

Before the
Federal Communications Commission
Washington, DC 20554

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| In the Matter of |) | File No.: EB-TCD-12-00004803 |
| |) | |
| Advantage Telecommunications Corp. |) | NAL/Acct. No.: 201332170013 |
| |) | |
| Apparent Liability for Forfeiture |) | FRN: 0005077730 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 8, 2013

Released: May 9, 2013

By the Commission: Commissioner McDowell not participating.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Advantage Telecommunications Corp. (Advantage or Company)¹ apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act),² and Sections 64.1120 and 64.2401(b) of the Commission's rules.³ Specifically, we find that Advantage apparently (i) violated Section 201(b) of the Act by engaging in deceptive marketing practices by pretending to be consumers' existing long distance carrier and misrepresenting the true nature of the transaction about which it was calling them; (ii) placed unauthorized or "crammed" charges on numerous consumers' telephone bills, also in violation of Section 201(b); (iii) changed the preferred telecommunications service providers of consumers without their authorization, a practice commonly known as "slamming," in violation of Section 258 of the Act; and (iv) violated the Commission's truth-in-billing rules by failing to clearly and plainly describe charges on consumers' telephone bills as required by Section 64.2401(b). Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of seven million, six hundred thousand dollars (\$7,600,000).

II. BACKGROUND

2. Advantage is a non-facilities-based interexchange carrier⁴ operating in 34 states, the District of Columbia, and Puerto Rico.⁵ The Commission has received numerous consumer complaints

¹ According to the Commission's records and publicly available information, Advantage's offices are located at 3001 Aloma Avenue, Suite 304, Winter Park, FL 32792. Advantage's chief executive officer is Robert Sorrentino, who is also chief executive officer of two other toll resellers, Reduced Rate Long Distance, LLC and Reliant Communications, Inc.

² 47 U.S.C. §§ 201(b), 258.

³ 47 C.F.R. §§ 64.1120, 64.2401(b).

⁴ Advantage is authorized to provide resold international telecommunications services. See ITC-214-19981023-00731, Public Notice, "International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests" (Feb. 16, 2006).

⁵ See Advantage 2012 FCC Form 499-A ((Telecommunications Reporting Worksheet) (Reporting Calendar 2011 Revenues)).

against Advantage. Taken together, the complaints allege a pattern whereby Advantage apparently misrepresents its identity or the nature of its call when marketing its long distance service in order to obtain “authorization” to change consumers’ preferred long distance carriers and bill them for its service.⁶ After making the misrepresentations, Advantage submits a request to change the consumer’s preferred long distance carrier (e.g., AT&T or Verizon), relying on the fraudulently obtained “authorization.”⁷ When Advantage is successful in effectuating the change, Advantage apparently bills the consumer for long distance service using the former carrier’s invoice (third-party billing).⁸ In cases where Advantage does not complete the carrier change, the Company apparently bills the consumer directly for its “service” while the preferred carrier continues to bill the consumer for the existing long distance service.

3. Pursuant to standard Commission processes,⁹ the Consumer & Governmental Affairs Bureau (CGB) served on Advantage those complaints that the Commission received directly from consumers and directed it to respond to the consumer allegations. Where the consumer complaint alleged a case of “slamming,” CGB directed Advantage to provide evidence of an authorized change in the subscriber’s selection of a telecommunications service provider. Recently, CGB issued orders granting 18 of those slamming complaints against Advantage, finding that the Company’s actions violated the Commission’s carrier change rules.¹⁰

4. The Enforcement Bureau (Bureau) initiated an investigation of Advantage after reviewing the complaints filed with the Commission and complaints filed with various state regulatory agencies and the Better Business Bureau (BBB).¹¹ As part of its investigation, the Bureau sent Advantage a letter of inquiry (LOI)¹² on October 17, 2012, directing the Company to answer a number of questions regarding its business practices and its compliance with the Act and Commission rules. The LOI identified 82 small businesses that alleged they were crammed or slammed by Advantage and directed Advantage to state whether it had initiated a carrier change for each of the complainants.¹³ The LOI also afforded Advantage an opportunity to provide evidence of authorized carrier changes for each of the

⁶ See *infra* paras. 11–16.

⁷ See *infra* discussion in paras. 18–20.

⁸ *Id.*

⁹ See 47 C.F.R. § 1.717 and 47 C.F.R. § 64.1150(c), (d).

¹⁰ See *Advantage Telecommunications Corporation, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 287 (CGB 2013); *Advantage Telecommunications Corporation, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 282 (CGB 2013).

¹¹ In total, the Bureau obtained 165 complaints against Advantage during the course of its investigation. Only 35 of those complaints were filed directly with the Commission. Those that were not filed directly with the Commission were either provided by Advantage in response to the Bureau’s letter of inquiry or the Bureau obtained them from other agencies or the Better Business Bureau. All 165 complaints are part of the record in this case. The 64 complaints that form the basis of the penalty proposed in this NAL are identified in the Appendix.

¹² Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Robert Sorrentino, Advantage Telecommunications Corp. (Oct. 17, 2012) (on file in EB-TCD-12-00004803) (LOI).

¹³ The initial LOI requested information regarding 82 complainants. On December 14, 2012, the Bureau directed Advantage to provide information regarding 58 additional small businesses that had filed complaints against the Company. Some complaints reviewed by the Bureau were outside the statute of limitations period and were not included in the LOI. See E-mail from Erica H. McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Andrew B. Lustigman, Counsel to Advantage Telecommunications Corp. (Dec. 14, 2012).

small businesses.¹⁴ In addition, the Bureau directed Advantage to explain how it had responded to complaints from consumers regarding Advantage's marketing practices.¹⁵

5. Advantage submitted a response to the LOI on November 30, 2012.¹⁶ With its LOI response, Advantage provided what it claimed were "third party verification"¹⁷ recordings of valid carrier changes and other information and documents regarding its telemarketing and business practices. In particular, Advantage confirmed that it did not change the preferred carriers of all consumers that filed complaints against the Company.¹⁸ Nevertheless, the record shows that it billed all complainants, including those whose preferred carriers Advantage had not switched.

III. DISCUSSION

6. During the course of its investigation, the Bureau obtained a total of 165 complaints against Advantage alleging that Advantage had apparently engaged in acts that violated the Communications Act and/or the Commission's rules. We propose a forfeiture of \$7,600,000 for the apparent violations that occurred within the twelve months prior to the release date of this NAL.¹⁹

7. As discussed below, we find that Advantage apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act²⁰ and Sections 64.1120 and 64.2401(b) of the Commission's rules.²¹ Specifically, we find that Advantage apparently violated Section 201(b) of the Act by (i) deceptively marketing its long distance service to 38 consumers by apparently misrepresenting itself as the consumer's existing carrier and/or misrepresenting the nature of the transaction in which it sought to engage these consumers; and (ii) placing unauthorized charges for service on 56 consumers' local telephone bills or on telephone bills issued directly by Advantage. In addition, we find that Advantage violated Section 258 of the Act and Section 64.1120 of the Commission's rules by apparently switching the long distance service providers of eight consumers without their authorization.

¹⁴ See LOI at 5-7.

¹⁵ See LOI at 8.

¹⁶ Letter from Andrew B. Lustigman, Counsel to Advantage Telecommunications Corp., to Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Nov. 30, 2012) (on file in EB-TCD-12-00004803) (LOI Response). Advantage requested and the Bureau granted an extension of time until November 30, 2012, to respond to the LOI. Advantage filed supplemental LOI responses on January 11, 2013 and March 20, 2013. See E-mail from Andrew B. Lustigman, Counsel to Advantage Telecommunications Corp., to Erica H. McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 11, 2013) (on file in EB-TCD-12-00004803) (Supplemental LOI Response); E-mail from Elissa Shane, Legal Assistant to Andrew B. Lustigman, Counsel to Advantage Telecommunications Corp., to Erica H. McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 20, 2013) (on file in EB-TCD-12-00004803).

¹⁷ "Third party verification," or TPV, is one of the methods a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. In general, the TPV procedures involve verification of a consumer's oral authorization to change preferred carriers by an independent third party and must strictly comply with Section 64.1120(c)(3) of the Commission's rules, 47 C.F.R. § 64.1120(c)(3).

¹⁸ See LOI Response at 12 and Supplemental LOI Response.

¹⁹ The 64 complaints and 50 billing invoices that form the basis of this NAL are identified in the Appendix.

²⁰ 47 U.S.C. §§ 201(b), 258.

²¹ 47 C.F.R. §§ 64.1120, 64.2401(b).

8. Finally, as discussed more fully below, Advantage directly billed between [REDACTED] consumers monthly during the course of the previous 12 months.²² In each of the telephone bills the Bureau reviewed, Advantage apparently failed to clearly and plainly describe certain charges, in apparent violation of Section 64.2401(b) of the Commission's truth-in-billing rules. While each invoice Advantage sent to a consumer constitutes a separate violation,²³ the forfeiture we propose is based on 50 invoices that complainants provided to the Bureau during the course of its investigation.²⁴

A. Apparent Violations of Section 201(b) of the Act

9. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful."²⁵

10. As discussed below, Advantage apparently misrepresented its identity, claiming to be the consumer's existing carrier, to obtain "authorization" to change the consumer's preferred long distance carrier.²⁶ It then submitted a request to change the consumer's preferred long distance carrier in apparent violation of Section 258 of the Act. In some cases, the consumer's underlying carrier switched the preferred carrier to Advantage and in other cases it did not make the switch. In either case, Advantage billed the consumer for telecommunications services that were never authorized, in apparent violation of Section 201(b). The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b) of the Act.²⁷ In particular, the Commission has found that a carrier violates Section 201(b) by effectuating a change to a consumer's preferred carrier through deception about its identity or the nature of its service.²⁸ Further,

²² See LOI Response at 6. Advantage sent these bills directly to the consumers. As discussed above in para. 2, Advantage also billed consumers through their own preferred carriers.

²³ See, e.g., *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001) (*NOS*) (finding that each deceptive rate sheet sent to consumers constituted a separate violation of Section 201(b)).

²⁴ With the exception of one invoice dated December 20, 2012, the invoices are dated the 13th and 27th of each month from May 2012 through February 2013.

²⁵ 47 U.S.C. § 201(b).

²⁶ See *infra* para. 11.

²⁷ See, e.g., *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*BDP Forfeiture Order*) (finding that the company violated Section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (*TRAC*) (recognizing that a carrier's failure to convey sufficient information about its rates, practices, and range of services can be an unreasonable practice in violation of section 201(b)); *STi Telecom Inc. (formerly Epana Networks, Inc.)*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808, 12810, para. 6 (2011) (*Epana NAL*) (finding that the marketing materials used to sell prepaid calling cards were misleading and deceptive regarding the rates and charges applicable to the service and therefore apparently violated Section 201(b)); see also *Locus Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818, 12820–21, para. 7 (2011) (*Locus NAL*) (same); *Lyca Tel, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12827, 12829, para. 6 (2011) (*Lyca Tel NAL*) (same); *Touch-Tel USA, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12836, 12838, para. 6 (2011) (*Touch-Tel NAL*) (same); *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16669, 16671, para. 6 (2011) (*Simple Network NAL*) (same); *NobelTel, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11760, 11762, para. 6 (2012) (*NobelTel NAL*) (same).

²⁸ See *BDP Forfeiture Order*, 15 FCC Rcd at 14467, para. 12; see also *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499 (2012) (*Preferred Long Distance NAL*) (continued....)

the Commission has found that the inclusion of unauthorized charges and fees on consumers' telephone bills is an "unjust and unreasonable" practice under Section 201(b).²⁹

1. Apparent Misrepresentations by Advantage's Telemarketer

11. In 38 of the complaints for which this NAL proposes forfeitures, the complainants allege that Advantage's telemarketer claimed to be, or to be affiliated with, the consumer's current long distance carrier. Based on the record in this case, it appears that Advantage initially contacted consumers in an effort to deceptively obtain authorization to change the consumer's preferred long distance carrier.³⁰ Consumers contend that during that initial sales call, Advantage misrepresented its identity or the true purpose of the call. For example, according to K. Conway of Rogers & Greenberg:

I received a call from a representative of Advantage Telecommunications Corp. He informed me that [Advantage] was already our long distance service provider but that [the] company had just renegotiated their contract with Verizon which was great because now they would be able to save us a whole bunch of money. He just needed our approval in order to have us continue to receive the same long distance coverage at a lower rate per month He said that we would still be billed through Verizon and would not receive a separate bill Then he said he just had to get my authorization to a third party who would ask if it was okay to change my long distance carrier, but that I wasn't really changing carriers[;] it was just that they were changing their contract with Verizon.³¹

Ms. Conway then received a bill directly from Advantage for long distance service, "which is when I realized I was scammed. I called Verizon right away and told them [] that I wanted to switch my long distance back."³² Ms. Conway sent a letter to Advantage, telling them that she believed its deceptive sales tactics were fraudulent and that she would not be paying the bill. Advantage did not respond to the letter, but sent an e-mail with a third-party recording of Ms. Conway's "authorization," which "did not have a

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Liability for Forfeiture, 27 FCC Rcd 16489 (2012) (*Preferred NAL*); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180-5181, paras. 5-7 (2010) (*Silv NAL*).

²⁹ See *Long Distance Direct, Inc.*, *Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI Forfeiture Order*) (finding that the company's practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services). The Commission has also proposed forfeitures for apparent cramming violations. See, e.g., *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (2011); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (2011); *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (2011); *Main Street Telephone Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (2011); *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558 (2012).

³⁰ In many of these instances, however, even though Advantage deceptively marketed its service to the consumer and completed a TPV, a carrier change did not actually take place; nevertheless, Advantage billed consumers for its "service." In those cases, the deceptive marketing practice resulted in a cram, a violation of Section 201(b), rather than a slam, a violation of Section 258. The actual cram and slam violations constitute separate and distinct violations and are discussed below. Here we address the Section 201(b) violation of misrepresentation regardless of whether the deception resulted in a cram or slam.

³¹ Complaint from Rogers & Greenberg, 12-S003487.

³² *Id.*

complete recording of the salesman's lies before he connected [me] to the third party. They are now charging late fees and threatening to send us to collections."³³

12. Similarly, Ms. Young of Keeler Thomas Financial Services explained that she also received a call from an Advantage representative who stated that it was a courtesy call and that her company's long distance service billed by Integra Telecom was actually through Qwest and that Advantage was taking over that service. "She continued to state that we would receive just one phone bill through Integra and that we would actually be saving money . . . She [] coach[ed] me on the third party verification and told me to just say 'yes' to everything that they said."³⁴ Ms. Young then received a bill directly from Advantage for the same long distance service for which she was paying Integra.³⁵

13. Identity Construction describes a similar experience, explaining that Advantage "poses as your normal phone carrier and says they can save you money on your long distance phone bill. When in fact they have nothing to do with your primary carrier. . . [t]hen they will record [you] saying you authorized the change but what they don't record is the conversation before that occurs."³⁶

14. K. Troutman stated that Advantage also called his office using his contracted phone service provider's name.³⁷ "They were telling us how they could save us money by making some switches on the way the long-distance service was set up. During the entire conversation, we thought we were talking to our current long-distance carrier. WRONG . . . we received a second bill from Advantage Telecommunications Corp in addition to our regular phone bill. We really believe we were . . . tricked into accepting their services!"³⁸ Despite Mr. Troutman's efforts to resolve the situation, Advantage referred his business to a collections agency. In the end, Mr. Troutman paid the bill even though Advantage never provided any service to him.³⁹

15. In another case, Ms. Hoffman of the Nebraska Thoroughbred Breeders Association explains that she was called by someone representing CenturyLink and that they were "lowering my long distance on my phone bill. I said fine, as long as my service was not changing . . . I said I do not have the authority to change the service AS I AM WORKING AT A NON PROFIT ASSOCIATION AND NEED THE BOARD'S APPROVAL. She said, oh no, we are not changing service . . . But I am going to

³³ *Id.* See also Complaint from Georgetown Hairstyling, BBB ("The person [from Advantage] who called me . . . misrepresented herself as Verizon calling to make customers aware of a NOTICE that Verizon had sent consumers that third-party long distance service providers would no longer be allowed to be on Verizon's one bill plan, and that if I didn't do this change, long distance would effectively come on a separate bill, and therefore I should opt for keeping my long distance on the one bill plan, and that the change she was calling about was going to happen soon and that many customers had disregarded/or didn't pay attention to the warning notice . . . I asked her two times if she was with Verizon and she flat out lied and answered YES.").

³⁴ Complaint from Keeler Thomas Financial Services, BBB.

³⁵ In its LOI Response, Advantage acknowledged that Keeler Thomas Financial Service's long distance service was never switched to Advantage; nevertheless, the Company billed the business but never provided any service.

³⁶ Complaint from Identity Construction, BBB.

³⁷ Complaint from Troutman Family Dentistry, BBB.

³⁸ *Id.*

³⁹ See also Complaint from [REDACTED], North Carolina Utilities Commission (explaining that they received a call from someone representing themselves as Frontier, their current carrier. "He said that due to restructuring they were switching the company that helped provide their long distance service . . . that Frontier was now going to work with a company named Advantage to lower their long-distance rates. I agreed to the switch believing this switch was taking place through Frontier and we would still receive all service through Frontier. This part of the phone call is not recorded . . . [t]hey only cut to the part where I agree to a switch, so there is no indication that they lied to me concerning the true nature of the company.").

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connect you to a 3rd party and you need to answer YES to everything.” When Ms. Hoffman received a bill for long distance service from Advantage, she contacted the Company. “Oh yes, they were happy to share the recording for me. OF COURSE I said yes[;] they told me to. It was all the lying they did BEFORE that. Where are those recordings?”⁴⁰ Many other consumers offered similar stories about Advantage misrepresenting its identity, the nature of its services, or the purpose of the call.⁴¹

16. Advantage has not produced any evidence that its telemarketer did not misrepresent Advantage’s identity, the purpose of the call, or the nature of the transaction to 38 consumers identified in the Appendix. It maintains, however, that the Company [REDACTED]

[REDACTED]”⁴² Despite this “[REDACTED],” however, Advantage received numerous complaints from consumers who claimed Advantage’s telemarketer told them they were speaking with their current provider or that Advantage was calling on behalf of or was affiliated with their current provider and could lower their long distance rates,⁴³ yet the Company took no action to correct the fraudulent behavior or terminate its relationship with the telemarketer. The complaints regarding Advantage’s deceptive marketing span the course of over a year; therefore, it appears that Advantage was aware of and benefited financially from its telemarketers’ acts. Thus, based on the information in the record, we conclude that Advantage apparently engaged in deceptive practices involving 38 consumers. We find that these deceptive, fraudulent practices are unjust and unreasonable practices in violation of Section 201(b) of the Act.

2. Charges for Unauthorized Services – “Cramming”

17. The record also shows that Advantage placed charges on consumers’ local telephone bills, or on bills Advantage sent them directly, for service they never authorized. The Commission has found that the inclusion of unauthorized charges and fees on consumers’ telephone bills is an “unjust and

⁴⁰ Complaint from Nebraska Thoroughbred Breeders Association, Nebraska Public Service Commission.

⁴¹ A total of 38 consumers whose complaints are identified in the Appendix allege such instances of misrepresentation. Still other consumers allege similar wrongdoing by Advantage, but did not indicate that the misconduct occurred within one year of the date of this NAL. *See, e.g.*, Complaint from [REDACTED] (telemarketer claimed to be calling about a billing issue); Complaint from [REDACTED] (telemarketer claimed to be with Cox Communications); Complaint from [REDACTED] (telemarketer told them Advantage had merged with Embarq); Complaint from [REDACTED] (telemarketer told him that because of the change from Qwest to CenturyLink, telemarketer could offer lower rates because Advantage was the long distance provider to CenturyLink); Complaint from Gateway Counseling Services (telemarketer claimed to be calling because FCC required changes in policy and that rates would change due to deregulation); Complaint from [REDACTED] (telemarketer claimed to be Qwest and offering a new program); Complaint from [REDACTED] (telemarketer said that Advantage had partnered with CenturyLink and claimed to be taking over the long distance for CenturyLink); Complaint from [REDACTED] (telemarketer said that Frontier would no longer be servicing her long distance); [REDACTED] (telemarketer claimed to be with Verizon); [REDACTED] (telemarketer claimed to be with AT&T and that contract was due for renewal); Complaint from [REDACTED] (telemarketer claimed that customer’s current long distance provider would be taken over by Advantage and that she needed to verify information to avoid a duplicate bill); Complaint from [REDACTED] (telemarketer claimed to be handling the business’s billing and that customer needed to respond or face disconnect/reconnect fees); Complaint from [REDACTED] (telemarketer told her she was speaking to an operator for CenturyLink); Complaint from [REDACTED] (telemarketer claimed to be working with the business’s current provider to provide better services).

⁴² LOI Response at 10.

⁴³ Advantage provided these complaints with its LOI Response. *See* LOI Response at 13 and attached Bates-stamped documents ADV000262-ADV000712, ADV000714-ADV001054, ADV001056-ADV001291.

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unreasonable” practice under Section 201(b).⁴⁴ Cramming can occur when third parties place unauthorized charges on consumers’ local telephone bills, and it can occur, as in this case, when carriers place unauthorized charges on their own telephone bills.⁴⁵ Regardless, however, of the method used by the carrier to bill consumers, whether by telephone bill or some other process such as a credit card, any assessment of an unauthorized charge billed to consumers is an “unjust and unreasonable” practice under Section 201(b) of the Act.⁴⁶

18. In 56 of the complaints for which the instant NAL proposes forfeitures, the complainants allege that Advantage billed them for services they never authorized. While Advantage may have sought the consumer’s “authorization” in the context of initiating a change in the consumer’s preferred long distance provider (in the slamming context), we treat these complaints as Section 201(b) cramming violations because either (1) Advantage never switched the consumer’s preferred carrier,⁴⁷ or (2) after the affected consumers returned to their preferred carriers, Advantage continued to bill them without proper authorization.⁴⁸

19. The following are examples of complaints alleging that Advantage billed consumers for “service,” but never switched their long distance service or provided service of any kind:

- Complainant Mickinak’s business’s long distance service was never switched but he received a bill from Advantage for over \$100 with only a list of fees identified as “PICC,” “MRC,” “CCRF,” “Federal USF,” and “State taxes” and no calls identified.⁴⁹ Mr. Mickinak refused to pay the bill, saying “they never took over my long distance . . . [h]ow can they expect you to pay for service you never received?” Advantage sent Mickinak’s company several bills and then referred the bills to a collections agency.⁵⁰
- [REDACTED] received a bill from Advantage and contacted her preferred carrier, Frontier, which confirmed that “there was no change in [] provider and that [Frontier was] still covering our long distance service. Not only did Advantage misrepresent their intent to sell, they did not provide the service for which they requested payment.”⁵¹

⁴⁴ See *supra* note 29.

⁴⁵ See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437, paras. 1–2 (2012).

⁴⁶ See 47 U.S.C. § 201(b) (Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”).

⁴⁷ In these cases, Advantage was not providing any service to the consumers. Based on complaints, it appears that Advantage may not have been able to complete the carrier switch because the consumers had a preferred interexchange carrier (PIC) “freeze” on their accounts, to prevent such a change without their authorization. See 47 C.F.R. § 64.1190; see also Complaint from [REDACTED], North Carolina Utilities Commission; Complaint from [REDACTED], Indiana Attorney General; Complaint from Bruce Wintersteen, DDS, 12-S003394; Complaint from Country Traditions, BBB.

⁴⁸ While it is within our statutory authority to assess a forfeiture for both the underlying Section 258 violations related to the “slam” and a separate forfeiture for the Section 201(b) violation for unauthorized charges (cramming), we do not do so in this case.

⁴⁹ Complaint from JM Building Remodeling Company, BBB.

⁵⁰ *Id.*

⁵¹ Complaint from [REDACTED], BBB.

- The Counseling and Enrichment Center's (Center's) long distance provider was never switched to Advantage, yet Advantage crammed charges onto the Center's telephone bill through its billing aggregator USBI. The Center was able to get its preferred carrier, Frontier, to remove the charges from its local telephone bill, but Advantage then sent the Center a separate bill for service.⁵²
- Complainant Jackson of Jackson's Nursery, Inc. explained that her company was also billed directly by Advantage for a service it did not supply . . . "I called [my preferred carrier] Frontier to see if any changes had been made to my phone lines. They said no and told me it was a scam and not to pay the bill. Jackson called Advantage to tell the Company that since "no services were rendered . . . [she] would not pay the bill. Advantage "sent my complaint to 'dispute department,' but no voiding of the invoice charges or credit has occurred as of today."⁵³
- V. Schlegel of Insights Optical complained about the bill she received from Advantage even though the business's service was not switched to Advantage. "I asked why there were no numbers listed and I was told there were no calls made. Our office calls long distance every day . . . [t]hey removed us from their service but said that we still owe the bill."⁵⁴

Numerous other complainants shared similar stories of discovering charges from Advantage on their local telephone bills or on bills sent to them directly by Advantage for long distance service that they did not authorize and that Advantage did not provide.⁵⁵

20. In other cases, when the consumers discovered that Advantage had switched their service without authorization, they took steps to return to their preferred carriers. Despite having cancelled service with Advantage, the consumers contend that Advantage continued to charge them for monthly service, other fees, and taxes. Advantage billed these consumers directly for the unauthorized charges, often many months after it switched their service and long after the consumers had returned to their preferred carriers. Regardless of whether a carrier at one time provides service to a consumer, that carrier may violate Section 201(b) for cramming if it subsequently bills the consumer for unauthorized charges. These subsequent incidents of "cramming" are reflected in numerous complaints.⁵⁶ For example,

- W. Sholette explains that Advantage switched his business's long distance service in January, 2012 without his authorization. After Sholette's Cabinet Shop returned to its preferred carrier, Advantage began sending direct bills to the business and was still charging Sholette's Cabinet Shop nine months later in October, 2012. "We would like to have this company discontinue sending us bills for a service that we never wanted in the first place."⁵⁷

⁵² Complaint from Counseling and Enrichment Center, BBB.

⁵³ Complaint from Jackson's Nursery, Inc., Indiana Attorney General.

⁵⁴ Complaint from Insights Optical, Indiana Utility Regulatory Commission.

⁵⁵ See, e.g., Complaint from [REDACTED], BBB; Complaint from [REDACTED], BBB; Complaint from Precision Welding Corporation, BBB; Complaint from Country Traditions, BBB. See Appendix for a list of all consumers who allege such wrongdoing by Advantage within one year of the date of this NAL.

⁵⁶ See, e.g., Complaint from Identity Construction, BBB; Complaint from [REDACTED], Nebraska Attorney General; Complaint from [REDACTED], Arizona Corporation Commission.

⁵⁷ Complaint from Sholette's Cabinet Shop, BBB.

- A. Hatton of Burch Sheet Metal states that in November, 2011, Advantage switched the business's long distance service. "[W]e realized it was a scam and cancelled the service. We still ended up paying them for the month of 'service'; however, the next month we received another bill." Advantage continued to send bills to Burch Sheet Metal eight months later, even turning the business over to collections.⁵⁸
- After its long distance service was switched by Advantage in November, 2011, the Swatch Works made repeated attempts to cancel the service in January, February, March and April, 2012. The Swatch Works continued to receive bills from Advantage with late fees and penalties. "Due to the harassment and complete lack of respect I got from anyone at Advantage, I stopped trying to call to request the services be cancelled and began sending letters . . . [in] April 2012 the collection calls from Advantage began."⁵⁹

21. Thus, based on information in the record, we find that Advantage apparently placed charges on 56 consumers' local telephone bills or billed them directly without authorization. We find the inclusion of these unauthorized charges on consumers' telephone bills is an unjust and unreasonable practice in violation of Section 201(b) of the Act.

B. Apparent Violations of Section 258 of the Act and Section 64.1120 of the Commission's Rules

22. In addition to the Section 201(b) violations discussed above, we find that Advantage apparently violated Section 258 of the Act at least eight times with respect to complaints set forth in the Appendix. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."⁶⁰ Pursuant to Section 258, the Commission has adopted implementing rules. Section 64.1120(c) provides that a carrier must verify a change in one of three ways: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130;⁶¹ (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically;⁶² or (3) utilize an independent third party to verify the subscriber's order in accordance with certain requirements.⁶³

23. Section 64.1120(c)(3) sets forth detailed procedures that carriers that choose to use third party verification (TPV) procedures must follow. Among other specific requirements, the carrier's verifier must elicit the date of the verification; the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; confirmation that the person on the call understands that a carrier change -- not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction -- is being authorized; the names of the carriers affected by the change (not including the displaced carrier); the telephone numbers to be switched; and the types of service involved.⁶⁴ The requirements were

⁵⁸ Complaint from Burch Sheet Metal, BBB.

⁵⁹ Complaint from The Swatch Works, BBB. After attempting to resolve the matter with Advantage and its preferred carrier, The Swatch Works switched to a third carrier altogether in February, 2012.

⁶⁰ 47 U.S.C. § 258(a).

⁶¹ 47 C.F.R. § 64.1120(c)(1).

⁶² 47 C.F.R. § 64.1120(c)(2).

⁶³ 47 C.F.R. § 64.1120(c)(3).

⁶⁴ 47 C.F.R. § 64.1120(c)(3)(iii).

adopted to ensure that consumers understand precisely the service changes they are approving and to increase consumer confidence, decrease the administrative costs for carriers, and alleviate the enforcement burden on the Commission.⁶⁵

24. We have reviewed the TPV recordings associated with the eight apparent “slamming” violations that Advantage provided and find that they do not satisfy the requirements of the rules. As noted above, the Commission’s rules require that “all third party verification methods shall elicit, at a minimum . . . confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; [and] confirmation that the person on the call understands that a carrier change . . . is being authorized.”⁶⁶ This requirement is crucial to ensure that there is no confusion or ambiguity about the carrier change.⁶⁷ In all of Advantage’s TPV recordings, the verifiers ask the person on the call, “[a]re you authorized by the telephone account owner to make changes to and incur charges on this telephone account?” The verifiers must confirm that the consumers are authorized to make a carrier change and, in fact, want to make a carrier change. A switch from one carrier to another differs from merely making changes to the customer’s service or its existing account.⁶⁸

25. The rules further require that any description of the carrier change transaction by a third party verifier must not be misleading.⁶⁹ In all of the TPV recordings, Advantage’s verifiers state upfront that the purpose of the verification is “to confirm accurate data and your understanding to this change of service.”⁷⁰ In truth, as discussed above, the purpose of the verification recording is to confirm that the consumer has authorized a *carrier change*. As the Commission stated in its *Slamming Fourth Report and Order*, “the record reflects that some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose. As the Commission concluded when it first considered proposals for third party verifier script requirements, ‘the scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.’”⁷¹ We reiterate here that enforcement of these rules is crucial to protect consumers, especially where consumers contend that they did not intend to change carriers at all, and that the carrier in fact misled them during the telemarketing call as to with whom they were speaking and the purpose of the call.⁷² CGB

⁶⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Fourth Report and Order, 23 FCC Rcd 493, 493, para. 1 (2008) (*Slamming Fourth Report and Order*).

⁶⁶ 47 C.F.R. §64.1120(c)(3)(iii).

⁶⁷ See *Slamming Fourth Report and Order*, 23 FCC Rcd at 501, paras. 18 and 19.

⁶⁸ See *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) (“the verifier’s question, ‘Do you have authority to make changes to your long distance service?’ did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*.”); see also *supra* note 10, citing recent CGB orders issued against Advantage for violations of the carrier change rules.

⁶⁹ 47 C.F.R. § 64.1120(c)(3)(iii).

⁷⁰ See, e.g., *United Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 5753 (CGB 2012) (granting six complaints against United due to the verifier’s failure to ask about a carrier change).

⁷¹ *Slamming Fourth Report and Order*, 23 FCC Rcd at 501, para. 19 (footnotes omitted) (citing *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

⁷² See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

determined as early as May, 2010, that Advantage's third party verification scripts using the same language quoted above failed to confirm that the subscribers intended to change their preferred carriers.⁷³ Nevertheless, there is no evidence in the record that Advantage took steps to bring its scripts into compliance with the Commission's rules, as its scripts continue to verify "accurate data" and a "change of service." We therefore conclude that Advantage apparently violated Section 258(a) of the Act and Section 64.1120(c)(3) of the Commission's rules by failing to follow all of the Commission's third party verification requirements with respect to eight complainants.⁷⁴

C. Violations of the Commission's Truth-in-Billing Rules

26. We also find that Advantage apparently violated Section 64.2401 of the Commission's "truth-in-billing" rules in the bills that it sent directly to consumers. The purpose of the truth-in-billing rules is "to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service."⁷⁵ In addition, the rules are "intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service."⁷⁶ Specifically, the rules require that "[c]harges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received"⁷⁷

27. The record shows that consumers were confused by the charges that appeared on Advantage's bills due to the lack of information describing such charges. [REDACTED] received a bill from Advantage that "included amounts, but no explanation of charges, no numbers called, call times or length of calls."⁷⁸ R. Aufer also explained that Advantage's bill "shows a total of \$87.50 but had no other info for the service they supposedly were giving."⁷⁹ We conclude that Advantage's descriptions of billed charges are neither sufficiently clear nor specific enough to aid customers in assessing their bills. Its bills include charges identified as "MRC," "CCRF," and "PICC" with no indication of what these acronyms represent; nor is there any plain language description of the charges Advantage is assessing.⁸⁰ We therefore find that Advantage has apparently failed to clearly and plainly describe certain charges appearing on its telephone bills, in violation of Section 64.2401(b) of the

⁷³ See *Advantage Telecommunications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, 25 FCC Rcd 5920 (CGB 2010) (noting that Advantage's verifier stated that the purpose of the recorded conversation was "to confirm a change to your service as well as to facilitate accurate data" when the true purpose of a TPV recording is to verify a subscriber's intent to change preferred carriers). See also *supra* note 10.

⁷⁴ As discussed above, we find that Advantage also misrepresented itself and the nature of its service offerings to seven of these complainants. See *supra* paras. 11–16. Although the record shows that the number of complainants Advantage slammed was much higher than eight, only eight of the carrier switches occurred within one year of the release of this NAL.

⁷⁵ 47 C.F.R. § 64.2400.

⁷⁶ *Id.*

⁷⁷ 47 C.F.R. § 64.2401(b).

⁷⁸ Complaint from [REDACTED], Montana Public Service Commission.

⁷⁹ Complaint from Aufer Automotive, 12-C00383359.

⁸⁰ Many complainants stated they had no idea what Advantage was charging them for based on the bills they received. See, e.g., Complaint from [REDACTED], Arizona Corporation Commission; Complaint from [REDACTED], BBB; Complaint from Albion Bowling Center, 12-C00427608.

Commission's rules.

IV. PROPOSED FORFEITURE

28. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁸¹ Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 against a common carrier for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.⁸² For a violation to be willful, it need not be intentional.⁸³ In exercising our forfeiture 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."⁸⁴ In addition, the Commission has established forfeiture guidelines, which set forth base penalties for certain violations and identify criteria that we consider in exercising our discretion in determining the penalties to apply in any given case.⁸⁵ Pursuant to the guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁸⁶

29. The Commission's forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.⁸⁷ While there is no base forfeiture amount in the guidelines for cramming, the Commission has similarly established a \$40,000 base forfeiture for cramming violations.⁸⁸ In prior enforcement actions, the Commission has warned carriers that misrepresentations such as the ones in the instant case are serious and that future violations may receive significant upward adjustments. For example, in the *Silv NAL*, the Commission stated that "[c]arriers should be on notice that the Commission considers violations such as the ones discussed herein to be serious and that future violations may receive significant upward adjustments."⁸⁹ The misrepresentations discussed above—which all took place after the *Silv NAL* was released—are particularly egregious.

30. Applying the \$40,000 base forfeiture to each of the 64 apparent cramming and slamming violations upon which this NAL is based would result in a forfeiture of \$2,560,000. In this case, however, Advantage's conduct was particularly egregious, as demonstrated by our conclusion that the

⁸¹ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

⁸² 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). *Amendment of Section 1.80 of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

⁸³ *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

⁸⁴ *See* 47 U.S.C. § 503(b)(2)(E); *see also* *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997) (*Forfeiture Policy Statement*).

⁸⁵ 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

⁸⁶ *Id.*

⁸⁷ *See* 47 C.F.R. § 1.80, Appendix A, Section I.

⁸⁸ *See LDDI Forfeiture Order*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for cramming imposed by the Commission in the forfeiture order).

⁸⁹ *Silv NAL*, 25 FCC Rcd at 5186, para. 16; *see also* *United NAL*, 27 FCC Rcd at 16505-06, para. 17; *Preferred NAL*, 27 FCC Rcd at 16494, para. 14.

Company also violated Section 201(b) of the Act in 38 of the 64 cases at issue by misleading consumers into believing that Advantage was calling on behalf of their current carrier, was affiliated with their current carrier, or was taking over the long distance service provided by their current carrier. We further note that Advantage appears to have engaged in this kind of deception repeatedly.⁹⁰ The Commission must consider prior offenses to establish the context for determining an appropriate forfeiture amount.⁹¹ We therefore find that a significant upward adjustment is appropriate here.⁹² In light of Advantage's repeated egregious conduct, and given that the Commission specifically addressed in the *Silv NAL* two years ago the very kind of misrepresentation at issue here, we propose to triple the base forfeiture of \$40,000 for each of the 38 egregious violations at issue in this NAL—the crams and slams involving misrepresentation—making the penalty for each such violation \$120,000. This is consistent with the forfeiture amounts proposed in recent enforcement actions,⁹³ and we find that an overall penalty of this magnitude is appropriate given our prior warnings and the apparently egregious and repeated violations at issue here.⁹⁴

31. There is no base forfeiture amount for violations of the Commission's truth-in-billing rules. As discussed above, the purpose of the truth-in-billing rules is to reduce slamming and other telecommunications fraud by requiring carriers to use clear and non-misleading descriptions of the

⁹⁰ The 64 complainants identified in the Appendix are those who identified cramming and slamming incidents within the twelve months preceding the NAL. Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), empowers the Commission only to assess a penalty for violations that occurred in the year preceding the issuance of an NAL. In fashioning the penalty to apply for such violations, however, the Commission may take into account conduct that occurred at earlier times. Thus, in determining the forfeiture to assess for Advantage's apparent violations with respect to these 64 consumers, we consider its apparent deceptive conduct with respect to other consumers as well. *See supra* note 41.

⁹¹ *See Sandhill Communications*, Notice of Apparent Liability, 25 FCC Rcd 17762, 17769, n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company's conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period); *see also InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8701, para. 28 (2007) (citing *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671, para. 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1386, 1388, para. 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 11 FCC 2d 193, 195, para. 6 (1967)).

⁹² 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17116, Appendix A, Section II.

⁹³ *United NAL*, 27 FCC Rcd at 16506, para. 18; *Preferred NAL*, 27 FCC Rcd at 16495, para. 15 (2012).

⁹⁴ The President and CEO of Advantage, Robert Sorrentino, is also the President of Reduced Rate Long Distance and former telecommunications provider Horizon Telecom, Inc. The Commission issued an NAL against Horizon Telecom for apparently violating the Commission's carrier change rules, i.e., slamming. *See Horizon Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3485 (2008) (finding that Horizon apparently changed the preferred carriers of 125 consumers without proper authorization). The Commission recently entered into a consent decree with Horizon and Reduced Rate. Among the provisions of the consent decree, Reduced Rate Long Distance shall implement a new Policy Manual, which will prohibit any activity that violates any federal or state law, misrepresents the sales caller's identity or purpose, or involves any other misleading, untrue, or incomplete statements. *See Horizon Telecom, Inc. and Reduced Rate Long Distance, LLC*, Adopting Order and Consent Decree, 27 FCC Rcd 2998 (2012) (Horizon consent decree). Such misrepresentations, prohibited in the Horizon consent decree, are at issue in this NAL. Reduced Rate's Compliance Director and Customer Service Representative who handles consumer complaints appear to serve in the same capacities for Advantage. That the conduct at issue in this investigation is expressly prohibited in the recent Horizon consent decree is further evidence that Advantage's conduct is egregious.

charges for service on their telephone bills.⁹⁵ The rules are designed to ensure that consumers understand the charges on their bills and to facilitate consumer detection of fraud, thereby deterring unscrupulous carriers from engaging in unreasonable practices such as slamming and cramming.⁹⁶ We believe that telephone bills that include unclear or misleading information, or that omit critical information, capitalize on consumers' confusion over the choices they have in a competitive telecommunications marketplace and the complexity of most telecommunications billing. Given that the underlying purpose of the truth-in-billing rules is to assist consumers in protecting themselves from deceptive practices, we believe that the penalty for violating those rules should be equivalent to the \$40,000 penalty for engaging in a deceptive practice,⁹⁷ at least where the violations occur in the context of the egregious circumstances of this case.

32. We propose a \$40,000 forfeiture for each telephone bill Advantage sent to consumers without adequate description of the charges assessed. Advantage direct billed between [REDACTED] consumers monthly during the last year.⁹⁸ Assessing a forfeiture for each of the bills the Company apparently issued to consumers would result in a penalty in the hundreds of millions of dollars.⁹⁹ Rather than assess a forfeiture on that basis, we propose a forfeiture for each of the 50 bills that Advantage sent to complainants within the past year and that the Bureau had an opportunity to review individually. The Bureau determined that each of these 50 bills does not contain any clear descriptions of the charges assessed and therefore does not comply with the Commission's truth-in-billing rules. In this case, \$40,000 for each of the 50 bills results in an additional \$2,000,000.¹⁰⁰ Thus, the total forfeiture we propose for Advantage's conduct is \$7,600,000.

V. CONCLUSION

33. Based on the facts and record before us, we have determined that Advantage Telecommunications Corp. has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended, and Sections 64.1120 and 64.2401(b) of the Commission's rules.

VI. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the 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 Advantage Telecommunications Corp. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of seven million, six hundred thousand dollars (\$7,600,000), for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(b), 258, and Sections 64.1120 and 64.2401(b) of the Commission's rules, 47 C.F.R. §§ 64.1120 and 64.2401(b).

35. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,¹⁰¹ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture,

⁹⁵ See *supra* para. 26.

⁹⁶ See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 at 7506, para. 24.

⁹⁷ See *BDP Forfeiture Order*, 15 FCC Rcd at 14471-72.

⁹⁸ See LOI Response at 6. [REDACTED] *Id.*

⁹⁹ See, e.g., *NOS*, 16 FCC Rcd 8133 (finding that each deceptive rate sheet sent to consumers constituted a separate violation of Section 201(b)).

¹⁰⁰ The 50 consumer invoices that form the basis for assessing our forfeiture are identified in the attached Appendix.

¹⁰¹ 47 C.F.R. § 1.80.

Advantage Telecommunications Corp. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

36. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Advantage Telecommunications Corp. shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁰² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁰³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

37. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau—Telecommunications Consumers Division, and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

38. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁰² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁰³ See 47 C.F.R. § 1.1914.

39. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Advantage Telecommunications Corp., Attn: Robert Sorrentino at 3001 Aloma Avenue, Suite 304, Winter Park, FL 32792 and Andrew B. Lustigman, Esq., Olshan Frome Wolosky, LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

| Sections 258 and 201(b) Violations | | | |
|------------------------------------|--|----------------------|---|
| | Complainant | Date of slam or cram | Violation(s) |
| 1. | Yuriatin, LLC | 5/10/12 | Section 258 slam |
| 2. | Barlow Road Repairs | 5/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 3. | Green Landscaping and Irrigation, Inc. | 5/13/12 | Section 201(b) cram |
| 4. | Koca Chiropractic Clinic | 5/13/12 | Section 201(b) cram |
| 5. | Land Survey Inc. | 5/13/12 | Section 201(b) cram |
| 6. | Troutman Family Dentistry | 5/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 7. | Dog Spa Quality Grooming | 5/15/12 | Section 258 slam; Section 201(b) misrepresentation |
| 8. | Schwartzkopf's Decorating | 5/15/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 9. | Rogers Beck, DDS | 5/18/12 | Section 201(b) cram |
| 10. | Keeler Thomas Financial Planning | 5/22/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 11. | Counseling and Enrichment Center | 5/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 12. | Albert Miller, III, DDS | 5/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 13. | Niantic Crop Service | 6/1/12 | Section 201(b) cram |
| 14. | Blue Heron Restoration | 6/1/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 15. | Langeland Farms | 6/6/12 | Section 201(b) cram |
| 16. | Fountain of Youth | 6/6/12 | Section 201(b) cram |
| 17. | Albrecht Engineering, Inc. | 6/6/12 | Section 258 slam; Section 201(b) misrepresentation |
| 18. | Rogers & Greenberg | 6/14/12 | Section 258 slam; Section 201(b) misrepresentation |
| 19. | Dycor USA | 6/19/12 | Section 201(b) cram |
| 20. | Kokopellis Kitchen | 6/22/12 | Section 201(b) cram |
| 21. | Pizzico Signs, Inc. | 6/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 22. | John's Scuba Shop | 6/27/12 | Section 201(b) cram |
| 23. | Michael's Cycles | 6/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 24. | Summit Financial Consulting, LLC | 6/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 25. | Hollandale Massage Clinic | 6/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 26. | Fitness Forum | 7/2/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 27. | Burch Sheet Metal and Supply | 7/3/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 28. | The Swatch Works | 7/13/12 | Section 201(b) cram |

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|-----|--|----------|---|
| 29. | A&W Development | 7/13/12 | Section 201(b) cram |
| 30. | JM Building Remodeling Company | 7/13/12 | Section 201(b) cram |
| 31. | G. Popper, PhD | 7/13/12 | Section 201(b) cram |
| 32. | First Montana Title Company of Hamilton | 7/13/12 | Section 201(b) cram |
| 33. | B. Sherman, PhD | 7/13/12 | Section 258 slam; Section 201(b) misrepresentation |
| 34. | W. Greenfield | 7/13/12 | Section 201(b) cram |
| 35. | 7 Oaks Investment Corp. | 7/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 36. | W.G. Leffelman & Sons, Inc. | 7/25/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 37. | Palmer Realty | 8/1/12 | Section 258 slam; Section 201(b) misrepresentation |
| 38. | Identity Construction | 8/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 39. | Prescott Pines Camp | 8/13/12 | Section 258 slam; Section 201(b) misrepresentation |
| 40. | Colorado River Valley Soft Water | 8/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 41. | Sholette's Cabinet Shop | 8/13/12 | Section 201(b) cram |
| 42. | Parents With Promise | 8/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 43. | Insights Optical | 9/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 44. | Albion Bowling Center | 9/13/12 | Section 201(b) cram |
| 45. | Nebraska Thoroughbred Breeders Association, Inc. | 9/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 46. | Ski Train Depot | 9/13/12 | Section 201(b) cram |
| 47. | Jackson's Nursery, Inc. | 9/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 48. | Uncle Bill's Self Storage | 9/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 49. | Precision Welding Corporation | 9/27/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 50. | Jim's Small Engine Repair | 10/1/12 | Section 258 slam; Section 201(b) misrepresentation |
| 51. | Minuteman Press | 10/13/12 | Section 201(b) cram |
| 52. | Gig Harbor Veterinary Hospital | 10/27/12 | Section 201(b) cram |
| 53. | Waiting Room Records | 11/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 54. | KCM Dental | 11/27/12 | Section 201(b) cram |
| 55. | Kolb Electric | 11/27/12 | Section 201(b) cram; Section 201(b) |

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| | | | misrepresentation |
| 56. | Anneken, Huey & Moser, PLLC | 12/13/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 57. | Country Traditions | 12/20/12 | Section 201(b) cram; Section 201(b) misrepresentation |
| 58. | Communication Therapy | 12/21/12 | Section 201(b) cram |
| 59. | Scholl Appraisal | 1/13/13 | Section 201(b) cram; Section 201(b) misrepresentation |
| 60. | Moster Turf | 1/27/13 | Section 201(b) cram; Section 201(b) misrepresentation |
| 61. | Arrowmont Stables & Cabins | 1/27/13 | Section 201(b) cram |
| 62. | Sir Pizza of Troy, Inc. | 2/13/13 | Section 201(b) cram; Section 201(b) misrepresentation |
| 63. | Arizona Family Karate | 2/13/13 | Section 201(b) cram; Section 201(b) misrepresentation |
| 64. | TD Wright, Inc. | 2/27/13 | Section 201(b) cram |

Truth-in-Billing Rules Violations

| | Complainant | Date of bill | Violation |
|--------|--------------------------------------|---------------------------|------------------------|
| 1-2. | Blake Hi-Y Car Wash | 5/13/12, 6/13/12 | 47 C.F.R. § 64.2401(b) |
| 3. | Land Survey, Inc. | 5/13/12 | 47 C.F.R. § 64.2401(b) |
| 4. | Barlow Road Repairs | 5/13/12 | 47 C.F.R. § 64.2401(b) |
| 5. | Troutman Family Dentistry | 5/13/12 | 47 C.F.R. § 64.2401(b) |
| 6. | Counseling and Enrichment Center | 5/27/12 | 47 C.F.R. § 64.2401(b) |
| 7-8. | Summit Financial Consulting | 5/27/12, 6/27/12 | 47 C.F.R. § 64.2401(b) |
| 9-11. | The Swatch Works | 5/13/12, 6/13/12, 7/13/12 | 47 C.F.R. § 64.2401(b) |
| 12-14. | JM Building Remodeling Company, Inc. | 5/13/12, 6/13/12, 7/13/12 | 47 C.F.R. § 64.2401(b) |
| 15-17. | G. Popper, PhD | 5/13/12, 6/13/12, 7/13/12 | 47 C.F.R. § 64.2401(b) |
| 18-19. | W. Greenfield | 6/13/12, 7/13/12 | 47 C.F.R. § 64.2401(b) |
| 20-21. | 7 Oaks Investment Corp. | 6/13/12, 7/13/12 | 47 C.F.R. § 64.2401(b) |

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| 22-23. | Sholette's Cabinet Shop | 6/13/12, 8/13/12 | 47 C.F.R. § 64.2401(b) |
| 24. | Pizzico Signs, Inc. | 6/27/12 | 47 C.F.R. § 64.2401(b) |
| 25. | First Montana Title Company | 7/13/12 | 47 C.F.R. § 64.2401(b) |
| 26-27. | Albrecht Engineering, Inc. | 7/13/12, 8/13/12 | 47 C.F.R. § 64.2401(b) |
| 28-29. | Rogers & Greenberg | 7/13/12, 8/13/12 | 47 C.F.R. § 64.2401(b) |
| 30-31. | B. Sherman, PhD | 7/13/12, 8/13/12 | 47 C.F.R. § 64.2401(b) |
| 32-33. | Identity Construction | 7/13/12, 8/13/12 | 47 C.F.R. § 64.2401(b) |
| 34-35. | Nebraska Thoroughbred Breeders Association | 8/13/12, 9/13/12 | 47 C.F.R. § 64.2401(b) |
| 36. | Prescott Pines Camp | 8/27/12 | 47 C.F.R. § 64.2401(b) |
| 37. | Palmer Realty | 9/13/12 | 47 C.F.R. § 64.2401(b) |
| 38. | Precision Welding Corp. | 9/27/12 | 47 C.F.R. § 64.2401(b) |
| 39. | Uncle Bill's Self Storage | 9/27/12 | 47 C.F.R. § 64.2401(b) |
| 40. | Jim's Small Engine Repair | 10/13/12 | 47 C.F.R. § 64.2401(b) |
| 41-43. | Anneken, Huey & Moser, PLLC | 10/13/12, 11/13/12, 12/13/12 | 47 C.F.R. § 64.2401(b) |
| 44. | Kolb Electric, Inc. | 11/27/12 | 47 C.F.R. § 64.2401(b) |
| 45. | Country Traditions | 12/20/12 | 47 C.F.R. § 64.2401(b) |
| 46-47. | Arrowmont Stables & Cabins | 12/27/12, 1/27/13 | 47 C.F.R. § 64.2401(b) |
| 48-50. | TD Wright, Inc. | 12/27/12, 1/27/13, 2/27/13 | 47 C.F.R. § 64.2401(b) |