

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
)	
Apparent Liability for Forfeiture)	FRN: 0006057293

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 16, 2013

Released: December 17, 2013

By the Commission:

I. INTRODUCTION

1. We find that Consumer Telcom, Inc. (CTI or Company)¹ apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act),² and Sections 64.1120 and 64.2401(b) of the Commission's rules.³ Specifically, we find that CTI apparently (i) engaged in deceptive marketing practices; (ii) changed the preferred telecommunications service providers of consumers without proper authorization verified in accordance with the Commission's rules (commonly known as "slamming"); (iii) placed unauthorized or "crammed" charges on numerous consumers' telephone bills; and (iv) failed to clearly and plainly describe charges on consumers' telephone bills in violation of the Commission's truth-in-billing rules. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of three million, five hundred sixty thousand dollars (\$3,560,000).

II. BACKGROUND

2. CTI is a non-facilities-based interexchange carrier⁴ authorized to provide service in 43 states.⁵ Based on complaints filed with the Commission, the Enforcement Bureau (Bureau) initiated an

¹ According to the Commission's records and publicly available information, CTI's offices are located at 701 North Green Valley Parkway, Suite 200, Henderson, NV 89014. CTI's Chief Executive Officer and President is Joe Nicotra. In additional information provided by CTI, the company noted that Mr. Nicotra's offices, CTI's data management services, and CTI's customer service center are located at 17832 Gillette Avenue, Irvine, CA 92416.

² 47 U.S.C. §§ 201(b), 258.

³ 47 C.F.R. §§ 64.1120, 64.2401(b).

⁴ CTI is authorized to provide resold international telecommunications services. See ITC-214-20000511-00286, Public Notice, "International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Cable Landing License Applications (47 C.F.R. § 1.767); Requests to Authorize Switched Services Over Private Lines (47 C.F.R. § 63.16); Section 310(b)(4) Requests" (Jan. 17, 2002).

⁵ According to its website, "Consumer Telcom, Inc. offers resold interexchange telecommunications services to commercial and residential customers utilizing the network of one or more underlying carriers. The Company's services consist of Presubscribed interstate long distance services bundled with casual calling, travel card and other Subscribed services. . . ." See Consumer Telcom, Inc., Telecommunications Service Guide, General Information Regarding Ordering, Changing and Terminating Service at 6, <http://consumertelcom.com/svcguide1.pdf> (last visited Nov. 21, 2013).

investigation of CTI. As part of its investigation, the Bureau sent CTI a letter of inquiry (LOI)⁶ directing the Company to answer a number of questions. The LOI directed CTI to explain how it had responded to consumers' allegations that its telemarketers had deceived consumers by misrepresenting their identity and by concealing that CTI would be switching the consumers' long distance carriers.⁷ CTI initially responded to the LOI on March 15, 2013, and later supplemented that response.⁸

3. CTI provided its "Training Manual" and explained that it hires its own sales representatives to contact potential customers.⁹ According to CTI, if the sales representative determines that a consumer wishes to subscribe to CTI's long distance services, the telemarketer transfers the call to an independent third party verification company to verify and record the customer's authorization of CTI as his or her primary long distance carrier.¹⁰

4. The Bureau reviewed more than 100 complaints against CTI filed with the Commission, the Federal Trade Commission, various state regulatory agencies¹¹ and the Better Business Bureau. Many complainants contend that CTI or its telemarketers misrepresented that CTI was (or was affiliated with) the complainant's existing long-distance carrier, and that the purpose of the Company's marketing call was merely to obtain the complainant's authorization to change the complainant's current service plan with his or her existing carrier—*not* to switch carriers. According to the complainants, after obtaining and recording their "authorization," CTI then attempted to switch consumers' long distance carrier (e.g., AT&T, Verizon, or CenturyLink) to CTI. In some cases CTI successfully effected the change and in others CTI did not because, for example, a consumer had blocked carrier switches.¹² Either way, CTI

⁶ Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Consumer Telcom, Inc., Attn: Joe Nicotra (Jan. 30, 2013) (on file in EB-TCD-13-00006333) (LOI); *see also* e-mail from Erica H. McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Michael L. Glaser, Counsel to Consumer Telcom, Inc. (May 9, 2013; 11:39 AM EST).

⁷ *See* LOI at 6.

⁸ *See* Responses of Consumer Telcom, Inc. to Letter of Inquiry, Dated January 30, 2013, Issued by the Enforcement Bureau of the Federal Communications Commission at 5 (Mar. 15, 2013) (on file in EB-TCD-13-00006333) (LOI Response). CTI requested, and the Bureau granted, an extension of time until Mar. 15, 2013, to respond to the LOI. *See also* First Supplemental Responses of Consumer Telcom, Inc. to Letter of Inquiry, Dated January 30, 2013, Issued by the Enforcement Bureau, Telecommunications Consumers Division of the Federal Communications Commission (Apr. 2, 2013) (on file in EB-TCD-13-00006333) (Supplemental LOI Response); Second Supplemental Index of Documents for Consumer Telcom, Inc.'s Response to FCC Letter of Inquiry (Apr. 12, 2013) (on file in EB-TCD-13-00006333) (Second Supplemental LOI Response); Supplemental Response to Question 22 (May 30, 2013) (on file in EB-TCD-13-00006333) (Third Supplemental LOI Response); Supplemental Response to Question 22 (June 4, 2013) (on file in EB-TCD-13-00006333) (Fourth Supplemental LOI Response).

⁹ LOI Response at 9 and Bates-stamped document CTI-17-000001-000061.

¹⁰ "Third party verification" (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 strictly with Section 64.1120(c)(3) of the Commission's rules. 47 C.F.R. § 64.1120(c)(3). CTI provided TPV recordings and a sample script used by its third party verifier to validate the subscriber's authorization to switch telephone carriers. *See* Supplemental LOI Response, Second Supplemental LOI Response, and Third Supplemental LOI Response, Bates-stamped recordings CTI-21-000002-000047 and LOI Response, Bates-stamped document CTI-20-000001. In contrast, CTI stated that its own telemarketers do not use scripts to market its services. LOI Response at 9.

¹¹ With its LOI Response, CTI provided complaints that consumers had 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 Public Utility Commission of Texas.

¹² Some consumers indicated they had a preferred interexchange carrier (PIC) freeze on their accounts. A 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 C.F.R. § 64.1190(a); *see also, e.g.*, Complaint from G. Stewart.

apparently charged the consumers for services by billing them directly or by placing charges on the consumers' telephone bills from their respective local exchange carriers (LECs).

III. DISCUSSION

5. We find that CTI apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act¹³ and Sections 64.1120 and 64.2401(b) of the Commission's rules.¹⁴ Specifically, we find that CTI apparently violated Section 258 of the Act and Section 64.1120 of the Commission's rules by submitting requests to switch the long distance service providers of consumers without their authorization and without adherence to the Commission's verification rules. We also find that CTI apparently violated Section 201(b) of the Act by deceptively marketing its long distance service and placing unauthorized charges on consumers' local telephone bills or on bills it issued directly. Finally, we find that when CTI directly billed consumers, the Company failed to clearly and plainly describe its charges, in apparent violation of Section 64.2401(b) of the Commission's truth-in-billing rules.¹⁵ Accordingly, we propose a forfeiture of \$3,560,000 for the apparent violations that occurred within the twelve months prior to the release date of this NAL.¹⁶

A. CTI Apparently Switched Consumers' Long Distance Carriers Unlawfully ("Slamming") and Deceptively Marketed Its Services

6. CTI apparently violated Sections 201(b) and 258 of the Act and Section 64.1120 of the Commission's rules. Section 258 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."¹⁷ Section 64.1120 of the Commission's rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before obtaining authorization from the consumer; carriers can verify that authorization in one of three specified ways, including third party verification.¹⁸ If a carrier relies on TPV, the independent verifiers must, among other things, confirm that the consumers with whom they are speaking: (i) have the authority to change the carrier associated with the telephone number, (ii) in fact wish to change carriers, and (iii) understand that they are authorizing a carrier change.¹⁹ The rules expressly prohibit verifiers from presenting any misleading information.²⁰

7. Section 201(b) also prohibits misrepresentation. 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."²¹ The Commission has held that unfair and deceptive marketing practices by interstate common carriers as a general matter, and misrepresentations about a carrier's identity or the nature of its service to obtain a consumer's authorization to change his or her preferred long distance carrier

¹³ 47 U.S.C. §§ 201(b), 258.

¹⁴ 47 C.F.R. §§ 64.1120, 64.2401(b).

¹⁵ See 47 C.F.R. § 64.2401(b).

¹⁶ The Appendix identifies the 26 complaints that form the basis of the forfeiture, two of which include Truth-in-Billing apparent violations.

¹⁷ 47 U.S.C. § 258(a).

¹⁸ 47 C.F.R. § 64.1120(c)(1)–(3). See *supra* note 10.

¹⁹ 47 C.F.R. § 64.1120(c)(3)(iii).

²⁰ *Id.*

²¹ 47 U.S.C. § 201(b).

specifically, constitute unjust and unreasonable practices under Section 201(b) of the Act.²²

8. The evidence demonstrates that CTI apparently violated Section 258 of the Act and Section 64.1120 of the Commission's rules by switching (or attempting to switch) consumers' preferred providers of telecommunications services without proper authorization verified in accordance with the Commission's rules. The evidence further demonstrates that CTI's telemarketers at times tricked consumers into believing that the telemarketers were calling on behalf of the consumers' existing providers—and doing so simply to authorize a change to their existing service with that provider—not to switch their provider to CTI.

9. For example, Ms. Buck complained:

The representative that called me led me to believe that Verizon was changing long distance providers and my account was now under their care. This change would benefit me because my bill would drop from about \$20.00 to about \$2.00, all I needed to do was authorize. Because they led me to believe this was a Verizon action, I did authorize. I would never have ordered anything additional for my phone line since it is not used. . . ."²³

10. Likewise, according to Ms. S. Jefferson-Brown:

I 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 and . . . that if I want to accept the discount that I would have to say my name and say yes at the prompts . . . he also said don't ask any questions during this time because there won't be anyone answering questions at this time. So after about two weeks [] I noticed that my bill was increasing . . . I called AT&T and they told me that my service had been switched to another carrier not affiliated with them.²⁴

Ms. Jefferson-Brown contacted CTI, and the representative played a recording of her "authorization."²⁵ "The beginning of the conversation had been changed from what the conversation was when I talked to the gentleman . . . it was not about a discount from AT&T. It was a conversation . . . asking me to agree to change my service and you could hear me saying my name and yes at the prompts . . . and it wasn't even the same guy that I had talked with."²⁶ Other complainants offered similar stories.²⁷

²² See *Advantage Telecomms., Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843 (2013) (*Advantage NAL*); *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489 (2012) (*Preferred NAL*); *Silv Commc'n Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180–5181, paras. 5–7 (2010) (*Silv NAL*).

²³ Complaint from J. Buck.

²⁴ Complaint from S. Jefferson-Brown.

²⁵ *Id.*

²⁶ *Id.* Some complainants identified in this NAL, including Ms. Jefferson-Brown, describe experiences that took place more than one year before the date of this NAL. We therefore do not propose a separate forfeiture for CTI's apparently unlawful conduct towards those complainants. Nevertheless, such conduct is relevant in assessing CTI's business practices and credibility, as well as in determining an appropriate penalty for conduct that falls within the statute of limitations period. See, e.g., *Sandhill Commc'ns*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17762, 17769, n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company's conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period); see also *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8701, para. 28 (2007) (citing *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC (continued...)

11. CTI's actions were apparently unlawful not only because of its misleading marketing, but also because its third party verification recordings failed to satisfy the Commission's rules.²⁸ Section 64.1120(c)(3) of the Commission's rules require, *inter alia*, that a verifier's description of the carrier change not be misleading. As consumers repeatedly describe, however, CTI's telemarketers led them to believe that the purpose of the call was to discuss the consumer's existing service even though the verification that followed immediately attempted to change the consumer's long distance carrier. CTI's verifiers state 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."²⁹ The consumers heard the verifiers confirming a change in "service" after CTI's telemarketers had just told them that the telemarketers were calling on behalf of consumers' *existing* carrier, and merely attempting to change the existing *service*—but not the *carrier*. The statement reinforces the overall impression that the call does not relate to a carrier change. And because the consumers had not yet agreed to change their carrier, there was no change to "confirm." As one complainant explained:

Their whole call approach is geared to deceive people and bill them for a bogus long distance telephone service. Their agents call and say 'We are calling to CONFIRM changes to your telephone service' instead of OFFERING an additional telephone service. They record and edit the conversation so they can later show that the customer said 'OK' agreeing to be billed. Even if at the end of the conversation you realize what is going on and tell them 'I am not interested in any additional services,' once you said 'OK' in response to some questions they asked, they will EDIT the call and make it sound like you agreed to be billed. *They also make customers believe they are from your carrier Verizon or AT&T when in fact they are not.*³⁰

As the 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

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Red 9669, 9671, para. 8 (2000); *Cate Commc'ns Corp.*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1386, 1388, para. 7 (1986); *E. Broad. Corp.*, Memorandum Opinion and Order, 11 FCC 2d 193, 195, para. 6 (1967)).

²⁷ Complainant ██████, for example, stated that "[i]n May of this year, I received a call from someone leading me to believe they represented Verizon, who our phone service is with. This person said because we weren't using long distance, they were going to save us \$10.00 per month by adjusting our plan. I went along with it[;] then when I was told I was being recorded and the person on the other end of the line was talking very fast, I began to realize I was being duped." CTI switched ██████ long distance service provider. After she switched back to Verizon, CTI continued to bill her. Complaint from ██████. *See also* Complaint from N. Lopez, *infra* para. 11.

²⁸ The Consumer & Governmental Affairs Bureau (CGB) has issued numerous orders granting slamming complaints against CTI, finding the Company's actions violated the Commission's carrier change rules. *See Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Red 10325 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Red 7257 (CGB 2013); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Red 7561 (CGB 2012); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Red 1001 (CGB 2010); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Red 1019 (CGB 2010). Under the Commission's rules, CGB adjudicates individual slamming complaints and may order financial restitution for consumers who have been slammed. *See* 47 C.F.R. §§ 64.1150–1170. EB may take separate enforcement action under Section 503(b) of the Act for a carrier's willful or repeated violations of Section 258 of the Act and Section 64.1120 of the rules.

²⁹ *See* TPV script with LOI Response, Bates-stamped document CTI-20-000001 (on file in EB-TCD-13-00006333).

³⁰ Complaint from N. Lopez (*italics added*).

'upgrade' to existing service or in other ways that obscure the true purpose."³¹ Enforcement of the verification rules is crucial to protect consumers, especially when consumers contend that they did not intend to change carriers at all, and that the carrier in fact misled them during the telemarketing call as to with whom they were speaking and the purpose of the call.³²

12. Moreover, under Section 64.1120(c)(3), carriers using third party verification may not submit a carrier change unless a verifier confirms not only that the called party is authorized to make a carrier change, but also that the called party, in fact, *wants* to make the carrier change and understands that he or she is, in fact, *authorizing* a carrier change.³³ The TPV recordings demonstrate, however, that at most the third party verifier met only the first of these three requirements. In most cases the verifiers also ask the person on the call, "Do you have the authority to make changes of your long distance service?"³⁴ The verifiers do not, however, confirm that the consumers both understand that they are authorizing a carrier change and want to do so. Compliance with these requirements is crucial to prevent confusion and ambiguity about the carrier change.³⁵ A switch from one carrier to another differs greatly from merely making changes to the customer's existing service with its current carrier.³⁶

13. In its LOI Response, CTI explained that "it has a policy that requires its sales representatives not to mention the name of any carrier other than CTI in making telemarketing calls to potential customers" and that "it has a quality assurance program in which it randomly monitors sales representatives, and has not found any sales representatives to violate CTI's policy of not mentioning the name of a telecommunications carrier other than CTI."³⁷ However, CTI admitted in its LOI Response that it knew consumers were alleging its telemarketers were misrepresenting CTI's identity in sales calls.³⁸ CTI did not provide evidence that it had investigated these complaints or taken any action to resolve them.³⁹ Rather, CTI denied that it had any specific consumer complaints and characterized the complaints

³¹ *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*). Moreover, as the Commission has previously noted and as we explain above, 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)).

³² *See Silv NAL*, 25 FCC Rcd at 5184, para. 12.

³³ 47 C.F.R. § 64.1120(c)(3)(iii).

³⁴ *See* audio recordings provided with Supplemental LOI Response, Second Supplemental LOI Response, and Third Supplemental LOI Response, Bates-stamped CTI-21-000002-000047 (on file in EB-TCD-13-00006333).

³⁵ *See Silv NAL*, 25 FCC Rcd at 5184, para. 12.

³⁶ *See Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*"). CTI has filed petitions for reconsideration of certain slamming orders, which are currently pending before CGB. *See, e.g.*, Consumer Telcom, Inc.'s Petition For Reconsideration of IC No. 12-S3461638 and IC No. 13-S3548579 (Aug. 19, 2013).

³⁷ LOI Response at 14.

³⁸ *Id.*

³⁹ The record shows that CTI knew that each of the complainants identified above was asserting that CTI had misrepresented its identity. Consumers made such allegations over the course of more than a year. *See* Complaint from J. Erickson (dated April 2012); Complaint from [REDACTED] (dated July 2012); Complaint from [REDACTED] (dated September 2012); Complaint from [REDACTED] (dated November 2012); Complaint from S. Bridges (dated April 2013). CTI purportedly responded to these and many other complaints, but it did not address consumers' allegations of deceptive marketing. Indeed, the record shows that the Company ignored complainants' allegations about the misrepresentations made during the sales calls and simply responded to the complaints by saying that it had a third
(continued...)

as consumer “comments” that asserted “they believed CTI’s sales representatives were selling the services of other telecommunications [carriers] such as AT&T and Verizon” instead of its own services.⁴⁰

14. Based on the evidence from the investigation and the analysis above, we conclude that CTI apparently violated Section 258(a) of the Act and Section 64.1120(c)(3) of the Commission’s rules by submitting changes to consumers’ choices for long distance carriers without proper authorization verified in accordance with the Commission’s rules. We further conclude that CTI knew its telemarketers were engaged in deceptive marketing practices on its behalf and failed to take action to stop the practices. Pursuant to Section 217 of the Act, we hold CTI liable for the acts of its telemarketers and accordingly find that CTI is apparently liable for deceptive marketing practices in violation of Section 201(b) of the Act.⁴¹

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

15. CTI also apparently violated Section 201(b) by placing unauthorized charges on consumers’ telephone bills, in some cases multiple times.⁴² The Commission has previously held that the placement of unauthorized charges and fees on consumers’ telephone bills—known as “cramming”—is an “unjust and unreasonable” practice under Section 201(b).⁴³ Cramming can occur either when third parties place unauthorized charges on consumers’ local telephone bills or when carriers place unauthorized charges on the telephone bills of their own customers.⁴⁴ In either case, 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.

16. The following are examples of consumer complaints contending that CTI billed the consumers for service they did not authorize. These complaints arose from CTI’s failed attempt to change the consumer’s long distance service provider (e.g., the consumer had a “PIC freeze” preventing the switch; *see supra* note 12). CTI subsequently billed the consumers for its service on the pretext that regardless of whether the switch took place, the consumer had “authorized” the service. Like consumers whose carrier CTI did switch, many of these “crammed” consumers state that CTI tricked them into

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party verification recording of the consumer’s authorization. *See* Letters from CTI responding to consumer complaints.

⁴⁰ LOI Response at 14.

⁴¹ 47 U.S.C. § 217. Although we find that CTI knew of its agents’ misdeeds, Section 217 imposes liability on a carrier for the acts and omissions of its agents simply if those agents act within the scope of their employment; a carrier’s knowledge of its agents’ misdeeds is not required. *See, e.g., Preferred NAL*, 27 FCC Rcd at 16491, para. 6 (finding a carrier liable for the deceptive marketing practices of its third party telemarketers).

⁴² CTI’s process for billing consumers for its services generally involves three parties: CTI; its billing aggregator, Billing Services Group (BSG or USBI); and the LEC that issues the consumer’s bill. Specifically, CTI 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. . . .” CTI states that it directly bills only those consumers whose LEC rejects CTI’s charges, consumers who do not have LEC billing as an option, or consumers who prefer that CTI bill them directly. LOI Response at 7.

⁴³ *See, e.g., Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI Forfeiture Order*) (finding that the company’s practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

⁴⁴ *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 NAL*, 28 FCC Rcd at 6850, para. 17.

believing the telemarketer was calling on behalf of their current carrier.⁴⁵ CTI never informed them during the sales call that they would be charged by a different carrier or for additional services.

- Ms. I. Balladores stated that “AT&T is my local and long distance provider. Since June 2012 a company called USBI/Consumer Telcom [] has been placing unauthorized charges for a second long distance service [on my AT&T bill]. Consumer Telcom insists that they have a recording where I authorized to have their service which is not true . . . I want to have that company out of my bill, my credit back, and [to have] AT&T alert customers about this fraudulent situation.”⁴⁶ CTI placed charges for long distance service on Ms. Balladores’ AT&T bill from July through October 2012 even though AT&T remained her long distance provider during those months.
- Complainant Newberry stated that CTI “[d]eceptively claimed they represented my phone company with the offer to reduce my phone bill I very stupidly gave them some information. I called my phone provider with[in] an hour of having hung up with [CTI] They assured me that my account had not been changed. But I received a bill from Consumer Telcom. I still do not have long distance on the land line, yet I received a bill from Consumer Telcom, as if I was receiving that service Therefore, it appears to be fraudulent.”⁴⁷
- Ms. E. Jorgensen similarly complained to CTI that she was being billed by the Company directly for a service she had with another carrier. “This is a mature customer who has no recollection of requesting your services, and sometimes has trouble hearing over the telephone. Please remove th[is] account immediately and discontinue sending charges. [My] phone carrier provides long-distance services; a secondary carrier is redundant.”⁴⁸

Numerous other complainants shared similar stories of discovering charges from CTI on their local telephone bills or on bills sent to them directly by CTI for long distance service that they assert was not authorized and that CTI did not provide.⁴⁹

17. In other cases, consumers contend that CTI continued to charge them for monthly service and other fees and taxes—either through their LEC bills or on bills sent to them directly by CTI—often many months after they cancelled the CTI “service.” These incidents of apparent “cramming” are

⁴⁵ See *supra* paras. 7–10. The Appendix identifies those consumers who allege CTI deceived them and then charged them without authorization within one year of this NAL.

⁴⁶ Complaint from I. Balladores.

⁴⁷ Complaint from C. Newberry.

⁴⁸ Complaint from E. Jorgenson.

⁴⁹ See, e.g., Complaint from R. Raimann (asked Commission to “STOP THEIR BILLING. . . . I already have CenturyLink Long Distance. . . do NOT need theirs.”); Complaint from D. Araiza (explained that Mrs. Araiza already has long distance service with Verizon; CTI refused to assist her with this erroneous billing when she called); Complaint from C. Seaton (stated that she had unlimited long distance with WOW! yet was charged for service directly by Consumer Telcom); Complaint from [REDACTED] (explained that mother’s telephone bill has had an \$11.67 charge for service she did not authorize from April 2011 through August 2012; CTI added long distance service to her account that already had an unlimited long distance plan); Complaint from J. Burk (“I asked [CTI] to cancel this ‘service,’ which they agreed to do, but refused to refund the last year of charges . . . I already have unlimited long distance, I did not need this additional ‘service.’”). See Appendix for a list of all consumers who allege that such wrongdoing occurred within one year of this NAL.

reflected in numerous complaints.⁵⁰ For example:

- J. Painter, whose service was switched by CTI without her authorization, returned to AT&T in December 2012. Months later, CTI was billing Painter for long distance service. “They continued to bill me for this long distance service after I cancelled my home phone . . . I did not want it and now it is cancelled. I am very upset over the charges but also by the way [CTI] argued with [me] and they did not even try to understand my situation or help me in any way at all.”⁵¹
- J. Aguirre explained that after CTI billed him for service, he called his “local phone company which is AT&T and told them to put a block on my phone. I am getting billed from [CTI when] I never authorized them to charge me. USBI guaranteed me that they will stop billing me [for CTI]. However, . . . I got billed again. I am disabled and exhausted of having to dispute these charges on a monthly basis.”⁵²
- Complainant Weiss, a senior citizen, was not aware CTI was placing charges on his local telephone bill until he cancelled service with Verizon in April 2012 and CTI attempted to bill him for service directly. CTI was still billing him six months later. With the bills, CTI attached a letter in red, advising Mr. Weiss that “this nonpayment has been sent to their ‘Collections Department.’” “I never heard of Consumer Telcom, so I called them. A woman answered and insisted that I had agreed to a contract with them. I agreed to hear a tape . . . to prove their point. The tape was very scratchy, it was some woman’s voice asking ‘Mr. Weiss, do you agree?’ I started to holler into the phone, because I couldn’t understand a damn thing.”⁵³
- N. Lauderbaugh, who disconnected his telephone service in August 2012, explained that he received a bill in January 2013 from CTI for \$8.92. “I have never contracted for services with this company . . . I am 78 years old and I believe that this particular company abuses elderly citizens . . . The dollar amount although insignificant is troubling as there may be older folks such as myself that will just write a check and pay this. The company knows this. This is not my bill, nor did I contract with this company for their service. I do not have a landline telephone and have never needed their service.”⁵⁴

18. In responding to these and other consumer complaints, CTI defends its actions by first

⁵⁰ See, e.g., Complaint from W. Boston; Complaint from J. Buck; Complaint from W. Briggs; Complaint from L. Goscinski. In addition, K. Floyd explained that CTI’s telemarketer “talked my husband into changing the long distance service from AT&T to Consumer Telcom . . . [but] we called AT&T and changed back,” yet CTI continued to bill her for eight months, even after she and her husband moved from that address and closed out the telephone number. Likewise, J. Sharpe discontinued his long distance service with CTI in 2010 after signing up for unlimited long distance with CenturyLink, but CTI continued to bill him \$12.95 per month each month through March of 2012. CenturyLink credited the charges, but CTI “is now billing separately for the services that were disconnected in [September] 2010.” In its response to the complaint, CTI told Mr. Sharpe that “the local phone company is unaware that Consumer Telcom offers a bundled package with additional services which are not . . . identified by . . . the local phone company.” Consumer Telcom refused to refund all charges. Complaint from J. Sharpe and Response to Informal Complaint 12-C00415801 from Consumer Telcom (Sept. 20, 2012).

⁵¹ Complaint from J. Painter.

⁵² Complaint from J. Aguirre.

⁵³ Complaint from D. Weiss.

⁵⁴ Complaint from N. Lauderbaugh.

asserting that it provides a “bundled package” of services which, in addition to 1+ dialing long distance service, includes a “travel card, directory assistance, and casual calling long distance.”⁵⁵ CTI claims that when the consumers agreed to its service (allegedly during the telemarketing calls), they authorized CTI to change their preferred carrier and to charge them for its entire bundle of services, not simply its 1+ dialing long distance service. CTI then points to the TPV recording, during which the consumer allegedly verifies his or her authorization to change carriers, and CTI argues that the recording also establishes that the consumer authorized CTI’s entire bundle of services.⁵⁶

19. We disagree with CTI that the TPV recordings demonstrate the complainants’ authorization to be charged for all of CTI’s products and services. Nothing in the recordings CTI provided during the investigation suggests that the consumers agreed to CTI’s “bundled package” of services. In fact, nothing in the recordings suggests that consumers were even aware that CTI offered a bundled package of services. The script used by CTI’s third party verifier contains no information about a bundled package of services and does not even mention any other service such as a travel card or directory assistance. Finally, there is nothing in CTI’s bills (neither those issued by the LEC nor those issued by CTI directly) that reflects charges for a bundled service. Without any evidence to refute complainants’ assertions that they did not authorize CTI’s bundle of services—including, for instance, evidence that they used CTI’s travel card or directory assistance service—we conclude that CTI did not have complainants’ authorization to charge them for *any* services.

20. CTI also argues that in order for consumers to “cancel” all of its services and stop CTI from continuing to charge them, they must contact CTI directly.⁵⁷ Otherwise, according to CTI, it bills the consumer monthly fees regardless of whether the consumer was placed on its network or subsequently cancels long distance service.⁵⁸ CTI’s position seems to be that as a switchless reseller of telecommunications services, it does not know if and when a consumer is placed on its network by CTI’s underlying carrier or when a consumer is deactivated from CTI’s network after contacting his or her LEC to cancel CTI’s services.⁵⁹ CTI also states that it does not have information indicating when a customer is switched away from CTI to another long distance service provider except “when a customer’s service has been cancelled through CTI directly.”⁶⁰

21. As an initial matter, the record shows that complainants did not sign up for CTI’s

⁵⁵ See, e.g., CTI Response to Informal Complaint 12-S3461638 from L. Dove; CTI Response to Informal Complaint 13-C00490043 from L. Navarro; CTI Response to Informal Complaint 13-S3548579 from L. Boeckmann.

⁵⁶ See, e.g., CTI Response to Complaint No. CP2012120240 from [REDACTED]; CTI Response to Complaint File No. 250584 from [REDACTED].

⁵⁷ CTI states that its procedures for cancelling service are “clearly outlined in [its] General Service Agreement that [i]s mailed to the customer as well as the Company’s Public Disclosure Document.” See, e.g., CTI Response to Informal Complaint 12-S3461638 from L. Dove. Despite this claim, consumers maintain they never received such an agreement; nor did they expect to receive one since they were not aware that CTI enrolled them for its service. See, e.g., Complaint from C. Newberry; Complaint from W. Briggs; Complaint from J. Painter. Even if there were evidence that CTI mailed its General Service Agreement to new customers and that these customers received the agreement, such mailing does not in and of itself evidence a consumer’s authorization for service under Section 64.1120(c).

⁵⁸ We note, however, that CTI’s charges on consumers’ local telephone bills do not seem to match the bundled services CTI purports to provide; the charges appear, for example, as “Carrier Assessed USF Recovery Fee,” “Network Access Fee,” and “Single Bill Fee.” See, e.g., phone bill provided by E. Fodora-Elliott.

⁵⁹ See LOI Response at 8; see also Consumer Telcom Inc.’s Response to the Office of Consumer Advocate’s Petition for Proceeding to Consider Civil Penalty, State of Iowa Department of Commerce Before the Iowa Utilities Board, Docket No. FCU-2012-0007, Bates-stamped document CTI-22-000478-489 (stating that CTI continued billing the consumer monthly service charges because CTI was not told by its underlying carrier that the consumer had discontinued CTI’s long distance service).

⁶⁰ LOI Response at 8.

services; therefore, CTI cannot reasonably expect them to “cancel” a service they never ordered in the first place. The record further refutes CTI’s assertions because it shows that CTI receives the relevant information from its underlying carriers.⁶¹ Global Crossing, CTI’s underlying carrier, states that since 2006 it has provided CTI with a “daily response file of all transactions related to end-user telephone numbers on [its] accounts.”⁶² CTI thus has the ability to download the relevant files and incorporate the data into its own customer service and billing systems. CTI cannot simply ignore the customer information provided by its wholesale carrier and continue to bill consumers for unauthorized charges.

22. In sum, the record shows that CTI charged consumers for service, in some cases multiple times, after it was on notice that certain consumers had not been activated on CTI’s account or that other consumers had “canceled” CTI’s services. There is no evidence suggesting that consumers were ever aware of or authorized any of CTI’s services (including a travel card, directory assistance, or the option of “casual calling” long distance service) or that these consumers ever used such services.⁶³ We therefore find that CTI apparently placed charges on consumers’ local telephone bills or billed them directly for service without the consumers’ authorization. Accordingly, we find that CTI apparently engaged in an unjust and unreasonable practice in violation of Section 201(b) of the Act each time it placed an unauthorized charge on a consumer’s bill.

C. CTI Apparently Violated the Commission’s Truth-in-Billing Rules

23. We also find that CTI apparently violated Section 64.2401 of the Commission’s “truth-in-billing” rules in the bills it sent directly to consumers. 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. . . .”⁶⁴ The purpose of the truth-in-billing rules is “to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service.”⁶⁵ 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.”⁶⁶

24. We conclude that the bills CTI issues to customers directly are neither sufficiently clear nor specific enough to aid customers in assessing their bills.⁶⁷ First, the bills themselves are not dated and do not include a payment due date. Second, the bills include a single line item charge identified as “long distance service” but do not specify what is included in that amount or what period of time the charge covers. For instance, the bills do not identify any long distance calls made (e.g., numbers called or dates or length of such calls) or any monthly fees or taxes that typically appear on a bill issued by a LEC on behalf of CTI.⁶⁸ They also fail to identify any services that CTI claims are part of its bundled package of

⁶¹ 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).

⁶² *Id.* at 7.

⁶³ In response to the Bureau’s LOI, CTI stated that it was unable to provide the number of minutes of service each customer used per month. LOI Response at 8.

⁶⁴ 47 C.F.R. § 64.2401(b).

⁶⁵ 47 C.F.R. § 64.2400.

⁶⁶ *Id.*

⁶⁷ See *Advantage NAL*, 28 FCC Red at 6854–6855, paras. 26–27 (finding that the carrier’s descriptions of billed charges were neither sufficiently clear nor specific enough to aid customers in assessing their bills).

⁶⁸ The bills issued by the LECs on behalf of CTI, unlike those issued directly by CTI, itemize CTI’s charges for “Federal Universal Service Fee,” “USF Carrier Admin Fee,” “Single Bill Fee,” and “Network Access Usage Charge.” See, e.g., LEC telephone bill provided with Complaint from D. Weiss.

service. The omissions are striking, given CTI's insistence that when consumers "authorize" its service, they "authorize" a bundle of services—services that appear to have never been fully disclosed or explained to them;⁶⁹ likewise, these omissions are inconsistent with CTI's assertion that it charges customers a per-minute rate for long distance calls as well as monthly fees and surcharges.⁷⁰ Accordingly, we find that CTI has apparently failed to clearly and plainly describe charges appearing on its telephone bills in violation of Section 64.2401(b) of the Commission's rules.

IV. PROPOSED FORFEITURE

25. 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.⁷¹ Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for the violations in this case against CTI for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.⁷² 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."⁷³ In addition, the Commission has established forfeiture guidelines, which set forth base penalties for certain violations and identify criteria that we consider in exercising our discretion in determining the penalties to apply in any given case.⁷⁴ Under 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.⁷⁵

26. The Commission's forfeiture guidelines currently establish a base forfeiture of \$40,000 for violations of our slamming rules and orders.⁷⁶ Although the guidelines provide no base forfeiture for cramming, the Commission has similarly established a \$40,000 base forfeiture for cramming violations.⁷⁷

⁶⁹ See *supra* paras. 18–19.

⁷⁰ See generally Consumer Telcom, Inc., Telecommunications Service Guide, General Information Regarding Ordering, Changing and Terminating Service, <http://consumertelcom.com/svsguide1.pdf> (last visited Nov. 21, 2013).

⁷¹ See 47 U.S.C. § 503(b)(1).

⁷² 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 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 (Enf. Bur. 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). Here, because the apparent violations at issue occurred before September 13, 2013, the applicable maximum penalties are based on the Commission's previous inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

⁷³ 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*).

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

⁷⁵ *Id.*

⁷⁶ See 47 C.F.R. § 1.80, Appendix A, Section I.

⁷⁷ See *LDDI Forfeiture Order*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for cramming imposed by the Commission in the forfeiture order).

Applying the \$40,000 base forfeiture to each of the seven slamming violations⁷⁸ and each of the 18 cramming violations⁷⁹ would result in a forfeiture of \$1,000,000.

27. The Commission has previously determined that misrepresentations such as the ones in the instant case are serious and warrant significant upward adjustments. For example, in the *Advantage NAL*, the Commission proposed to triple the base forfeiture amount of \$40,000 in those instances of slamming and cramming when the carrier also engaged in deceptive marketing.⁸⁰ CTI's conduct was similarly egregious, as demonstrated by our conclusion that the Company violated Section 201(b) of the Act by misleading consumers into believing that CTI was calling on behalf of their current carrier, was affiliated with their current carrier, or was taking over the long distance service provided by their current carrier. We further note that CTI appears to have engaged in this kind of deception repeatedly. Consistent with past cramming and slamming cases involving deception,⁸¹ we propose to triple the base forfeiture for each of the six especially egregious violations at issue in this NAL—the crams and slams involving misrepresentation—making the penalty for each such violation \$120,000. This is consistent with recent enforcement actions involving similar instances of misrepresentation, where we have warned carriers that a significant upward adjustment is warranted in cases involving such deception.⁸² This adjustment increases the total forfeiture by \$480,000.

28. There is no base forfeiture amount for violations of the Commission's truth-in-billing rules. In the recent *Advantage NAL*, however, we proposed a \$40,000 forfeiture penalty for each telephone bill that Advantage sent to consumers within the year preceding the NAL, and that the Bureau had an opportunity to review individually. We explained that because "the underlying purpose of the truth-in-billing rules is to assist consumers in protecting themselves from deceptive practices, we believe that the penalty for violating those rules should be equivalent to the \$40,000 penalty for engaging in deceptive conduct, at least where the violations occur in the context of egregious circumstances of this

⁷⁸ A slamming violation occurs whenever a carrier submits an unlawful request to change service providers regardless of whether the change actually takes place. See 47 U.S.C. § 258(a) ("no telecommunications carrier shall 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 [the Commission's] verification procedures. . . .") (emphasis added). Consistent with our past practice to date, see, e.g., *Advantage NAL*, 28 FCC Rcd at 6855–6857, paras. 29–32, we do not propose a forfeiture for a slamming violation under Section 258 of the Act when CTI submitted an unauthorized and improperly verified request to change carriers (slamming) but the switch was not completed or the switch took place but was later reversed back to the original carrier. Nevertheless, we warn carriers that in the future we intend to look at Section 258 violations both in the context of a "successful" slam (i.e., when a carrier change actually takes place and remains in effect) and when a provider submits an unauthorized carrier change but the switch is not made (or is later reversed). Further, we will use our discretionary authority to assess forfeitures for both the Section 201(b) and Section 258 violations as the facts warrant.

⁷⁹ The Commission has made clear that each unauthorized charge a carrier places on a consumer's bill—or "cram"—constitutes a separate and distinct violation of Section 201(b). See *NOS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001) (finding that each deceptive rate sheet sent to consumers constituted a separate violation of Section 201(b)). Based on the record in the instant case, we decline to exercise our discretion in that way at this time, but we caution other carriers that the Commission is committed to aggressive enforcement of its rules, especially in addressing the protections afforded consumers.

⁸⁰ See *Advantage NAL*, 28 FCC Rcd at 6856–6857, para. 30; see also *United NAL*, 27 FCC Rcd at 16505–06, para. 17; *Preferred NAL*, 27 FCC Rcd at 16494, para. 14; *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

⁸¹ See *Advantage NAL*, 28 FCC Rcd at 6856–6857, paras. 30–32.

⁸² In the *United NAL*, the Commission stated that an "overall penalty of this magnitude is appropriate given our prior warnings . . . and the egregious and repeated violations at issue here." *United NAL*, 27 FCC Rcd at 16506–07, para. 18. Carriers have been warned repeatedly since the *Silv NAL* was released that the Commission will adopt a substantial upward adjustment for instances of misrepresentation. See *Preferred NAL*, 27 FCC Rcd at 16494, para. 14 (explaining that the Commission "has warned carriers that misrepresentations . . . are serious and that future violations may receive significant upward adjustments."); see also *Advantage NAL*, 28 FCC Rcd at 6855, para. 29 (same).

case.”⁸³ Given that Advantage and CTI have engaged in similar violations—slamming and cramming achieved through deceiving consumers—we take the same approach in both cases, and propose a \$40,000 forfeiture for each of two bills that CTI sent to complainants within the past twelve months and that the Bureau had an opportunity to review. The forfeiture we propose for CTI’s truth-in-billing violations is \$80,000.⁸⁴

29. Given the facts presented here, we believe that further upward adjustments are warranted. In the *Silv NAL*, the Commission “warned carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against any carrier found to have engaged in slamming.”⁸⁵ Likewise, in the *Main Street NAL*, we warned carriers who engaged in cramming that “we may propose more significant forfeitures in the future as high as is necessary, within the range of our statutory authority, to ensure that such companies do not charge consumers for unauthorized services.”⁸⁶ Moreover, CTI apparently engaged in slamming and cramming repeatedly, including placing unauthorized charges on consumers’ telephone bills multiple times—indeed, we have reviewed more than 100 consumer complaints alleging improper conduct on CTI’s part. Under Section 503, we may take into account the egregious and repeated nature of CTI’s actions and, pursuing our prior warning to carriers, upwardly adjust the forfeitures for both slamming and cramming.⁸⁷ Given the egregious circumstances here and the extent of CTI’s improper conduct and misrepresentations to the American public, all in the face of the repeated warnings of the Commission that deceptive marketing practices such as these would be met with significant and substantial penalties, we determine that an upward adjustment of \$1,500,000 is appropriate here.

30. Finally, as noted above, the Commission may at its discretion upwardly adjust a forfeiture for violations that cause substantial harm to the public.⁸⁸ Of the more than 100 complaints the Bureau reviewed in this investigation, over one third are from senior citizens or relatives of elderly or infirm consumers. For example:

- P. Gardner stated that CTI set up an account for her father, age 95, “who did not understand what he was agreeing to which is evident by the recorded phone call . . . His responses to the questions posed by [the CTI] representative, were almost inaudible. [She] asked dad four times if there were any other numbers he wanted to include in the long distance service. After a pause [and] on the fourth question, dad said no. She then asked him for the month and year of his birthday and there was no response. After she asked again, he responded April 30; that is not his correct birth date, and no birth year was given . . . [She] also asked dad who his long distance carrier was; he gave his home address. When she asked again, he couldn’t answer. After the second time he was asked and he didn’t answer, she responded with “It’s okay if you don’t know.”⁸⁹

⁸³ *Advantage NAL*, 28 FCC Rcd at 6856–6857, para. 31.

⁸⁴ The Appendix identifies the two consumer invoices that form the basis for assessing this part of the forfeiture.

⁸⁵ See *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

⁸⁶ *Main Street Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8861, para. 24 (2011) (*Main Street NAL*). See also *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, 8882, para. 24 (2011); *Cheap2Dial Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8872, para. 25 (2011); *Norristown Telephone Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, 8851, para. 23 (2011).

⁸⁷ In the future we may also seek to revoke a carrier’s authorization and, when the facts warrant, refer the case to the Department of Justice for criminal prosecution. See *CNN Revocation Order*, 13 FCC Rcd 13599 (1998) (revoking a company’s operating authority under Section 214 for repeatedly slamming consumers).

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

⁸⁹ Complaint from P. Gardner.

- CTI charged ██████████ \$10.97 a month for two years before she noticed the charges on her AT&T bill. A friend complained on behalf of ██████████, saying, “She is 94 [years] old and is all alone.” AT&T credited the recent charges and then CTI billed ██████████ directly for them. “Please have them play [the] tape and you will see how the sales lady kept saying ‘is that a yes’? Please help us on this. [I] do not like to see this happen to more older people.”⁹⁰
- Mr. G. Stewart received a bill from CTI directly for \$58.41 despite the fact that he has a block on his Verizon account to prevent any changes to his service without his daughter’s permission. Mr. Stewart’s daughter explained that she contacted CTI to dispute the charges and was played a recording that CTI claimed was evidence that Mr. Stewart had agreed to the services. “Listening to the tape it is clear that he was not sure about what he was agreeing to, he was barely able to provide his home address without their prompting . . . He is a senior citizen, 84 years old, who is often confused by these sales calls . . . I tried to explain this to the [Consumer Telcom] representative . . . They would not provide me with a copy of the tape and they were quite rude.”⁹¹ Mr. Stewart “felt badgered by Consumer Telcom” so he paid the bill after several bills were sent to him.⁹²

31. Consumers like these are especially vulnerable to the deceptive tactics employed by CTI.⁹³ Indeed, the record suggests that, at least in some instances, CTI and its telemarketers and third party verifiers deliberately exploited these consumers’ obvious confusion and inability to understand the sales pitch they heard and understand the questions they were asked. We therefore find that CTI caused substantial consumer harm, and that an upward adjustment to the overall forfeiture of \$500,000 is appropriate.

32. Accordingly, the total forfeiture we propose for CTI’s conduct is \$3,560,000.

V. CONCLUSION

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

VI. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, that Consumer Telcom, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of three million, five hundred sixty thousand dollars (\$3,560,000), for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(b), 258, and Sections 64.1120 and 64.2401(b) of the Commission’s rules, 47 C.F.R. §§ 64.1120 and 64.2401(b).

⁹⁰ Complaint from ██████████.

⁹¹ Complaint from G. Stewart.

⁹² *Id.*

⁹³ *See, e.g.*, Complaint from ██████████ (mother is in a nursing home because of a stroke and discovered her mother had been billed for monthly service fees by Consumer Telcom on her CenturyLink bill without providing any long distance service to her. When she called to ask for refund, “she actually laughed at me and said that was impossible because we had not contacted them directly.”); Complaint from ██████████ (“Consumer Telcom called my house phone and just asked my mom if she was 18 years or older and to confirm her address but they never explained that they are a long distance phone company . . . [m]y mom didn’t know why they were asking those questions she is an elderly woman that didn’t understand the questions that were being asked.”).

35. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,⁹⁴ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Consumer Telcom, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

36. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Consumer Telcom, 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.⁹⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions Consumer Telcom, Inc. should follow based on the form of payment it selects:

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

Any request for making 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 20554.⁹⁶ If Consumer Telcom, Inc. has questions regarding payment procedures, it can contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

38. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-

⁹⁴ 47 C.F.R. § 1.80.

⁹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁹⁶ See 47 C.F.R. § 1.1914.

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.

39. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Joseph Nicotra, Consumer Telcom, Inc., 701 North Green Valley Parkway, Suite 200, Henderson, NV 89014 and to Michael L. Glaser, Esq., 1720 S. Bellaire Street, Suite 607, Denver, CO 80222.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Apparent Violations of Sections 258 and 201(b) of the Act			
	Complainant	Carrier change date or billing date	Violation(s)
1.	G. Stewart	12/18/12	Section 201(b) cram
2.	L. Boeckmann	12/25/12	Section 201(b) cram
3.	K. Boyle	12/27/12	Section 258 slam
4.	W. Briggs	12/31/12	Section 201(b) cram
5.	M. Buss	1/1/13	Section 201(b) cram
6.	N. Lauderbaugh	1/3/13	Section 201(b) cram
7.	W. Boston	1/4/13	Section 258 slam
8.	J. Lanoue	1/15/13	Section 258 slam
9.	J. Buck	1/19/13	Section 201(b) cram; Section 201(b) misrepresentation
10.	V. Lee	1/19/13	Section 258 slam; Section 201(b) misrepresentation
11.	L. Rogers	2/1/13	Section 201(b) cram; Section 201(b) misrepresentation
12.	M. Tejada	2/16/13	Section 258 slam
13.	J. Liddle	2/20/13	Section 258 slam; Section 201(b) misrepresentation
14.	R. Bansal	2/21/13	Section 201(b) cram
15.	C. Newberry	2/26/13	Section 201(b) cram; Section 201(b) misrepresentation
16.	J. Painter	3/22/13	Section 201(b) cram
17.	M. Trujillo	5/21/13	Section 201(b) cram
18.	J. Aguirre	5/25/13	Section 201(b) cram
19.	L. Goscinski	5/28/13	Section 201(b) cram
20.	D. Rudd	7/20/13	Section 201(b) cram
21.	M. Patton	8/5/13	Section 201(b) cram
22.	D. Airstman	8/22/13	Section 201(b) cram
23.	W. Mason	9/10/13	Section 258 slam; Section 201(b) misrepresentation
24.	B. Seals	9/16/13	Section 201(b) cram
25.	R. Silvester	9/20/13	Section 201(b) cram
Apparent Violations of Section 64.2401(b) of the Commission's Rules			
	Complainant	Date bill received (bills not dated)	Violation
1.	G. Stewart	12/18/12	47 C.F.R. § 64.2401(b) Truth-in-Billing
2.	E. Fodora-Elliott	3/19/13	47 C.F.R. § 64.2401(b) Truth-in-Billing