

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

In the Matter of)	
)	File No. ENF-99-11
Qwest Communications)	
International, Inc.)	
)	NAL/Acct. No. 916EF0008
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 15, 1999

Released: October 19, 1999

By the Commission:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture for slamming (NAL),¹ we initiate enforcement action against Qwest Communications International, Inc. (Qwest).² For the reasons set forth below, we find that Qwest apparently willfully or repeatedly violated section 258 of the Communications Act of 1934, as amended (the Act),³ as well as Commission rules and orders, by changing the designated preferred carriers of thirty consumers without their authorization.⁴ For twenty-two of the complaints forming the basis of this NAL, the violations are particularly egregious because Qwest relied on Letters of Agency (LOAs) that appear to contain forged or falsified signatures of the unsuspecting consumers. In another four complaints, Qwest provided no evidence to rebut the complainants' allegations that although the consumers never communicated with the company, Qwest changed the consumers' preferred carriers without their authorization. In the remaining four complaints, Qwest submitted preferred carrier change requests based upon LOAs completed by individuals who were not authorized to effect changes on the accounts that were switched. Based upon our review of the facts and

¹ 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.

² Qwest, a publicly traded company headquartered in Denver, Colorado, was incorporated in 1991 and completed a merger with LCI International Telecom Corp. (LCI) on October 17, 1998. The complaints, which form the basis for this NAL, involve unauthorized conversions by both Qwest and LCI.

³ 47 U.S.C. § 258.

⁴ The practice of changing a customer's preferred carrier without the customer's authorization is commonly referred to as "slamming."

circumstances surrounding the violations, we find that Qwest is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000) for the twenty-two violations involving forged or falsified signatures and forty thousand dollars (\$40,000) for the eight remaining violations, resulting in a total forfeiture amount of two million and eighty thousand dollars (\$2,080,000).

2. In response to the Commission's service of these complaints, as well as the many others served on Qwest in the past year,⁵ Qwest's form reply asserts that it made the respective switches based upon authorizations received from several third-party marketers of Qwest's service. Accordingly, we take the opportunity at the outset of this order to emphasize what we have stated on numerous occasions: that reliance on actions of third-party marketers does not constitute a defense to an allegation of slamming. Pursuant to the Act and Commission rules, carriers are responsible for the actions of their sales agents, whether they are employees or third-party contractors.

II. THE CONSUMER COMPLAINTS

3. The Common Carrier Bureau conducted an investigation into consumer complaints filed with the Commission alleging that Qwest had switched the complainants' long distance service without their authorization. This action is based upon thirty of those complaints from consumers throughout the nation. Each of these complainants contends that Qwest changed their preferred interexchange carriers without their authorization. The complainants are Anusha Srinivasan of Eden Prairie, Minnesota; Alda J. Hodgson of Lake Matthews, California; Linda Carroll of Fayetteville, Georgia; Sue Wu of Short Hills, New Jersey; Rosalie Pinto of Jersey City, New Jersey; Elwood I. Kita of Hilo, Hawaii; Bobby F. & Linda D. Lacy of McDonough, Georgia; Enrique G. Martinez of Kalamazoo, Michigan; Dolores Pestana of Dracut, Massachusetts; Jeffrey S. Protzel of Pittsburgh, Pennsylvania; Siu-ki Tso of Edison, New Jersey; Katherine F. Howell of Rolla, Missouri; George A. Robles of Priest River, Idaho; Saul O. Paredes of Saint Louis, Missouri; Don P. Romero of Welsh, Louisiana; Edward A. Herrera of Phoenix, Arizona; Szuchien Yau of Hamden, Connecticut; Carolyn Booth, of East Concord, New Hampshire; Jose A. Pabon of Las Vegas, Nevada; Diane C. Lares of Sarver, Pennsylvania; Arturo Sobrino of Allentown, Pennsylvania; Edna Cruz of Centreville, Virginia; Audrey R. Tien of East Lansing, Michigan; Laura Petrou of Washington, D.C.; Janice and Jerry Yun of Annandale, Virginia; Liem B. Lam of Plainsboro, New Jersey; Frank J. Ruiz of Chalmette, Louisiana; James S. Angert of Honolulu, Hawaii; Pieh-Ling Shing of Fremont, California and Enrique Vargas of Cave Creek, Arizona. The pertinent facts underlying these complaints are set forth below.

⁵ During a period between September 1, 1998 and August 31, 1999, the Commission's National Call Center received 1,142 consumer calls regarding unauthorized preferred carrier changes by Qwest and 218 consumer calls regarding unauthorized preferred carrier changes by LCI. During the same period, the Consumer Protection Branch processed 637 written consumer complaints alleging slamming by Qwest and 551 written consumer complaints alleging slamming by LCI.

A. The Booth Complaint

4. In their written complaint, Carolyn and Stephen Booth allege that Qwest switched their preferred interexchange carrier from AT&T, Incorporated (AT&T) to Qwest without authorization. The phone line at issue serves a summer camp owned by the Booths. The account for this line is in the name of Stephen Booth, but for privacy reasons, the Booths listed the telephone in the name of the Booth's former dog, Boris, that had died in 1987.⁶ The Booths state that they discovered the switch when they noticed charges from Qwest on their Bell Atlantic bill. When the Booths contacted Qwest, the customer service representative credited the account, but did not offer an explanation for the switch.

5. The Common Carrier Bureau's Consumer Protection Branch (the Branch) forwarded the Booth's complaint to Qwest along with a Notice of Informal Complaint (Notice).⁷ In response to the Notice, Qwest filed a letter stating that it had received an LOA from Amnet Services, a third party distributor (marketing agent) of Qwest's services. The letter indicates that the Booth's account was credited \$33.04 for switching and usage charges.⁸ Qwest's response goes on to indicate that it established an account for Boris Booth on January 5, 1999. As noted previously, the Booth's listed the name of their deceased dog Boris in the telephone directory, even though the account was in the name of Stephen Booth. Qwest also included a copy of a LOA allegedly signed by Boris Booth on May 23, 1999, five months after Qwest admittedly established the Booth account. The response fails to describe Qwest's efforts, if any, to confirm the LOA's authenticity.

B. The Hodgson Complaint

6. In her written complaint, Alda J. Hodgson alleges that Qwest switched her preferred interexchange carrier from AT&T to Qwest without her authorization. Mrs. Hodgson states that she discovered the switch when an AT&T telemarketer contacted her and asked her permission to reinstate her AT&T service. On the same day, she received a letter from Qwest addressed to her late husband, James Hodgson.⁹ The letter welcomed Mr. Hodgson to Qwest's service. Mrs. Hodgson then contacted Qwest to determine why her long distance service was changed without her authorization. The Qwest customer service representative stated that James Hodgson authorized the switch. Mrs. Hodgson states that her husband could not have authorized the switch because he died over eight years ago.¹⁰ When she pressed the Qwest

⁶ See Declaration of Carolyn and Steven Booth.

⁷ See Appendix A. Also see 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

⁸ Qwest Response to Notice of Informal Complaint No. IC-99-20305 (filed September 20, 1999).

⁹ Alda J. Hodgson, Informal Complaint No. IC-99-02489 (December 8, 1998) (Hodgson Complaint).

¹⁰ *Id.* In further support of her complaint, Mrs. Hodgson submitted to the Common Carrier Bureau a declaration dated May 25, 1999. Declaration of Alda J. Hodgson, IC-99-02489 (May 25, 1998).

customer service representative for an explanation of how she was switched, the representative hung up on her.¹¹

7. In response to the Branch's Notice, Qwest filed a letter stating that it had received an LOA from American Communications Network,¹² a third party distributor (marketing agent) of Qwest's services. The letter indicates that Mrs. Hodgson's account was credited \$14.08 for switching and usage charges.¹³ The letter also included a copy of the LOA allegedly signed by Mr. Hodgson on November 13, 1998. Qwest's response does not rebut Mrs. Hodgson's allegation that her deceased husband did not and indeed could not have authorized the switch. The response also fails to provide any information regarding the circumstances of how the LOA was obtained, nor does it describe Qwest's efforts to confirm the LOA's authenticity.

C. The Wu Complaint

8. Sue Wu alleges in her complaint that Qwest switched her preferred interexchange carrier from AT&T to Qwest twice without her authorization.¹⁴ Ms. Wu noticed the December, 1998, switch when she received an invoice from Qwest in January 1999.¹⁵ Ms. Wu states that she repeatedly corresponded with Qwest to demand that the company cease changing her long distance service without her authorization.¹⁶

9. In response to the Branch's Notice,¹⁷ Qwest states that it received a LOA authorizing Ms. Wu's switch from Everlasting Telecomm,¹⁸ a third-party distributor of Qwest's services. Qwest adds that the Wu's account was credited \$10 for switching charges.¹⁹ As an attachment to its letter, Qwest included a copy of the LOA allegedly signed by Ms. Wu's

¹¹ *Id.*

¹² American Communications Network is also the Qwest distributor in the Carroll and Lacey complaints.

¹³ Qwest Response to Notice of Informal Complaint No. IC-99-02489 (filed March 17, 1999).

¹⁴ Sue Wu, Informal Complaint No. IC-99-03274 (January 26, 1998) (Wu Complaint). The wrongful switch considered as the basis of this complaint occurred on December 3, 1998. Ms. Wu also alleges that Qwest previously slammed her in February of 1998. *See* Wu Complaint at 2-3.

¹⁵ *See* Wu Complaint.

¹⁶ *See* Wu Complaint at 2-3.

¹⁷ *See* Appendix A.

¹⁸ Ms. Wu, echoing the concerns of other complainants, expresses their suspicion that they were specifically targeted as members of the Chinese speaking community that could be more susceptible to victimization due to a lack of fluency in English. *See* Wu Supplemental Letter at 1.

¹⁹ Qwest Response to Notice of Informal Complaint No. IC-99-03274 (filed April 14, 1999).

husband. In a supplemental letter submitted to the Branch in April 1999,²⁰ Ms. Wu states that the signature purportedly authorizing the carrier change clearly is a forgery.²¹ In support of her assertion, Ms. Wu provided the Commission with a copy of her husband's signature and also explains that her husband's name on the purported LOA is spelled incorrectly.²² Our own review of the LOA and the Wu declaration reveals that the two signatures appear clearly to be different and Mr. Wu's name is spelled incorrectly. The only explanation offered by Qwest for its actions is that "the enclosed Letter of Agency (LOA) that Qwest accepted in good faith from Everlasting Telecom indicates that Wen-Hsien Wu authorized the change in long distance service."²³ Qwest's response does not, however, dispute Ms. Wu's assertions that the LOA used to convert her long distance service contains a forged signature.

D. The Tso Complaint

10. Ms. Siu-ki Tso's complaint details how she learned that her preferred interexchange carrier had been converted from AT&T to Qwest when she received her January, 1999 bill from Bell Atlantic. She attempted to resolve the problem by calling Qwest numerous times, but was unable to reach anyone at the number provided on the bill.²⁴ Only after the Branch served it with a Notice,²⁵ did Qwest send Ms. Tso a copy of the LOA it purportedly relied upon to switch her long distance provider. Ms. Tso describes the signature on the LOA as a forgery and states that the LOA contains an incorrect spelling of her name.²⁶

11. In response to the Branch's Notice of Ms. Tso's complaint, Qwest filed a letter with the Commission providing a summary of charges it had assessed Ms. Tso's account following the unauthorized preferred carrier change, and the amount of money Qwest had credited to her account in an apparent attempt to resolve the complaint.²⁷ Qwest's letter included a copy of the LOA allegedly signed by Ms. Tso. Qwest's response fails to provide any

²⁰ See Supplemental Letter from Ms. Su Wu to Sharon Lee, Chief, Consumer Protection Branch, April 19, 1999, IC No. IC-99-03274. (Wu Supplemental Letter).

²¹ *Id.*

²² See Declaration of Sue and Wen-hsien Wu, IC 99-03274 (May 16, 1999).

²³ *Id.*

²⁴ We note this practice might constitute a violation of the Commission's recently adopted Truth-In-Billing rules. See *In the Matter of Truth-in-Billing and Billing Format*, 14 FCC Rcd. 7492 (1999), at paras. 65-67. Although TIB does not adopt any standards for customer service personnel, the Order states that we expect that customer service reps will be well trained and that there will be enough of them to handle call volumes.

²⁵ See April 25, 1999 letter from Siu-Ki Tso to the Commission responding to Qwest's April 15, 1999 letter regarding, Informal Complaint No. IC-99-03438 (January 21, 1999).

²⁶ *Id.*

²⁷ Qwest Response to Notice of Informal Complaint No. IC-99-03438 (filed April 15, 1999).

information about how it attempted to confirm the LOA's authenticity nor does it dispute Ms. Tso's assertion that she did not authorize the switch.

E. The Robles Complaint

12. Mr. George Robles also alleges in his complaint that Qwest switched his preferred interexchange carrier from AT&T to Qwest without his authorization.²⁸ Mr. Robles states that, he learned that that Qwest had converted his long distance service when he received a welcome letter from Qwest on December 18, 1998. He contacted Qwest to inquire under what authority Qwest made the change.²⁹ The LOA provided by Qwest contained the name "Glen" Mickelson and an address different from Mr. Robles', but Mr. Robles' telephone number.³⁰ Mr. Robles' phone bill is in his name, and he is the only individual authorized to make changes to that account.

13. Qwest's response to the Branch's Notice³¹ of Mr. Robles' complaint states that Qwest established an account "under the name of George Robles on December 7, 1998." Incongruously, the LOA provided by Qwest to evidence its authorization is signed by a "Glen Mickelson." Qwest's response does not explain how an account was established in the name of George Robles based upon an LOA signed by a "Glen Mickelson." Nor does Qwest's response address the assertion that the LOA used to convert Mr. Robles' long distance service was signed by an individual unaffiliated with his telephone service account, and therefore, without authority to approve such a change.

F. The Yau Complaint

14. Mr. Szuchien Yau also states that he became aware that he had been switched to Qwest without his authorization when he received a monthly bill. Mr. Yau made several telephone calls to Qwest in an effort to determine how Qwest changed his preferred long distance carrier, and was told that Qwest had been given approval by a third-party marketing company. Even though Mr. Yau asserted that neither Qwest nor the marketing company had ever contacted him, the customer service representative he spoke with informed him he would still have to pay Qwest for the charges incurred³². Mr. Yau states that he then attempted to speak with a customer service supervisor in order to resolve his complaint. Although Mr. Yau left a message on the supervisor's answering machine, his call was not returned.

²⁸ George Robles, Informal Complaint No. IC-99-02911 (December 30, 1998) (Robles Complaint).

²⁹ *Id.*

³⁰ *Id.* In support of his complaint, Mr. Robles submitted to the Common Carrier Bureau a declaration dated May 21, 1999. *See* Declaration of George Robles, IC-99-02911 (May 21, 1999).

³¹ *See* Appendix A.

³² *See* Yau Complaint at 1; *also see* Declaration of Szuchien Yau, IC-99-19325 (September 13, 1999).

15. As in the other complaints, Qwest states that an account was established in Mr. Yau's name based upon authorization it received from Advanced Direct Marketing, a third-party distributor.³³ The LOA provided by Qwest as evidence of this authorization appears to include the signature of someone other than Mr. Yau. Moreover, handwriting on the LOA says "Authorized By Phone," further suggesting that the signature on the LOA is that of someone other than Mr. Yau. Qwest's response does not explain how a signed LOA, as required by the Commission's rules, could be obtained over the telephone.³⁴ Nor does Qwest challenge Mr. Yau's assertion that he had never given authorization to have his preferred long distance carrier switched to Qwest.

G. The Romero Complaint

16. Mr. Don Romero states that he first learned that Qwest had converted his long distance service without his authorization when he received a bill from Qwest on April 30, 1999.³⁵ In his complaint, Mr. Romero states that he immediately contacted Qwest to explain that he did not authorize a change and to request "that the charges be taken off or credited to reflect a zero balance."³⁶ In response, Qwest claimed it would send to Mr. Romero a copy of a the LOA illustrating his agreement to change his carrier. In a subsequent conversation with Qwest customer service, Mr. Romero was informed that Qwest did not have a letter of authorization, and no LOA was ever provided to him. Mr. Romero states in his complaint and a supporting declaration that he never authorized Qwest to order a change in his long distance carrier.³⁷

17. Qwest's response to the Branch's Notice³⁸ of Mr. Romero's complaint lists the amount of charges Qwest assessed Mr. Romero, and the amount of money it had credited to Mr. Romero's account.³⁹ Qwest states further that it received authorization from the Dino Group, a third party distributor of Qwest's services,⁴⁰ although it had been "unable to obtain the Letter of Authorization that established this account."⁴¹ Qwest fails to provide the Commission with any

³³ Qwest Response to Informal Complaint No. IC-99-19325 (filed September 20, 1999).

³⁴ *Id.*

³⁵ Don P. Romero, Informal Complaint No. IC-99-19477 (June 4, 1999) (Romero Complaint).

³⁶ *Id.*

³⁷ *See* Romero Complaint at 1; *also see* Declaration of Don P. Romero, IC-99-19477 (September 10, 1999).

³⁸ *See* Appendix A.

³⁹ Qwest Response to Informal Complaint No. IC-99-19477 (filed July 13, 1999).

⁴⁰ *Id.*

⁴¹ *Id.*

evidence to rebut Mr. Romero's allegations that Qwest changed his preferred carrier service without authorization.

H. The Cruz Complaint

18. In her complaint, Edna Cruz similarly explains that she discovered that her preferred long distance carrier had been switched to Qwest when she received her bill. She asserts that she never authorized this switch. Ms. Cruz declares that she does recall receiving a telemarketing call from Qwest, "but emphatically declined their offer."⁴² She states that when she contacted Qwest, a customer service representative indicated that she was unable to discontinue future bills and service, and refused to credit her account for the current bill of \$5.13. The customer service representative also denied Ms. Cruz' request to speak to a supervisor.

19. In response to the Branch's service of Ms. Cruz' complaint, Qwest sent a letter⁴³ addressed to the Branch Chief "apologizing for any frustration this situation may have caused." There is no indication whether a copy of this letter was also sent to the complainant, Ms. Cruz. As with the other complaints, Qwest response states that Ms. Cruz' service was switched based on an order received from LI Deer International, an authorized marketer of Qwest's service. However Qwest's response does not include a copy of an LOA, or any other evidence demonstrating that they verified Ms. Cruz' purported carrier change request in accordance with Commission rules.

20. In a manner similar to several other recent responses, Qwest goes on to state that,

Qwest is entitled to reimbursement for calls carried over its network. In those cases where a change in primary long distance carrier is disputed, the FCC has ruled that the customer is responsible for charges incurred on the current carrier.⁴⁴

Qwest does not explain the basis for its assertion concerning Commission rulings that it is entitled to be paid in full for charges assessed upon customers that it allegedly switched without authorization.

I. The Remaining Consumer Complaints

⁴² See Declaration of Edna Cruz, IC Number 99-16094, (September 30, 1999)

⁴³ Qwest Response to Informal Complaint No. IC-99-16094 (filed September 7, 1999).

⁴⁴ *Id.*

21. The remaining consumer complaints⁴⁵ that are the basis of this NAL are factually similar to the allegations in the complaints described above, and appear to establish a pattern of conduct by Qwest to change consumers' preferred interexchange carriers through the use of forged or otherwise unauthorized LOAs. In each case, the complainant discovered that his or her long distance service had been changed to Qwest after reviewing a telephone bill, receiving a welcome letter from Qwest or receiving a phone solicitation from their previous long distance company. Twenty-two of the complainants have provided statements and evidence that the signature on the purported LOA supplied by Qwest as its authority for submitting a preferred carrier change request on behalf of the complainants is falsified or a forgery.⁴⁶ Three other complainants, in a manner similar to the Robles complaint, have provided statements and evidence that the signature on the LOA provided by Qwest is not the signature of a person with authority to make such a request. In each instance, the complainants contend that the alleged signatory is both unauthorized to approve preferred carrier changes for that telephone line and unknown to the complainants.⁴⁷ One additional complainant, in fashion analogous to the Romero complaint, alleges that his preferred carrier was changed without authorization, much less any contact with the company.⁴⁸ Qwest, in response to this complaint, fails to provide any evidence to refute the consumer's allegations that Qwest converted the consumer's long distance carrier without obtaining his authorization. Although Qwest claims that these changes were made pursuant to a signed LOA, Qwest concedes that it is unable to locate the purported LOA's upon which it claims to rely. Finally, in one other case similar to the Cruz complaint, Qwest has failed to provide the Commission with any evidence rebutting the complainant's sworn allegation that his preferred carrier was switched to Qwest without authorization.

22. Qwest's responses to the Branch's Notices⁴⁹ forwarding the complaints are similar to those detailed above. In all of the remaining cases Qwest responds that it directed the preferred carrier switches be made based upon authorization received from various third-party marketers of Qwest's service. In those cases where Qwest has produced LOA's, Qwest does not contest the complainant's assertion that the signature on the purported LOA is falsified or forged,⁵⁰ or was in the name of someone without authorization to approve the switch.⁵¹ In four

⁴⁵ See Appendix A for details concerning the remaining consumer complaints.

⁴⁶ See Appendix A for a list of complainants' declarations.

⁴⁷ See Katherine F. Howell Complaint, IC 99-03536. The LOA provided by Qwest in response to the Howell complaints is in the name of Hong Li and is written solely in Chinese. *Also see* Pieh-Ling Shing Complaint, IC 99-19341, and James S. Angert Complaint, IC 99-19328.

⁴⁸ See Enrique Vargas Complaint, IC 99-19128.

⁴⁹ See Appendix A for a list of Qwest responses.

⁵⁰ See complaints of Anusha Srinivasan, IC 99-02727; Alda J. Hodgson, 99-02489; Linda Carroll, IC 99-03505; Sue Wu, IC 99-03274; Rosalie Pinto, IC 99-19015; Elwood I. Kita, IC 99-02578; Bobby F. & Linda D. Lacy, IC 98-41593; Enrique G. Martinez, IC 99-03279; Dolores Pestana, IC 99-02730; Jeffrey S. Protzel, IC 99-02689; Siu-ki Tso, IC 99-03438; Saul O. Paredes, IC 99-09942; Szuchien Yau, IC 99-19325; Carolyn Booth, IC 99-20305; Jose A. Pabon, IC 99-19314; Diane C. Lares, IC 99-19322; Audrey R. Tien, IC 99-19495; Laura Petrou, IC

of the cases,⁵² Qwest has failed to produce any evidence to rebut the allegation of slamming, or demonstrated that it had complied with the Commission's rules requiring verification of carrier switch requests.

III. DISCUSSION

A. Violations Evidenced in the Complaints

23. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change"⁵³ 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.⁵⁴ The goal of section 258 is to eliminate the practice of "slamming." Pursuant to section 258, carriers are barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.

24. Commission rules and orders related to slamming require that when using LOA's IXC's obtain a signature from an individual authorized to approve a change in the presubscribed carrier for the consumer's telephone line.⁵⁵ The Commission's rules establish that the LOA must be signed by, the "subscriber to the telephone line(s) requesting the primary interexchange carrier change."⁵⁶

25.. The thirty consumer complaints forming the basis for this action appear to establish a pattern of willful or repeated violations of the requirements of the Act and the

99-08045; Janice and Jerry Yun, IC 99-19448; Edward A. Herrera, IC 99-19139; Frank Ruiz, IC 99-19144 and Liem B. Lam, IC 99-19478.

⁵¹ See complaints of Katherine F. Howell, IC 99-03536; Pieh-Ling Sheng, IC 99-19341; James S. Angert, IC 99-19328 and George A. Robles, IC 99-02911.

⁵² See complaints of Don P. Romero, IC 99-19477; Arturo Sobrino, IC 99-16192; Edna Cruz, IC 99-16094 and Enrique Vargas, IC 99-19128.

⁵³ The Commission's rules and orders prescribe that interexchange carriers (IXCs) must submit preferred carrier 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 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (*LOA Order*); *Preferred Carrier Change Order*, 7 FCC Rcd 1038 (1992); *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*).

⁵⁴ *See* 47 U.S.C. § 258.

⁵⁵ Under the Commission's rules, "the letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change." 47 C.F.R. § 64.1150(b).

⁵⁶ 47 C.F.R. § 64.1150(b).

Commission's rules and orders pertaining to preferred carrier changes.⁵⁷ The facts in the complaints, and Qwest's own responses, illustrate clearly that Qwest was or should have been on notice as early as October 1998, that consumers had problems with Qwest's submission of LOAs.⁵⁸ In April and May of 1999, however, Qwest apparently was continuing to submit forged or falsified LOAs and change orders without authorizations in the same manner which had resulted in complaints being filed with Qwest over seven months earlier.⁵⁹ Regarding the forgery complaints, our own review of signatures that have been supplied by the 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 clearly fabricated.⁶⁰ In each of the twenty-two cases, we find that the complainants have provided credible and compelling evidence that the respective LOAs proffered by Qwest were either falsified or contain forgeries of the complainants' signatures. Therefore, we conclude that Qwest has apparently willfully or repeatedly violated section 258 of the Act and the Commission's rules and orders by changing these consumers preferred carriers without authorization through the submission of forged letters of authorization.⁶¹

26. In four of the remaining complaints, an individual authorized to make such a preferred carrier change request on behalf of the complainants apparently did not sign the LOAs. Qwest offers no explanation for how individuals without any association to the complainants' telephone service were allowed to authorize a change in that service, nor does Qwest explain the measures it employed to ensure that such a violation of our rules did not occur. Indeed, in each of these cases, it appears that a simple comparison between the LOA and the listing information would have revealed the inconsistency. In each of the cases, we find that the complainants have provided credible and compelling evidence that an individual unaffiliated with the complainant's telephone service account signed the respective LOAs proffered by Qwest. Therefore, we conclude that Qwest has apparently willfully or repeatedly violated section 258 of the Act and

⁵⁷ See 47 C.F.R. § 64.1150; *Preferred Carrier Change Order*, 7 FCC Rcd at 1045.

⁵⁸ Mr. and Mrs. Lacy's complaint contends that they initially contacted Qwest on October 23, 1998. Lacy Complaint, Informal Complaint No. IC-98-41593 (November 2, 1998). Qwest confirms this contact in its response to the Commission's Notice. See Qwest Response to Notice of Informal Complaint No. IC-98-41593 (filed March 1, 1999).

⁵⁹ US WEST reported that on May 4, 1999, they processed a Qwest order to execute a preferred carrier change for Enrique Vargas' telephone number. US WEST Response to Vargas Complaint, Notice of Informal Complaint No. IC-99-19128 (filed August 13, 1999).

⁶⁰ See e.g., Wu complaint, IC 99-03274 or Carroll complaint IC 99-03505.

⁶¹ See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; *1997 FNPRM & Order on Reconsideration*, 12 FCC Rcd 10674 (1997); *LOA Order*, 10 FCC Rcd 9560 (1995), stayed in part, *In-bound Stay Order*, 11 FCC Rcd 856 (1995); (*Preferred Carrier 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*).

the Commission's rules and orders in connection with the unauthorized preferred carrier changes alleged by these complainants.⁶²

27. Regarding the four additional complaints, we find that the complainants have provided credible and compelling evidence that Qwest converted their long distance carriers without proper authorization. Our review of the record demonstrates that Qwest fails to rebut the complainants' allegations that their long distance service was changed, and alternatively states it is unable to locate the LOAs used to change the consumers' carriers.⁶³ In fact, with respect to these consumers, Qwest fails to provide the Commission with any evidence that Qwest utilized *any* verification method prior to submitting the carrier change orders.⁶⁴ Therefore, we conclude, in the absence of an argument or rebuttal evidence to the contrary, that Qwest has apparently willfully or repeatedly violated section 258 of the Act and the Commission's rules and orders in connection with the unauthorized preferred carrier changes alleged by these complainants.⁶⁵

28. We note that each of Qwest's responses to these complaints state that Qwest made the switch based upon purported authorizations received from various third-party marketers of Qwest services. Qwest's responses typically add that such distributors "are required to act within the guidelines of federal and state laws, in addition to following Qwest's policies regarding" carrier switches. To the extent Qwest is seeking to absolve itself of fault in these complaints by laying blame on its third-party marketers, we emphasize that the Commission on many occasions has made clear that carriers are responsible for the acts of their marketing agents.⁶⁶ Moreover, despite Qwest's assertions that its distributors are required to act in accordance with applicable law, we find it particularly troubling that the complaints encompassed by this NAL were admittedly originated by *no less than twelve different independent marketing companies authorized by Qwest*. Thus apparent slamming violations

⁶² See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; 1997 FNPRM & Order on Reconsideration, 12 FCC Rcd 10674 (1997); LOA Order, 10 FCC Rcd 9560 (1995), stayed in part, In-bound Stay Order, 11 FCC Rcd 856 (1995); (Preferred Carrier 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 (Bur. 1985).

⁶³ See Romero, Sobrino, Cruz and Vargas complaints; also see, e.g., Qwest Response to Informal Complaint No. IC-99-19477 (filed July 13, 1999).

⁶⁴ See 47 U.S.C. §§ 64.1100, 64.1150 (detailing the different procedures by which carriers may verify a preferred carrier change); see also 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, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (1998 Second Order and FNPRM) at ¶ 78.

⁶⁵ See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; 1997 FNPRM & Order on Reconsideration, 12 FCC Rcd 10674 (1997); LOA Order, 10 FCC Rcd 9560 (1995), stayed in part, In-bound Stay Order, 11 FCC Rcd 856 (1995); (Preferred Carrier 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 (Bur. 1985).

⁶⁶ See 47 U.S.C. § 217; also see Excel Telecommunications Incorporated, 11 FCC Rcd 19765 (1997) and Long Distance Direct, Inc., 14 FCC Rcd 314 (1999).

undertaken by Qwest's agents were widespread rather than limited to a single marketer or marketing company.

B. Forfeiture Amount

29. Qwest's actions, including: (1) the apparent use of forged or falsified LOAs⁶⁷ to effect changes in long distance service; (2) the use of LOAs signed by someone without authority to effectuate a change; and (3) the unauthorized submission of carrier change orders for the long distance service, persuades us that a significant forfeiture action is warranted against Qwest for willful or repeated violations of section 258 of the Act and the Commission's rules and orders.⁶⁸ 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.⁶⁹ 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."⁷⁰ 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.⁷¹ These policies and guidelines, however, include upward adjustment criteria that warrant a higher forfeiture amount based on our evaluation of the particular actions and circumstances of the violator.⁷² These include the egregiousness of the misconduct, ability or inability to pay, whether the violation was intentional, whether substantial harm resulted from the violations,

⁶⁷ 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. *Brittan Communications International Corp.*, Notice of Apparent Liability, FCC No. 98-291, rel. Oct. 29, 1998 (*Brittan NAL*); *Amer-I-Net Services Corp.*, Notice of Apparent Liability, FCC No. 285, rel. Oct. 30, 1998 (*Amer-I-Net NAL*); *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*).

⁶⁸ 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).

⁶⁹ 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. *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

⁷⁰ See 47 U.S.C. § 503(b)(2)(D).

⁷¹ Section 503(b)(2)(B) 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. 47 U.S.C. § 503(b)(2)(B). 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. *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

⁷² *Id.*

history of compliance with Commission requirements, whether the violator realized substantial economic gain from the misconduct, and whether the violation is repeated or continuous.⁷³

30. We note that on several occasions, the Commission has sternly admonished carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against any carrier found to have engaged in slamming, particularly through the practice of forged LOAs.⁷⁴ More recently, the Commission has issued several NALs assessing forfeitures at \$80,000 per violation for the use of forged LOAs.⁷⁵ In those Orders, the Commission found that the higher forfeiture amount was warranted by the egregiousness of misconduct.⁷⁶

31. In the instant case, the evidence before us indicates that Qwest, despite our previous warnings to the long distance industry about the use of forged LOAs, has willfully or repeatedly engaged in this conduct as part of a pattern to slam consumers. Moreover, as we have explained in earlier NALs, we find forgery to be a particularly egregious form of slamming.⁷⁷ We thus find that the upward adjustment criteria in our forfeiture guidelines that involve egregiousness of misconduct 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 for those preferred carrier change requests based on forged LOAs.⁷⁸ This determination is consistent with the most recent NALs, which involved conduct comparable to that alleged herein.⁷⁹ In this regard, the unauthorized conversions of twenty-two of the complainants' presubscribed carriers through the use of forged or falsified LOAs constitute twenty-two separate violations. We propose to assess a forfeiture of eighty thousand dollars (\$80,000) per violation. We will apply

⁷³ *Id.* See also 47 U.S.C. § 503(b)(2)(D).

⁷⁴ 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).

⁷⁵ *All American Telephone Company, Inc.*, 13 FCC Rcd 15040 (1998) (*All American NAL*); *Brittan Communications International Corp.*, Notice of Apparent Liability, FCC No. 98-291, rel. Oct. 29, 1998 (*Brittan NAL*); *Amer-I-Net Services Corp.*, Notice of Apparent Liability, FCC No. 285, rel. Oct. 30, 1998 (*Amer-I-Net NAL*).

⁷⁶ See, e.g., *Brittan NAL*, FCC No 98-291, ¶¶ 22-27, (1998).

⁷⁷ See *Amer-I-Net NAL*, FCC No. 98-285, ¶ 21 (1998); See also *Excel Telecommunications Incorporated*, 11 FCC Rcd 19765, 19767 (1997).

⁷⁸ Cf. *All American NAL*, 13 FCC Rcd 15040, 15049; *Brittan NAL*, FCC No 98-291, ¶ 24 (1998).; *Amer-I-Net NAL*, FCC No. 98-285, ¶ 21 (1998).

⁷⁹ See *All American NAL*, 13 FCC Rcd 15040, 15049; *Brittan NAL*, FCC No 98-291, ¶¶ 24-25 (1998).

the forty thousand dollar (\$40,000) base slamming forfeiture amount for each of the remaining eight violations. Thus, we find that Qwest is apparently liable for a forfeiture of two million and eighty thousand dollars (\$2,080,000) for the unauthorized conversion of the thirty complainants' long distance service. Qwest will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.⁸⁰

32. Finally, our review of Qwest's responses indicates a need for the Commission to continue to monitor Qwest's preferred carrier change practices. As is evident by its submissions in response to other consumer complaints, Qwest has illustrated a lack of responsiveness to its customers and to the Commission's inquiries and Consumer Protection Branch policies. Among other things, the widespread nature of Qwest's slamming complaints among numerous third party marketers indicates that Qwest has failed to exercise appropriate oversight of such agents or to take reasonable steps to verify the legitimacy of authorizations received from them. Qwest's failure in several instances to provide an LOA or any other evidence of verification required by the Commission's rules also suggests that Qwest has failed to implement reasonable precautions to ensure it has received proper authorization before directing a switch in a consumers preferred carrier. We also note that most of the complainants referenced in the NAL express frustration resulting from an inability to reach Qwest or lack of responsiveness to their complaints from Qwest customer service representatives. Additionally, we are concerned about recent letters from Qwest that state the Commission requires consumers to pay Qwest's charges even if Qwest has slammed the consumer. This letter, which is an apparent attempt to intimidate consumers into paying slamming charges, does not accurately reflect the Commission's rules in this regard.⁸¹ We, therefore, require Qwest to file with this Commission within 30 days of the release of this order a compliance plan which shall include procedures designed to promptly identify and address consumer inquiries and concerns about Qwest's preferred carrier change practices.⁸² The compliance plan shall also detail actions Qwest will take and procedures it will establish to comply with the Act, and the Commission's rules and orders. The Commission will continue to closely monitor the level and content of consumer complaints to determine whether the establishment of Qwest's proposed management practices leads to a decrease in unauthorized preferred carrier changes.

IV. CONCLUSIONS AND ORDERING CLAUSES

⁸⁰ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

⁸¹ See 47 U.S.C. § 258; *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, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (1998 Second Order & FNPRM).

⁸² See 47 U.S.C. § 218.

33. We have determined that Qwest Communications International Corporation apparently violated section 258 of the Act and the Commission's preferred carrier change rules and orders⁸³ by converting the preferred carriers of the thirty consumers identified above, on the dates and in the manner described herein. We have further determined that Qwest Communications International Corporation is apparently liable for forfeitures in the amount of eighty thousand dollars (\$80,000) for each of the twenty-two violations involving forgeries or falsifications and forty thousand dollars (\$40,000) for each of the eight violations that did not involve forgeries or falsifications, resulting in a total forfeiture amount of two million and eighty thousand dollars (\$2,080,000).

34. 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, that Qwest Communications International Corporation IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of two million and eighty thousand dollars (\$2,080,000) for willful or repeated violations of section 258 of the Act⁸⁴ and the Commission's preferred carrier change rules and orders as described in the paragraphs above.⁸⁵

35. 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, Qwest Communications International Corporation SHALL PAY the full amount of the proposed forfeiture⁸⁶ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

⁸³ See, e.g., 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, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*1998 Second Order & FNPRM*); *EqualNet Corporation Proposed Request for Waiver*, 14 FCC Rcd 3975 (1999) (*EqualNet Waiver Order*); 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) (*Preferred Carrier 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*).

⁸⁴ 47 U.S.C. § 258.

⁸⁵ See 47 C.F.R. § 64.1150; *1997 FNPRM & Order on Recon.*, 12 FCC Rcd 10674; *LOA Order*, 10 FCC Rcd 9560; *Preferred Carrier Change Order*, 7 FCC Rcd 1038; *Allocation Order*, 101 FCC 2d 911; *Waiver Order*, 101 FCC 2d 935.

⁸⁶ 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 Qwest Communications International Corporation's check or money order to "NAL/Acct. No. 916EF0008." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

36. 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 Qwest Communications International Corporation SHALL FILE with the Commission, within thirty (30) days of the release of this Notice, a compliance plan detailing the actions it will take and the procedures it will establish, to ensure compliance with section 258 of the Act and the Commission's rules and orders relating to preferred carrier changes. The compliance plan shall set forth procedures designed to enable Qwest Communications International Corporation to promptly identify and address consumer inquiries and concerns about its preferred carrier change practices.

37. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Joseph Nacchio, Qwest Communications International Corporation, 555 17th Street, #700, Denver, Colorado 80202 and to Cheryl A. Tritt, Esq., Morrison & Foerster LLP, 2000 Pennsylvania Avenue, N.W., Suite 5500, Washington, D.C. 20006, Qwest's registered agent.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary