

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Home Owners Long  
Distance, Inc.

File No. ENF-95-05  
NAL/Acct. No. 616EF005

Apparent Liability for Forfeiture

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: January 19, 1996; Released: January 23, 1996

By the Chief, Common Carrier Bureau:

**I. INTRODUCTION**

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Home Owners Long Distance, Inc. ("HOLD").<sup>1</sup> For the reasons discussed below, we find that HOLD apparently willfully or repeatedly violated Commission rules and orders<sup>2</sup> by changing the primary interexchange carrier ("PIC") designated by Sharon M. Paquet ("Paquet"), Vice President of Leather Luster, Inc., of Canon City, Colorado and Donald M. Marchant ("Marchant") of Tifton, Georgia without Paquet's or Marchant's authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that HOLD is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000).

**II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS**

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,<sup>3</sup> the Commission set forth rules and procedures for implementing equal access<sup>4</sup> and cus-

tomers' presubscription<sup>5</sup> to an interexchange carrier ("IXC").<sup>6</sup> The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.<sup>7</sup> After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."<sup>8</sup> In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes.<sup>9</sup> Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, return postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.<sup>10</sup> Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.<sup>11</sup> The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.<sup>12</sup> The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written

<sup>1</sup> Home Owners Long Distance, Inc. is located at 8000 Vantage, Suite 2001, Building A, San Antonio, Texas, 78230.

<sup>2</sup> 47 C.F.R. § 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order*); *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (*Waiver Order*).

<sup>3</sup> See *supra* proceedings cited at note 2.

<sup>4</sup> Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*Modification of Final Judgement* or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." *Allocation Order*, 101 FCC 2d at 911.

<sup>5</sup> Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials

"1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). *Id.* at 911.

<sup>6</sup> Pursuant to the MFJ, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. *Id.*

<sup>7</sup> An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929.

<sup>8</sup> *Waiver Order*, 101 FCC 2d at 942.

<sup>9</sup> Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038-39 (1992) (*PIC Change Order*).

<sup>10</sup> See 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

<sup>11</sup> Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995).

<sup>12</sup> See *id.* at 9574-75. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the

in clear and unambiguous language.<sup>13</sup> The rules prohibit all "negative option" LOAs<sup>14</sup> and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.<sup>15</sup>

### III. THE PAQUET AND MARCHANT COMPLAINTS

#### A. Paquet Complaint

4. On May 22, 1995, the Commission received a written complaint from Paquet alleging that HOLD had converted her company's prescribed long distance service provider from AT&T Corporation (AT&T) to HOLD without her authorization.<sup>16</sup> Paquet states that upon discovering that AT&T was no longer her long distance carrier she contacted HOLD and was told that she had signed an application/entry form authorizing HOLD to make the change. On May 16, 1995, HOLD apparently forwarded to Paquet, by facsimile transmission, a copy of a form captioned "Long Distance Application & Entry Blank" that included a LOA purporting to bear Paquet's signature. Paquet attached a copy of the application/entry form to her complaint. Paquet states that the signature on the sweepstakes entry form is not hers.

5. The Common Carrier Bureau's Consumer Protection Branch<sup>17</sup> directed HOLD to provide specific information regarding the conversion of Paquet's telephone service.<sup>18</sup> HOLD has not responded to the staff's request nor has it sought an extension of time in which to submit the requested information.

#### B. Marchant Complaint

6. On June 16, 1995, the FCC received a written complaint from Marchant alleging that HOLD had converted his residential prescribed long distance service provider from AT&T to HOLD without his authorization.<sup>19</sup> Marchant states that AT&T notified him that his prescribed long distance carrier had been switched to LDDS Metromedia Communications ("LDDS"). Marchant then contacted LDDS, who acts as a provider of network services for HOLD, to inquire how his long distance carrier was switched. Marchant apparently was told that he had signed a sweepstakes entry form authorizing HOLD to change his long distance service and Marchant then requested a copy of that form. On May 22, 1995, Marchant received a facsimile transmission from HOLD of the form, captioned "Long Distance Application & Entry Blank," which was purportedly signed by Marchant and used by HOLD to convert Marchant's prescribed long distance carrier. Marchant states that the signature on the LOA is neither his nor his wife's. Marchant attached to his complaint a copy of the sweepstakes entry form he received

from HOLD, as well as a page of a deed that shows both Marchant's and his wife's signature, for comparison with the LOA.<sup>20</sup>

7. The Consumer Protection Branch directed HOLD to provide specific information regarding the conversion of Marchant's telephone service.<sup>21</sup> HOLD has not responded to the staff's request, nor has it sought an extension of time in which to submit the requested information.

### IV. DISCUSSION

8. We have carefully evaluated the information submitted in connection with Paquet's and Marchant's informal complaints and conclude that HOLD is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find HOLD's apparent actions particularly egregious. It appears that on or about March 15, 1995, and April 21, 1995, HOLD, through its underlying carrier, LDDS, submitted PIC change requests to both U S West Communications ("U S West") and BellSouth Telecommunications, Inc. ("BellSouth"), based on apparently forged LOAs, resulting in the conversion of Paquet's and Marchant's telephone service from AT&T to HOLD. The statements and information provided by Paquet and Marchant leave virtually no doubt that the LOAs were not executed by the complainants and that HOLD lacked the requisite authorization to request a PIC change to either Paquet's or Marchant's long distance service. There is no similarity between the signatures provided by both Paquet and Marchant and the purported signatures on the LOA forms that HOLD used as the basis for the PIC changes submitted to U S West and BellSouth. Under these circumstances, we conclude that HOLD's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

9. As a general matter, the unauthorized conversion of a customer's presubscribed long distance carrier continues to be a wide-spread problem in the industry.<sup>22</sup> We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs, which turn out to be falsified or forged, to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to alleged unauthorized conversion complaints rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules

check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. *Id.* at 9573.

<sup>13</sup> See *id.* at 9564-65.

<sup>14</sup> See *id.* at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

<sup>15</sup> See *id.* at 9581.

<sup>16</sup> Sharon D. Paquet, Vice President of Leather Luster, Inc., Informal Complaint No. IC-95-16841 (May 22, 1995).

<sup>17</sup> Formerly known as the Informal Complaints and Public

Inquiries Branch.

<sup>18</sup> Notice of Informal Complaint No. IC-95-16841 (December 1, 1995).

<sup>19</sup> Donald M. Marchant, Informal Complaint No. IC 95-19424 (June 16, 1995).

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

<sup>21</sup> Notice of Informal Complaint No. IC-95-19424 (December 1, 1995).

<sup>22</sup> From June 1994 to June 1995, of the 28,773 informal complaints filed, 7,960 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

and orders, we intend 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. If carriers intend to rely on a LOA to request a PIC change, they will be responsible for ensuring its validity.

10. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$100,000) for each violation, or each day of a continuing violation, up to a statutory maximum of one million dollars (\$1,000,000) for a single act or failure to act.<sup>23</sup> In exercising such authority, the Commission is 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>24</sup> For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of Paquet's and Marchant's telephone lines as two violations. After weighing the circumstances surrounding the violation, we find that HOLD is apparently liable for a forfeiture of eighty thousand dollars (\$80,000) for the unauthorized conversion of the Paquet and Marchant lines. HOLD 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.<sup>25</sup> In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.<sup>26</sup> We will give full consideration to any financial information provided by HOLD before assessing a final forfeiture amount.

#### V. CONCLUSIONS AND ORDERING CLAUSES

11. We have carefully reviewed the information submitted in connection with Sharon M. Paquet's and Donald M. Marchant's informal complaints and conclude that on or about March 15, 1995, and April 21, 1995, HOLD apparently converted, or caused a local exchange carrier to convert, Paquet's and Marchant's telephone lines, without either Paquet's or Marchant's authorization, through the use of apparently forged LOAs. We further conclude that HOLD thereby apparently willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars (\$80,000).

<sup>23</sup> 47 U.S.C. § 503(b)(2)(B).

<sup>24</sup> *Id.* § 503(b)(2)(D).

<sup>25</sup> See *id.* § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>26</sup> PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$5,000 and \$3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount (\$8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$395,469); see also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Home Owners Long Distance, Inc., Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars (\$80,000) for its willful or repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (1985).

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Home Owners Long Distance, Inc. SHALL PAY the full amount of the proposed forfeiture<sup>27</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Joe Webb, President of Home Owners Long Distance, Inc., 8000 Vantage, Suite 2001, Building A, San Antonio, Texas, 78230.

#### FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney  
Chief, Common Carrier Bureau

projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

<sup>27</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 Home Owners Long Distance, Inc.'s check or money order to "NAL/Acct. No. 616EF005." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.