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ANDREW O. ISAR

Via Priority Delivery

January 9, 2013

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street, Room 108
Phoenix, Arizona 85007-2996

Re: Supplemental Response to Staff's Third Set of Data Requests to Preferred Long Distance, Inc., Docket No. T-04308A-12-0118

Dear Sir/Madam:

On January 7, 2013, Preferred Long Distance, Inc. ("Preferred") submitted a supplement to its responses to Staff's August 8, 2012 Third Set of Data Requests in the above-referenced matter, advising the Arizona Corporation Commission of recent relevant developments pertaining to a Federal Communications Commission Notice of Apparent Liability ("NAL") following submission of the Company's original responses to these Data Requests. Preferred now submits an original and thirteen (13) copies of the NAL into the record in this proceeding.

Please acknowledge receipt of this filing by file-stamping and returning the additional copy of this Application and transmittal letter in the self-addressed, postage-paid envelope provided for this purpose. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Regulatory Consultants to
Preferred Long Distance, Inc.

Attachments

cc: Ms. Pam Genung via electronic delivery (PGenung@azcc.gov)

Arizona Corporation Commission
DOCKETED
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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-TCD-12-00003409
)	
Preferred Long Distance, Inc.)	NAL/Acct. No.: 201332170008
)	
Apparent Liability for Forfeiture)	FRN: 0003757473

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 19, 2012

Released: December 20, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Preferred Long Distance, Inc. (Preferred 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 Section 64.1120 of the Commission's rules.³ As discussed in more detail below, we find that Preferred has apparently changed the preferred telecommunications service providers of a number of consumers without their authorization, a practice commonly known as "slamming."⁴ The conduct here is especially egregious because in 11 of the instances of slamming on which this NAL is based, Preferred appears to have effectuated the carrier change by making misrepresentations to consumers that Preferred's telemarketer was calling from or on behalf of the consumer's own carrier. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of one million four hundred forty thousand dollars (\$1,440,000).

II. BACKGROUND

2. Preferred is a non-facilities-based interexchange carrier based in Encino, California. The Commission has received numerous slamming complaints against Preferred. Pursuant to standard Commission processes,⁵ the agency's Consumer & Governmental Affairs Bureau (CGB) served these complaints on Preferred and directed it to respond to the allegations and provide evidence of an authorized change in the subscriber's selection of a telecommunications service provider. Recently, CGB issued orders granting consumer complaints against Preferred, finding that the Company failed to provide

¹ According to the Commission's records and publicly available information, Preferred's offices are located at 16830 Ventura Boulevard, Suite 350, Encino CA 91436.

² 47 U.S.C. §§ 201(b), 258.

³ 47 C.F.R. § 64.1120.

⁴ The Appendix to this NAL identifies the consumers on whose complaints it is based, along with the dates each instance of slamming occurred and apparent violations involved.

⁵ See 47 C.F.R. § 64.1150(c), (d).

evidence of an authorized carrier change.⁶ The Enforcement Bureau (Bureau) initiated an investigation after reviewing complaints involving Preferred.⁷

III. DISCUSSION

A. Apparent Violations of Section 201(b)

3. 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.”⁸ 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.⁹ 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.¹⁰

4. We find that Preferred apparently violated Section 201(b) by engaging in deceptive practices in connection with changes to the preferred carriers of 11 consumers. Preferred’s telemarketer apparently misrepresented its identity and the nature of the transactions in which it sought to engage 11 consumers. The telemarketer claimed to be, or be affiliated with, the complainant’s current long distance carrier. We find that these deceptive, fraudulent practices are unjust and unreasonable practices that apparently violate Section 201(b) of the Act.

5. In 11 of the violations on which this NAL is based, the complainants allege that Preferred’s telemarketer claimed to be, or be affiliated with, the consumer’s current long distance carrier. For example, Complainant Slotnick observed that “[t]his company stated and reiterated multiple times

⁶ See, e.g., *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, DA 12-1900 (rel. Nov. 28, 2012) (granting slamming complaints filed by G. Busch, B. Littmann, and J. Dyer); *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 13381 (CGB 2012) (granting slamming complaint filed by M. Tice); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13333 (CGB 2012) (granting two slamming complaints, including the complaint filed by W. Legler); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 13328 (CGB 2012) (granting slamming complaints filed by B. Schneider, J. Ariza, and P. Almon); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 9026 (CGB 2012) (granting six slamming complaints, including the complaint filed by A. Russo); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 27 FCC Rcd 9021 (CGB 2012) (granting 21 slamming complaints including the complaints filed by A. Burton, D. Smith, J. Slotnick, F. Littleton, and D. Williams).

⁷ See Appendix.

⁸ 47 U.S.C. § 201(b).

⁹ 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 Section 201(b) provides a cause of action against carriers for failing to convey sufficient information about their rates, practices, and range of services).

¹⁰ See *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178 (2010) (*Silv NAL*).

that they were partnered with AT&T.”¹¹ Complainant Russo stated that she “was [c]alled by [Preferred] Long Distance who claimed they were now the authorized billing agent for [AT&T].”¹² Complainant Tice explained that the Preferred telemarketer “stated that they were a sub-division of AT&T.”¹³ The telemarketer told her that “during the verification process the [verifier] would say that [Preferred] is an independent company not affiliated with AT&T . . . [and] this was true only in the fact that they were separate yet still part of AT&T—a sub-department—and that this was just a technicality required by the FCC.”¹⁴ Other complainants allege similar instances of misrepresentation.¹⁵

6. The Commission has ruled that carriers are responsible for the conduct of third parties acting on the carrier’s behalf, including third party marketers.¹⁶ The Commission has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.¹⁷ Preferred has not provided any evidence that its third party telemarketer was acting outside the scope of its engagement or employment. Thus, pursuant to Section 217 of the Act, we find the acts of Preferred’s third party telemarketer to be the acts of Preferred.

7. Preferred has not produced credible evidence that any of these complainants in fact authorized a change in his or her provider. Thus, based on the above, we conclude that Preferred apparently violated Section 201(b) of the Act by changing the preferred carriers of 11 complainants identified in the Appendix through making material misrepresentations about Preferred’s identity and/or the purpose of its calls, and therefore without cognizable authorization from such complainants.

¹¹ Complaint from J. Slotnick.

¹² Complaint from A. Russo.

¹³ Complaint from M. Tice.

¹⁴ *Id.*

¹⁵ See Complaint from P. Almon (“This company represented themselves as our carrier, AT&T.”); Complaint from A. Burton (“A representative called saying she was with AT&T and since we only had one line they had a separate company called Preferred that would be taking over small business accounts with less than 45 lines.”); Complaint from G. Busch (“Carrier deceived me by misstating their association with AT&T.”); Complaint from J. Dyer (“Preferred called and said they were a division of AT&T.”); Complaint from W. Legler (Telemarketer said they were “associated with AT&T.”); Complaint from B. Schneider (“Preferred Long Distance called on behalf of AT&T.”); Complaint from D. Smith (“I received a phone call on February 28, 2012 from a representative of Preferred Long Distance, Inc. He identified himself as representing AT&T.”); Complaint from D. Williams (“I was told by Preferred that they were with AT&T.”). Section 503(b)(6) empowers the Commission to propose a forfeiture penalty for violations that occurred within one year preceding the issuance of an NAL. Thus, this NAL is based on the complaints of consumers, identified in the Appendix, who allege to have been slammed within the past year. The Commission has reviewed similar complaints during the course of this investigation. See, e.g., Complaint from M. Carter (“Preferred Long Distance called to offer discounts to [my] phone bill. Caller identified himself as Jason with AT&T . . . I asked many times ‘You’re with AT&T’ and Jason replied ‘Yes.’”); Complaint from B. Jellinek (Telemarketer “stated they were chosen by AT&T to be [her] local & long distance provider.”).

¹⁶ See *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3300, para. 9 (2000); 47 U.S.C. § 217.

¹⁷ See *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-21864, para. 7 (2002) (citing *American Paging, Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (Wireless Bur., Enf. and Cons. Inf. Div., 1997), quoting *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (1984)).

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

8. In addition to the Section 201(b) violations, we find that Preferred apparently violated Section 258 of the Act and Section 64.1120 of the Commission's rules. 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."¹⁸ 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;¹⁹ (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically;²⁰ or (3) utilize an independent third party to verify²¹ the subscriber's order in accordance with certain requirements.²²

9. Section 64.1120(c)(3) sets forth detailed procedures that carriers who choose to use third party verification must follow. Among other specific requirements, the carrier's verifier must confirm "the telephone numbers to be switched," and must ensure that "any description of interLATA service . . . convey[s] that it encompasses both international and state-to-state calls, as well as some intrastate calls where applicable."²³ The requirements were 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.²⁴

10. We have reviewed the TPV recordings for 14 changes that Preferred provided, and find that they do not satisfy the requirements of the rule. For example, Complainant Russo's TPV failed to

¹⁸ 47 U.S.C. § 258(a). The Commission has found that a submitting carrier violates Section 258 of the Act when it effectuates a change in a consumer's preferred carrier through engaging in deceptive practices, such as misrepresentations about its identity, designed to prevent the consumer from understanding that the submitting carrier is, in fact, seeking to change the consumer's preferred carrier. *See BDP Forfeiture Order*, 15 FCC Rcd at 14467, para. 12 (the Commission found that "BDP knew, or should have known, that consumers acting reasonably under these circumstances would be misled or confused by BDP's telemarketing calls and that therefore, consumers were not authorizing a PIC change.").

¹⁹ 47 C.F.R. § 64.1120(c)(1).

²⁰ 47 C.F.R. § 64.1120(c)(2).

²¹ 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).

²² 47 C.F.R. § 64.1120(c)(3).

²³ 47 C.F.R. § 64.1120(c)(3)(iii). A local access and transport area, or LATA, can cross over state boundaries. Some states have more than one LATA. LATAs can exist in multiple area codes and an area code can be in more than one LATA. An intrastate call can be an interLATA toll call.

²⁴ *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*, CC Docket No. 94-129, Fourth Report and Order, 23 FCC Rcd 493, 493, para. 1 (2008) (*Fourth Report and Order*). *See also Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order on Reconsideration, 27 FCC Rcd 5340, 5341-42, para. 5 (CGB 2012) (reiterating that any description of the carrier change transaction must not be misleading).

obtain separate authorizations for each service sold;²⁵ Complainant Williams' TPV included only the call-back portion of the recording, but failed to include any form of verification of the switch;²⁶ and 13 TPVs failed to confirm the telephone numbers to be switched.²⁷ Our rules require that the TPV specifically elicit the "telephone numbers to be switched," rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.²⁸ Thus, these verifications failed to comply with Section 64.1120 of our rules.²⁹ We find that especially where consumers contend that they did not intend to change carriers at all, and that Preferred in fact misled them, enforcement of these rules is crucial to protect consumers.³⁰

11. We also note that one of the complainants also contends that the person with whom Preferred's telemarketer spoke specifically stated that he did *not* have authority to change the company's long distance carrier. Complainant Littleton stated that "[i]n January of 2012 this company called. They were told that the person answering the phone was not authorized to make changes as the owner was out of town."³¹ Preferred's response to this allegation was nonsensical, asserting that if the consumer "lied by saying she has the authority then she committed fraud on our company."³²

²⁵ Complaint from A. Russo; *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 9026 (CGB 2012). See 47 C.F.R. § 64.1120(c)(3)(iii).

²⁶ Complaint from D. Williams.

²⁷ Complaint from P. Almon; Complaint from J. Ariza; Complaint from A. Burton; Complaint from G. Busch; Complaint from J. Dyer; Complaint from W. Legler; Complaint from F. Littleton; Complaint from B. Littmann; Complaint from B. Schneider; Complaint from J. Slotnick; Complaint from D. Smith; Complaint from M. Tice; Complaint from D. Williams. See *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, DA 12-1900 (rel. Nov. 28, 2012); *Preferred Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13381 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13333 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 13328 (CGB 2012); *Preferred Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 9021 (CGB 2012).

²⁸ 47 C.F.R. § 64.1120(c)(3)(iii).

²⁹ See 47 C.F.R. § 64.1120(c)(3).

³⁰ See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

³¹ Complaint from F. Littleton. Bureau staff is aware of additional situations where the complainants argue that Preferred was specifically told by the person who purportedly authorized the carrier change switch that such person, in fact, was *not* authorized to make the switch. See, e.g., Complaint from L. Sakuma ("the employee . . . stated that he . . . was just a worker..." and has no authority to make any decisions). The Bureau staff reviewed the TPV for the Sakuma complaint. The TPV contains the statement from the employee that he was a cashier and does not have an affirmative response—or any response at all—to the specific question asked by the telemarketer to the employee as to whether the employee had the authority to agree to the carrier change.

³² See Letter from Keith Nussbaum, Regulatory Contact, Preferred Long Distance, Inc., to the FCC Consumer & Governmental Affairs Bureau (June 5, 2012) regarding the Complaint from F. Littleton.

12. We conclude that Preferred 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 all 14 complainants.³³

IV. PROPOSED FORFEITURE

13. 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.³⁴ Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.³⁵ For a violation to be willful, it need not be intentional.³⁶ 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."³⁷ 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 to adjust the base upward or downward.³⁸ 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.³⁹

14. The Commission's forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.⁴⁰ 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, most recently, 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."⁴¹ The Commission must take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against Preferred and any other carrier found to have engaged in misrepresentations to consumers.

³³ See, e.g., *New Century Telecom, Inc., Complaints regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 5911, 5913, para. 4 (CGB 2010) (finding that TPV recordings did not include references to intrastate interLATA service and concluding that verifier did not obtain authorization to switch interLATA service); *United Telecom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5758 (CGB 2012).

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

³⁵ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). See *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).

³⁶ *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

³⁷ 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*).

³⁸ 47 C.F.R. § 1.80(b)(8).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

15. Applying the \$40,000 base forfeiture to each of the 14 apparent slamming violations upon which this NAL is based would result in a forfeiture of \$560,000. In this case, however, Preferred's conduct was particularly egregious, as demonstrated by our conclusion that the company also violated Section 201(b) of the Act in 11 of the 14 cases at issue by misleading consumers into believing that Preferred was calling on behalf of their current carrier. We therefore find that a significant upward adjustment is appropriate here.⁴² In light of Preferred's repeated egregious conduct, and given that we 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 11 apparent egregious violations at issue in this NAL—the unauthorized changes involving misrepresentations—making the penalty for each such violation \$120,000. We recognize that this adjustment is greater than that the Commission has imposed in other cases involving similar conduct, but 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. Thus, the total forfeiture we propose for Preferred's conduct is \$1,440,000.⁴³

V. CONCLUSION

16. Based on the facts and record before us, we have determined that Preferred Long Distance, Inc. has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act and Section 64.1120 of the Commission's rules.

VI. ORDERING CLAUSES

17. 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 Preferred Long Distance, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of one million four hundred forty thousand dollars (\$1,440,000) for willful and repeated violations of Sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201(b), 258, and Section 64.1120 of the Commission's rules, 47 C.F.R. § 64.1120.

18. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,⁴⁴ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Preferred Long Distance, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. 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. Preferred Long Distance, 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.⁴⁵ 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

⁴² 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17117, Appendix A, Section II.

⁴³ BDP's telemarketer represented that it was affiliated with the customers' existing carriers. *BDP*, 15 FCC Rcd at 14468, para. 15. The Commission found that the telemarketer repeatedly deceived consumers as to BDP's identity and the nature of its service, and imposed a \$40,000 forfeiture for each instance of slamming and an additional \$40,000 forfeiture for each instance in which BDP engaged in an unjust and unreasonable telemarketing practice.

⁴⁴ 47 C.F.R. § 1.80.

⁴⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

(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 US 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 US 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 20554.⁴⁶ 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.

20. 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.

21. 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.

⁴⁶ See 47 C.F.R. § 1.1914.

22. **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 the Company at 16830 Ventura Blvd, Suite 350, Encino, CA 91436.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainant	Date of slam	Violation(s)
A. Burton 12-S3321288	1/9/12	Sections 201(b) and 258
F. Littleton 12-S3409767	1/16/12	Section 258
A. Russo 12-S3353014	1/30/12	Sections 201(b) and 258
J. Slotnick 12-S3399206	2/7/12	Sections 201(b) and 258
D. Smith 12-S3373425	2/20/12	Sections 201(b) and 258
W. Legler 12-S003492	3/30/12	Sections 201(b) and 258
G. Busch 12-S3473516	4/27/12	Sections 201(b) and 258
P. Almon 12-S3454906	5/11/12	Sections 201(b) and 258
D. Williams 12-S3413396	6/1/12	Sections 201(b) and 258
J. Dyer 12-S3488150	7/13/12	Sections 201(b) and 258
B. Schneider 12-S003459	7/23/12	Sections 201(b) and 258
J. Ariza 12-S003483	6/14/12	Section 258
B. Littmann 12-S3486508	8/6/12	Section 258
M. Tice 12-S003505	8/14/12	Sections 201(b) and 258