd at 15564, 15567, paras. 11-12, 16, *aff'd*, *Telseven Forfeiture Order,* 31 FCC Rcd at 1639, para. 2; *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8870, para. 22 (2011); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853,

(continued….)

3. *Section 217 of the Act.* The Commission has repeatedly held that carriers are responsible for the conduct of third parties acting on the carrier's behalf.[10] Under section 217 of the Act, "the act, omission, or failure of any . . . person acting for or employed by" any carrier is deemed to be the act, omission or failure of that carrier.[11] This language extends to entities acting on behalf of a carrier in marketing its services.[12]

4. *Section 258 of the Act and Section 64.1120 of the Commission's Rules.* 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."[13] Section 64.1120 of the Commission's 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 third-party verification.[14] If a carrier relies on third-party verification, 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.[15]

5. Violations of sections 201(b) and 258 are not mutually exclusive. The Commission has long held that if a carrier engages in an initial slam, and that slam leads to a subsequent cram, the carrier has violated both sections 201(b) and 258 of the Act for slamming and cramming.[16] In such cases, the Commission may exercise its authority to assess forfeitures for both types of violations.[17]

6. *Section 1.17 of the Commission's Rules.* Section 1.17(a)(2) of the Commission's rules states that no person may provide to the Commission, in any written statement of fact related to an investigatory matter, "material factual information that is incorrect or omit material information . . .

8859, para. 21 (2011); *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).

[10] *See Eure Family Ltd. Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *LDDI MO&O*, 15 FCC Rcd at 3300, para. 9; *Vista Services Corporation*, Order of Forfeiture, 15 FCC Rcd 20646, 20650, para. 9 (2000); *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (1997); *Triad Broadcasting Company, Inc*., Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984).

[11] *See* 47 U.S.C. § 217; *see also LDDI MO&O*, 15 FCC Rcd at 3300, para. 9.

[12] *See Preferred Forfeiture Order*, 30 FCC Rcd at 13724, para. 26.

[13] 47 U.S.C. § 258(a).

[14] 47 CFR § 64.1120(c)(1)-(3).

[15] *Id.* § 64.1120(c)(3)(iii).

[16] *See Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056, 9063, para. 19 (2014) (*Optic Notice*), *aff'd*, Forfeiture Order, 30 FCC Rcd 2539 (2015) (*Optic Forfeiture Order*); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6850, para. 18 n.48 (2013), *aff'd*, *Advantage Forfeiture Order*, 32 FCC Rcd 3723.

[17] *See Central Telecom Long Distance, Inc.,* Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517, 5529, para. 25 nn.83-84, *aff'd*, 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, para. 24 nn.93-94, *aff'd*, Forfeiture Order, 31 FCC Rcd 10413 (2016) (*USTLD Forfeiture Order*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17208, para. 26 nn.78-79, *aff'd*, Forfeiture Order, 31 FCC Rcd 10435 (2016) (*CTI Forfeiture Order*).

without a reasonable basis for believing that any such material factual statement is correct and not misleading."[18]

B. Factual Background

7. Tele Circuit is a non-facilities based interexchange carrier authorized by the Commission to provide domestic and international long distance telecommunications service.[19] In 2017, Commission staff identified a significant number of consumer complaints against Tele Circuit.[20] Consumers filed complaints with the Commission, state regulatory agencies, the Federal Trade Commission, and the Better Business Bureau.[21] The complainants, identified in the Appendix to the *Notice*, contended that Tele Circuit switched their (or their elderly relatives') long distance service from their preferred carriers to Tele Circuit without authorization and/or charged the victims for service they did not request. Many of the complainants stated that Tele Circuit's telemarketers misrepresented themselves by claiming to be calling on behalf of the consumer's current telecommunications service provider.[22] Some complainants stated that Tele Circuit offered a discount on the consumer's existing service or discussed a fictitious government program for low-income individuals or senior citizens that, Tele Circuit claimed, could lower the cost of service.[23]

8. As described in the *Notice*, Tele Circuit's practices apparently impacted elderly and vulnerable consumers—including senior citizens with severe health conditions—and left them unable to contact caregivers or emergency services until they paid the Company's bills.[24] For example, victims of Tele Circuit's slamming and cramming included one complainant's grandmother. Her grandson, who filed the complaint, explained that "poor grandma . . . is so afraid and concerned" that he had to tell "her not to worry she didn't do [any]thing wrong, she was just played by crooks."[25] Other victims were left without any phone service at all, with one son filing on behalf of his 94-year old mother and stating that above and beyond the financial impact, the slamming and cramming resulted in a "safety issue" by "cutting off [my mother's] phone service before her conservator knew the service had been switched from AT&T. This is the only way she or her caregivers can contact me or anyone else in case of an emergency."[26]

9. After reviewing the complaints received by the Commission about Tele Circuit's practices, as well as complaints filed with other entities, the FCC's Enforcement Bureau (Bureau) initiated an investigation of Tele Circuit and issued a Letter of Inquiry (LOI) to the Company on March

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[18] 47 CFR § 1.17(a)(2).

[19] *See* ITC-214-20030417-00193, *Application for authority to provide service in accordance with Section 63.18(e)(2) of the rules* (granted May 16, 2003). Tele Circuit identified its address as 1815 Satellite Blvd., Suite 504, Duluth, GA 30097. Tele Circuit's President is Ashar Syed; its CEO is Syed's wife, Pobish Khan. *Notice*, 33 FCC Rcd at 4380, para. 3 n.1.

[20] *Notice*, 33 FCC Rcd at 4380, para. 3.

[21] Twenty-seven complaints that took place within the 12-month period prior to the release of the *Notice* were identified in the Appendix to the *Notice*. Twenty-four of these complaints involved slamming (many of which also had a cramming or misrepresentation violation); the three remaining complaints were standalone cramming violations (with no associated slam). Other complaints discussed in the *Notice*, but not listed in the Appendix and described as "not in Appendix," arose from slams or crams before the 12-month period prior to the release date of the *Notice*. Such complaints were not used to calculate the forfeiture but were included in the *Notice* to illustrate Tele Circuit's past conduct and to support the upward adjustment to the forfeiture amount.

[22] *Notice*, 33 FCC Rcd at 4380, para. 3.

[23] *See Notice*, 33 FCC Rcd at 4380, para. 3 n.5.

[24] *Notice*, 33 FCC Rcd at 4382-84, para. 6.

[25] *Id*.

[26] *Id*.

28, 2017.[27] The LOI instructed the Company to produce various documents and records, including evidence that it had complied with the Commission's verification procedures prior to switching consumers' long distance service providers.[28] Tele Circuit responded to the LOI on May 3, 2017, with a number of e-mails and attachments, but failed to fully answer the Bureau's inquiries and failed to provide all requested documents or furnish any explanation for why its response was incomplete.[29] In particular, Tele Circuit did not provide proof that the complainants listed in the LOI authorized Tele Circuit to switch their long distance carrier.[30] In response to the LOI, Tele Circuit did produce some third-party verification recordings,[31] which are supposed to provide evidence that customers assented to changing their long distance service from their existing carriers to Tele Circuit.[32] However, some complainants

[27] *See* Letter of Inquiry from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Tele Circuit Network Corporation (Mar. 28, 2017) (on file in EB-TCD-17-00023953) (LOI).

[28] The LOI stated that the Bureau was investigating Tele Circuit's compliance with sections 201(b) and 258 of the Act and indicated that the failure to respond appropriately to the LOI constitutes a violation of the Act and the Commission's rules. *See* LOI at 1.

[29] E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 3, 2017, 15:47 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 3, 2017, 15:50 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (May 3, 2017, 15:53 EDT) (attaching document with partial response to the LOI). All three e-mails attached a document which contained Tele Circuit's partial response to the LOI. The three e-mails and the attached document are referred to herein, collectively, as the LOI Response.

[30] After submitting an incomplete response to the LOI on May 3, 2017, Tele Circuit requested an extension of time to fully respond, and the Bureau granted a one-week extension. *See* E-mail from Mika Savir, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Yara Paredes, Manager, Tele Circuit Network Corporation (May 3, 2017, 8:29 EDT). After Tele Circuit failed to provide any evidence of consumer authorizations by the extended due date, the Bureau asked whether the Company intended to submit any third-party verification recordings. *See* E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Yara Paredes, Manager, Tele Circuit Network Corporation (May 25, 2017, 14:17 EDT); E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Yara Paredes, Manager, Tele Circuit Network Corporation (May 25, 2017, 15:26 EDT). Tele Circuit subsequently sent third-party verification recordings for some, but not all, of the consumers who had been switched to Tele Circuit.

[31] Third-party verification is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. 47 CFR § 64.1120(c)(3).

[32] *See* E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:15 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:17 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:18 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:19 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:21 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017, 15:22 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 9, 2017,15:23 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 19, 2017, 15:48

(continued….)

who listened to the recordings alleged that the third-party verifications were falsified.[33] In all, the Bureau reviewed more than 100 written consumer complaints, contacted numerous complainants, obtained substantial documentary evidence (including copies of consumer telephone bills), listened to third-party verification recordings, and received data from consumers' carriers.

10. *Notice.* On April 27, 2018, the Commission released the *Notice*, finding that Tele Circuit apparently willfully and repeatedly violated section 258 of the Act and section 64.1120 of the Commission's rules by changing the preferred carriers of 24 consumers without complying with the Commission's verification procedures (slams). Tele Circuit also apparently violated section 201(b) of the Act by assessing 21 unauthorized charges (crams) on consumer bills.[34] The Commission proposed a forfeiture for each slamming violation that occurred within the one-year statute of limitations period, along with a single cramming violation if the consumer was also charged for unauthorized service.[35] In addition, the *Notice* found that Tele Circuit apparently violated section 201(b) of the Act by engaging in deceptive marketing in the promotion of its slamming efforts.[36] The *Notice* also found that Tele Circuit had apparently violated a Commission Order by failing to respond fully to the LOI.[37] Finally, the *Notice* found six apparent violations of section 1.17 of the Commission's rules for Tele Circuit's submission of false material information to the Commission in the form of fraudulent third-party verifications.[38]

EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 19, 15:52 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (June 19, 15:53 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (July 11, 2017, 10:05 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (Nov. 22, 2017, 11:17 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 29, 2017, 10:11 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (Dec. 29, 2017, 13:26 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 26, 2018, 12:40 EDT); E-mail from Yara Paredes, Manager, Tele Circuit Network Corporation, to Erica McMahon and Mika Savir, Attorney Advisors, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 19, 2018, 13:04 EDT).

[33] *See* Complaints from J. Castaneda; P. Morales; O. Valtierra; M. Casales; M. Hernandez; and L. Arellano (on file in EB-TCD-17-00023953).

[34] *Notice*, 33 FCC Rcd at 4389-91, paras. 20, 23. *But see Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, CG Docket No. 17-169, Report and Order, 33 FCC Rcd 5773, 5781-82, paras. 24-25 (2018) (*Protecting Consumers Order*) (adopting rules to codify a prohibition against cramming); 47 CFR § 64.2401(g). This Forfeiture Order applies the statutory section 201(b) prohibition in effect at the time of the violations.

[35] *Notice*, 33 FCC Rcd at 4392-93, para. 27. 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 *Notice*.

[36] *Id*. at 4383-85, paras. 8-10. Although the Commission finds that Tele Circuit violated section 201(b) of the Act by engaging in misrepresentation, we have not proposed a separate forfeiture for such violations. Instead, "consistent with the *Forfeiture Policy Statement* and with prior slamming and cramming orders that involved evidence of deceptive marketing, we upwardly adjust the proposed base forfeiture for the underlying slam and cram violations that are coupled with direct evidence of such misconduct." *Id*. at 4396, para. 34 (citations omitted).

[37] *Notice*, 33 FCC Rcd at 4390-91, paras. 24-25.

[38] *Notice*, 33 FCC Rcd at 4387-88, paras. 14-15.

11. The *Notice* highlighted excerpts from consumer complaints[39] which provided consistent descriptions of the misrepresentations made to consumers and the methods of slamming and cramming Tele Circuit apparently employed.[40] The *Notice* also provided examples of consumer complaints dating back to 2016 in which consumers described unauthorized carrier switches and misrepresentations, demonstrating that Tele Circuit's apparent misconduct was ongoing for more than a year prior to the Commission's *Notice*.[41] The record before the Commission included descriptions of tactics Tele Circuit apparently used to deceive consumers on numerous occasions—for example, claiming the Company was calling on behalf of AT&T or calling about a senior citizen discount.[42]

12. *The Company's Response.* Tele Circuit filed a response to the *Notice* on June 26, 2018, arguing that the *Notice* should be canceled or reduced.[43] In its Notice Response, Tele Circuit denies that it engaged in any misrepresentation, claims it did not commit any slamming violations, asserts it did not alter any third-party verifications, argues that it did not engage in cramming, and attempts to discredit the quality of the record evidence.[44] The Company also argues that the *Notice* did not provide enough specificity about the violations, and declares that the Commission exceeded its authority, violated Tele Circuit's due process rights, and proposed an unlawful forfeiture amount.[45] Finally, Tele Circuit asserts an inability to pay.[46]

III. DISCUSSION

13. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,[47] section 1.80 of the Commission's rules,[48] and the Commission's *Forfeiture Policy Statement*.[49] 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."[50]

14. We have fully considered Tele Circuit's response to the *Notice*. We now find that Tele Circuit violated section 201(b) of the Act when its telemarketers made deceptive sales calls to four consumers. We further find that Tele Circuit switched the telephone service of 24 consumers without verified authorization to do so, in violation of section 258 of the Act and section 64.1120 of the Commission's rules. Next, we find that Tele Circuit placed unauthorized charges on 21 consumers' telephone bills, in violation of section 201(b) of the Act. We also find that Tele Circuit violated a Commission order by failing to respond fully to the LOI. Further, we reject Tele Circuit's arguments that

[39] Had Tele Circuit provided all the consumer complaints submitted directly to the Company, as requested in the LOI, the Bureau likely would have had access to far more than the 100 complaints reviewed in this investigation. LOI at 5, Question 9. The Bureau attempted to contact as many complainants as possible and followed up with all complainants who were responsive to telephone and e-mail outreach.

[40] *Notice*, 33 FCC Rcd at 4382-87, paras. 6-12.

[41] *See Notice*, 33 FCC Rcd at 4384-85, paras. 9-10 & nn.34-36.

[42] *See Notice*, 33 FCC Rcd at 4384-85, para. 9.

[43] *See* Notice Response *passim*.

[44] Notice Response at 7-11, 22-27, 29-31.

[45] Notice Response at 20-22, 32-43.

[46] Notice Response at 44-49.

[47] 47 U.S.C. § 503(b).

[48] 47 CFR § 1.80.

[49] *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).

[50] 47 U.S.C. § 503(b)(2)(E).

it was denied due process of law, that the proposed forfeiture was arbitrary and capricious or unconstitutionally excessive, and that the penalty amount should be reduced based on the Company's inability to pay. However, upon further review of the evidence in the record, as well as the arguments made in the Notice Response, we decline to adopt the initial finding that Tele Circuit apparently violated section 1.17(a)(2) of the Commission's rules by lacking a reasonable basis for believing that the third-party verifications recordings it submitted to the Commission were correct and not misleading. We therefore reduce the $5,323,322 forfeiture proposed in the *Notice* by $1,178,322—the amount associated with the apparent violations of section 1.17(a)(2)—and impose a penalty of $4,145,000.

A. Tele Circuit Engaged in Deceptive Marketing

15. Tele Circuit violated section 201(b) each time a consumer received a sales call from a telemarketer acting on Tele Circuit's behalf and that telemarketer misrepresented Tele Circuit's identity or service offering. The statute does not require that the misrepresentation, or lie, succeed in fooling the victim—the act of lying itself is the violation.[51] A practice is unjust or unreasonable based on the conduct at issue, not a subjective examination of its impact on each individual consumer—though in this case, consumers were misled and did indeed suffer harm.[52] The consumer complaints show that Tele Circuit (through its telemarketers) violated section 201(b) by stating that they were calling on behalf of the consumer's current telecommunications service provider, offering a discount on their existing service, or presenting a fictious government program that would purportedly lower the consumer's costs.[53] We therefore reject Tele Circuit's argument that it did not engage in deceptive marketing.

16. As noted in the *Notice*, each of the four instances of misrepresentation made by Tele Circuit's telemarketers during sales calls to the complainants constituted a stand-alone violation of section 201(b).[54] Subsequent statements to the complainants by the Company's third-party verifiers, made during separate verification calls, have no bearing on whether Tele Circuit engaged in an unjust and unreasonable practice in the first instance. Tele Circuit has cited nothing in its Notice Response that prohibits us from sanctioning a carrier from making deceptive sales calls to consumers; to the contrary, there is ample precedent for holding carriers liable under section 201(b) for such practices.[55] Further, the Commission has explicitly rejected the notion that a misrepresentation on a sales call may be "cured" by a subsequent third-party verification call.[56] Tele Circuit argues that the recordings of the verification calls (which do not include the sales portion of the call) "demonstrate that consumers know they are selecting Tele Circuit as their telephone service provider"[57] and that the Commission should not take "the word of a consumer" over a third-party verification recording.[58] Tele Circuit misses the point. By the time the consumer was speaking to the third-party verifier, the violation of section 201(b) had already occurred.

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[51] *See* 47 U.S.C. § 201(b).

[52] 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); s*ee 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.").

[53] *See Notice*, 33 FCC Rcd at 4380-81, 4383-85, paras. 3 & nn.5, 8-10.

[54] *Notice*, 33 FCC Rcd at 4399-4400, Appx.

[55] *See, e.g.*, *Advantage Forfeiture Order*, 32 FCC Rcd at 3725, para. 7; *Preferred Forfeiture Order*, 30 FCC Rcd at 13718, para. 16; *BDP Forfeiture Order*, 15 FCC Rcd at 14468, para. 15. Although Tele Circuit questions the Commission's authority to sanction deceptive marketing practices under section 201(b), it fails to raise any arguments or claims that have not already been rejected in prior Commission orders.

[56] *See Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 12.

[57] Notice Response at 11-12.

[58] Notice Response at 13.

Moreover, the record in this case underscores that the third-party verification calls did not overcome the initial misrepresentation.

17. Tele Circuit does not refute the evidence that consumers were confused and frustrated by the misrepresentations. Instead, it discusses at length its purported policies to ensure compliance with FCC rules, stating that the Company requires its third-party telemarketers to comply with all applicable laws, including the FCC's rules on slamming and cramming, pointing to its contract between Tele Circuit and its telemarketing contractor.[59] Tele Circuit maintains that it trains its employees and contractor telemarketers, providing telemarketers with a sales script to use when calling consumers, and that it randomly monitors its telemarketers and terminates any telemarketer who violates the Company's policies or sales script.[60] Tele Circuit is not relieved of liability simply because it provided its telemarketers with a sales script and directed them to comply with the law.[61] Tele Circuit essentially argues that either its telemarketers must not have made any misrepresentations (a position contradicted by complaining consumers) or that it should not be held responsible for the misrepresentations because the sales script contained no misleading or false statements.[62] A contractor's failure to follow a script might be the basis of a dispute between Tele Circuit and its contractor,[63] but it is not a defense to a statutory or rule violation. Under section 217 of the Act and well-established Commission precedent applying that provision of the Act,[64] Tele Circuit is charged with the acts of its agents and cannot avoid liability for those acts.

18. To rebut the complainants' claims, Tele Circuit also states that these consumers must have either forgotten about authorizing a change in their service and/or the details of the call verifying the change[65] or "may even lie about their verification experience."[66] Tele Circuit asserts that "[a]n elderly consumer, in particular, may feel pressured to deny authorizing a change in his or her home phone service when confronted by an adult child (or other caregiver) who is surprised and exasperated by the parent's change in home phone service."[67] While many of the complainants did indeed identify themselves as elderly, there is no evidence in the record that they were pressured by others to file their complaints with the Commission or were untruthful in their complaints. Additionally, the Company points to high customer satisfaction and below-industry churn rates,[68] and claims that it places "Welcome Calls" to consumers before they are charged.[69] Whether certain of its customers were satisfied with the Company's services, however, or received "Welcome Calls" has no bearing on the complainants' credibility or our assessment of whether Tele Circuit violated section 201(b) through its interaction with those particular individuals.

19. Ultimately, we believe the consumers who filed complaints describing Tele Circuit's misbehavior. The complaints are credible, in part, because they contain unique descriptions of

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[59] Notice Response at 14.

[60] Notice Response at 3, 14-15.

[61] *See* Notice Response at 14-15.

[62] *See id*. at 7-8.

[63] *See* Notice Response at Exh. G (Contract between Tele Circuit and CFS Consultant (Pvt.) Ltd. (Aug. 21, 2008)) (on file in EB-TCD-14-00017401).

[64] 47 U.S.C. § 217; *see Preferred Forfeiture Order*, 30 FCC Rcd at 13724, para. 26; *LDDI MO&O*, 15 FCC Rcd at 3300, para. 9.

[65] Notice Response at 13.

[66] Notice Response at 13.

[67] Notice Response at 13.

[68] Notice Response at 5.

[69] Notice Response at 4. To the extent the Company makes such calls, none of the complainants reported receiving them.

consumers' interactions with Tele Circuit or its contractors; they are detailed and consistent but not duplicative; and they are specific.[70] In particular, three of the four complaints involving misrepresentations allege that Tele Circuit's telemarketers falsely claimed to be "with" or "from" AT&T;[71] the fourth states that the telemarketer referenced a "government program" designed to help fixed-income households lower their phone rates.[72] Thus, the consumers allege that they inadvertently changed carriers based on Tele Circuit's misrepresentations, believing that the entity that called was affiliated with their existing carrier. The third-party verification recordings contain no evidence to indicate that consumers knew or believed that in switching to Tele Circuit they would be switching to an entity wholly unaffiliated with their existing carrier. Moreover, despite having access to these complaints, Tele Circuit did not rebut the complainants' assertions with any specific facts. We find that the complainants' statements about their experiences with Tele Circuit's telemarketers (including consistent statements from consumers who filed contemporaneous complaints against Tele Circuit) constitute credible evidence of Tele Circuit's deceptive marketing and therefore we affirm the findings of the *Notice* that Tele Circuit violated section 201(b) by engaging in misrepresentation in an effort to obtain authorization to change the consumers' long distance carriers.[73]

B. Tele Circuit Switched Consumers' Phone Service Without Proper Authorization

20. Tele Circuit switched the telephone service of 24 consumers without verified authorization to do so, in violation of section 258 of the Act and section 64.1120 of the Commission's rules.[74] The Company argues that it did not slam the consumers identified in the *Notice* because its verifiers made clear throughout the third-party verification call that the consumer affirmatively chose Tele Circuit for his or her phone service.[75] According to Tele Circuit, every third-party verification provided to the Bureau shows that the Company's third party verifiers: (1) stated that the purpose of the call was to confirm a selection to Tele Circuit, (2) repeatedly referenced Tele Circuit, and (3) welcomed the consumer to Tele Circuit Network Corporation at the end of the call.[76] This argument has no merit because the information relayed to consumers during the third-party verifications does not fulfill the more specific requirements in the Commission's rules designed to ensure against slamming.

21. Section 64.1120 of the Commission's rules sets out specific requirements that competitive carriers must follow to verify that a carrier change was authorized.[77] In order to satisfy these requirements, a qualified third party verifier must ask the consumer if he or she is authorized to make a "carrier change," confirm that she or he wished to make a "carrier change," and confirm that she or he understands that a "carrier change"—rather than some other change in service—is occurring.[78] The

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[70] *Notice*, 33 FCC Rcd at 4389, paras. 18-19. *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).

[71] *See* Complaint filed by R. Butler (filed Sept. 21, 2017); Complaint filed by R. McLeod (filed Jan. 2, 2018); Complaint filed by A. Scivally (filed Oct. 6, 2017).

[72] *See* Complaint filed by P. Ballentine (filed May 15, 2017). As detailed in the *Notice*, Complainant Ballentine's allegations echoed those of other consumers (whose complaints fell outside the 12-month period covered by the *Notice*) who alleged that the Company's telemarketers falsely referenced government programs designed to lower senior citizens' or low-income households' monthly telephone charges. *See Notice*, 33 FCC Rcd at 4380-81, para. 3 & n.5.

[73] *Notice*, 33 FCC Rcd at 4383-85, paras. 8-10.

[74] *See Notice*, 33 FCC Rcd at 4389-90, para. 20.

[75] Notice Response at 14-15.

[76] *Id*. at 8-10.

[77] 47 U.S.C. § 258; 47 CFR § 64.1120.

[78] 47 CFR § 64.1120(c)(3)(iii).

Commission found in the *Notice*, and we adopt the finding here, that Tele Circuit and its verifiers failed to comply with these requirements for 13 complainants.[79] Tele Circuit's third-party verifications—including portions of verification recording that the Company cites in its Notice Response—refer to the selection of Tele Circuit as a "home service provider," but nowhere explicitly state that a change or substitution of providers will take place.[80] Supposed "context" that may be provided to the consumer through other questions and statements during the call is not an acceptable substitute for obeying the law and making clear to the consumer that he or she is changing from one carrier to another. Years of experience investigating and taking actions against unauthorized carrier change practices shows us that section 64.1120's requirements are crucial to protect consumers.[81]

22. The shortcomings displayed by Tele Circuit's faulty third-party verifications extended beyond the 13 complaints discussed in the *Notice*. Indeed, the Commission was only able to evaluate the verifications of 13 consumers because Tele Circuit failed to provide verification information for all 24 consumers that were ultimately included in the *Notice*. Prior to the issuance of the *Notice*, FCC staff directed Tele Circuit to provide each verified authorization that the Company relied upon in requesting to switch the carriers of the 11 remaining consumers who had filed slamming complaints.[82] However, Tele Circuit failed to provide any kind of verified authorization[83] for those consumers prior to the issuance of the *Notice*. Tele Circuit eventually produced third-party verifications associated with 2 of those 11 consumers and included them in its Notice Response. After a review of the two additional third-party verifications, we find that they, like Tele Circuit's other 13 faulty third-party verifications, failed to confirm that the consumers understood they were making a carrier change and that they wished to make such a change. At no point does the verifier elicit confirmation that the person on the call wants to make the carrier change or confirmation that the person on the call understands that a carrier change is being authorized, as required by the Commission's rules.[84]

23. As for the other nine consumers, Tele Circuit failed to provide any evidence of verification at all. Tele Circuit attempts to shift blame to the Commission by arguing that the *Notice* failed to adequately identify the complainants. Specifically, Tele Circuit claims that it was unable to identify the consumers who complained—even though the Commission provided a list of each

[79] *See Notice*, 33 FCC Rcd at 4389-90, para. 19.

[80] *See* Notice Response at 8-9, 17-19 (quoting from Nichols and Beal third-party verification recordings).

[81] *See, e.g.*, *Advantage Forfeiture Order*, 32 FCC Rcd at 3730, para. 21; *Preferred Forfeiture Order*, 30 FCC Rcd at 13714, para. 8.

[82] *See* LOI at 5, Question 6. The Enforcement Bureau did so through an LOI sent to Tele Circuit. In addition, the Commission's Consumer & Governmental Affairs Bureau served additional slamming complaints on Tele Circuit that consumers filed through the Commission's Consumer Complaint Center.

[83] *See TeleCircuit, Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, 33 FCC Rcd 6122 (CGB 2018); *TeleCircuit, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 33 FCC Rcd 922 (CGB 2018); *TeleCircuit, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 32 FCC Rcd 9532 (CGB 2017); *TeleCircuit Network Corporation, Complaint Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, 32 FCC Rcd 7672 (CGB 2017) (each granting complaints because Tele Circuit did not respond to the complaints and did not provide proof of verification). Following the *Notice*, Tele Circuit continued to remain the subject of numerous slamming complaints. *See, e.g.*, *Tele Circuit Network Corporation, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 35 FCC Rcd 9844 (CGB 2020) (granting slamming complaint based on Tele Circuit's failure to respond); *Tele Circuit Network Corporation, Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, 35 FCC Rcd 2377 (CGB 2019) (granting eight slamming complaints because Tele Circuit's third-party verifications failed to meet the Commission's verification requirements); *Tele Circuit Network Corporation, Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, 34 FCC Rcd 2194 (CGB 2019) (granting 13 slamming complaints based on Tele Circuit's failure to provide proof of verified authorization).

[84] *See* 47 CFR § 64.1120(c)(3)(iii).

complainant's first initial and last name.[85] We find this argument disingenuous. It is true that the Commission has a long-standing policy to protect consumer privacy by only releasing first initial and last names of complainants in a notice of apparent liability. But the Commission also provides non-public information directly to the recipient of the Notice (including the consumer's full name and billing telephone number) upon request. In this case, even if Tele Circuit had asked for additional information (which it did not), it would not have revealed anything that the Company did not already know. All of the "missing" nine complaints were served on Tele Circuit long before the release of the *Notice*; in each instance, Tele Circuit was required to investigate the complaint and respond within 30 days.[86] None of these complaints were mysterious or new. Moreover, the *Notice* Appendix provided the specific FCC Complaint number associated with each complaint, which gave Tele Circuit all the necessary information to locate and retrieve the complaints from the Commission's consumer complaint database.[87] Each complaint contains the complainant's first and last name, telephone number, address, and the specifics of the consumer's concern.[88] We therefore reject Tele Circuit's claim that it lacked adequate information to identify the complainants, or that the *Notice* improperly shifted the burden for doing so to Tele Circuit.[89]

24. Of the 24 slamming complaints filed by consumers,[90] Tele Circuit's third-party verifications for 15 consumers' verifications were flawed and, as a result, incapable of eliciting a consumer's authorization for a carrier change. For the remaining nine consumers, Tele Circuit failed to provide the Commission with *any* evidence of verified consumer authorizations to switch carriers. We therefore adopt the findings in the *Notice* that Tele Circuit violated section 258 of the Act and section 64.1120(c)(3) of the Commission's rules by failing to comply with the Commission's third-party verification requirements prior to switching the carriers of 24 consumers.

C. Tele Circuit Placed Unauthorized Charges on Consumers' Telephone Bills

25. Cramming can occur in different ways, including when billing carriers place unauthorized charges on the telephone bills of their customers for services.[91] In the present case, each of the 21 cramming complainants maintained that they neither requested nor agreed to service provided by Tele Circuit, and that they therefore were billed for service that they never authorized. Each of these consumers were identified in the *Notice*, along with the date of the unauthorized charge.[92] We affirm the

[85] Notice Response at 20-21. We note that Tele Circuit was able to identify all other complainants listed in the *Notice* Appendix by first initial and last name. More importantly, Tele Circuit also states that in some cases it has no records concerning the person identified in the *Notice*, but does not state which consumers for whom it has no records. Notice Response at 21.

[86] Each of the complaints for which Tele Circuit claims it did not have sufficient information was served on Tele Circuit through the Commission's consumer complaint database on the following dates: M. Washington (8/8/17), M. Wood (10/20/17), P. McCandless (10/20/17), R. Butler (10/5/17), R. Moore (11/13/17), G. Ferguson (10/20/17), B. Hendrix (9/21/17), V. Bell (11/27/17), W. White (11/16/17). These complaints were accessible to Tele Circuit prior to the time the *Notice* was issued and remain accessible today.

[87] *Notice*, 33 FCC Rcd at 4399-4400, Appx.

[88] The complainants were identified in the *Notice* and the actual complaints can be found on file in EB-TCD-17-00023953. *See Notice*, 33 FCC Rcd at 4399-4400, Appx.

[89] *See* Notice Response at 21-22.

[90] *See Notice*, 33 FCC Rcd at 4389-90, para. 20.

[91] *See Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 14; *see also Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket Nos. 11-116 and 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437, 4439, paras. 1, 6 (2012).

[92] *Notice*, 33 FCC Rcd at 4390-91, 4399-4400, paras. 21-23 & Appx.

Commission's finding in the *Notice* that Tele Circuit placed unauthorized charges on 21 consumers' local telephone bills.[93]

26. The only proof Tele Circuit offers that these bill charges were authorized are the flawed third-party verification recordings.[94] But, as already fully discussed, Tele Circuit's third-party verification recordings did not comply with the Commission's verification rules and did result in consumers being slammed. Each of the complainants denied that he or she wanted to switch their long distance service providers to Tele Circuit, and several alleged Tele Circuit's telemarketer lied to them about who they were and why they were calling, immediately before the "verification" recording.[95] Tele Circuit's unauthorized charges, or crams, that resulted from the slams therefore violate section 201(b) of the Act.

27. Based on the record in this case, we find that the complainants did not request or authorize Tele Circuit's services and were nonetheless billed for "service."[96] The Commission has stated repeatedly that in circumstances like these—where a carrier "engages in an initial slam that leads to a subsequent cram"—we may exercise our authority to assess forfeitures for both violations.[97] This principle flows naturally from the fact that the slamming and cramming offenses, even when associated with a single complainant, stem from separate and distinct acts (first, changing a consumer's preferred long distance provider without authorization verified in compliance with the Commission's verification procedures, and then second, placing unauthorized charges for its service on the consumer's telephone bills). Tele Circuit was on notice that this type of conduct constitutes cramming and that the Commission considers such violations serious. Thus, we affirm the findings in the *Notice* that Tele Circuit placed unauthorized charges on 21 consumers' telephone bills, in violation of section 201(b) of the Act.[98]

D. Tele Circuit Violated a Commission Order by Failing to Respond Fully to a Bureau LOI

28. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers, such as Tele Circuit, to provide requested information and documents to the Commission and its

[93] *See Notice*, 33 FCC Rcd at 4390-91, para. 23.

[94] Notice Response at 14. Tele Circuit's only other defense is to state that cramming customers is "self-defeating" and not a sustainable business practice. This argument fails to establish that the complainants who alleged they were crammed authorized Tele Circuit to charge them. *See* Notice Response at 31.

[95] As discussed in the *Notice*, in many cases Tele Circuit did not complete the carrier switch and therefore was not providing any service to the consumer, yet the Company nonetheless billed them a monthly recurring charge. *Notice*, 33 FCC Rcd at 4390, para. 22.

[96] Slammed consumers who made long distance calls generally detected the slam in the first bill containing the unauthorized charges because that bill contained itemized charges for each long-distance call and would be much higher than their usual telephone bill. These consumers made long distance calls believing that they would be charged according to the plan they had with their own carrier (in most cases a bundled plan with AT&T), but were instead charged at Tele Circuit's higher rates. The remaining consumers who were crammed (or who were slammed and did not make any long distance calls) only had a recurring charge on their telephone bill for Tele Circuit's "service;" these consumers did not use Tele Circuit's services, even unwittingly. For all 21 consumers who were identified in the *Notice*, the unauthorized charges placed on their telephone bills constituted cramming in violation of section 201(b) of the Act and were independent of the initial slamming violations under section 258 of the Act. *See Notice*, 33 FCC Rcd at 4390-91, paras. 22-23.

[97] *See Notice*, 33 FCC Rcd at 4391, para. 23 (citing *Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 15; *Optic Forfeiture Order*, 30 FCC Rcd at 2539, para. 1; *Neon Phone Service, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7971-72, para. 19 & Appx (2017); *Long Distance Consolidated Billing Company*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664, 8671, para. 21 & Appx (2015), *aff'd Long Distance Consolidated Billing Company,* Forfeiture Order, 34 FCC Rcd 1871 (2019)).

[98] *Notice*, 33 FCC Rcd at 4390-91, paras. 22-23.

Bureaus.[99] Failure to respond to such requests constitutes a violation of a Commission order.[100] In the present case, the Bureau's LOI directed Tele Circuit to provide specific information related to its compliance with sections 201(b) and 258 of the Act and the Commission's anti-slamming rules.[101] Tele Circuit failed to provide all of the requested information and documents in violation of a Commission order.[102] Specifically, Tele Circuit's LOI Response did not include consumer complaints or inquiries the Company received from consumers (either directly or through its billing aggregator, state regulatory authorities, or the Better Business Bureau). In addition, Tele Circuit failed to provide the Bureau with third-party verification recordings associated with such complaints or inquiries. Finally, the Company did not provide the scripts used by its telemarketers and third-party verifiers, its contracts with any billing aggregator or local exchange carrier, or its state registrations.

29. Tele Circuit does not deny that it failed to provide the required information, nor does it assert that any of the materials specified in the Bureau's LOI were not within its control or possession during the relevant time period.[103] In fact, it does not respond to the apparent findings at all, except to state that it "worked diligently to provide the FCC with as much information as possible within the LOI's deadline."[104]

30. Tele Circuit does not mention that the Bureau granted an extension of time to fully respond to the LOI, nor does it explain why (if it needed additional time to fully respond) it did not request a further extension within which to provide the missing documents. The Company offers no explanation as to why such information could not be produced and has yet to provide complete complaint information.[105] Accordingly, in light of Commission precedent,[106] we find that Tele Circuit's failure to provide all of the information and documents responsive to the Bureau's LOI constitutes a willful violation of a Commission order.

E. Parties Providing Information to the Commission are Required to Act with Candor and Satisfy the Requirements of Section 1.17(a)(2)

31. Section 1.17(a)(2) of our rules prohibits a party from providing false and misleading material information to the Commission and is intended to enhance the effectiveness of the Commission's

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[99] 47 U.S.C. §§ 154(i), 218, 155(c)(3). "Any order . . . or action made or taken pursuant to any [ ] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission." 47 U.S.C. § 155(c)(3).

[100] 47 U.S.C. § 503(b)(1)(B). *See GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2529-30, paras. 18-20 (2015) (*GPSPS Notice*), *aff'd*, *GPSPS, Inc.*, Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 2 (2015) (*GPSPS Forfeiture Order)*; *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Order of Forfeiture, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (*Net One Forfeiture Order*); *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7589, para. 1 (2002) (*SBC Forfeiture Order*).

[101] *See* LOI.

[102] *Notice*, 33 FCC Rcd at 4391, para. 25.

[103] Some of the materials requested through the LOI were subject to specific Commission recordkeeping requirements. *See* 47 CFR § 64.1120(c)(3)(iv) (requiring carriers to maintain third-party verification recordings for a minimum of two years). Others, although not subject to specific recordkeeping obligations—such as Tele Circuit's telemarketing scripts and contracts with its telemarketer and third-party verifier—were later furnished to the Commission along with the Company's Notice Response but were not produced in response to the Bureau's LOI.

[104] Notice Response at 5.

[105] Tele Circuit did provide a telemarketing script with its Notice Response, which it was required to provide as part of its LOI Response.

[106] *See GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 2; *Net One Forfeiture Order*, 29 FCC Rcd at 264, para. 1; *SBC Forfeiture Order*, 17 FCC Rcd at 7589, para. 1; *GPSPS Notice*, 30 FCC Rcd at 2522, para. 1.

enforcement efforts.[107] Even absent an intent to deceive, a false statement may constitute a violation if provided without a reasonable basis for believing that the information was truthful and not misleading.[108]

32. The Commission found in the *Notice* that Tele Circuit apparently violated section 1.17(a)(2) of the Commission's rules by providing false and misleading material information to the Commission in the form of six fabricated third-party verifications.[109] The Commission further found that the Company apparently lacked a reasonable basis for believing that those third-party verifications were valid.[110]

33. In its Notice Response, Tele Circuit argues that, pursuant to Commission rules,[111] the Company has an arms-length relationship with its third-party verification provider, did not have the opportunity to alter or falsify verification recordings created and maintained by its verification provider, and structured its contract with the verification provider to not pay or incentivize the provider based on the number of carrier change authorizations verified.[112] Thus, Tele Circuit maintains, it had a reasonable basis for believing that the verification recordings it provided to the Commission were authentic. Upon consideration of these arguments, as well as information and documents from the Notice Response detailing the arrangement between Tele Circuit and its third-party verification provider, we decline to adopt the initial finding that the Company violated section 1.17(a)(2) through its submission of third-party verifications. Although we continue to have concerns about the authenticity of the verifications in question, based on the record developed in this investigation, we do not find that Tele Circuit lacked a reasonable basis for believing that those third-party verifications were valid.

34. We nevertheless take this opportunity to make clear that parties providing information to the Commission are required to do so with candor, and that a failure to do so (including a failure to provide appropriate context or caveats to information that has already been called into question) runs afoul of our rules. For instance, a party cannot turn a blind eye to evidence of impropriety—particularly falsification or fabrication—involving its verification provider, and we will not hesitate to impose penalties under section 1.17 for the submission of fabricated third-party verifications.[113] In addition, when the Commission requests that a carrier provide it with proof of authorization and verification of a carrier change, we expect that the carrier will not simply pass along verification recordings whose

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[107] 47 CFR § 1.17(a)(2); *see Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, GC Docket No. 02-37, 18 FCC Rcd 4016, 4021, paras. 1-2, 12 (2003) (*Truthful Statements Order*).

[108] *See Truthful Statements Order*, 18 FCC Rcd at 4017, para. 4 (stating that the revision to section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive"); *id.* at 4021, para. 12.

[109] *See Notice*, 33 FCC Rcd at 4387-88, paras. 14-15. Falsifying third-party verifications is a serious issue and, to combat it, the Commission recently adopted a rule that any carrier that becomes the subject of a Commission forfeiture order through abuse of the third-party verification process will be suspended for a period of five years from using the third-party verification process to confirm carrier switches. *See Protecting Consumers Order*, 33 FCC Rcd at 5783, para. 29; 47 CFR § 64.1120(b).

[110] *Notice*, 33 FCC Rcd at 4385-87, para. 12. The *Notice* Appendix listed the complaints that involved violations that took place within the statute of limitations.

[111] *See* 47 CFR § 64.1120(c)(3).

[112] Notice Response at 27-29.

[113] In the present case, we recognize that the six complaints associated with the apparent violations of section 1.17 discussed in the *Notice* primarily allege that certain information contained on the recordings is not correct. Although consistent and repeated complaints about the accuracy of verification recordings should compel a carrier to investigate potential misconduct involving its verification provider, under the particular circumstances of this case, and in light of the limited number of complaints involved and the specific assertions made in those complaints, we do not find that Tele Circuit failed to meet this duty.

accuracy or authenticity has been disputed by the relevant consumers.[114] At a minimum, the carrier should acknowledge the concerns raised by the consumers and attempt to explain the apparent discrepancy.

F. Tele Circuit Received Full Due Process of Law

35. Section 503 of the Act requires "sufficient notice to provide the violator with the information he or she needs to mount a defense to the violations charged in a Notice of Apparent Liability."[115] Contrary to the Company's arguments, the *Notice* provided all statutorily required and relevant information of the alleged violations on which the base forfeiture amounts were based, including the specific dates of each violation. However, Tele Circuit argues that these requirements were not met, claiming that the Commission failed to "set forth 'the nature of the act or omission charged against [it] and the facts upon which such charge is based' along with 'the date on which the conduct occurred.'"[116] We have considered all of Tele Circuit's due process arguments and find that they lack merit.

36. The *Notice* and its Appendix list each complainant; the dates that the violations involving that complainant occurred; and the "nature of the act or omission charged."[117] The nature of the acts charged for the complaints identified in the Appendix are also described in the *Notice*.[118] In addition, all complaints listed in the *Notice* had either previously been served on Tele Circuit by the FCC's Consumer and Governmental Affairs Bureau or were sent to Tele Circuit by the Better Business Bureau.[119] The

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[114] In the present case and as already discussed, given the specific assertions in the six relevant complaints, we decline to find that Tele Circuit violated section 1.17 by furnishing the six verification recordings.

[115] *Purple Communications, Inc*., Forfeiture Order, 30 FCC Rcd 14892, 14899, para. 22 (2015). The notice requirements of section 503 requiring that a Notice "state the date" are satisfied when the Notice identifies the conduct resulting in the violations and provides: (1) specific cite references to the record (i.e., specific citations to files and documents provided by the violator that identified relevant dates sufficient to allow the violator to lodge its defense); or (2) citations to records containing dates and other relevant information. *Id.* at 14899, para. 22. *See also* 47 U.S.C. § 503(b)(4)(C).

[116] Notice Response at 34. Tele Circuit also contends that there is no factual support that the third-party verifications were false, or that Tele Circuit engaged in deceptive marketing. Notice Response at 34-40. We disagree with Tele Circuit's reliance on the *BDP Order on Reconsideration*. *Business Discount Plan, Inc*., Order on Reconsideration, 15 FCC Rcd 24396 (2000) (*BDP Order on Reconsideration*). In *BDP*, on reconsideration, the Commission found that certain complaints contained no reference to unreasonable marketing practices and therefore that there was no direct evidence that the company deceived those individual consumers. *BDP Order on Reconsideration*, 15 FCC Rcd at 24400-01, para. 11. In this case, each of the four misrepresentation violations identified in the Appendix stemmed from specific allegations made by consumers in their complaints. *See* Complaint filed by P. Ballentine (filed May 15, 2017); Complaint filed by R. Butler (filed Sept. 21, 2017); Complaint filed by R. McLeod (filed Jan. 2, 2018); Complaint filed by A. Scivally (filed Oct. 6, 2017).

[117] *Notice*, 33 FCC Rcd at 4399-4400, Appx. Tele Circuit also specifically states that the *Notice* fails to identify the dates of the misrepresentation violations. *See* Notice Response at 36. The dates on which the misrepresentations occurred were not required by section 503(b)(4), as such violations did not form the basis of the forfeiture penalty. Moreover, with respect to each of the four complaints involving misrepresentation, the Notice included the complainant's first initial and last name, the specific FCC complaint number associated with the complaint (except for the misrepresentation complaint that originated with the Better Business Bureau), and the date of the unauthorized carrier change that resulted from Tele Circuit's deceptive sales call to the consumer.

[118] *Notice*, 33 FCC Rcd at 4383-91, paras. 8-25.

[119] Tele Circuit also argues that because the *Notice* identified only the first initial and last name of the complainants, Tele Circuit was unable to respond to the apparent violations. Notice Response at 34. Tele Circuit requested, and was granted, an extension of time in which to file the Notice Response. It did not, however, request a list of complainants by their full name or any other information to clarify any purported shortcomings in the *Notice*. In any event, prior to the issuance of the *Notice*, Tele Circuit had already been provided with and was in possession of full information about the complainants, including the complainants' full names, addresses and billing telephone

(continued….)

Bureau also obtained bills (either from Tele Circuit or from the consumers themselves) that had been issued to the consumers; those bills list either dates that the consumers were charged by Tele Circuit or the dates that a consumer's service was switched to Tele Circuit. Such dates were listed in the Appendix to the *Notice* and Tele Circuit does not dispute the accuracy of such dates. The *Notice* contained far more than "generalized references to wrongdoing."[120] We therefore find that the *Notice* fully complies with the requirements outlined in section 503(b)(4) of the Act.

37. The Commission's investigation and use of evidence in this case comports with due process requirements. The record contains overwhelming and credible evidence that Tele Circuit engaged in slamming, cramming, and misrepresentation. That evidence includes highly credible consumer complaints,[121] evidence submitted by Tele Circuit, and information obtained from consumers' local exchange carriers. Despite the weight of the evidence, Tele Circuit argues that the Commission gave undue consideration to what it dismisses as "fallible" consumer complaints.[122] We reject this argument. Tele Circuit had a full opportunity to be heard on the Commission's use of consumer complaints, which did not violate Tele Circuit's due process rights. We are not persuaded by Tele Circuit's attempts to diminish the complaints by characterizing them as "general allegations," nor its arguments that the use of a summary of the complaints make it impossible to prepare an adequate response (particularly when Tele Circuit was provided with a detailed listing, in the *Notice* Appendix, of the complaints upon which the *Notice* was based).[123] Despite Tele Circuit's arguments to the contrary, including the complaints in the *Notice* does not make the *Notice* arbitrary or capricious.[124] The Commission explained in the *BDP Order on Reconsideration* that because "[n]either the Act nor the [Commission's] rules speak to the type or quantity of evidence necessary for assessing a forfeiture[,]" it is "within the Commission's discretion to determine the kind of evidence needed to support a forfeiture."[125] Here, the Commission properly accepted consumer complaints and evaluated such complaints and the claims made within them on their individual merits. The use of such complaints, in combination with the other evidence in the record, is consistent with the requirements of due process.

38. Further, Commission staff reviewed all of the information submitted by Tele Circuit in response to the LOI and *Notice*, including third-party verifications. Tele Circuit claims that such third-party verifications are exculpatory evidence, demonstrating it did not engage in any slamming violations.[126] The Company is mistaken. Staff reviewed each third-party verification recording and determined that those cited in the *Notice* Appendix did not comply with the Commission's rules—specifically, the requirement that the verifier confirm that the consumer understands they are making a carrier change and wishes to make such a change.[127] As such, the verification recordings do not act to

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numbers when each complaint was served on the Company. Given these circumstances, we reject Tele Circuit's claim that the complainants were not sufficiently identified to it.

[120] *See* Notice Response at 35 n.92 (citing Chairman Pai's dissent in *Lyca Tel, LLC*, Memorandum Opinion and Order, 31 FCC Rcd 12125 (2016)). Unlike the *Notice* here, the notice in *Lyca Tel* did not contain an Appendix listing the name, date, and other identifying information for each violation charged.

[121] As the Commission has explained in other investigations, consumer complaints constitute credible and reliable evidence when they are (1) detailed, (2) consistent but not duplicative, and (3) specific. *See Advantage Forfeiture Order*, 32 FCC Rcd at 3725, para. 7; *Preferred Forfeiture Order*, 30 FCC Rcd at 13722-23, para. 23.

[122] Notice Response at 32.

[123] Notice Response at 33.

[124] Notice Response at 32-34.

[125] *BDP Order on Reconsideration*, 15 FCC Rcd at 24401, para 12.

[126] Notice Response at 19-20.

[127] Far from an "overzealous, heavy-handed" agency action (*see* Notice Response at 49-50), the *Tele Circuit Notice* followed over 30 enforcement actions assessing substantial monetary penalties for slamming, cramming, and

(continued….)

erase Tele Circuit's wrongdoing, but to underscore it. Accordingly, we reject the Company's claim that the FCC ignored exculpatory evidence.

39. Tele Circuit possessed all consumer complaints contained in the *Notice* in their entirety—each complaint contained the consumer's full name, address, billing telephone number, and their allegations regarding their experiences with Tele Circuit. The *Notice* and Appendix identified the violations with the required specificity. The Bureau's investigation properly evaluated and considered all available evidence. Therefore, Tele Circuit received full due process of law.

G. The Forfeiture Amount Is Constitutional and Consistent with FCC Precedent

40. 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.[128] In this case, the Commission is authorized to assess a forfeiture of up to $204,892 for a single act or failure to act.[129]

41. After considering the evidence in the record, the relevant statutory factors, the Commission's *Forfeiture Policy Statement*,[130] and the arguments advanced by Tele Circuit in its Notice Response, we find that Tele Circuit is liable for a total forfeiture of $4,145,000.[131] As calculated in the *Notice*, the Commission applied the $40,000 base forfeiture amount to 41 of the 45 apparent slamming and cramming violations, which resulted in a forfeiture of $1,640,000.[132] The remaining four slamming and cramming violations involved misrepresentations; the Commission proposed a penalty of $120,000 (triple the base forfeiture amount) to each of these four violations, resulting in an additional forfeiture of $480,000.[133] The Commission also proposed a forfeiture of $25,000 for Tele Circuit's failure to respond fully to the Bureau's LOI.[134] Finally, the Commission determined that in light of the egregious and repeated nature of Tele Circuit's improper conduct—including instances of apparent slamming and cramming that took place prior to the 12-month period covered by the Notice, as well as evidence that Tele Circuit "deliberately exploited" elderly and infirm consumers—an upward adjustment of $2,000,000 was appropriate.[135]

42. Tele Circuit contests the amount of the forfeiture with three arguments. *First*, Tele Circuit argues that the Commission's proposed forfeiture, and the upward adjustments applied to the base forfeiture amounts, is arbitrary and capricious. *Second*, the Company argues that the forfeiture is excessive and violates the Eighth Amendment's prohibition of excessive fines. *Third*, Tele Circuit claims

misrepresentation. Such actions, which are cited throughout this Forfeiture Order, send a strong signal to carriers that the Commission takes violations of its rules in these areas very seriously.

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

[129] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

[130] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 27.

[131] Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

[132] *Notice*, 33 FCC Rcd at 4392-93, para. 27.

[133] *Id.* at 4396, para. 34.

[134] *Id.* at 4393, para. 29.

[135] *Id.* at 4395-96, paras. 31-33. In addition, the *Notice* also proposed penalties for each of the six instances when Tele Circuit provided apparently false and misleading material information to the Commission in the form of fabricated third-party verification. In the *Notice*, the Commission applied the maximum forfeiture amount of $196,387, resulting in an additional forfeiture of $1,178,322. *Notice*, 33 FCC Rcd at 4393, para. 28. However, we do not impose that forfeiture amount here.

that it is unable to pay the forfeiture.[136] The Company also maintains that the Commission should consider Tele Circuit's remedial actions.[137] We are not persuaded by any of these arguments.

43. *The Proposed Forfeiture Was Neither Arbitrary nor Capricious*. The forfeiture proposed by the *Notice* is consistent with, and calculated in a similar manner as, other recent forfeitures in comparable enforcement actions. The Commission calculated the amount of the proposed forfeiture using a methodology that the FCC has used many times before. Tele Circuit's claim that the amount of the forfeiture is "inconsistent with similar actions" is simply wrong.[138] Tele Circuit ignores a multitude of cases where the Commission has assessed the base forfeiture for each unauthorized switch and separate cramming violation, and upwardly adjusted that base amount for violations that were coupled with evidence of misrepresentation.[139]

44. Instead of looking to these more recent and more analogous cases, it points to *NOS Communications*.[140] In that case, the *only* violations at issue were deceptive marketing where two carriers failed to clearly and conspicuously disclose material facts regarding their promotional plan offerings and pricing methodology.[141] In contrast, the current case involves multiple types of violations, including both slamming and cramming. Tele Circuit engaged in slamming and cramming for several years, causing consumers to spend significant time and effort to return to their preferred carriers and seek refunds of unauthorized charges. In many cases, Tele Circuit's practices left vulnerable consumers without telephone service for extended periods of time—with Tele Circuit refusing to reinstate service until the crammed charges were paid in full. Tele Circuit also failed to fully comply with the Bureau's requests for information. These types of violations were not present in the *NOS Notice* and thus makes any comparison of the forfeiture amounts between the present case and *NOS* largely irrelevant.

45. The Commission has consistently assessed significant fines against carriers and adjusted forfeitures upward due to allegations of misrepresentation and substantial consumer harm in slamming and cramming cases.[142] In establishing the forfeiture in this case, the Commission used the per violation base forfeiture specified in the Commission's rules and in Commission orders.[143] It then considered the statutory factors in section 503 and determined that the amount should be adjusted to reflect the egregiousness of the unlawful behavior.[144] Moreover, instead of assessing the forfeiture on the basis of each crammed charge, which the Commission could have opted to do, the Commission proposed a

[136] Notice Response at 44-50.

[137] Notice Response at 46-47.

[138] *See* Notice Response at 45.

[139] *See, e.g.*, *Advantage Forfeiture Order*, 32 FCC Rcd at 3733, para. 27; *Preferred Forfeiture Order*, 30 FCC Rcd at 13725-26, para. 29; *Central Forfeiture Order*, 31 FCC Rcd at 10408, 10411, paras. 39, 44; *CTI Forfeiture Order*, 31 FCC Rcd at 10451, 10454, paras. 38, 43; *U.S. Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10413, 10429, 10433, paras. 37, 43 (2016) (*USTLD Forfeiture Order*).

[140] Notice Response at 42 (citing *NOS Communications, Inc. and Affinity Network, Incorporated*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133 (2001) (*NOS Notice*)).

[141] *NOS Notice*, 16 FCC Rcd at 8139-8140, paras. 12-15. The Commission observed that almost 900 complaints had been filed against the two carriers since 1997 but did not identify which were filed within the 12-month statute of limitations and therefore did not identify how many were used to calculate the $1,000,000 proposed forfeiture. *NOS Notice*, 16 FCC Rcd at 8134, para. 4.

[142] *See, e.g.*, *Central Forfeiture Order*, 31 FCC Rcd at 10408-11, paras. 39-44; *CTI Forfeiture Order*, 31 FCC Rcd at 10451-54, paras. 38-43; *USTLD Forfeiture Order*, 31 FCC Rcd at 10429-433, paras. 37-43; *GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 2; *Net One Forfeiture Order*, 31 FCC Rcd at 2379-80, paras. 35-39; *Optic Forfeiture Order*, 30 FCC Rcd at 2539, paras. 1-2; *Preferred Forfeiture Order*, 30 FCC Rcd at 13725-26, paras. 29-30; *Telseven Forfeiture Order*, 31 FCC Rcd at 1649, para. 25.

[143] *See Notice*, 33 FCC Rcd at 4392-93, paras. 27-29; 47 U.S.C. § 227(e)(5).

[144] *See* 47 U.S.C. § 503(b)(2)(E); *Notice*, 33 FCC Rcd at 4394-96, paras. 30-34.

forfeiture for one cramming violation per complainant.[145] Thus, the forfeiture was calculated using an established methodology and the Commission did not assess as high a forfeiture as we could have under our statutory authority.

46. *The Forfeiture is Constitutional and Not Excessive*. The proposed forfeiture was consistent with forfeitures proposed in other Commission notices for slamming, cramming, and misrepresentation, especially given the egregious misconduct described in the *Notice*.[146] Tele Circuit nevertheless contends that the proposed forfeiture violates the Eighth Amendment because it deems the fine excessive.[147] In making this claim, the Company asserts that the Bureau's intent is to "financially ruin Tele Circuit and drive it out of business."[148] We reject this argument.

47. In evaluating a claim that a forfeiture is excessive under the Eighth Amendment, one especially probative factor is whether the fine is within the prescribed statutory maximum for the underlying offense.[149] Additional factors that bear on the constitutionality of a forfeiture are whether it is "grossly disproportional" to the gravity of the underlying offense and whether it was arbitrary or capricious.[150] Here, with respect to the first factor, the forfeiture falls well below the statutory limits. The *Notice* identified 33 complaints evidencing 55 violations of the Act and Commission rules. These violations involved misrepresentation, slamming, cramming, providing false and misleading information to the Commission, and failing to comply with a Bureau directive. Had the Commission assessed the statutory maximum for each violation, the penalty would have been more than $10 million. Instead, the Commission determined that the appropriate forfeiture amount for these violations (including upward adjustments for the nature of the misconduct) was $5,323,322—or just 48% of the statutory maximum in effect at the time of the *Notice*. Thus, there is no merit to Tele Circuit's assertion that, in setting the amount of the proposed forfeiture, the intent of the Bureau was to "financially ruin" the Company. If that had been the Commission's aim, a significantly higher penalty could have been proposed.

48. The next factor we consider is whether the forfeiture is "grossly disproportional" to the gravity of the offense.[151] This involves examining the nature and extent of the underlying offense, including whether it was in furtherance of other illegal conduct and the nature of the harm caused by the sanctioned person's conduct.[152] The burden to establish that a forfeiture is grossly disproportional lies with the party challenging the forfeiture.[153] Tele Circuit has not satisfied this burden. The Company fails

[145] *Notice*, 33 FCC Rcd at 4392, para. 27 n.86.

[146] *See*, *e.g.*, *Long Distance Consolidated Billing Company*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 8664, 8672, para. 22 (2015) ($2,400,000), *aff'd* Forfeiture Order, 34 FCC Rcd 1871 (2019); *Roman LD, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 3433, 3440-41, paras. 20-21 (2015) ($5,900,000); *Optic Notice*, 29 FCC Rcd at 9065, paras. 22-24 ($7,620,000), *aff'd Optic Forfeiture Order*, 30 FCC Rcd at 2539, paras. 1-2; *GPSPS Notice*, 30 FCC Rcd at 2532, para. 25 ($9,065,000), *aff'd GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 2.

[147] Notice Response at 48. *See* U.S. Const. amend. VIII.

[148] Notice Response at 48.

[149] *See Newell Recycling Co. v. EPA*, 231 F.3d 204, 210 (5th Cir. 2000) (internal quotation marks omitted). Similarly, the D.C. Circuit readily upheld the Commission's imposition of the maximum statutory penalty (adjusted for inflation) against an unlicensed radio operator who challenged that penalty as excessive. *See Grid Radio v. FCC*, 278 F.3d 1314, 1322 (D.C. Cir. 2002) (noting that the statutory amount was "neither indefinite nor unlimited," and that it did not "seem excessive in view of the [petitioner's] continued and willful violation of the licensing requirement"). *See also Scott Malcolm*, Order on Reconsideration, 33 FCC Rcd 2410, 2413-14, para. 11 (2018) ("Because the forfeiture was within the statutory limits, there is a strong indication that it was not excessive.").

[150] *See Scott Malcolm*, 33 FCC Rcd at 2413-14, para. 10 (2018) (citing *United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Collins v. SEC*, 736 F.3d 521, 526-27 (D.C. Cir. 2013)).

[151] *United States v. Bajakajian*, 524 U.S. 321, 334 (1998).

[152] *See, e.g.*, *United States v. Viloski*, 814 F.3d 104, 109 (2d Cir. 2016), *cert. denied*, 137 S. Ct. 1223 (2017).

[153] *Id*.

to address, let alone distinguish, the numerous analogous cases where the Commission has assessed similar (and often greater) penalties for the same violations Tele Circuit committed.[154]

49. Moreover, the Commission's forfeiture is presumptively constitutional because it was not arbitrary nor capricious. As the D.C. Circuit has explained, when an agency's decision to impose a penalty is not arbitrary and capricious, that "goes most of the way to compelling rejection of [any Eighth Amendment challenge to that penalty]."[155] The court further noted that "[a] penalty that is not far out of line with similar penalties imposed on others and that generally meets the statutory objectives seems highly unlikely to qualify as excessive in constitutional terms."[156] We conclude that the forfeiture is reasonable in light of the egregious conduct by the Company and in line with penalties imposed on other parties for similar misconduct, as well as within the limits established by the Eighth Amendment.[157]

50. *Tele Circuit's Claimed Remedial Actions Are Insufficient to Warrant a Reduction in the Forfeiture*. Tele Circuit was the subject of numerous consumer complaints, some dating back to 2016. All complaints listed in the *Notice* had previously been delivered to Tele Circuit, either served on the Company by the FCC's Consumer and Governmental Affairs Bureau or sent to it by the Better Business Bureau.[158] Despite the notice that these complaints provided about serious issues with Tele Circuit's business (namely, allegations of slamming, cramming, and misrepresentations), the Company has not demonstrated that it has actually taken any action to address such issues. Tele Circuit now argues that the Commission should consider its "remedial actions" before imposing such a "punitive" forfeiture.[159] But whether or when these measures were actually taken by Tele Circuit was not specified by the Company.[160] While the Company claims it terminates any telemarketer that misrepresents its services, it has not provided any evidence that it has ever done so, despite receiving complaints from consumers. In her affidavit to the Notice Response, Tele Circuit's manager states only that the Company is considering additional policies, has plans to implement a re-training process for its telemarketers, and is evaluating whether to require its telemarketers to record sales calls.[161] While we look favorably upon remedial measures a carrier takes to come into compliance with the Act and the Commission's rules, these arguments about future plans made after the fact are plainly inadequate.

51. *Tele Circuit's Ability to Pay Is Far Outweighed by the Egregiousness of its Actions*. A violator's "ability to pay" is only one of several factors the Commission must consider when determining an appropriate forfeiture under section 503 of the Act and our forfeiture guidelines. We must also consider "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, . . . and such other matters as justice may require."[162] Tele Circuit argues that, based on its gross revenues, a smaller forfeiture (if any) should be

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[154] The only case Tele Circuit points to in claiming that the proposed forfeiture is excessive is the *NOS Notice*, a case that, as explained above, only involved the sole violation of deceptive marketing rather than the five different types of violations at issue here.

[155] *Collins v. SEC*, 736 F.3d 521, 526-27 (D.C. Cir. 2013).

[156] *Id.*

[157] *See supra* paras. 46-49; *see also Notice*, 33 FCC Rcd at 4394-96, paras. 30-34.

[158] The *Notice* cites numerous representative complaints dating back to 2016. *See, e.g.*, Complaint filed by F. Salinas (filed Sept. 6, 2016); Complaint filed by M. Arellano (filed Feb. 5, 2016); Complaint filed by L. Mansell (filed May 2, 2016). Thus, Tele Circuit was on notice of its shortcomings well before the complaints associated with the *Notice* were ever filed.

[159] Notice Response at 46-47. Tele Circuit states that it has provided restitution to customers and taken steps to further minimize future complaints, including hiring additional personnel to monitor sales and customer service.

[160] *See* Notice Response at 46-47; Affidavit of Yara Paredes, Exh. A to Notice Response (Paredes Aff.).

[161] Paredes Aff.

[162] 47 U.S.C. § 503(b)(2)(E).

imposed.[163] We decline to reduce the proposed forfeiture on that basis. Notwithstanding Tele Circuit's financial condition, and consistent with other slamming and cramming investigations, we are not required to and will not reduce the proposed forfeiture because Tele Circuit's egregious conduct outweighs its alleged inability to pay.[164]

52. With respect to the nature, circumstances, extent, and gravity of the violations and the degree of culpability, we have considered the large number of consumer complaints against Tele Circuit for slamming, cramming and misrepresentations and its failure to fully respond to a Commission order (the LOI). With regards to slamming, cramming, and misrepresentations, Tele Circuit's actions were egregious. The Company 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' telephone bills.[165] Many complainants stated that Tele Circuit's telemarketer pretended that he or she was calling from the consumer's existing carrier,[166] or to offer them a discount on their existing service.[167] Tele Circuit's deceptive behavior was described in numerous consumer complaints dating back several years, and which the Commission continued to receive during the investigation and even after the *Notice* was released.[168] With regards to the Commission's LOI, despite being directed to produce consumer complaints, Tele Circuit failed to do so. Without the Company's cooperation, Commission staff nonetheless located and reviewed more than 100 consumer complaints. Of these, 33 were within the 12-month statute of limitations and were included in the *Notice*. Even after being notified of the Commission's investigation, Tele Circuit provided no evidence of any actual remediation in light of these violations. We have found this same type of willful and repeated use of deceptive marketing practices to be particularly egregious in other investigations, and we likewise find them to be egregious here.[169]

53. We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.[170] Given the record evidence here that Tele Circuit willfully and repeatedly violated

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[163] Notice Response at 44-47. We note that gross revenues are generally the best indicator of an ability to pay a forfeiture. *See Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000).

[164] *See, e.g.*, *CTI Forfeiture Order*, 31 FCC Rcd at 10453-54, paras. 41-43; *Central Forfeiture Order*, 31 FCC Rcd at 10410-11, paras. 42-44 ("We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations. Given the record evidence here that Central willfully and repeatedly violated the Act and the Commission's rules, and the egregious nature of its misrepresentations and exploitive tactics, we find that these factors outweigh any inability to pay claim raised by Central and that therefore, the record does not warrant any further mitigation of the proposed forfeiture amount.") (footnote omitted).

[165] *Notice*, 33 Rcd 4394-96, paras. 30-33; *see also Central Forfeiture* Order, 31 FCC Rcd at 10408-09, paras. 40-41; *Preferred Forfeiture Order*, 30 FCC Rcd at 13725, 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).

[166] *Notice*, 33 FCC Rcd at 4384-85, para. 9.

[167] *Id.* at 4380, para. 3 n.5.

[168] *See* Complaint filed by C. Van Atta, on behalf of R. Holland (filed Sept. 20, 2018); Complaint filed by J. Harden, on behalf of O. Hatcher (filed Aug. 22, 2018); Complaint filed by E. Alen (filed Aug. 10, 2018).

[169] *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 Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16505-06, paras. 17-18 (2012) (finding company's deceptive conduct particularly egregious because it repeatedly misled consumers into believing it was calling on behalf of their current carriers); *Silv Notice*, 25 FCC Rcd at 5186, para. 16 (same).

[170] *See, e.g.*, *Central Forfeiture Order*, 31 FCC Rcd at 10410-11, paras. 43-44; *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple

(continued….)

the Act and the Commission's rules, and the egregious nature of its misrepresentations and exploitive tactics, we find that these factors outweigh any inability to pay claim raised by Tele Circuit. We see no reason to reduce the proposed forfeiture on the basis of the Company's ability to pay.

IV. ORDERING CLAUSES

54. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,[171] and section 1.80 of the Commission's rules,[172] Tele Circuit Network Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four million, one hundred and forty-five thousand dollars ($4,145,000) for willfully and repeatedly violating sections 201(b) and 258 of the Act,[173] and section 64.1120 of the Commission's rules.[174]

55. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.[175] Tele Circuit shall send electronic notification of payment to Lisa Williford, Enforcement Bureau, Federal Communications Commission, at lisa.williford@fcc.gov on the date said payment is made. 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.[176]

56. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[177] or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[178]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated

intentional violations); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (EB 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (EB 2013).

[171] 47 U.S.C. § 503(b).

[172] 47 CFR § 1.80.

[173] 47 U.S.C. §§ 201(b), 258.

[174] 47 CFR § 64.1120.

[175] *Id.*

[176] 47 U.S.C. § 504(a).

[177] Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

[178] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

with the Notice Account – the bill number is the Notice Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the Notice Account – the bill number is the Notice Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

57. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.[179] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

58. **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 counsel for Tele Circuit Network Corporation, Jane L. Wagner, Marashlian & Donahue, PLLC, 1420 Spring Hill Road, Suite 401, Tysons, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[179] *See* 47 CFR § 1.1914.

STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Tele Circuit Network Corporation*, Forfeiture Order, File No. EB-TCD-17-00023953

This is an ugly scam. It involves a company—Tele Circuit—that hired telemarketers to call consumers with a deceptive sales pitch. The company suggested they were reaching out on behalf of a consumer's existing communications carrier and then use that lie to switch the consumer's phone service and saddle them with unauthorized charges on their bills. They targeted senior citizens and people with health conditions. Then, when their victims did not pay up and compensate Tele Circuit for these unauthorized charges, the company would even go so far as to disconnect the consumer's phone service.

This is not right. It violates the Communications Act. So today we hold this company accountable for its mistreatment of consumers. To anyone else using our nation's phone systems to perpetuate this kind of scam, take note because our efforts won't stop here.

Thank you to those who worked on this, including Michael Epshteyn, Rosemary Harold, Shannon Lipp, David Marks, Latashia Middleton, Phil Rosario, Kristi Thompson, and Shana Yates from the Enforcement Bureau; Michael Carlson, Terry Cavanaugh, Richard Mallen, and Bill Richardson from the Office of General Counsel; and Alex Hernandez, Erica McMahon, and Mika Savir from the Consumer and Governmental Affairs Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *In the Matter of Tele Circuit Network Corporation*, Forfeiture Order, File No. EB-TCD-17-00023953

In the Telecommunications Act, Congress recognized the importance of protecting consumers from unscrupulous practices such as "slamming" by specifically charging the Commission with adopting rules to prevent unauthorized carrier changes—which often, in turn, enable other harmful practices such as "cramming." With this Order, we take aggressive steps to crack down on these practices that can harm consumers not just financially but can also leave them vulnerable and thus susceptible to further harms.

In this case, Tele Circuit used the reputation of well-known carriers to gain the trust of elderly consumers, a particularly vulnerable population. The company in some instances cut off their victims' telephone service due to unpaid bills, leaving them without the ability to communicate with family or reach support services for extended periods of time, and refused to reinstate service until the crammed charges were paid in full. While even one instance would be intolerable, the repeated nature of Tele Circuit's predatory behavior makes its actions particularly egregious, and the consumer complaints show the great extent of the impact felt by these unsuspecting individuals. We owe it to American consumers to protect them against such unscrupulous bad actors.

I strongly support the action we are taking here, and thank the Bureau for their continuing efforts to enforce the regulations we have in place to protect consumers from these and other harmful practices.