

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-TCD-13-00006333
)	
Consumer Telcom, Inc.)	NAL/Acct. No. 201432170001
)	
)	FRN: 0006057293

FORFEITURE ORDER

Adopted: September 14, 2016

Released: September 15, 2016

By the Commission: Commissioner O’Rielly concurring in part and dissenting in part.

I. INTRODUCTION

1. We impose a penalty of \$3,060,000 against Consumer Telcom, Inc. (CTI or Company) for improperly changing the preferred long distance carriers of consumers, a practice commonly known as “slamming,” and charging consumers directly or through their local telephone companies for long distance service that they had never authorized, a practice commonly referred to as “cramming.” CTI also deceptively marketed its services to consumers as part of its slamming and cramming scheme. In addition, where CTI billed consumers directly, it failed to clearly and plainly describe the charges, in violation of the Commission’s truth-in-billing rules. Slamming and cramming are deceptive business practices that result in consumers paying for services they never requested and then expending great time and personal effort to return to their preferred carriers. These practices are made even more egregious where, as here, they are coupled with deceptive marketing. After reviewing CTI’s response to the Notice of Apparent Liability for Forfeiture (*NAL*), we reduce the penalty proposed in the *NAL* and assess a \$3,060,000 forfeiture.

II. BACKGROUND

2. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) initiated an investigation of CTI¹ after reviewing numerous consumer complaints filed against the Company. As discussed in more detail in the *NAL*,² many of the consumers who filed complaints contended that CTI misrepresented that the Company was (or was affiliated with) the complainant’s existing long distance carrier and that the purpose of the Company’s marketing call was to obtain the complainant’s authorization to change the current service plan with his or her existing carrier—not to switch carriers.³ According to the complainants, after obtaining and recording their “authorization,” CTI then attempted to switch their long distance carrier to CTI.⁴ In some cases, CTI successfully effected the carrier change and in other cases CTI could not because, for example, a

¹ CTI, located at 701 North Green Valley Parkway, Suite 200, Henderson, NV 89014, is a non-facilities-based interexchange carrier.

² *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (*NAL*). The *NAL* contains a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *NAL*, 28 FCC Rcd at 17196–17120, paras. 2–32. The Appendix to the *NAL* also contains a list of complaints, including the complainant’s name, date of carrier change or billing date, and violation. *Id.* at 17213.

³ *Id.* at 17197, para. 4.

⁴ *Id.*

consumer had taken the initiative through a “PIC freeze” to block unauthorized carrier changes.⁵ In both types of cases, CTI charged the complainants for long distance services. The charges were billed directly to the complainants or were placed on the complainants’ local exchange carrier (LEC)⁶ bill.⁷ For example, Complainant Fodora-Elliott’s AT&T bill contained charges from CTI and after she advised AT&T that the charges were unauthorized, CTI sent her a direct bill.⁸ Complainants contended that they did not authorize CTI’s service and that they had no need to pay CTI for the same service that they already had with their existing carriers.

3. The slamming and cramming scheme in this case is very similar to that in two other recent cases: U.S. Telecom Long Distance, Inc. (USTLD),⁹ and Central Telecom Long Distance, Inc. (Central);¹⁰ all three companies are operated by a fourth company, the “hub” of the operation, Data Integration Systems, Inc. (DIS) that handles the day-to-day operations of the three companies.¹¹ All three companies—CTI, USTLD, and Central—are managed from DIS’s offices at 17832 Gillette Ave., Irvine, CA 92416. DIS, whose sole owner, officer, and director is Craig Konrad (Konrad),¹² “provides billing, training, customer service, . . . and other data management and retrieval services” for CTI.¹³ According to Konrad,¹⁴ DIS would provide services pursuant to the contract with CTI, including:

collecting and managing data needed for billing and collection services; interfacing with billing aggregators, interexchange carriers and local exchange carriers; training telemarketers; providing software and software services; managing databases; reviewing services and other non-service contracts; and overseeing regulatory matters.¹⁵

⁵ *Id.* A preferred or presubscribed interexchange carrier (PIC) freeze “prevents a change in a subscriber’s preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent.” See 47 CFR § 64.1190(a).

⁶ *E.g.*, AT&T, Verizon, or CenturyLink. “The term ‘local exchange carrier’ means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.” 47 U.S.C. § 153(32).

⁷ *NAL*, 28 FCC Rcd at 17197, para. 4.

⁸ See Complaint from E. Fodora-Elliott.

⁹ *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014) (*USTLD NAL*).

¹⁰ *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014) (*Central NAL*).

¹¹ See *Central NAL*, 29 FCC Rcd at 5517–18, para. 2.

¹² According to the 2014 FCC Form 499-A, filed Mar. 13, 2014, Konrad is also the chief executive officer of the toll reseller, Business Discount Plan, Inc.

¹³ *USTLD NAL*, 29 FCC Rcd at 823, para. 2 n.6.

¹⁴ Konrad provided a “declaration under penalty of perjury” to the Bureau’s letter of inquiry (LOI), stating that “[a]ll of the information requested by the Letter of Inquiry that is locatable and in CTI’s possession, custody, control or knowledge has been produced.” In addition, Konrad provided the substantive responses to the LOI, and stated that “CTI’s responses to the questions directed to CTI . . . which DIS assisted CTI in preparing its responses, are true and correct to the best of my personal knowledge and belief.” See “Responses of Consumer Telcom, Inc. to Letter of Inquiry, Dated January 30, 2013, Issued by the Enforcement Bureau of the Federal Communications Commission” (Mar. 15, 2013) (on file in EB-TCD-13-00006333).

¹⁵ See Consumer Telcom Inc.’s Response to Notice of Apparent Liability for Forfeiture at Exhibit 2, p. 1 (Feb. 18, 2014) (on file in EB-TCD-13-00006333) (*NAL Response*). Konrad provided the substantive information in the *NAL Response* regarding the CTI operations. See *NAL Response* at Exhibit 2 (Affidavit of Craig Konrad).

4. With respect to marketing, “CTI, through its agent DIS, trains and instructs its sales representatives”¹⁶ and “also has a quality assurance monitoring program in which it, through its agent DIS, regularly listens in on the sales representative’s calls.”¹⁷ DIS provides the “telemarketers with CTI’s training materials.”¹⁸ According to the Konrad affidavit, “CTI, through its agent DIS, trains its employees well and, consequently, CTI has not had to terminate many employees for engaging in misconduct during the telemarketing sales calls.”¹⁹ After the third party verifier process, DIS “uses [the name and address of new customers] to prepare address labels.”²⁰ DIS provides those address labels to its subcontractor, National Customer Service Center (NCSC), which then affixes these address labels to envelopes. DIS pays for the postage that is loaded into a postage meter, and NCSC will then mail the customer various promotional materials. If the documents are undeliverable, “DIS will then double check the customer’s name and address and correct the address label, if necessary, and re-mail the envelope.”²¹ According to Konrad, NCSC prepares all of the responses to consumer complaints against CTI.²²

5. The three companies, CTI, USTLD, and Central, have different owners, although the owner of CTI, Joseph Nicotra, was previously an officer of USTLD;²³ they are all, however, operated by DIS. Konrad, the owner of DIS, is also the president of another toll reseller, Business Discount Plan, Inc.²⁴ This system of using multiple companies, all run by one person or company, is used to dilute the number of complaints against each specific reseller and to make it more difficult for regulatory and law enforcement agencies to know how much cramming or slamming is occurring.²⁵

6. On December 17, 2013, the Commission released the *NAL* proposing a \$3,560,000 forfeiture against CTI for its apparently willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act),²⁶ and Sections 64.1120 and 64.2401(b) of the Commission’s rules (Rules).²⁷ The *NAL* found that the Company apparently violated Section 258 of the Act and Section 64.1120 of the Rules by changing the preferred carriers of seven consumers without authorization (slams), and Section 201(b) of the Act by assessing 18 unauthorized charges (crams) on bills to consumers. In addition, CTI apparently further violated Section 201(b) by engaging in six instances of misrepresentation, and apparently violated Section 64.2401(b) of the Rules by committing two truth-in-billing violations when sending bills directly to consumers. The *NAL* ordered CTI to, within 30 days, either pay the proposed forfeiture amount or submit evidence or arguments in response to the

¹⁶ *NAL* Response at Exhibit 2, p. 7.

¹⁷ *Id.* at 8.

¹⁸ *Id.*

¹⁹ *Id.* at 10.

²⁰ *Id.* at 11.

²¹ *Id.*

²² *Id.* at 19.

²³ *See id.* at Exhibit 5, p. 216.

²⁴ *See Central NAL*, 29 FCC Rcd at 5518 & n.5. The Commission has investigated Business Discount Plan, Inc. for slamming and misrepresentation. *See Bus. Disc. Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000), *aff’d in relevant part on reconsideration*, 15 FCC Rcd 24396 (2000) (*BDP Forfeiture Order*).

²⁵ *See* United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, “Unauthorized Charges on Telephone Bills,” Staff Report for Chairman Rockefeller, July 12, 2011 (Senate Report) at pp. 9-10, available at <http://apps.fcc.gov/ecfs/document/view?id=7021859847>.

²⁶ 47 U.S.C. §§ 201(b), 258.

²⁷ 47 CFR §§ 64.1120, 64.2401(b).

NAL that no forfeiture should be imposed or that some lesser amount should be assessed. CTI filed a response to the NAL on February 18, 2014.²⁸

7. CTI makes a number of arguments in its NAL Response as to why the NAL should be canceled or reduced. The Company contends that: (i) it did not slam consumers because it complied with the Commission's verification rules for carrier changes; (ii) it did not cram consumers because the recurring charges it assessed were for "bundled services" authorized by consumers; (iii) it did not deceptively market its services because it implemented telemarketer training and other safeguards; (iv) the Commission's reliance on unsworn consumer complaints was unreasonable and denied the Company due process; (v) it did not violate the Commission's truth-in-billing rules because the Company was billing consumers for a previous unpaid bill; and (vi) the NAL's upward adjustments of the proposed forfeiture amount were arbitrary and capricious.²⁹ As we discuss below, we reject each of CTI's arguments. However, based on all the evidence in the record, we reduce the penalty proposed in the NAL and assess a forfeiture amount of \$3,060,000.

III. DISCUSSION

8. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,³⁰ Section 1.80 of the Rules,³¹ and the Commission's *Forfeiture Policy Statement*.³² When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³³ As discussed below, we have fully considered CTI's response to the NAL, but we do not find its arguments persuasive. Based on the preponderance of the evidence in the record, we assess a \$3,060,000 forfeiture.

A. CTI Slammed Consumers in Violation of Section 258 of the Act and Section 64.1120 of the Rules

9. 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."³⁴ Section 64.1120 of the Rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before verifying authorization from the consumer; carriers can verify that authorization in one of three specified ways, including "Third Party Verification" (TPV).³⁵ If a carrier relies on a TPV,³⁶ the verifier must be independent of the carrier and, among other things, must confirm that the consumer with whom the verifier is speaking: (i) has the authority to change

²⁸ See NAL Response, *supra* note 15.

²⁹ In addition, the Company submitted three years of federal tax returns to support its claim that it was not able to pay the proposed forfeiture.

³⁰ 47 U.S.C. § 503(b).

³¹ 47 CFR § 1.80.

³² *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), reconsideration denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³³ 47 U.S.C. § 503(b)(2)(E).

³⁴ 47 U.S.C. § 258(a).

³⁵ 47 CFR § 64.1120(c)(1)–(3).

³⁶ TPV is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. TPV must comply with Section 64.1120(c)(3) of the Commission's rules. 47 CFR § 64.1120(c)(3).

the carrier associated with the telephone number in question; (ii) in fact wishes to change carriers; and (iii) understands that he or she is authorizing a carrier change.³⁷ The rules expressly prohibit verifiers from misleading consumers while attempting to obtain the required authorization (i.e., the rules require, *inter alia*, that a verifier's description of the carrier change not be misleading).³⁸ In its NAL Response, CTI makes a number of arguments in an attempt to avoid its liability, but we find none of them persuasive and, based on the preponderance of the evidence in the record, we affirm the NAL's finding of violations of Section 258 of the Act and Section 64.1120 of the Rules.

10. In the NAL we found that CTI apparently violated Section 258 of the Act and Section 64.1120 of the Rules by switching seven consumers' preferred providers of telecommunications services without proper authorization verified in accordance with the Rules.³⁹ Specifically, in all seven cases the TPV's description of the carrier change was misleading in violation of the Rules, and failed to confirm that the consumer wished to change carriers and understood that they were authorizing such a change.⁴⁰ As consumers repeatedly described, CTI's telemarketers initially led the consumers to believe that they were speaking to their existing carrier and that the purpose of the call was to discuss the consumer's *existing service*.⁴¹ After those misrepresentations were made by CTI's telemarketers, the consumer's call was passed to the third party verifier, who told consumers that "[t]he reason we are speaking is to confirm the change in long distance service to Consumer Telcom, Inc. as your long distance carrier."⁴² As we explained in the NAL, simply tacking on the words "as your long distance carrier" does not change the fact that the verifier stated that the purpose of the call was to change the consumer's "*service*," rather than the *carrier* providing that service, and that consumers believed their service would continue to be through their existing preferred carrier because of the initial misrepresentations made by CTI's telemarketers (discussed in greater detail in the NAL and below).⁴³ The consumers had not agreed to change their carriers and there were no agreements for a carrier change to "confirm" with the third party verifier. It is well established law that changing service is not equivalent to changing carriers,⁴⁴ and CTI's statements

³⁷ *Id.* § 64.1120(c)(3)(iii).

³⁸ *Id.*

³⁹ NAL, 28 FCC Rcd at 17199, para. 8.

⁴⁰ *See id.* at 17200–17201, paras. 11–12.

⁴¹ *Id.* at 17199, paras. 8–10.

⁴² *Id.* at 17200, para. 11.

⁴³ *Id.* at 17199–17200, paras. 9–11 & n.31 (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*, Fourth Report and Order, 23 FCC Rcd 493, 501, para. 19 (2008) (footnotes omitted) (*Slamming Fourth Report and Order*)).

⁴⁴ *See, e.g., Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding "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*."); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 7338 (CGB 2012) (finding that CTI's TPVs did not comply with the carrier change rules because the verifier asked whether the person on the call "has the authority to make changes to your long distance service"); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 7561 (CGB 2012) (same); *see also Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 10325 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 7257 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 3202 (CGB 2010) (same, two complaints); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 1001

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suggesting that it was seeking verification only for a change in “service” were misleading and in violation of Section 64.1120(c)(3), notwithstanding the addition of the phrase “as your long distance carrier” at the end of the sentence.⁴⁵

11. Notwithstanding numerous orders from the Commission’s Consumer & Governmental Affairs Bureau (CGB) finding that CTI’s TPVs failed to comply with the slamming rules,⁴⁶ CTI argues that the Commission should not focus on a single statement by the verifier, which it claims was taken “out of context,” and that its TPVs, when reviewed in their entirety “did not lead to consumer confusion concerning the true purpose of the solicitation call.”⁴⁷ According to CTI, the verifications “confirmed that the person on the call understood that a *carrier change*, not an upgrade to existing service, bill consolidation, or other misleading description of the underlying transaction, was being authorized.”⁴⁸ The evidence shows otherwise. Notably, after the seven consumers discovered that their carrier was changed without their authorization they immediately took steps to switch back to their prior carrier, obtain a refund of the CTI charges, and file complaints against CTI due to the unauthorized carrier change and resulting unauthorized charges.⁴⁹

12. Further, CTI is mistakenly focusing on one small part of the TPV—i.e., the reference to a consumer’s “long distance carrier”—to show that the TPV complied with our verification rules. The evidence shows that prior to the TPV, the CTI telemarketer led the consumers to believe that the purpose of the call was to discuss the existing service, *not* to change carriers. Consequently, the vague language of the TPV, “confirm the change in long distance service,” did not significantly contradict what the CTI telemarketer had just told the consumers, i.e., that they were discussing a change in their current service (not a carrier change), and was misleading and therefore in violation of our verification rules. As the

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(CGB 2010) (same); *Consumer Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 1019 (CGB 2010) (same).

⁴⁵ CTI contends that it is “incomprehensible” and “inconceivable” that we find fault with its TPVs because, according to CTI, there have been numerous CGB orders that reviewed similar language used by CTI which CGB found did not constitute a slam. NAL Response at 25-26. CTI’s contention, however, is based entirely upon old CGB orders dating back to 2008. NAL Response at 12-15. CTI conveniently ignores the subsequent CGB orders specifically against CTI that supersede that prior precedent. In these more recent orders CGB specifically found CTI violated the slamming rules because its TPVs asked consumers about a change in “service” and not a change in “carrier.” *See supra*, note 44. These orders put CTI on notice prior to the slams at issue in the NAL that the old CGB precedent no longer applied following the Commission’s 2008 rulemaking and that CTI needed to change its TPVs to bring them into compliance with the slamming rules. We find no merit in CTI’s argument and affirm our findings in the NAL. Additional CGB orders released after the NAL reached the same conclusion. *See, e.g., U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5805 (CGB 2014) (finding that the statement that the purpose of the recorded conversation was “to confirm the change in long distance service to US Telecom Long Distance as your long distance carrier” was in violation of FCC carrier change rules); *Consumer Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5800 (CGB 2014) (same, regarding Consumer Telecom, Inc.); *Central Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5795 (CGB 2014) (same, regarding Central Telecom Long Distance, Inc.); *Central Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5790 (CGB 2014) (same).

⁴⁶ *See supra* note 44.

⁴⁷ NAL Response at 24. CTI argues that the TPVs complied with our rules and were not misleading, combining, to some extent, the slamming and misrepresentation issues.

⁴⁸ *Id.*

⁴⁹ *See, e.g.,* Complaint from J. Buck (describing how CTI’s telemarketer misled her into believing the call related to a Verizon action and that when she discovered CTI had switched her carrier, she contacted Verizon to switch back and then filed a complaint after not receiving a credit for the unauthorized charges).

Commission stated in its *Slamming Fourth Report and Order*, “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.”⁵⁰ Here, the evidence demonstrates that CTI “obscured the true purpose” of its interactions with consumers for the purpose of switching their carriers without their authorization.

13. CTI also argues that instead of looking at the allegations of each complaint, including the statements and representations made to consumers *prior* to the TPV, if the TPV, standing alone, complies with our rules, then it “necessarily means that the customers were authorized to make a carrier change, wanted to make a carrier change, and understood that they were making a carrier change.”⁵¹ Essentially, the Company’s position is that as long as there is a “valid” TPV, the associated carrier change is justified regardless of what a telemarketer may have told the consumer.⁵² As discussed above, we have reviewed the relevant CTI TPVs and determined that they do not comply with our verification rules and thus, do not prove authorization. Even if we were to accept CTI’s argument (that a valid TPV standing alone proves authorization), it would be of no avail in the instant case. CTI’s TPV argument also fails because the misrepresentations made to consumers by CTI’s telemarketers alone invalidate the TPVs, making the subsequent carrier changes invalid.⁵³ Moreover, a falsified TPV⁵⁴ could make it appear that a complainant had agreed to a carrier change when no such agreement had occurred.⁵⁵ Accordingly, we reject the contention that we should look no further than the TPV in determining whether a particular carrier change comports with the Act and our Rules.

14. For all these reasons, and based on the preponderance of the evidence in the record, we affirm the finding in the *NAL* that CTI, in violation of Section 258 of the Act and Section 64.1120 of the Rules, changed the preferred carriers of seven consumers without proper authorization verified in accordance with the Commission’s rules.

B. CTI Placed Unauthorized Charges on Consumers’ Telephone Bills (“Cramming”)

15. CTI also violated Section 201(b) of the Act by placing 18 unauthorized charges on consumers’ telephone bills.⁵⁶ The Commission has previously held that the placement of unauthorized

⁵⁰ *Slamming Fourth Report and Order*, 23 FCC Rcd at 501, para. 19. Moreover, as the Commission has previously stated, third party verifier scripts “should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.” *Id.* (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)).

⁵¹ *NAL* Response at 35.

⁵² *Id.*

⁵³ *See supra*, para. 10. *See also NAL*, 28 FCC Rcd at 17200, para. 11 (explaining that due to the misrepresentations by the telemarketer, CTI cannot demonstrate that the complainants wanted to make a carrier change and understood that they were authorizing a carrier change).

⁵⁴ *See NAL*, 28 FCC Rcd at 17199, para 10 (describing Complaint from S. Jefferson-Brown).

⁵⁵ This is consistent with *AT&T Corporation v. FCC*, 323 F.3d 1081, 1086 (DC Cir. 2003) (*AT&T v. FCC*). In *AT&T v. FCC*, the court agreed with AT&T that “carriers seeking new customers via telemarketing have little choice but to depend on the veracity of the person answering the phone.” The matter of a falsified TPV was not at issue in the two slamming instances before the court; in fact, the court repeatedly noted that the telemarketer following our verification procedures would have to rely on the person who answered the telephone call. Our position here, however, is that a falsified TPV cannot comply with our verification rules because it is not the subscriber’s verification but a faked recording created solely to mislead state and federal agencies that the subscriber agreed to the carrier change.

⁵⁶ CTI’s process for third party billing generally involves three parties: CTI; its billing aggregator, Billing Services Group (known as BSG or USBI); and the LEC that issues the consumer’s bill. As we described in the *NAL*, CTI

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charges and fees on consumers' telephone bills—known as “cramming”—is an “unjust and unreasonable” practice under Section 201(b).⁵⁷ Cramming can occur either when third parties place unauthorized charges on consumers' existing carriers' telephone bills or when carriers place unauthorized charges on their own customers' telephone bills.⁵⁸ Any assessment of an unauthorized charge on a telephone bill or for a telecommunications service is an “unjust and unreasonable” practice under Section 201(b) of the Act.⁵⁹ CTI argues in its NAL Response that: (1) it did not cram consumers, but instead charged them for a “bundled” service that the consumers had authorized;⁶⁰ and (2) by failing to comply with CTI's complaint procedures, consumers authorized any charges billed by CTI.⁶¹ For the reasons discussed below, we reject these arguments and, based on the preponderance of the evidence in the record, we affirm the *NAL*'s finding that CTI violated Section 201(b) of the Act by placing 18 unauthorized charges on consumers' telephone bills.

1. Complainants did not authorize CTI's “bundled” services

16. In the *NAL* we found that CTI apparently violated Section 201(b) of the Act by placing 18 unauthorized charges on consumers' telephone bills, in some cases multiple charges on the same consumer's bills.⁶² When CTI was able to change a consumer's long distance carrier to itself, it would charge the consumer for itemized long distance calls as well as a monthly recurring charge. When CTI was unable to change a consumer's carrier (such as when the consumer had a PIC freeze in place), or when a consumer discovered the unauthorized carrier change to CTI and switched back to his or her original carrier, CTI nonetheless assessed the same monthly recurring charge even though CTI was not the consumer's presubscribed long distance carrier. CTI contends that it sells a “bundle” of services and thus did not cram these consumers because it was billing them for its “bundled long distance service,” not just for the long distance service that the consumer either was never subscribed to (i.e., because a PIC freeze was in place)⁶³ or that was canceled (because the consumer switched back to their preferred carrier).⁶⁴ As discussed below, however, the evidence demonstrates that the complainants had not authorized CTI to charge them for any service, including this “bundled” service.

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“obtains information on its customers' usage from its underlying carriers, Global Crossing Telecommunications, Inc. (Global Crossing) and CenturyLink. CTI then ‘applies its rates to the customer's usage as well as its monthly fees and sends the information to [USBI] . . . which, in turn, sends the information to the [consumer's] LEC which bills the [consumer] monthly. . . .” See *NAL*, 28 FCC Rcd at 17202, n.42.

⁵⁷ See, e.g., *Long Distance Direct, Inc., Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (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).

⁵⁸ 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); see also *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6850, para. 17 (2013) (*Advantage NAL*).

⁵⁹ See *Advantage NAL*, 28 FCC Rcd at 6850, para. 17 (regardless of the method used to bill consumers, “any assessment of an unauthorized charge billed to consumers is an ‘unjust and unreasonable’ practice under Section 201(b)”).

⁶⁰ *NAL* Response at 37–74.

⁶¹ *Id.* at 56–74.

⁶² *NAL*, 28 FCC Rcd at 17202–17206, paras. 15–22.

⁶³ *NAL* Response at 38–39.

⁶⁴ *Id.* at 56.

17. CTI states that its service includes “presubscribed 1+ long distance bundled with casual calling long distance service, travel card long distance service, and directory assistance long distance service.”⁶⁵ We understand that the “casual calling”⁶⁶ service to which CTI refers is a dial around service, i.e., the caller would dial 10-10 followed by the carrier identification code, or CIC, for the underlying carrier.⁶⁷ Despite CTI’s claims that these recurring charges are “valid accrued charges for long distance service provided”⁶⁸ the evidence shows that complainants had not authorized or used such “bundled long-distance service.”⁶⁹ As we discussed in the *NAL*, the bundle is not mentioned in the TPV and is not described or listed on the telephone bills from the LEC or from CTI.⁷⁰ CTI admits that the TPV transcript does not “refer to a bundled package of services that includes casual calling, free directory assistance minutes and a calling card.”⁷¹

18. The complainants all contended that CTI billed them for services they did not authorize.⁷² In most cases, CTI initially switched their service away from their carrier to CTI. Then, once they had returned to their original carriers, CTI continued to bill them for monthly service and other fees and taxes—either through their LEC bills or on bills sent to them directly by CTI. Numerous complainants described discovering unauthorized charges from CTI on their local telephone bills, or on bills sent to them directly by CTI, for long distance service they did not authorize and CTI did not provide.⁷³ CTI has not offered any evidence to dispute the record evidence and justify its practice of continuing to bill consumers for several months after the unauthorized service was cancelled⁷⁴ and has failed to credibly refute complainants’ assertions that such charges were unauthorized, as described in detail in the *NAL*. Therefore, we find, based on the preponderance of the evidence in the record, that CTI did not have the complainants’ authorization to charge for any service and thus crammed consumers by charging complainants for those unauthorized services.⁷⁵

⁶⁵ *Id.* at 57.

⁶⁶ Casual calling services are those services that do not require the calling party to establish an account with an interexchange carrier or otherwise subscribe to a service. A casual calling service is not a subscribed service and the caller using a casual calling service would not have an account with the interexchange carrier. Therefore, if CTI offered a casual calling service, it would not charge a recurring fee for such service because a casual calling service, by definition, does not have subscribed customers.

⁶⁷ Dial around long distance can be an economical service in certain circumstances, in lieu of a 1+ long distance service. For example, some carriers offer discounted international service to certain countries on a dial around basis that consumers may prefer to the international service offered by the consumer’s PIC-ed carrier. There is no evidence in the record that CTI offers any such discounted services.

⁶⁸ *NAL* Response at 56.

⁶⁹ *NAL*, 28 FCC Rcd at 17205–17206, paras. 19–22.

⁷⁰ *Id.* at 17205, para. 19.

⁷¹ *NAL* Response, Exhibit 5 at 478–479.

⁷² *NAL*, 28 FCC Rcd at 17205–17206, paras. 21–22.

⁷³ *Id.* at 17203–17204, para. 17 & n.50.

⁷⁴ The evidence shows that when a consumer cancelled CTI’s service through his or her LEC, CTI could independently activate the line even though it had been deactivated by CTI’s underlying carrier, Global Crossing or CenturyLink. Konrad said that this would be done by him “or somebody that works for Data Integration Services . . .” *NAL* Response at Exhibit 5, pp. 463–470.

⁷⁵ In addition to the above described unauthorized charges, CTI’s position is that after cancellation of its service by a consumer, the Company will still bill a consumer for several months—despite the fact that no charges were ever authorized. For example, CTI’s letter to complainant Painter asserts (referring to a Feb. 28, 2013 call to CTI’s customer service to complain about unauthorized charges) “[d]epending on the timing of the local phone company

(continued....)

19. In its NAL Response, CTI first tries to establish that consumers authorized the recurring charges by providing copies of undated rate cards describing calling plans in Maryland, Mississippi, and New York.⁷⁶ CTI has not demonstrated that the complainants received one of these three rate cards, or any rate card, containing information about the bundle of services.⁷⁷ CTI also provided a “General Service Agreement” from January 2008.⁷⁸ CTI has not shown that the January 2008 Agreement was in effect in 2012 and 2013, during which the apparent violations relevant to the *NAL* occurred, or that the complainants received this Agreement. Further, CTI has not explained why a consumer, already paying his or her presubscribed carrier for 1+ long distance service, would knowingly pay CTI a monthly recurring charge for its dial around long distance service. We do not find that CTI’s evidence refutes the complainants’ assertions that they did not sign up for these services and that the charges were unauthorized.

20. With respect to the casual calling service element of the bundle, CTI speculates that the casual calling service would be a “convenient service for customers who are away from their presubscribed phone.”⁷⁹ However, this explanation appears to confuse casual calling, pay-per-call dial around long distance service, and a subscribed calling card service because it fails to take into account that the call would be charged to the person whose telephone is used for the call, not the customer who made the call. Assuming CTI was referring to a subscribed calling card service using a toll free number and a PIN, also allegedly part of the bundle, CTI fails to show that any customer authorized the service or, in fact, even used the service. CTI also contends that subscribers could use the casual calling service if they “want to use CTI’s deeply discounted international rates to make international calls.”⁸⁰ However, there is no evidence in the record that CTI had “deeply discounted” international rates, that any consumers were aware of international rates offered by CTI, or that any consumers had used this service. CTI’s “Telecommunications Service Guide”⁸¹ does not say anything about international rates and no such rates are listed in the document CTI provided with its NAL Response. CTI has not given any examples of the complainants, or any other person, using the casual calling dial around service.⁸²

21. Finally, CTI contends that invoices from its wholesaler, Global Crossing/Level 3, show that consumers used its directory assistance and calling card services.⁸³ The 2012 and 2013 invoices identify from [REDACTED] directory assistance calls each month.⁸⁴ The only calling card calls identified

(Continued from previous page) _____

billing cycle, it may be 1-2 billing cycles before she receives the final Consumer Telcom charges for the billing cycle ending February 28, 2013.” See CTI’s Response to BBB Complaint of J. Painter.

⁷⁶ NAL Response at Attachment 2. In Konrad’s affidavit, he states that “[a]ttached hereto as Attachment 2 are sample rate cards.” NAL Response at Exhibit 2, p. 4.

⁷⁷ The rate cards do not list directory assistance as part of the bundled plan. See NAL Response at Attachment 2.

⁷⁸ *Id.* at Attachment 4.

⁷⁹ *Id.* at Exhibit 2, p. 4, para. 14.

⁸⁰ *Id.* at 58.

⁸¹ See *id.* at Attachment 3. The “Telecommunications Service Guide” CTI provided with its NAL Response included only pages 1, 27, and 40–54. A CTI Telecommunications Service Guide, posted on the internet and dated March 2014 (after the issuance of the *NAL*) contains only “Off-Shore Calling Card” rates for calls placed to and from the U.S. Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands. See <http://consumertelcom.com/svcguide1.pdf> at 60 (last visited Aug. 4, 2015).

⁸² The wholesale invoices provided by CTI do not categorize the dial around calls separately; there is no evidence in the record that any consumer used CTI’s dial around service at any time. See NAL Response at Attachment 5.

⁸³ *Id.* at 72. CTI provided invoices from Global Crossing for various months from August 2006 through May 2008, all covering time periods several years before the complaints at issue. See *id.* at Attachment 5. CTI also provided monthly invoices from Global Crossing/Level 3 for January 2008 through April 2013. See *id.* at Attachment 6.

⁸⁴ See *id.* at Attachment 6.

were in January 2012, almost a year prior to the violations cited in the *NAL*.⁸⁵ The invoices do not identify the customers' names or billing telephone numbers from which the directory assistance or calling card calls were made. Thus, the invoices do not demonstrate that any of the complainants made any directory assistance or calling card calls. CTI contends that it charges its customers for directory assistance calls after a certain number of free directory assistance calls;⁸⁶ therefore, CTI should be able to identify which customers made directory assistance calls, and how many calls were made by those customers (information that the Company would track by necessity in order to accurately bill customers), yet the Company has failed to provide such information in its *NAL* Response. Further, none of CTI's bills (neither those issued by the LEC nor those issued by CTI directly) identify or even reflect any charges for a "bundled service" or mention a bundle of services at all.⁸⁷ Accordingly, based on the preponderance of the evidence in the record, we conclude that CTI has failed to show that the complainants made any directory assistance or calling card calls or authorized the bundled services.

2. Complainants' failure to follow CTI's "cancellation procedures" is not a substitute for authorization to be billed

22. CTI further argues that the recurring charges described above were authorized because consumers must contact CTI directly in order to cancel its services and stop CTI from continuing to charge them.⁸⁸ Otherwise, according to CTI, it bills the consumer monthly fees regardless of whether CTI is the consumer's preferred carrier.⁸⁹ Thus, a consumer who discovered an unauthorized carrier change to CTI and charges on his or her telephone bill and complained to the LEC to have the carrier changed back and the charges removed would, according to the argument put forth by CTI, be authorizing further CTI charges because the cancellation was not performed in accordance with CTI's procedures, of which the consumer was unaware having never sought service by CTI in the first place. The LEC bills through which CTI was billing the consumers specifically instructed the consumers to contact the LEC with any billing questions.⁹⁰ A consumer faced with an unauthorized charge from CTI on his or her telephone bill would therefore reasonably follow the instructions on the telephone bill and contact the LEC to have the charge removed. According to CTI, after a consumer canceled CTI's service through his or her LEC, and

⁸⁵ See *id.* at Attachment 5.

⁸⁶ See Affidavit of Craig Konrad, *NAL* Response at Exhibit 2, p. 6 ("Depending on the rate plan to which the customer has subscribed, the customer is allowed a certain number of free directory assistance calls.").

⁸⁷ See LEC bills and CTI's direct bills sent to Complainants E. Fordora-Elliott; G. Stewart; L. Boeckmann; W. Briggs; J. Lanoue; J. Buck; J. Liddle; R. Bansal; J. Painter; J. Aguirre. The direct bills list "Consumer Telcom, Inc. Charges" beside a line for "Adjusted Long Distance Charges." On the bottom of the bill CTI states: "This letter is being sent to inform you of charges that were sent back to Consumer Telcom, Inc., by your local carrier. These are charges that you contacted your local phone company about, that you were not aware of, or did not understand." There is no other description of the service or the charges or any mention of "bundled services," such as a travel card, directory assistance, or casual calling long distance, on the bill. See, e.g., bill attached to complaint from E. Fordora-Elliott.

⁸⁸ *NAL* Response at 60. CTI contends that this cancellation policy is explained during the initial sales call. *Id.* at 64.

⁸⁹ The complainants' telephone bills do not mention the bundled services or the particular requirements for cancelling CTI's services.

⁹⁰ See, e.g., Complaint from J. Lanoue (Verizon bill attached to complaint states "Questions about your bill or service? View your bills in detail at verizon.com or call 1-800-VERIZON (1-800-837-4966."); Complaint from J. Liddle (CenturyLink bill attached to complaint provides a CenturyLink contact number (1-800-201-4099) for Product, Services, and Billing questions); Complaint from R. Bansal (AT&T bill attached to complaint has instructions, under Billing Summary, "Billing Questions? Visit att.com/billing" as well as a toll free number to call.).

CTI received the cancellation information from its underlying carrier,⁹¹ instead of honoring the consumer's request for cancellation of the unauthorized service, it continued to send the consumer a direct bill for "monthly service."⁹² Thus, CTI, on notice of the cancellations, continued to bill consumers on the pretext that the consumers failed to follow CTI's cancellation procedure, which CTI contends was explained to consumers during the course of its initial sales call.⁹³ CTI has not provided recordings or transcripts of its initial sales calls or any other evidence to support this contention.

23. Notwithstanding CTI's unsubstantiated claim that it notified consumers of its cancellation policy, CTI cannot deliberately ignore the consumers' cancellations and expect them to follow particular CTI procedures to cancel a bundled service they had not previously ordered and of which, according to the available evidence, they were unaware. Indeed, CTI has not shown that the complainants had any information about the Company's particular cancellation procedures. We find it unjust and unreasonable to expect a consumer to do anything more to cancel a service on his or her telephone bill than what the consumer is instructed to do on the bill containing the charge. Moreover, as discussed in the *NAL*, the initial sales call misrepresented the services and the purpose of the call and thus, the consumer acting reasonably at the time of cancellation would have no reason to refer back to that initial call for clarity as to his or her obligation in cancelling a service that was never authorized in the first instance.⁹⁴

24. We therefore affirm the finding in the *NAL* and find that the record here establishes that CTI placed charges on consumers' local telephone bills or billed them directly for service without the consumers' authorization. Any carrier that charges consumers for services without authorization from the consumer is in violation of Section 201(b), and that violation is even more egregious when, as in this case, the carrier has actual knowledge that the charge is not authorized through a cancellation notice.

C. CTI Deceptively Marketed its Services to Consumers

25. As stated in the *NAL*, CTI violated Section 201(b) of the Act by misrepresenting its identity to six consumers.⁹⁵ The Company makes two arguments in an attempt to refute this finding: (1) that its training of telemarketers makes it unlikely that they misrepresented the identity or affiliation of the Company to consumers;⁹⁶ and (2) that the Company's TPVs prove that no misrepresentations took place.⁹⁷ We reject these arguments and find that CTI violated Section 201(b) of the Act by engaging in misrepresentations of its identity to consumers.

1. Telemarketer Training Does Not Refute the Findings in the *NAL* that the Company Deceptively Marketed its Services

26. We found in the *NAL* that CTI's telemarketers apparently misrepresented that the Company was (or was affiliated with) six complainants' existing long distance carriers. For example, Complainant Jefferson-Brown stated that she "received a call from a gentleman claiming to be working for AT&T named Brandon. He stated that because I had been such a good customer with them that they were offering me a \$10 discount on my bill."⁹⁸ Ms. Jefferson-Brown later noticed that her telephone bill

⁹¹ CTI gathers information on the customers' usage for billing purposes. *See* Office of Consumer Advocate v. Consumer Telcom, Inc., State of Iowa Department of Commerce Utilities Board, Docket No. FCU-2012-0011c (FCU-2012-0001, FCU-2012-0007), Global Crossing Telecommunications, Inc., Direct Testimony of Diane L. Peters (Feb. 25, 2013) (explaining the Global Crossing procedure for providing end-user information to resellers).

⁹² *NAL* Response at 61.

⁹³ *Id.* at 63–74.

⁹⁴ *NAL*, 28 FCC Rcd at 17198–17199, paras. 7–10.

⁹⁵ *Id.* at 17198, para. 5.

⁹⁶ *NAL* Response at 42.

⁹⁷ *Id.* at 34–37.

⁹⁸ *NAL*, 28 FCC Rcd at 17199, para. 10.

had increased. “I called AT&T and they told me that my service had been switched to another carrier not affiliated with them.”⁹⁹ Complainant Newberry similarly explained that CTI contacted her and “[d]eceptively claimed they represented my phone company with the offer to reduce my phone bill . . . I very stupidly gave them some information.”¹⁰⁰ Ms. Newberry stated she did not have long distance service on her land line, although “I received a bill from Consumer Telcom, as if I was receiving that service . . . Therefore, it appears to be fraudulent.”¹⁰¹ CTI argues that it is “highly improbable” that the Company tricked any of its customers into believing the telemarketer was calling from their own carriers because CTI instructs the telemarketers that “they must advise prospective customers during the telemarketing call that they are with ‘Consumer Telcom, Inc.,’” the telemarketers must sign a marketing practices agreement; CTI has a quality assurance monitoring program; and its dialing software program has a 17 second delay before the telemarketer is shown the customer’s telephone number and address, making it “extremely difficult” to misrepresent that the telemarketer is affiliated with or actually is the consumer’s long distance carrier.¹⁰²

27. We are not persuaded that the existence of a telemarketing agreement prevented CTI telemarketers from engaging in the misrepresentations described above and in the *NAL*. The evidence in the record reflects, for example, that Complainant Buck was led to believe that the CTI telemarketer was affiliated with Verizon;¹⁰³ Complainant Lopez received a call from a CTI telemarketer who said he was “calling to CONFIRM changes to your telephone service instead of OFFERING an additional telephone service . . . They also make customers believe they are from your carrier Verizon or AT&T when in fact they are not;”¹⁰⁴ Complainant Mason spoke to the CTI telemarketer, who “claimed to be able to provide discounted long distance telephone service . . . via a billing arrangement with Verizon Telephone;”¹⁰⁵ and Complainant Lee stated she was fooled into believing AT&T was lowering her rate, “when it was really another company pretending to be AT&T and charging her a higher rate.”¹⁰⁶ We also disagree that the 17 second delay described by CTI¹⁰⁷ precludes a telemarketer from misrepresenting his or her identity to consumers. CTI has not shown that during the 17 seconds before the telemarketer is shown the consumer’s telephone number and address,¹⁰⁸ the telemarketer would be prevented from saying that he or she was calling from the consumer’s long distance carrier. With respect to the “quality assurance monitoring program,”¹⁰⁹ we do not find that the allegation that DIS “regularly listens in on the sales representative’s calls”¹¹⁰ refutes the misrepresentations described by the complainants. CTI has not provided recordings of the telemarketing call for the specific complaints at issue to refute the evidence of misrepresentation. Based on the evidence in the record, we find the multiple consumers who took the time to file complaints against CTI describing instances of misrepresentation to be far more persuasive than the CTI statement that a telemarketer has signed a marketing practices agreement and that some calls

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 17203, para. 16.

¹⁰¹ *Id.*

¹⁰² *NAL* Response at 42–44.

¹⁰³ Complaint from J. Buck

¹⁰⁴ Complaint from N. Lopez.

¹⁰⁵ Complaint from W. Mason.

¹⁰⁶ Complaint from V. Lee.

¹⁰⁷ *NAL* Response at 43–44.

¹⁰⁸ Although not explained in CTI’s *NAL* Response, presumably the issue is that once the telemarketer has this information he or she can do an internet search to determine the consumer’s carrier.

¹⁰⁹ *NAL* Response at 43.

¹¹⁰ *Id.*

are monitored.

28. We reject the argument that CTI's telemarketing safeguards, anti-slamming policies, and telemarketer contracts prevented misrepresentations, cramming, or slamming, or in any way alleviated CTI of its statutory and rule obligations.¹¹¹

2. CTI's TPV Recordings Do Not Refute Evidence that the Company Misrepresented Itself to Consumers

29. The contents of the six consumer complaints show, by a preponderance of the evidence, that CTI misrepresented itself to consumers.¹¹² We find that the complainants' statements about their experiences with CTI's telemarketers constitute credible evidence of CTI's Section 201(b) violations. CTI argues, however, that the Commission "need not look beyond the four corners of the TPV [recordings]" for evidence that CTI did not deceptively market its services.¹¹³

30. We find unpersuasive CTI's argument that transcripts of its TPV recordings demonstrate that consumers were not deceived during the sales call.¹¹⁴ As noted above, CTI hired telemarketers to solicit consumers to switch their long distance carrier to CTI. After the telemarketer allegedly received the consumers' consent for a switch in carrier, the telemarketer transferred the call to a third-party company to verify the consumer's authorization to make the switch. According to CTI, the complainants' affirmative responses to the verifier's questions necessarily mean that the consumers were not deceived by the telemarketer during the earlier sales call.¹¹⁵ CTI contends the TPV recordings establish that the complainants "were authorized to make a carrier change, wanted to make a carrier change, and understood that they were making a carrier change."¹¹⁶

31. CTI is simply wrong that we cannot look beyond the "four corners" of the TPV in determining whether CTI's telemarketers deceptively marketed its service. The TPV recording is for the sole purpose of demonstrating that the carrier complied with our verification procedures. We disagree that TPV recordings have any bearing on whether a misrepresentation was made during the sales portion of the call. This argument suggests that a misrepresentation under Section 201(b) is only a violation if a consumer was deceived. Section 201(b) has no such requirement—by its terms, no actual harm from a misrepresentation need be shown in order to find that a misrepresentation was made. Even assuming that the TPV portion of the call cleared up any confusion in the complainants' minds or misrepresentation made by CTI's telemarketers as to their identity and purpose of the call, the preceding violation of the Act could not be "cured" by the subsequent TPV call.

32. Bureau staff reviewed many misrepresentation complaints lodged against CTI, although only the complaints that were within our 12 month statute of limitations were included in the *NAL*'s proposed forfeiture. Our review of the record, the complaints outlined in the *NAL*, as well as the other

¹¹¹ *See id.* at 42–45.

¹¹² *See* Complaints from J. Buck, V. Lee, L. Rogers, J. Liddle, C. Newberry, and W. Mason. The record includes additional complaints against CTI containing allegations of misrepresentation that were not included in the Appendix to the *NAL*.

¹¹³ *NAL* Response at 34–37.

¹¹⁴ *Id.* at 34–37 ("CTI's TPVs show that CTI did not slam any of its customers. The FCC should not look beyond the four corners of the TPV to scrutinize the manner in which the authorizations were given. Put another way, the TPVs show that the complainants were authorized to make a carrier change, wanted to make a carrier change, and understood that they were making a carrier change. Thus, in view of this showing, complainants cannot legitimately complain that CTI's telemarketers tricked them into believing that the telemarketers were calling on behalf of consumers' existing providers..."). *Id.* at 34.

¹¹⁵ *Id.* at 42.

¹¹⁶ *Id.* at 35.

evidence described in this proceeding, all support the findings in the *NAL*, including the finding that the CTI telemarketers engaged in misrepresentations. We conclude that CTI has not refuted the evidence of misrepresentations as described in the *NAL* and, based on the evidence in the record, we affirm the findings and conclusions in the *NAL*.

D. The NAL's Reliance on Consumer Complaints was Reasonable and CTI was not Denied Due Process

33. CTI contends that the Commission's reliance on consumer complaints, instead of "sworn statements" is "suspect."¹¹⁷ We disagree. There is no requirement in the Act¹¹⁸ or in our Rules¹¹⁹ that we use sworn statements or even that we base our investigations on consumer complaints. Further, the Commission decides on a case-by-case basis whether to obtain declarations in support of complaints.¹²⁰ The *NAL* was primarily based on consumer complaints the Bureau reviewed—a process similar to that used in other recent slamming and cramming investigations.¹²¹ In this investigation, the Bureau reviewed over 100 complaints filed against CTI and interviewed many of the complainants. The complainants, all of whom stated that the carrier change and/or charges were unauthorized, filed complaints with the Commission, various state regulatory agencies,¹²² the Federal Trade Commission, and the Better Business Bureau. In investigating the other two companies that were part of this operation, Central and USTLD, the Bureau found similar complaints from consumers, i.e., that the carrier change to Central or USTLD and/or charges assessed by those companies were not authorized.¹²³ CTI had more than enough information about the complaints upon which the *NAL*'s proposed forfeiture was based to allow it to rebut the *NAL*'s findings and contest the complainants' assertions in its *NAL* Response. Nonetheless, the Company did not submit any evidence disputing the veracity of those complaints. CTI has not offered any evidence that the complainants are not truthful.

34. We also reject CTI's claim that it was denied due process because the complaints were "unsworn" and there are "numerous reasons why a customer would mistakenly describe the substance of his telephone conversation with a telemarketer" or "intentionally falsely describe" the telemarketing

¹¹⁷ *Id.* at 45.

¹¹⁸ See Section 403 of the Act, providing, in pertinent part, that "[t]he Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing ... concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act." 47 U.S.C. § 403.

¹¹⁹ CTI erroneously cites to 47 CFR § 1.351, for the proposition that using consumer complaints in lieu of sworn statements runs "afoul" of our rules. *NAL* Response at 45. Section 1.351, however, specifically pertains to formal hearings. The rule section also states that "[s]uch rules may be relaxed if the ends of justice will be better served by so doing." 47 CFR § 1.351.

¹²⁰ See *Business Discount Plan, Inc.*, Order on Reconsideration, 15 FCC Rcd 24396, 24401, para. 12 (2000).

¹²¹ See, e.g., *Central NAL*, 29 FCC Rcd at 5518, para. 3; *Advantage NAL*, 28 FCC Rcd at 6845, para. 6; *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16500, para. 3 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16489, para. 2 (2012) (*Preferred NAL*), Forfeiture Order, 30 FCC Rcd 13711 (2015); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5179, para. 2 (2010) (*Silv NAL*).

¹²² CTI provided complaints filed against CTI with the California Public Utilities Commission, Georgia Public Service Commission, Illinois Attorney General, Iowa Utilities Board, Kansas Corporation Commission, Louisiana Public Service Commission, Michigan Public Service Commission, New York State Public Service Commission, Pennsylvania Public Utility Commission, Tennessee Regulatory Authority, and the Public Utility Commission of Texas.

¹²³ See *Central NAL*, 29 FCC Rcd at 5518, para. 3 (reviewed over 100 complaints); *USTLD NAL*, 29 FCC Rcd at 824, para. 3 (reviewed over 60 complaints).

call.¹²⁴ CTI was on notice that its actions and practices were in violation of our Rules and the Act¹²⁵ and of the allegations in each complaint. CTI had contacted each of the complainants to address their complaints, and had also sent some of the complainants direct bills.¹²⁶ The consumer complaints were all initially served on CTI; the Company had ample opportunity to investigate each complaint regardless of whether the complaint contained a sworn declaration. With respect to the notice aspect of due process, CTI had advance notice that slamming, cramming, and misrepresentation were in violation of the Act and our Rules. Prior to the time frame of the complaints at issue here, the Commission had released a forfeiture order and several NALs that address the very same practices and actions we find in this case to be in violation of the Act and our Rules.¹²⁷ Further, the *NAL*, as a notice of proposed forfeiture liability, affords CTI the due process right to respond and offer any evidence to rebut the apparent findings of the *NAL*. Accordingly, we reject CTI's argument and find that the *NAL* is appropriately supported.

E. CTI Violated the Commission's Truth-in-Billing Rules

35. We found in the *NAL* that where CTI billed consumers directly, it failed to clearly and plainly describe the charges, in violation of the Commission's truth-in-billing rules.¹²⁸ Under these rules, "[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"¹²⁹ The purpose of the truth-in-billing rules is "to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service."¹³⁰ 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."¹³¹

36. In the *NAL*, we concluded that the bills CTI issued to customers directly were neither sufficiently clear nor specific enough to aid customers in assessing their bills.¹³² In particular, the monthly recurring charge for CTI's "bundled" services was not described as such on the CTI direct bill. The CTI bills were not dated, included no payment due date, and lacked a brief, clear, and non-misleading description of the service or services rendered.¹³³ They included a line item charge for "Long Distance Charges" or "Long Distance Service" but had no information about what was included in that amount or

¹²⁴ *NAL* Response at 49.

¹²⁵ See, e.g., *BDP Forfeiture Order*, 15 FCC Rcd at 14469, para. 17; *Advantage NAL*, 28 FCC Rcd at 6849, para. 16; *United NAL*, 27 FCC Rcd at 16502, para. 9; *Preferred NAL*, 27 FCC Rcd at 16491, para. 7; *Silv NAL*, 25 FCC Rcd at 5180–82, paras. 5–7.

¹²⁶ As we discuss in more detail below, on several occasions after consumers complained about CTI's unauthorized charges and the LEC removed the charges, CTI then billed the consumers directly.

¹²⁷ See, e.g., *BDP Forfeiture Order*, 15 FCC Rcd 14461, 14469, para. 17 (Business Discount Plan's telemarketers unlawfully deceived consumers about the identity of the carrier and the nature of the service offering); *Advantage NAL*, 28 FCC Rcd at 6849, para. 16 (same); *United NAL*, 27 FCC Rcd at 16502, para. 9 (same); *Preferred NAL*, 27 FCC Rcd at 16491, para. 7 (same); *Silv NAL*, 25 FCC Rcd at 5180–82, paras. 5–7 (same).

¹²⁸ *NAL*, 28 FCC Rcd at 17206, paras. 23–24.

¹²⁹ 47 CFR § 64.2401(b).

¹³⁰ *Id.* § 64.2400.

¹³¹ *Id.*

¹³² *NAL*, 28 FCC Rcd at 17206–17207, paras. 23–24; see also *Central NAL*, 29 FCC Rcd at 5527–28, paras. 22–23 (finding that the carrier's descriptions of billed charges were neither sufficiently clear nor specific enough to aid consumers in assessing their bills); *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (same).

¹³³ *NAL*, 28 FCC Rcd at 17206–17207, para. 24.

what time period was covered by the alleged charge. The bills did not identify any long distance calls made (such as numbers called, dates, or length of such calls), did not list any fees or taxes that typically appear on a bill issued by a LEC on behalf of CTI, and failed to identify any specific services that CTI claims are part of its “bundled package of services.”¹³⁴ CTI contends that the bills complied with our truth-in-billing rules because they were merely billing consumers for unpaid bills, analogous to a carrier billing for a previous unpaid charge.¹³⁵ We reject this argument for the reasons discussed below and affirm the NAL’s findings.

37. CTI’s argument fails to recognize that in the case at hand, the bill or charge received by the consumer was from a carrier other than the consumer’s preferred carrier and was an unauthorized charge. Complainants were initially charged on their LEC bill by CTI, an unauthorized carrier, which the consumers then complained about, cancelled the CTI service, and received a credit from the LEC for the unauthorized charges. The unauthorized charges thus remained rightfully unpaid by consumers. After CTI received information about the cancellations and billing credits, the Company nonetheless continued to pursue payment by directly sending the consumers bills for these disputed charges. The CTI bills (mailed long after the initial LEC bill containing the unauthorized charges) had no information about the specific charges and in some cases were sent many months after the consumers had received a credit from the LEC for the unauthorized charges. This failure to include a non-misleading plain language description of the charges sufficiently clear so as to allow consumers the ability to ascertain what the charges were for is in direct violation of Section 64.2401 of the Commission’s “truth-in-billing” rules. Accordingly, we find CTI’s unpaid bill argument to be unpersuasive and we affirm the finding in the NAL that CTI failed to clearly and plainly describe charges appearing on its telephone bills, in violation of Section 64.2401(b) of the Rules.¹³⁶

F. Forfeiture Amount

38. In the *CTI NAL*, we found that after considering the relevant statutory factors and the Commission’s *Forfeiture Policy Statement*, CTI was liable for a proposed total forfeiture amount of \$3,560,000. As we explained in the *NAL*, this proposed amount resulted from a \$40,000 forfeiture for the 25 instances of slamming and cramming¹³⁷ and the two truth-in-billing violations, as well as an upward adjustment of \$80,000 for each of the six instances of misrepresentation, and other upward adjustments based on the egregious circumstances presented in the record here.¹³⁸ CTI argues that the forfeiture amount is not supported by the facts and that it is unable to pay the proposed forfeiture.¹³⁹

39. As discussed at length above, CTI has failed to refute the evidence in the record in support of the slamming, cramming, misrepresentation, and truth-in-billing violations. In particular, it does not address the fact that the Commission reviewed over 100 complaints from consumers who alleged improper conduct on the part of CTI, and determined that this conduct was extensive and repeated. For example, CTI’s slamming actions were particularly egregious because since 2010, the Consumer &

¹³⁴ *Id.*

¹³⁵ NAL Response at 75.

¹³⁶ NAL, 28 FCC Rcd at 17206–17207, paras. 23–24; *see also Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (discussing apparent Section 64.2401 violations in that investigation).

¹³⁷ Although the forfeiture guidelines do not provide a base forfeiture amount for cramming, the Commission has established a base forfeiture of \$40,000 for cramming violations. *See LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (“The imposition of charges on a telephone bill for ‘services’ the consumer has not authorized is sufficiently egregious to warrant a forfeiture in an amount equal to that for slamming.”).

¹³⁸ *See NAL*, 28 FCC Rcd at 17209–17210, paras. 29–31 (upward adjustment of \$1,500,000 due to the egregious circumstances, including misrepresentation to the public, and an additional upward adjustment of \$500,000 due to the exploitation of elderly or infirm consumers).

¹³⁹ NAL Response at 77–81.

Governmental Affairs Bureau has repeatedly notified CTI that its verification practices (the same that are at issue here) violated the Commission's slamming rules.¹⁴⁰ Further, Konrad, CTI's agent, testified that after a consumer had cancelled the CTI service and the underlying carrier deactivated the account, Konrad would activate the line if it had been deactivated and "go back in, and click that back to active"¹⁴¹ to continue billing the unauthorized charges. Konrad would continue to bill consumers after they had already cancelled, conduct that we find particularly egregious. In addition, CTI, as a carrier, is responsible for the conduct of third parties acting on its behalf, such as Konrad.¹⁴² Konrad, an agent of CTI, was responsible for the day-to-day running of the Company.¹⁴³ In addition to owning DIS, Konrad is the president of toll reseller BDP.¹⁴⁴ The Commission investigated BDP for slamming and misrepresentation¹⁴⁵ and described, in the *BDP Forfeiture Order*, that "[b]etween December 1997 and October 1998, the Commission processed thousands of written consumer complaints alleging slamming by BDP Each complainant contended that BDP had converted his or her designated PIC without authorization, and that BDP used unjust and unreasonable telemarketing practices in effecting these unauthorized PIC changes."¹⁴⁶ At the time of the BDP investigation, Konrad was the Vice President of BDP, and, as such, was served with a copy of the *BDP NAL*.¹⁴⁷ In operating USTLD, CTI, and Central, as the agent of these three companies, Konrad engaged in the same practices as discussed in the *BDP Forfeiture Order*. Due to the egregious nature of CTI's conduct, the Commission proposed an upward adjustment of \$1,500,000.¹⁴⁸

40. In the *NAL*, the Commission also alleged that at least in some instances CTI and its telemarketers and third party verifiers deliberately exploited elderly or disabled consumers' obvious confusion and inability to understand the sales pitch they heard and understand the questions they were asked.¹⁴⁹ In response, CTI argues that it would be "virtually impossible" for the Company to exploit senior citizens, the elderly, or infirmed "because of the methodology which CTI uses to solicit its long-

¹⁴⁰ See, e.g., *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding "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.*"); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 10325 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 7257 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 7561 (CGB 2012); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 7338 (CGB 2012); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 1019 (CGB 2010); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 1001 (CGB 2010).

¹⁴¹ *NAL* Response at Exhibit 5, p. 466.

¹⁴² See 47 U.S.C. § 217 (" . . . the act, omission, or failure of any . . . agent [] or other person acting for or employed by any common carrier . . . , acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier"); see also *LDDI MO&O*, 15 FCC Rcd at 3300, para. 9; *Silv NAL*, 25 FCC Rcd at 5180, para. 5 & n.18.

¹⁴³ *NAL* Response at Exhibit 2.

¹⁴⁴ See FCC Form 499-A, filed by Business Discount Plan, Inc. on Apr. 1, 2015.

¹⁴⁵ *BDP NAL*, 14 FCC Rcd at 353-363, paras. 27-44.

¹⁴⁶ See *BDP Forfeiture Order*, 15 FCC Rcd at 14461-62, para. 2.

¹⁴⁷ *BDP NAL*, 14 FCC Rcd at 364, para. 49.

¹⁴⁸ *NAL*, 28 FCC Rcd at 17209-17210, paras. 29-31.

¹⁴⁹ *Id.*

distance services from potential consumers.”¹⁵⁰ Specifically, CTI claims it purchases lists of land line telephone numbers from several sources, including Info USA, which contain numbers in the states where CTI provides long distance service.¹⁵¹ CTI has the burden of providing evidence to disprove the allegation in the *NAL*. We find that the evidence in the record is inconclusive on this point. Accordingly, we conclude that the upward adjustment of \$1,500,000 is sufficient to deter further egregious conduct by CTI and do not impose an additional upward adjustment of \$500,000.

41. Finally, CTI states that it “is not financially able to pay the proposed forfeiture” and in support, submits federal income tax returns for the years 2010 through 2012.¹⁵² Upon review of CTI’s financial information, and the totality of the circumstances presented here, we decline to reduce the forfeiture amount further. Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture against CTI of up to \$150,000 for each willful or repeated violation in this case of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁵³ 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.”¹⁵⁴

42. With regard to an individual’s or entity’s inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁵⁵ However, a party’s inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive in setting a forfeiture amount.¹⁵⁶ The other four factors we must consider are: (i) the nature, circumstances, extent, and gravity of the violation; (ii) the degree of culpability; (iii) any history of prior offenses; and (iv) such other matters as justice may require. With respect to the nature, circumstances, extent, and gravity of the violation and the degree of culpability, we have described the large number of consumer complaints against the Company for slamming and cramming and misrepresentation.¹⁵⁷ The *NAL* also describes the nature of the misrepresentations made by CTI.¹⁵⁸ In addition, CTI continued to bill consumers for the unauthorized charges after the consumers cancelled the CTI “service” that they never authorized in the first place and returned to their preferred carriers.¹⁵⁹ In

¹⁵⁰ *NAL* Response at 78.

¹⁵¹ *Id.* at 79.

¹⁵² *Id.* at 82 & Exhibit 9.

¹⁵³ 47 U.S.C. § 503(b)(2)(B); *see also* 47 CFR § 1.80(b)(2). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785 (EB 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment “shall apply only to violations that occur after the date the increase takes effect,” however, we apply the forfeiture penalties in effect at the time the apparent violation took place. 28 U.S.C. § 2461 note (6).

¹⁵⁴ *See* 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01, para. 27.

¹⁵⁵ *See Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues).

¹⁵⁶ *See* 47 U.S.C. § 503(b)(2)(E).

¹⁵⁷ *See NAL*, 28 FCC Rcd at 17197–17198, para. 4 (“over 100 complaints filed”).

¹⁵⁸ *Id.* at 17199, paras. 8-10.

¹⁵⁹ *Id.* at 17203–17204, para. 17.

some cases, CTI sent consumers a direct bill for the unauthorized CTI service.¹⁶⁰ In addition, the *NAL* noted that over one third of all complaints reviewed by the Bureau were from senior citizens or infirm consumers.¹⁶¹

43. We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹⁶² Given the evidence presented in this case that CTI willfully and repeatedly violated the Act and the Rules, and the egregious nature of its misrepresentations, we find that these factors outweigh any inability to pay claim raised by CTI. Accordingly, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$3,060,000 is warranted.

IV. CONCLUSION

44. We have reviewed CTI's arguments and based on the evidence in the record, we reduce the proposed forfeiture amount by \$500,000. We find that the preponderance of the evidence in the record establishes that CTI changed the preferred carriers of seven consumers without authorization, that it assessed unauthorized charges on 18 occasions, and that in six of those slamming and cramming instances, it made misrepresentations to those consumers. In addition, we find that the preponderance of the evidence in the record establishes that CTI violated the truth-in-billing rules when in two instances it sent consumers bills that were not accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. We conclude that CTI failed to refute the evidence cited in the *NAL*. Accordingly, the Commission finds that CTI violated Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401 of the Rules and we assess a \$3,060,000 forfeiture.

V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁶³ and Section 1.80 of the Commission's rules,¹⁶⁴ Consumer Telcom, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three million sixty thousand dollars (\$3,060,000) for willfully and repeatedly violating Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401(b) of the Rules.¹⁶⁵

46. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁶⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁶⁷

47. 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. Consumer Telcom,

¹⁶⁰ *Id.* at 17206–17207, paras. 23–24.

¹⁶¹ *Id.* at 17209–17210, para. 30.

¹⁶² *See, e.g., TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission “has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations”); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (EB 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (EB 2013); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple intentional violations).

¹⁶³ 47 U.S.C. § 503(b).

¹⁶⁴ 47 CFR § 1.80.

¹⁶⁵ *Id.* §§ 64.1120, 64.2401(b).

¹⁶⁶ *Id.* § 1.80.

¹⁶⁷ 47 U.S.C. § 504(a).

Inc. 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.¹⁶⁸ When completing the FCC Form 159, Consumer Telcom, Inc. should enter the Account Number in block number 23A (call sign/other ID) and the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- 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.

48. Any request for full payment over time 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 20554.¹⁶⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

49. **IT IS FURTHER ORDERED** that a copy of this Order for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Consumer Telcom, Inc.’s attorneys, Michael L. Glaser and Michael D. Murphy, 1720 S. Bellaire St., Suite 607, Denver, CO 80222.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁶⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁶⁹ See 47 CFR § 1.1914.