

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In the Matter of )  
 ) File No. ENF-98-09  
All American Telephone Company, Inc. )  
 ) NAL/Acct. No. 816EF0008 )  
Apparent Liability for Forfeiture )

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 6, 1998; Released: July 6, 1998

By the Commission:

**I. INTRODUCTION**

1. By this Notice of Apparent Liability for Forfeiture ("NAL"),<sup>1</sup> we initiate enforcement action against All American Telephone Company, Inc. ("All American").<sup>2</sup> For the reasons set forth below, we find that All American apparently willfully and repeatedly violated Section 258 of the Communications Act of 1934, as amended ("the Act"),<sup>3</sup> as well as Commission rules and orders,<sup>4</sup> by changing the preferred interexchange carriers ("PICs") for interstate service designated by thirteen consumers without their authorization.<sup>5</sup> The apparent violations are

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<sup>1</sup> See 47 U.S.C. § 503(b)(4)A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability.

<sup>2</sup> All American is located at 9001 Airport Freeway, Suite 570, Fort Worth, Texas 76180.

<sup>3</sup> 47 U.S.C. § 258.

<sup>4</sup> See 47 C.F.R. § 64.1150; *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket. No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997) (*1997 FNPRM & Order on Reconsideration.*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (*LOA Order*), stayed in part, 11 FCC Rcd 856 (1995) (*In-bound Stay Order*); *Policies and Rules Concerning Changing Long Distance Carriers*, 7 FCC Rcd 1038 (1992) (*PIC Change Order*), recon. denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (*Allocation Order*), *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 935 (Com. Car. Bur. 1985) (*Waiver Order*), recon. (of both *Allocation Order* and *Waiver Order*) denied, 102 FCC 2d 503 (1985) (*Reconsideration Order*).

<sup>5</sup> The practice of changing a customer's PIC without the customer's authorization is commonly referred to as "slamming."

particularly egregious in this case because All American, in requesting the local exchange carriers (LECs) to make the PIC-changes,<sup>6</sup> relied on Letters of Authorization ("LOAs") apparently containing forgeries of the names and signatures of the unsuspecting consumers.<sup>7</sup> Based upon our review of the facts and circumstances surrounding the violations, we find that All American is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000) for each of the violations, for a total forfeiture amount of one million, forty thousand dollars (\$1,040,000).<sup>8</sup>

2. As an additional measure, we require All American to file with this Commission within thirty (30) days of the release of this NAL, a compliance plan detailing the actions it has taken and the procedures it has established to ensure compliance with Section 258 of the Act and this Commission's rules and orders relating to PIC changes. The compliance plan shall set forth procedures designed to enable All American to promptly identify and address consumer inquiries and concerns about its PIC-change practices. We take this action in response to the egregious and repeated nature of the violations and All American's failure to respond fully to Commission Notices of Informal Complaint ("Notices").<sup>9</sup> We note that we are continuing to review complaints filed against the company and that the Commission may assess additional forfeitures if appropriate.<sup>10</sup>

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<sup>6</sup> The Commission's rules and orders prescribe that interexchange carriers (IXCs) must submit PIC change orders to local exchange carriers (LECs), who are then obligated to make the change absent some indication that the request is not legitimate. See *LOA Order*, 10 FCC Rcd 9560 (1995); *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985), *Waiver Order*, 101 FCC 2d 935 (Com. Car. Bur. 1985).

<sup>7</sup> The Commission previously issued NALs finding carriers apparently liable for relying upon forged LOAs and sternly admonished carriers that it would take swift and decisive enforcement action against any carrier found to have engaged in the practice. See *AT&T Corporation*, 11 FCC Rcd 1885 (1996) (*AT&T Corp. NAL*); *Home Owners Long Distance, Incorporated*, 11 FCC Rcd 1808 (1996) (*Home Owners Long Distance, Inc. NAL*); *MCI Telecommunications Corporation*, 11 FCC Rcd 1821 (1996) (*MCI NAL*); *Nationwide Long Distance, Incorporated*, 11 FCC Rcd 3087, (1996) (*Nationwide Long Distance, Inc. NAL*); *Target Telecom, Incorporated*, 11 FCC Rcd 1811, (1996) (*Target Telecom, Inc.*).

<sup>8</sup> See 47 U.S.C. § 503(b)(2)(B). This section provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license, permit, certificate or similar instrument. The Debt Collection Improvement Act of 1996 (DCIA), Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996), requires, however, that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. Thus, the statutory maxima pursuant to Section 503(b)(2)(B) increased from \$100,000 and \$1,000,000 to \$110,000 and \$1,100,000 respectively. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997). See *infra* note 54.

<sup>9</sup> See 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

<sup>10</sup> During a period between January 1, 1998 and May 28, 1998, the Commission's National Call Center received 156 consumer complaints alleging unauthorized PIC changes by All American.

## II. THE CONSUMER COMPLAINTS

3. Our action is based on a joint investigation by the staffs of the Common Carrier Bureau and the Compliance and Information Bureau of thirteen consumer complaints involving allegations of slamming by All American that were filed with the Commission between September 9, 1997, and March 24, 1998. Each of the complainants contends that All American converted their preferred interexchange carriers without their authorization through the apparent use of falsified or forged LOAs. The complainants are Ms. Susan Share of Anchorage, Alaska; Mr. Fun-Chi Wang of Bayside, New York; Ms. Caroline DelJudice of Yonkers, New York; Ms. Louise Howard, Ms. Marie Saines, and Ms. Martha Lax of Brooklyn, New York; Mr. Mark Wilson, Ms. Jill Leight, Ms. Linda Conrad, Ms. Maria Cervantes, all of New York, New York; Ms. Jean Kitay of Pelham, New York; Mr. Thomas Varughese of Commack, New York, and Ms. Margaret Joyce of Orange City, Florida. The pertinent facts underlying these complaints are set forth below.

### A. The Share Complaint

4. In a written complaint dated October 4, 1997, Ms. Susan Share alleges that All American converted her preferred interexchange carrier from AT&T Corporation ("AT&T") to All American without her authorization.<sup>11</sup> According to Ms. Share, the LOA used by All American to change her long distance telephone service contains incorrect information about her age, zip code, and home address.<sup>12</sup> Moreover, she states that the signature that All American represented was hers on the purported LOA is a forgery, and she provides a copy of her own signature as evidence that her signature was forged.<sup>13</sup>

5. The Common Carrier Bureau's Consumer Protection Branch ("CPB") forwarded the Share Complaint to All American along with a Notice of Informal Complaint ("Notice") in accordance with the Commission's rules.<sup>14</sup> In response, All American filed with the Commission a brief letter containing minimal information about charges it had assessed Ms. Share's account following the unauthorized PIC change, and the amount of money All American had credited to her account in an apparent attempt to resolve the complaint and terminate proceedings at the FCC.<sup>15</sup> The only explanation offered by All American for its actions is that it had received an LOA

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<sup>11</sup> Susan Share, Informal Complaint No. IC-98-1015103858RH (October 4, 1997) ("Share Complaint").

<sup>12</sup> *Id.* We note that at the time Ms. Share alleges her preferred interexchange carrier was changed, she was a resident of Brooklyn, New York.

<sup>13</sup> *Id.* In support of her complaint, Ms. Share submitted to the Compliance and Information Bureau a declaration dated June 11, 1998. *See* Declaration of Susan Share, IC-98-1015103858RH (June 11, 1998).

<sup>14</sup> Notice of Informal Complaint No. IC-98-1015103858RH (December 16, 1997). *Also see* 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

<sup>15</sup> All American Response to Notice of Informal Complaint No. IC-98-1015103858RH (filed January 6, 1998).

"requesting our service in the name of S. Share at the same address as the complainant."<sup>16</sup> All American includes a copy of the purported LOA allegedly signed by Ms. Share. All American states that based on this LOA, All American forwarded a PIC-change request for Ms. Share to NYNEX, Ms. Share's local exchange carrier, for processing.<sup>17</sup> All American does not respond to Ms. Share's allegations that the purported LOA contains incorrect age, zip code, and incomplete address entries, nor does All American attempt to rebut Ms. Share's assertion that the signature on the purported LOA is a forgery.

## **B. The Kitay Complaint**

6. The complaint filed by Ms. Jean Kitay represents perhaps the most blatant example of the fraudulent activity engaged in by All American in connection with its PIC-change practices. Ms. Kitay's complaint details how, upon learning that her preferred interexchange carrier had been converted from AT&T to All American without her authorization,<sup>18</sup> she obtained a copy of the purported LOA that All American relied upon to convert her telephone service. Upon receiving the LOA from All American, Ms. Kitay discovered that it contained the forged signature of her deceased husband.<sup>19</sup> Ms. Kitay describes the signature on the LOA as a blatant forgery because her husband had died long before the signature date indicated on the purported LOA.<sup>20</sup> Ms. Kitay also points out that the purported LOA contains incorrect information about the age and home address of her husband, noting that, while the purported LOA listed her husband's age as 36 years, he was well over that age at the time of his death.<sup>21</sup>

7. All American's response to the CPB's Notice of Ms. Kitay's complaint<sup>22</sup> followed the same pattern as its responses to the Share complaint described above. All American filed a brief letter relating basic information about the charges it had assessed Ms. Kitay following the unauthorized PIC change, and the amount of money it had credited to Ms. Kitay's account.<sup>23</sup> As an

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* In response to CPB's request, NYNEX reported that a PIC-change occurred on July 24, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-1015103858RH (filed January 6, 1998).

<sup>18</sup> Jean Kitay, Informal Complaint No. IC-98-02912 (November 14, 1997).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* In support of her complaint, Ms. Kitay submitted to the Compliance and Information Bureau a declaration dated June 4, 1998. *See* Declaration of Jean Kitay, IC-98-02912 (June 4, 1998).

<sup>22</sup> Notice of Informal Complaint No. IC-98-02912 (April 28, 1998).

<sup>23</sup> All American Response to Informal Complaint No. IC-98-02912 (June 5, 1998).

attachment to its letter, All American includes a copy of the purported LOA allegedly signed by Mr. Kitay. All American states that, based on this LOA, a PIC-change request was subsequently forwarded to Bell Atlantic for processing.<sup>24</sup> Once again, All American does not dispute Ms. Kitay's assertions that the signature on the purported LOA is a forgery, nor does it provide any additional information that might shed light on the facts and circumstances surrounding its apparent use of a forged LOA to effect a change in Ms. Kitay's long distance telephone service.

### C. The Leight Complaint

8. The informal complaint submitted by Ms. Jill Leight similarly asserts that All American converted her preferred interexchange carrier from MCI to All American without her authorization.<sup>25</sup> Ms. Leight states that after receiving a copy of the purported LOA that All American relied upon to convert her service, determined that the purported LOA was a forgery.<sup>26</sup> Ms. Leight points out that the information contained in the purported LOA contains an incorrect zip code.<sup>27</sup> More significantly, Ms. Leight states that the purported LOA contains the printed name and purported signature for "J. Mona," which is identical to the listing for her telephone number as published in her local telephone directory. Ms. Leight states, however, that she uses the name "J. Mona" as a pseudonym to protect her privacy. According to Ms. Leight, her legitimate long distance and local phone bills are prepared and provided to her under her actual name, "Jill Leight," and, Ms. Leight provides copies of the bills as proof of her statement. Ms. Leight argues that All American appears to have simply lifted her pseudonym from the telephone directory and forged a signature for that pseudonym.<sup>28</sup>

9. In a manner similar to its other responses, All American's response to the CPB's Notice<sup>29</sup> of Ms. Leight's complaint consists of a brief letter containing basic information. The letter simply lists the amount of charges All American assessed Ms. Leight, and the amount of money it had credited to the Ms. Leight's account.<sup>30</sup> As an attachment to its letter, All American includes a copy of the purported LOA allegedly signed by Ms. Leight. All American states that based on this

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<sup>24</sup> *Id.* In response to CPB's request, Bell Atlantic reported that a PIC change occurred on September 19, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-02912 (filed June 2, 1998).

<sup>25</sup> Jill Leight, Informal Complaint No. IC-98-02542 (November 14, 1997) ("Leight Complaint").

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* In support of her complaint, Ms. Leight submitted to the Compliance and Information Bureau a declaration dated June 14, 1998. *See* Declaration of Jill Leight, IC-98-02542 (June 14, 1998).

<sup>29</sup> Notice of Informal Complaint No. IC-98-02542 (April 28, 1998).

<sup>30</sup> All American Response to Informal Complaint No. IC-98-02542 (filed June 8, 1998).

LOA, a PIC-change request was subsequently forwarded to Bell Atlantic for processing.<sup>31</sup> All American, does not, however dispute Ms. Leight's assertions that it simply lifted her pseudonym from the telephone directory and forged a signature for that pseudonym on the purported LOA used to convert her long distance service.

**D. The Wilson Complaint**

10. In his written complaint, Mr. Mark Wilson alleges that upon learning that All American had converted his preferred interexchange carrier from Working Assets Long Distance, Incorporated ("Working Assets") to All American without his authorization,<sup>32</sup> he contacted All American and obtained a copy of a LOA that All American represented it used as authentication for the PIC change.<sup>33</sup> According to Mr. Wilson, the purported LOA includes incorrect information regarding his zip code and mailing address.<sup>34</sup> Mr. Wilson states that the purported LOA contains an address identical to that published in his local telephone directory, which shows his address as "Manhattan, NY." Mr. Wilson notes, however, that his actual address is New York, New York. Similar to the facts alleged in the Leight complaint, Mr. Wilson states that the Manhattan address on the purported LOA is evidence that All American simply selected his name and address from the local telephone directory.<sup>35</sup> Mr. Wilson also asserts that the signature on the purported LOA is not his. He provides a copy of his actual signature to demonstrate that the signature on the purported LOA is a forgery.<sup>36</sup>

11. All American's response to the CPB's Notice<sup>37</sup> forwarding the complaint contains minimal information about charges it had assessed Mr. Wilson's account following the unauthorized PIC change, and the amount of money All American had credited to his account.<sup>38</sup> The only explanation offered by All American concerning the circumstances of the PIC-change is that it had received an LOA "requesting our service in the name of Mr. Wilson at the same address as the

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<sup>31</sup> *Id.* In response to CPB's request, Bell Atlantic reported that a PIC change occurred on September 9, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-02542 (filed June 2, 1998).

<sup>32</sup> Mark Wilson, Informal Complaint No. IC-97-09103839MC (September 9, 1997) ("Wilson Complaint").

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* In support of her complaint, Mr. Wilson submitted to the Compliance and Information Bureau a declaration dated June 16, 1998. *See* Declaration of Mark Wilson, IC-97-09103839MC (June 16, 1998).

<sup>37</sup> Notice of Informal Complaint No. IC-97-09103839MC (December 16, 1997).

<sup>38</sup> All American Response to Notice of Informal Complaint No. IC-98-1015103858RH (filed January 6, 1998).

complainant."<sup>39</sup> All American includes a copy of the purported LOA allegedly signed by Mr. Wilson. All American states that based on this LOA, All American forwarded Mr. Wilson's PIC-change request to NYNEX for processing.<sup>40</sup> All American does not respond to Mr. Wilson's allegations that the purported LOA contains incorrect information,<sup>41</sup> nor does All American attempt to rebut Mr. Wilson's assertion that the signature on the purported LOA is a forgery.

### **E. The Remaining Nine Consumer Complaints**

12. The remaining nine consumer complaints<sup>42</sup> that are the subject of this NAL are factually similar to the allegations in the complaints described above, and appear to establish a pattern of conduct by All American to fraudulently change consumers' preferred interexchange carriers through the use of forged LOAs.<sup>43</sup> In each case, the complainant discovered that his or her

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.* In response to CPB's request, NYNEX reported that a PIC change occurred on August 8, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-97-09103839MC (filed January 15, 1998).

<sup>41</sup> *Id.*

<sup>42</sup> The nine consumer complaints are: 1. Fun-Chi Wang, Informal Complaint No. IC-98-06904 (November 28, 1997) ("Wang Complaint"); 2. Caroline DelJuidice, Informal Complaint No. IC-98-06637 (December 10, 1997) ("DelJuidice Complaint"); 3. Linda L. Conrad, Informal Complaint No. IC-98-03268 (March 18, 1998) ("Conrad Complaint"); 4. Maria Cervantes, Informal Complaint No. IC-98-03089 (October 27, 1997) ("Cervantes Complaint"); 5. Margaret A. Joyce Informal Complaint No. IC-98-06433 (March 24, 1998) ("Joyce Complaint"); 6. Louise Howard, Informal Complaint No. IC-98-03269 (March 17, 1998) ("Howard Complaint"); 7. Thomas Varughese, Informal Complaint No. IC-98-08509 (December 9, 1997) ("Varughese Complaint"); 8. Marie Saines, Informal Complaint No. IC-98-03570 (March 17, 1998) ("Saines Complaint"); 9. Martha Lax, Informal Complaint No. 98-08664 (December 1, 1997) ("Lax Complaint").

<sup>43</sup> The LEC responses to CPB's request for information confirm that PIC changes were made for each of the nine consumers. 1. Mr. Fun-Chi Wang: Bell Atlantic reported that a PIC change occurred on August 27, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-06904 (filed June 5, 1998). 2. Ms. Caroline DelJuidice: Bell Atlantic reported that a PIC change occurred on November 12, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-06637 (filed June 5, 1998). 3. Ms. Linda Conrad: GTE reported that a PIC change occurred on September 24, 1997. *See* GTE Response to Notice of Informal Complaint No. IC-98-03268 (filed June 2, 1998). 4. Ms. Maria Cervantes: NYNEX reported that a PIC change occurred on August 27, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-03089 (filed June 2, 1998). 5. Ms. Margaret A. Joyce: Sprint/ United Telephone Company reported that a PIC change occurred on February 11, 1998. *See* Sprint/ United Telephone Company Response to Notice of Informal Complaint No. IC-98-06433 (filed June 18, 1998). 6. Ms. Louise P. Howard: Bell Atlantic reported that a PIC-change occurred on September 26, 1997. *See* Bell Atlantic/ NYNEX Response to Notice of Informal Complaint No. IC-98-03269 (filed May 5, 1998). 7. Mr. Thomas Varughese: Bell Atlantic reported that a PIC-change occurred on October 17, 1997. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-08509 (filed June 12, 1998). 8. Ms. Marie Saines: Bell Atlantic reported that a PIC-change occurred on August 8, 1997. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-03570 (filed May 13, 1998). 9. Ms. Martha Lax: Bell Atlantic reported that a PIC-change occurred on September 2, 1997. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-08664 (filed June 15, 1998).

long distance service had been changed to All American after reviewing a telephone bill and contacting the local exchange carrier. Upon contacting All American, each of the complainants received from All American copies of signed LOAs purportedly authorizing All American to request the PIC change. Each of the complainants has provided statements and evidence that the signature on the purported LOA is a forgery. All American's responses to the CPB's Notices forwarding the complaints<sup>44</sup> are similar to those submitted in the matters detailed above, particularly in their failure to rebut complainants' allegations that the respective LOAs were forged.<sup>45</sup> In each case, All American files brief letters relating basic information about the charges it had assessed the complainants following the unauthorized PIC changes, and the amounts of money All American had credited to the complainants' accounts. In each case, All American includes a copy of the purported LOA allegedly signed by the complainant. All American states that based on this LOA, a PIC-change request was subsequently forwarded to the appropriate local exchange carrier for processing. In no case does All American contest the complainant's assertion that the signature on the purported LOA is a forgery, nor does it provide additional information that might illuminate the facts and circumstances surrounding its apparent use of a forged LOA to effect a change in the complainant's long distance telephone service.

### III. DISCUSSION

#### A. Violations Evidenced in the Complaints

13. As demonstrated in the paragraphs above, the thirteen consumer complaints, and All American's less than thorough responses, establish a disturbing pattern of callous disregard for the requirements of the Act and the Commission's implementing rules and orders pertaining to PIC

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<sup>44</sup> 1. Wang Complaint, Notice of Informal Complaint No. IC-98-06904 (May 12, 1998); 2. DelJudice Complaint, Notice of Informal Complaint No. IC-9806637 (May 12, 1998); 3. Conrad Complaint, Notice of Informal Complaint No. IC-98-03268 (April 28, 1998); 4. Cervantes Complaint, Notice of Informal Complaint No. IC-98-03089 (April 28, 1998); 5. Joyce Complaint, Notice of Informal Complaint No. IC-98-06433 (May 12, 1998); 6. Howard Complaint, Notice of Informal Complaint No. IC-98-03269 (April 28, 1998); 7. Varughese Complaint, Notice of Informal Complaint No. IC-98-08509 (May 27, 1998); 8. Saines Complaint, Notice of Informal Complaint No. IC-98-03570 (April 28, 1998); 9. Lax Complaint, Notice of Informal Complaint No. IC-98-08664 (May 27, 1998).

<sup>45</sup> 1. Wang Complaint, All American Response to Informal Complaint No. IC-98-06904 (June 5, 1998); 2. DelJudice Complaint, All American Response to Informal Complaint No. IC-98-06637 (June 5, 1998); 3. Conrad Complaint, All American Response to Informal Complaint No. IC-98-03268 (May 28, 1998); 4. Cervantes Complaint, All American Response to Informal Complaint No. IC-98-03089 (May 28, 1998); 5. Joyce Complaint, All American Response to Informal Complaint No. IC-98-06433 (June 9, 1998); 6. Howard Complaint, All American Response to Informal Complaint No. IC-98-03269 (May 28, 1998); 7. Varughese Complaint, All American Response to Informal Complaint No. IC-98-08509 (June 23, 1998); 8. Saines Complaint, All American Response to Informal Complaint No. IC-98-03570 (May 28, 1998); 9. Lax Complaint, All American Response to Informal Complaint No. IC-98-08664 (July 6, 1998).



changes.<sup>46</sup> These rules and orders require that IXC's either obtain a signed LOA or, in the case of telemarketing solicitations, follow one of the telemarketing verification procedures before submitting PIC-change requests to LECs on behalf of consumers.<sup>47</sup> Commission rules also prescribe the general form and content of the LOA used to authorize a change in a customer's preferred interexchange carrier.<sup>48</sup> The rules prohibit the potentially deceptive or confusing practice of combining in the same document the LOA with promotional materials.<sup>49</sup> The rules also prescribe the minimum information that must be included in the LOA and require that the LOA be written in clear and unambiguous language.<sup>50</sup> Section 258 of the Act affirms and expands the Commission's authority to deter, punish, and ultimately eliminate slamming by making 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 procedures as the Commission shall prescribe."<sup>51</sup>

14. The statements and other information provided by the complainants, and the limited responses by All American, represent compelling evidence that All American fraudulently represented to LECs that it had the requisite authority to request changes in the consumers' long distance service when it knew it lacked such authority. By failing to provide any evidence or information to counter the complainants' claims that their signatures were forged, we view those claims as admitted by All American. Our own review of signatures that have been supplied by complainants demonstrates that there is little similarity between the purported signatures on the LOAs and the exemplars provided by the complainants, thus rendering it more likely than not that the signatures are, as the complainants allege, forged. In several of the complaints, this finding is supported by evidence that other information on the purported LOA is incorrect or, as in the case of a purported signature by Ms. Kitay's deceased husband, is clearly fabricated. In each of the thirteen cases we find that the complainants have provided credible and compelling evidence that the respective LOAs proffered by All American were, indeed, forged. Therefore, we conclude that All American has apparently willfully or repeatedly violated Section 258 of the Act and the Commission's rules and orders governing PIC changes in connection with the unauthorized PIC changes alleged by the complainants.<sup>52</sup>

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<sup>46</sup> See 47 C.F.R. § 64.1150; *PIC Change Order*, 7 FCC Rcd at 1045.

<sup>47</sup> See 47 U.S.C. § 258, 47 C.F.R. § 64.1150; *1997 FNPRM & Order on Recon.*, 12 FCC Rcd 10674; *LOA Order*, 10 FCC Rcd 9560; *PIC Change Order*, 7 FCC Rcd 1038; *Allocation Order*, 101 FCC 2d 911; *Waiver Order*, 101 FCC 2d 935.

<sup>48</sup> See 47 C.F.R. §64.1150; *LOA Order*, 10 FCC Rcd at 9560.

<sup>49</sup> See 10 FCC Rcd at 9574-75.

<sup>50</sup> See *id.* at 9564-65.

<sup>51</sup> 47 U.S.C. § 258.

<sup>52</sup> See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; *1997 FNPRM & Order on Reconsideration*, 12 FCC Rcd 10674

**B. Forfeiture Amount**

15. All American's apparent use of forged LOAs to effect changes in the long distance service of the thirteen consumers described in this NAL persuades us that the a significant forfeiture action is warranted against All American for willful or repeated violations of Section 258 of the Act and the Commission's rules and orders.<sup>53</sup> Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred ten thousand dollars (\$110,000) for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>54</sup> In exercising such authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>55</sup> The Commission's forfeiture guidelines currently establish a standard forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.<sup>56</sup> These policies and guidelines include upward adjustment criteria that warrant a higher forfeiture amount based on our evaluation of the particular actions and circumstances of the violator.<sup>57</sup> These include the egregiousness of the misconduct, ability or inability to pay, whether the violation was intentional, whether substantial harm resulted from the violations, history of compliance with Commission requirements, whether the violator realized substantial economic gain from the misconduct, and whether the violation is repeated or continuous.<sup>58</sup>

16. We note that in January 1996, the Commission issued five Notices of Apparent

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(1997); *LOA Order*, 10 FCC Rcd 9560 (1995), stayed in part, *In-bound Stay Order*, 11 FCC Rcd 856 (1995); (*PIC Change Order*), 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); *Allocation Order*, 101 FCC 2d 911 (1985), *Waiver Order*, 101 FCC 2d 935 (Com. Car. Bur. 1985), recon. (of both *Allocation Order* and *Waiver Order*) denied, 102 FCC 2d 503 (1985) (*Reconsideration Order*).

<sup>53</sup> See *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) (petitions for reconsideration pending).

<sup>54</sup> 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

<sup>55</sup> See 47 U.S.C. § 503(b)(2)(D).

<sup>56</sup> See *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). (petitions for reconsideration pending).

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

<sup>58</sup> *Id.* See also 47 U.S.C. § 503(b)(2)(D).

Liability totalling \$320,000 against IXC's for their use of forged LOAs to effect PIC changes.<sup>59</sup> The Commission assessed forfeitures of \$40,000 for each of the violations cited in the NALs.<sup>60</sup> In issuing these Orders, the Commission sternly admonished carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary fines, against any carrier found to have engaged in slamming, particularly the practice of relying on forged LOAs.<sup>61</sup> The volume of consumer complaints, however, continues to grow. We need to communicate successfully the message that slamming will not be tolerated.

17. In the instant case, the evidence before us indicates that All American, despite our previous warnings to IXC's about the use of forged LOAs, has willfully and repeatedly engaged in this fraudulent conduct as part of a pattern to intentionally slam consumers. The clear pattern of conduct by All American, as evidenced by the 13 violations described above, distinguishes this case from prior NALs involving forged LOAs.<sup>62</sup> Moreover, as we have explained in earlier NALs, we find forgery to be a particularly egregious form of slamming.<sup>63</sup> We thus find that the upward adjustment criteria in our forfeiture guidelines that involve egregiousness of misconduct, intent of the carrier, and the repeated nature of violations are applicable in this case. Applying those criteria to the facts of this case, we conclude that it is appropriate to impose a forfeiture amount that is double the base amount contained in our forfeiture guidelines. In this regard, the unauthorized conversions of Share's, Wang's, DelJuidice's, Wilson's, Howard's, Leight's, Conrad's, Kitay's, Cervantes's, Joyce's, Varughese's, Saines's, and Lax's presubscribed carrier through the use of forged LOAs constitute thirteen separate violations. Thus, we find that All American is apparently liable for a forfeiture of one million, forty thousand dollars (\$1,040,000) for the unauthorized conversion of the thirteen complainants' long distance service. All American will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be

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<sup>59</sup> See *AT&T Corporation*, 11 FCC Rcd 1885 (1996) (*AT&T Corp. NAL*); *Home Owners Long Distance, Incorporated*, 11 FCC Rcd 1808 (1996) (*Home Owners Long Distance, Inc. NAL*); *MCI Telecommunications Corporation*, 11 FCC Rcd 1821 (1996) (*MCI NAL*); *Nationwide Long Distance, Incorporated*, 11 FCC Rcd 3087, (1996) (*Nationwide Long Distance, Inc. NAL*); *Target Telecom, Incorporated*, 11 FCC Rcd 1811, (1996) (*Target Telecom, Inc. NAL*).

<sup>60</sup> See, e.g. *AT&T Corp. NAL*, 11 FCC Rcd at 1886; *Home Owners Long Distance, Inc. NAL*, 11 FCC Rcd 1810.

<sup>61</sup> See, e.g. *Nationwide Long Distance, Inc. NAL*, 11 FCC Rcd at 3089. The Commission has also emphasized on numerous occasions that the actions of a carrier's marketing agents do not relieve a carrier of its independent obligation to ensure compliance with the rules. Rather, under the Communications Act, the acts or omissions of an agent or other person acting for a common carrier are deemed to be the acts or omissions of the carrier itself. See 47 U.S.C. § 217; see also *Heartline Communications, Inc.* 11 FCC Rcd 18487, 18494 (1996) (*Heartline Communications NAL*).

<sup>62</sup> See *AT&T Corp. NAL*, 11 FCC Rcd 1885; *Home Owners Long Distance, Inc. NAL*, 11 FCC Rcd 1808; *MCI NAL*, 11 FCC Rcd 1821; *Nationwide Long Distance, Inc. NAL*, 11 FCC Rcd 3087; *Target Telecom, Inc. NAL*, 11 FCC Rcd 1811.

<sup>63</sup> See *Excel Telecommunications Incorporated*, 11 FCC Rcd 19765, 19767 (1997) (*Excel NAL*).

imposed or that some lesser amount should be assessed.<sup>64</sup>

18. We take this opportunity to remind carriers that they must provide reasonable detail when responding to the Notices issued by the Consumer Protection Branch forwarding consumer complaints about slamming and other questionable practices. Typically, carriers do not provide a detailed explanation or justification of their actions in responding to slamming complaints. All American's responses exemplify this general practice. We hope our action today signals to carriers that their unwillingness to provide detailed information in response to consumer complaints puts them at risk of severe forfeiture penalties, if we determine that they have failed to adequately rebut allegations that their conduct has violated the Act or our rules or orders. Many carriers apparently mistakenly believe, as demonstrated by All American's responses to the Notices served upon them, that they can escape such enforcement consequences by simply providing a refund or credit to those consumers who actually discover an unauthorized change or action and take the time to file complaints with the Commission. Our practice is to scrutinize consumer complaints and to take prompt enforcement action, including the imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized and to conduct itself in a manner that promotes the interest and welfare of telecommunications consumers.

19. Furthermore, our review of All American's inadequate responses indicate a need for the Commission to continue to monitor All American's PIC-change practices. We, therefore, require All American to file with this Commission a compliance plan which shall include procedures designed to promptly identify and address consumer inquiries and concerns about All American's PIC-change practices.<sup>65</sup> The compliance plan shall also detail actions All American has taken and procedures it has established to comply with the Act, and the Commission's rules and orders.

#### IV. CONCLUSIONS AND ORDERING CLAUSES

20. We have determined that All American apparently violated Section 258 of the Act and the Commission's PIC change rules and orders by converting the PICs of the thirteen consumers identified above, on the dates and in the manner described herein. We have further determined that All American is apparently liable for forfeitures in the amount of eighty thousand dollars (\$80,000) for each of the violations, resulting in a total forfeiture amount of one million forty thousand dollars (\$1,040,000).

21. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80,

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<sup>64</sup> See § 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>65</sup> See 47 U.S.C. § 218.

that All American Telephone, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of one million, forty thousand dollars (\$1,040,000) for willful and repeated violations of Section 258 of the Act<sup>66</sup> and the Commission's PIC-change rules and orders as described in the paragraphs above.<sup>67</sup>

22. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, All American Telephone, Inc. SHALL PAY the full amount of the proposed forfeiture<sup>68</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

23. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 218, that All American SHALL FILE with the Commission, within thirty (30) days of the release of this Notice, a compliance plan detailing the actions it has taken and the procedures it has established, to ensure compliance with Section 258 of the Act and the Commission's rules and orders relating to PIC changes. The compliance plan shall set forth procedures designed to enable All American to promptly identify and address consumer inquiries and concerns about its PIC-change practices.

24. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Clay Garey, President, All American Telephone, Inc., 9001 Airport Freeway, Suite 570, Fort Worth, Texas 76180.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>66</sup> 47 U.S.C. § 258.

<sup>67</sup> See 47 C.F.R. § 64.1150; 1997 FNPRM & Order on Recon., 12 FCC Rcd 10674; LOA Order, 10 FCC Rcd 9560; PIC Change Order, 7 FCC Rcd 1038; Allocation Order, 101 FCC 2d 911; Waiver Order, 101 FCC 2d 935.

<sup>68</sup> The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on All American Telephone, Inc.'s check or money order to "NAL/Acct. No. 816EF0008." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.