

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

In the Matter of	)	File No.: EB-TCD-13-00011651
	)	
Central Telecom Long Distance, Inc.	)	NAL/Acct. No. 201432170008
	)	
Apparent Liability for Forfeiture	)	FRN: 0017288341

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 2, 2014**

**Released: May 5, 2014**

By the Commission:

**I. INTRODUCTION**

1. We propose a penalty of \$3,960,000 against Central Telecom Long Distance, Inc. (Central or Company) for apparently engaging in a variety of unjust, unreasonable, and deceptive practices regarding consumers' long distance telephone services. We take this action after evaluating over one hundred consumer complaints against Central and as part of our ongoing commitment to protect consumers. In particular, the evidence demonstrates that Central's telemarketers at times tricked consumers into believing that they were calling on behalf of the consumers' existing long distance telephone companies. The Company then changed consumers' preferred long distance telephone carriers without their authorization (commonly known as "slamming") and billed consumers for unauthorized or "crammed" telephone charges. In other instances, Central apparently violated the Commission's "truth-in-billing rules" by failing to clearly and plainly describe the charges on its customers' phone bills.

**II. BACKGROUND**

2. Central is a non-facilities-based interexchange carrier authorized to provide telecommunications service in 32 states.<sup>1</sup> Ms. Deborah Baker is the president, director, and sole shareholder of Central.<sup>2</sup> Central uses Data Integration Systems, Inc. (DIS) for data management, regulatory issues, and billing, among other things.<sup>3</sup> DIS contracts with National Customer Service Center (NCSC) to provide Central's customer service.<sup>4</sup> Ms. Baker's office, DIS, and NCSC are all located at

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<sup>1</sup> Central's offices are located at 102 S. Tejon Street, Suite 1100, Colorado Springs, CO 80903. Central is authorized to provide facilities-based and resold international telecommunications services. See ITC-214-20080214-000E; *International Authorizations Granted*, Public Notice, 23 FCC Rcd 4013 (2008).

<sup>2</sup> See Responses of Central Telecom Long Distance, Inc. to Letter of Inquiry, Dated October 17, 2013, Issued by the Enforcement Bureau of the Federal Communications Commission, at Bates No. 04-00001 (Dec. 2, 2013) (on file in EB-TCD-13-000011651) (LOI Response).

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* DIS and NCSC also provided support services to U.S. Telecom Long Distance, Inc. (USTLD) and Consumer Telecom, Inc. (CTI). See *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014) (proposing a \$5,230,000 forfeiture for engaging in deceptive marketing practices, slamming, cramming, and violation of truth-in-billing rules, in violation of Commission rules and §§ 201(b) and 258 of the Act) (*USTLD NAL*); *Consumer Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (same, proposing \$3,560,000 forfeiture) (*CTI NAL*).

17832 and 17840 Gillette Ave., Irvine, CA 92416.<sup>5</sup> According to Central, if the sales representative determines that a prospective customer wishes to subscribe to Central's services, the telemarketer "switches the call to [Central's] independent third party verifier"<sup>6</sup> to verify and record the customer's authorization of Central as his or her long distance carrier.<sup>7</sup>

3. The Enforcement Bureau (Bureau) reviewed over one hundred complaints filed against Central with the Commission, the Federal Trade Commission, various state regulatory agencies,<sup>8</sup> and the Better Business Bureau (BBB). Many of the complainants contend that Central or its telemarketers misrepresented that Central 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," Central then attempted to switch consumers' long distance carrier (e.g., AT&T, Verizon, or CenturyLink) to Central. In some cases Central successfully effected the change and in others Central did not because, for example, a consumer had blocked preferred carrier switches.<sup>9</sup> Either way, Central 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).

4. As part of its investigation, the Bureau sent Central a Letter of Inquiry (LOI) directing the Company to answer a number of questions regarding its business practices.<sup>10</sup> The LOI also directed Central to explain how it had responded to consumers' allegations that its telemarketers had deceived consumers by misrepresenting their identity and by concealing that Central would be switching the consumer's long distance carrier. Central provided a response to the LOI on December 2, 2013.<sup>11</sup> On January 31, 2014, BDP and Central filed a notice with the Commission,<sup>12</sup> pursuant to Section 64.1120(e)

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<sup>5</sup> The Bureau directed the Letter of Inquiry to Central. Craig Konrad, the owner of DIS, and Priscilla Meraz, the owner of NCSC, provided the two attestations to the LOI Response. Ms. Baker did not provide an attestation to the LOI Response. Mr. Konrad is also the President of Business Discount Plan, Inc. (BDP), a non-facilities-based interexchange carrier with offices at One World Trade Center, Suite 800, Long Beach, CA 90831.

<sup>6</sup> LOI Response at 5.

<sup>7</sup> "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. TPV must comply strictly with Section 64.1120(c)(3) of the Commission's rules. 47 C.F.R. § 64.1120(c)(3). Central provided TPV recordings and a sample script used by its third party verifier to validate the subscriber's authorization to switch long distance carriers. Additional TPV scripts were included with some of the consumer complaints. *See, e.g.*, Complaint from J. Hudson.

<sup>8</sup> With its LOI Response, Central provided complaints that consumers had filed against Central with the Alabama Public Service Commission, the Arizona Corporation Commission, the California Public Utilities Commission, the Michigan Public Service Commission, the Attorney General of Missouri, the New York State Public Service Commission, the Public Utility Commission of Texas, and the Washington Utilities and Transportation Commission.

<sup>9</sup> Some consumers indicated they had a preferred or presubscribed 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).

<sup>10</sup> Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Debbie Baker, President, Central Telecom Long Distance (Oct. 17, 2013) (on file in EB-TCD-13-000011651) (LOI).

<sup>11</sup> *See generally* LOI Response.

<sup>12</sup> *See* Letter from Andrew Isar, Regulatory Consultant to BDP, to Marlene H. Dortch, FCC Secretary, CC Docket No. 00-257 (Jan. 31, 2014) (BDP/Central Notification).

of the Commission's rules, that BDP was acquiring Central's customer base.<sup>13</sup> Subsequently, on March 27, 2014, Central, together with USTLD and CTI, filed notices with the Commission,<sup>14</sup> pursuant to Section 64.1120(e) of the Commission's rules, that Central was acquiring the CTI and USTLD customer bases.

### III. DISCUSSION

5. We find that Central apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act<sup>15</sup> and Sections 64.1120, and 64.2401(b) of the Commission's rules.<sup>16</sup> Specifically, we find that Central 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 proper authorization verified in compliance with the Commission's verification rules. We also find that Central 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. We find that when Central 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. Accordingly, we propose a forfeiture of \$3,960,000 for the apparent violations that occurred within the twelve months prior to the release date of this NAL.<sup>17</sup>

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

6. Central 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."<sup>18</sup> 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.<sup>19</sup> If a carrier relies on TPV, the independent verifiers must, among other things, confirm that

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<sup>13</sup> Section 64.1120(e) permits carriers to transfer another carrier's subscriber base without obtaining subscriber authorization and verification. This rule provides that "[a] telecommunications carrier may acquire, through sale or transfer, either part or all of another telecommunications carrier's subscriber base without obtaining each subscriber's authorization and verification," provided it follows certain procedures. The streamlined procedures require the acquiring carrier to notify the Commission of the planned transfer no later than 30 days before the planned transfer and to include in the notification the names of the parties to the transaction, the types of telecommunications services to be provided to the affected subscribers, and the date of the transfer of the subscriber base to the acquiring carrier. In addition, the acquiring carrier must attach a copy of the notice of the transfer to affected subscribers. *See* 47 C.F.R. § 64.1120(e).

<sup>14</sup> *See* Letter from Andrew Isar, Regulatory Consultant to Central and USTLD, to Marlene H. Dortch, FCC Secretary, CC Docket No. 00-257 (Mar. 27, 2014) (Central/USTLD Notification); Letter from Andrew Isar, Regulatory Consultant to Central and CTI, to Marlene H. Dortch, FCC Secretary, CC Docket No. 00-257 (Mar. 27, 2014) (Central/CTI Notification).

<sup>15</sup> 47 U.S.C. §§ 201(b), 258.

<sup>16</sup> 47 C.F.R. §§ 64.1120, 64.2401(b).

<sup>17</sup> The Appendix identifies the 31 complaints evidencing 42 apparent violations of the Act and the Commission's rules occurring in the last 12 months. The forfeiture proposed in this NAL is assessed on those apparent violations. *See* 47 U.S.C. 503(b)(6).

<sup>18</sup> 47 U.S.C. § 258(a).

<sup>19</sup> 47 C.F.R. § 64.1120(c)(1)–(3) (a carrier may also verify authorization by obtaining the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 or by obtaining

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the consumers with whom they are speaking: (i) have the authority to change the carrier associated with their telephone number; (ii) in fact wish to change carriers; and (iii) understand that they are authorizing a carrier change.<sup>20</sup> The rules expressly prohibit verifiers from presenting any misleading information.<sup>21</sup>

7. Section 201(b) also prohibits misrepresentation by common carriers. 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.”<sup>22</sup> 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 specifically, constitute unjust and unreasonable practices under Section 201(b) of the Act.<sup>23</sup>

8. The evidence demonstrates that Central 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 Central’s telemarketers at times tricked consumers into believing that they 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 Central. For example:

- Ms. Honnas explained, “I received a phone call from a woman who said she was with CenturyLink and the reason for her call was that CenturyLink did not want to lose any more landline customers . . . [and] they were offering a discount for customers that have a record of small use of long distance . . . [I said that] I do not want to change [my] phone company. She said no you would not have to change anything . . . She assured me it was not a scam but I would have to talk to another person to set this up but I was not to ask her any questions. [After receiving several monthly charges from Central, that were removed from her bill by CenturyLink] . . . then I received a bill from Central Telecom Long Distance for \$16 . . . I never use long distance so why would I ever want their service.”<sup>24</sup>
- Similarly, Ms. Millard explained, “[Central] called and posed as my AT&T provider [and] made a sales pitch stating my phone bill would go down by \$10 if I agreed to their

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confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically).

<sup>20</sup> 47 C.F.R. § 64.1120(c)(3)(iii).

<sup>21</sup> *Id.*

<sup>22</sup> 47 U.S.C. § 201(b).

<sup>23</sup> See *Bus. Disc. Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461, 14469, para. 17 (2000) (*BDP Forfeiture Order*); *USTLD NAL*, 29 FCC Rcd at 825–26, para. 7; *CTI NAL*, 28 FCC Rcd at 17198–99, para. 7; *Advantage Telecomms., Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6849, para. 16 (2013) (*Advantage NAL*); *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16502, para. 9 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16491, para. 7 (2012) (*Preferred NAL*); *Silv Commc’n Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180–82, paras. 5–7 (2010) (*Silv NAL*).

<sup>24</sup> Complaint from D. Honnas. According to Central, the Company sent Ms. Honnas separate bills on Apr. 4, 2013 and May 6, 2013. See Letter from Central to Better Business Bureau of Southern Colorado (June 3, 2013).

new terms and conditions so I did[,] thinking it was AT&T. . . . I have two cell phones so I do not even use my home phone for long distance.”<sup>25</sup>

Other complainants described similar instances of misrepresentation.<sup>26</sup>

9. Central’s actions were apparently unlawful not only because of this deceptive marketing, but also because its third party verification recordings failed to satisfy the Commission’s rules.<sup>27</sup> Section 64.1120(c)(3) of the Commission’s rules requires, *inter alia*, that a verifier’s description of the carrier change not be misleading.<sup>28</sup> As consumers repeatedly described, however, Central’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. Changing service is not equivalent to a carrier change and Central’s statements suggesting that it was seeking verification only for a change in “service” were misleading and in violation of Section 64.1120(c)(3).<sup>29</sup> Central’s verifiers state that “[t]he reason we are speaking to you is to confirm the change in long distance service to Central Telecom Long Distance, Inc. as your long distance carrier.”<sup>30</sup> The consumers heard the verifiers confirming a change in “service” after Central’s telemarketers had just told them that they were calling on behalf of the consumer’s existing carrier, and merely attempting to change the existing service—but not the carrier. The statement reinforces the overall impression that the

<sup>25</sup> Complaint from B. Millard.

<sup>26</sup> See, e.g., Complaint from K. [REDACTED] (“[REDACTED]”); Complaint from K. Josephsen (“Back in September [2013] USBI called . . . and claimed that they were with CenturyLink.”); Complaint from M. Thompson (“received a call stating that they were Verizon. . . . Then she received a bill showing charges from U.S.B.I. and Central. . . . Verizon [told] her that they did not call her and that they would see that this was cancelled. However, she is still getting billed.”). See also two recent complaints not included in the Appendix because the consumers were not billed by Central: Complaint from P. Dunn (telemarketer “told me [that Central Telecom] was the name of the program within AT&T that was lowering the bill”); Complaint from J. Friend (telemarketer called and claimed “to be the long-distance provider for our local phone company, CenturyLink”).

<sup>27</sup> The Consumer & Governmental Affairs Bureau (CGB) recently issued orders granting informal complaints filed against Central. See *Central Telecom Long Distance, Inc.; Complaint Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, DA 14-573 (CGB rel. Apr. 30, 2014) (granting one complaint); *Central Telecom Long Distance, Inc.; Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 28 FCC Rcd 16653 (CGB 2013) (granting two complaints); *Central Telecom Long Distance, Inc.; Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 28 FCC Rcd 13353 (CGB 2013) (granting two complaints); *Central Telecom Long Distance, Inc.; Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 9276 (CGB 2013) (granting one complaint); *Central Telecom Long Distance, Inc.; Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 28 FCC Rcd 6537 (CGB 2013) (granting two complaints); *Central Telecom Long Distance, Inc.; Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 6241 (CGB 2013) (granting one complaint). These complaints were all granted for the same reason we discuss herein: the verification must elicit, among other things, confirmation that the person on the call is “authorized to make the carrier change”; however, in each case, the verifier instead asks the person on the call “do you have the authority to make changes to your long distance service?”

<sup>28</sup> 47 C.F.R. § 64.1120(c)(3).

<sup>29</sup> See *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (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.*” (emphasis in original)).

<sup>30</sup> See, e.g., TPV transcript attached to Complaint from J. Hudson. Simply tacking on the words “as your long distance carrier” does not change the fact that the verifier stated that the purpose of the call was to change “service.”

call does not relate to a carrier change. And because the consumers had not yet agreed to changes in their carrier, there was no change to “confirm.”

10. 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 ‘upgrade’ to existing service or in other ways that obscure the true purpose.”<sup>31</sup> 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.<sup>32</sup>

11. Moreover, under Section 64.1120(c)(3), carriers using third party verification may not submit a carrier change request 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.<sup>33</sup> The TPV recordings demonstrate, however, that the third party verifier did not meet these requirements. In most cases the verifiers asked the person on the call, “Do you have the authority to make changes to your long distance service?”<sup>34</sup> However, the verifiers did not confirm that the consumers both understood that they were authorizing a carrier change and wanted to do so. As discussed above, a switch from one carrier to another differs greatly from merely making changes to the customer’s existing service with its current carrier.

12. In its LOI Response, Central explained that it “has a policy that requires its sales representatives not to mention the name of any carrier other than [Central] in making telemarketing calls to potential customers”<sup>35</sup> and that it “has a quality assurance program in which it randomly monitors sales representatives, and has not found any sales representatives to violate [Central’s] policy of not mentioning the name of a telecommunications carrier other than [Central].”<sup>36</sup> Central admitted in its LOI Response that it knew consumers had stated “that they believed [Central’s] sales representatives were selling the services of other telecommunications [companies] such as AT&T and Verizon.”<sup>37</sup> Central, however, denied that it had any “specific complaints” and characterized the complaints as consumer “comments.”<sup>38</sup>

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<sup>31</sup> *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)).

<sup>32</sup> See *Silv NAL*, 25 FCC Rcd at 5184, para. 12.

<sup>33</sup> 47 C.F.R. § 64.1120(c)(3)(iii).

<sup>34</sup> See, e.g., TPV transcript attached to Complaint from J. Hudson.

<sup>35</sup> LOI Response at 8. Central also stated that in addition to the policy prohibiting sales representatives from mentioning other carriers, “it would be impossible for [the telemarketers] to name any particular long distance or local exchange carrier in their national sales presentations.” See Central’s response to the Complaint from P. Dunn (Complaint not included in the Appendix). We reject Central’s claim. Central never explains why it would be impossible and the complaints described above provide evidence that the telemarketers in fact mentioned the names of consumers’ existing carriers. Further, Bureau staff has confirmed that an internet search of the telephone number will often identify the subscriber’s carrier.

<sup>36</sup> LOI Response at 8. Central states that it “uses its own telemarketers.” *Id.* at 4.

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.* 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 party verification

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13. Based on the evidence from the investigation and the analysis above, we conclude that, within the last twelve months, Central 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 on at least three occasions.<sup>39</sup> We further conclude that Central knew that 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 Central liable for the acts of its telemarketers and accordingly find that Central is apparently liable for deceptive marketing practices in violation of Section 201(b) of the Act.<sup>40</sup>

**B. Central Apparently Placed Unauthorized Charges on Consumers' Telephone Bills ("Cramming")**

14. Central also apparently violated Section 201(b) of the Act by placing unauthorized charges on the consumers' telephone bills, in some cases multiple times.<sup>41</sup> 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).<sup>42</sup> 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.<sup>43</sup> 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.

15. The following are examples of consumers who complained that Central billed them for service they did not authorize. These complaints arose from Central's failed attempt to change the consumer's long distance service provider (e.g., the consumer had a PIC freeze preventing the switch). Central subsequently billed the consumer for its service on the pretext that regardless of whether the switch took place, the consumer had “authorized” the service. Like the consumers whose carrier Central did switch, many of these “crammed” consumers state that initially Central tricked them into believing the

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recording of the consumer's authorization. *See, e.g.*, Letter from Central to John Wilson, Deputy District Attorney (Sept. 6, 2013) regarding the Complaint from A. Stanley.

<sup>39</sup> As noted above, Central and BDP recently informed the Commission of a “planned transfer of [Central] customers to BDP . . . on or after March 3, 2014.” *See supra* para. 4. Central, CTI, and USTLD similarly have informed the Commission of planned transfers of CTI's and USTLD's customer bases to Central. BDP, CTI, and USTLD have all been the subject of prior Commission enforcement action for conduct similar to that involved here. *See supra* notes 4, 23. Craig Konrad owns BDP, as well as DIS, the company that manages the day-to-day operation of Central, CTI, and USTLD. *See supra* para. 2 and note 5. None of the planned transfers may occur without prior application to, and approval by, the Commission. 47 C.F.R. § 63.24. There is no evidence that Central, CTI, or USTLD has filed any application seeking Commission approval for the transfers. If Central, CTI, and USTLD proceed, or have already proceeded, with any of the planned transfers, they have violated the Commission's rules.

<sup>40</sup> 47 U.S.C. § 217. Although we find that Central 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 apparently deceptive marketing practices of the third party telemarketers).

<sup>41</sup> Central's process for billing consumers for its services generally involves three parties: Central; its billing aggregator, Billing Services Group (BSG or USBI); and the LEC that issues the consumer's bill. LOI Response at 4. Central obtains information on its customers' usage from its underlying carriers, Global Crossing Telecommunications, Inc. (Global Crossing) and CenturyLink. *Id.*

<sup>42</sup> *See Long Distance Direct, Inc., Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that the company's practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

<sup>43</sup> *See Advantage NAL*, 28 FCC Rcd at 6850, para. 17.



Telecom both charged me for long distance. I want USBI and Central to stop charging me. . . . I do not know who they are or why these companies are charging me.”<sup>51</sup>

Numerous other complainants shared similar stories of discovering charges from Central on their local telephone bills or on bills sent to them directly by Central for long distance service that they assert they did not authorize and that Central did not provide.<sup>52</sup>

16. In other cases, consumers contend that Central 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 Central—often many months after they cancelled the Central “service.” These incidents of apparent cramming are reflected in numerous complaints. For example:

- Complainant Trembley explained: “When I converted to U-Verse VOIP in October of 2012, Central Telecom mailed me a bill. . . . I called them and requested to cancel their service entirely. They required a final payment of \$7.05 to cancel their service, which I paid by check on Dec. 8, 2012. On May 28, 2013 I just received a letter from Central Telecom saying I still owe them 7.06 and they will turn it over to a collection agency if I don’t pay it. I do not use or want their service. If I ever make a long distance call it will be thru AT&T U-Verse.”<sup>53</sup>
- Complainant George explains: “I changed carriers [and telephone numbers] on May 9, 2013. I [was billed by Central for “service”] on May 23, June 20, July 22 and today on August 20<sup>th</sup>. . . . The phone number I am being billed for is no longer in service, therefore there is no service being provided.”<sup>54</sup> Despite the fact that Mr. George’s number was no longer in service as of May 9, 2013, Central continued to bill him monthly for the universal service fund, as well as a “bill statement fee,” a “carrier cost recovery fee,” and a “network access fee.” Mr. George explained that when he received the bills for Central’s “service” for the number he no longer had, he complained to CenturyLink and “through the billing cycles of May, June and July I was advised that the charge was incorrect and would be adjusted.”<sup>55</sup>
- Complainant Moore stated that she had never agreed to Central’s service; when the telemarketer called “I hung up on them because I was not interested in having long distance because I use my cell phone when I have to make long distance calls.”<sup>56</sup>

<sup>51</sup> Complaint from J. Richards. USBI is the billing aggregator for Central. *See supra* note 41.

<sup>52</sup> *See, e.g.*, Complaint from R. Balain (after canceling his landline service, “received a long distance bill from [Central] . . . [although he] did not sign up with this carrier. [He] contacted [Central] and explained that he did not sign up with [them]. He requested carrier stop sending bills but has received another bill in January.”); Complaint from L. [REDACTED] (“[REDACTED]”); Complaint from C. [REDACTED] (“[REDACTED]”); Complaint from

F. [REDACTED] (“[REDACTED]”); Complaint from

[REDACTED] (“[REDACTED]”); Complaint from B. [REDACTED] (“[REDACTED]”); Complaint from J. Roberson (charged by USBI and Central Telecom “for Long Distance Service already provided by Century Link as Unlimited National Long Distance Service. Tried to dispute with USBI and they said that Century Link did not provide Long Distance Service.”).

<sup>53</sup> Complaint from A. Trembley.

<sup>54</sup> Complaint from D. George.

<sup>55</sup> *Id.*

<sup>56</sup> Complaint from C. Moore.

Nevertheless, Ms. Moore was billed by Central. She called Central to complain and was told that after she paid the July 19, 2013 charges (which she paid) there would be no further charges from Central. On August 19, 2013, Central billed her again.

- Complainant Presley explains: “I did not order their service. I have been receiving bills. I called on the first bill to cancel. They said I would be billed nothing. Now I have my 4<sup>th</sup> bill of \$16.28. I do not know why I am still receiving bills. . . . They said it was cancelled with no charge.”<sup>57</sup>
- Complainant Rule was slammed in May 2013. Then, “[in] July, I called AT&T [and] got back their LD service. . . . Central Telecom [is] still billing me. . . . Got 3 more bills.”<sup>58</sup>

17. In response to these consumer complaints, Central defends its actions by first asserting that it provides a “bundled plan” of service which, in addition to 1+ dialing long distance service, includes “casual calling or dial-around (10-444) service, travel card services and certain number free directory assistance.”<sup>59</sup> Central claims that when consumers agreed to its service (allegedly during the telemarketing calls) they authorized Central to change their preferred carrier and to charge them for its entire bundle of services, not simply its 1+ dialing long distance service.<sup>60</sup> Central then points to the TPV recordings during which the consumer allegedly verified his or her authorization to change carriers, and argues that the recordings also establish that the consumer authorized Central’s entire bundle of services.<sup>61</sup>

18. We disagree with Central that the TPV recordings demonstrate the complainants’ authorization to be charged for all of Central’s products and services. Nothing in the recordings Central provided during the investigation suggests that the consumers agreed to Central’s “bundled package” of services. In fact, nothing in the recordings suggests that consumers were even aware that Central offered a bundled package of services. The script used by Central’s third party verifier contains no information about a bundled package of services and makes no mention of any other service such as a travel card or directory assistance. Finally, there is nothing in Central’s bills (neither those issued by the LEC nor those issued by Central directly) that reflects charges for a “bundled service.”<sup>62</sup> Without any evidence to refute complainants’ assertions that they did not authorize Central’s bundle of services—including, for instance, evidence that they used Central’s travel card or directory assistance service—we conclude that Central did not have complainants’ authorization to charge them for *any* services.

19. Central also argues that in order for consumers to “cancel” all of its services and stop Central from continuing to charge them, they must contact Central directly.<sup>63</sup> Otherwise, according to Central, it bills the consumer monthly fees regardless of whether the consumer is placed on its network or subsequently cancels long distance service. Central’s position seems to be that as a non-facilities-based

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<sup>57</sup> Complaint from K. Presley.

<sup>58</sup> Complaint from J. Rule.

<sup>59</sup> LOI Response at 2.

<sup>60</sup> Central explains that “if the prospective customer agrees to select [Central’s] bundled services plan, the telemarketer then switches the call to [Central’s] independent third party verifier, United Verifications, Inc. (‘UVI’) for verification of the customer’s agreement to select [Central’s] bundled service plan.” *Id.* at 5.

<sup>61</sup> *Id.*

<sup>62</sup> See direct bills sent to Complainants J. Hudson, C. [REDACTED], A. Stanley, A. Trembley. The direct bills list “Long Distance Charges” or “Adjusted Long Distance Charges.”

<sup>63</sup> Central states that “[i]n order to cancel service correctly with Central Telecom the customer must contact Central Telecom customer service directly. That is why these procedures are clearly outlined in the General Service Agreement that was mailed to the customer as well as the Company’s Public Disclosure Document.” See, e.g., Central’s response to Complaint from S. Bingham; Central’s response to Complaint from D. Homnas.

switchless reseller of telecommunications services, it “does not receive the pic’d one plus dial notification from the local phone company”<sup>64</sup> and therefore does not know if and when a consumer is placed on its network by Central’s underlying carrier or when a consumer is deactivated from Central’s network after contacting his or her LEC to cancel Central’s services.<sup>65</sup> Central also states that it does not have information indicating when a customer is switched away from Central to another long distance service provider except “when a customer’s service has been cancelled through Central directly.”<sup>66</sup>

20. As an initial matter, the record shows that complainants did not sign up for Central’s services; therefore, Central cannot reasonably expect them to “cancel” a service they never ordered in the first place. Also, the consumers’ LEC telephone bills instruct subscribers to contact the LEC with any “[q]uestions about your bill or service.”<sup>67</sup> It is therefore entirely reasonable that consumers would contact their LEC, which in many cases sent the telephone bill with Central’s charges, with any questions or complaints about the bill. This is in fact what most of the complainants did when they discovered the Central charges. Nevertheless, Central began to direct bill the consumers after the LEC credited the charges. Central cannot claim that it was not on notice that the consumer had complained to the LEC about the unauthorized Central charges when it subsequently resorted to direct billing due to the consumer complaints. Finally, the record further refutes Central’s assertions because it shows that Central receives the relevant information from its underlying carriers.<sup>68</sup> Central cannot simply ignore the customer information provided by its wholesale carriers and continue to bill consumers for unauthorized charges.

21. In sum, the record shows that Central charged consumers for service, in some cases multiple times, after it was on notice that certain consumers had not been activated on Central’s account or that other consumers had “cancelled” Central’s service. There is no evidence suggesting that consumers were ever aware of or had authorized any of Central’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. We therefore find that, within the last twelve months, Central apparently placed charges on 28 consumers’ local telephone bills or billed them directly for service without the consumers’ authorization. Accordingly, we find that Central 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. Central Apparently Violated the Commission’s Truth-in-Billing Rules**

22. We also find that Central apparently violated Section 64.2401 of the Commission’s

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<sup>64</sup> A PIC (preferred or presubscribed interexchange carrier) is the long distance carrier to which a subscriber’s calls are routed by default. A subscriber can choose to use a different interexchange carrier by first dialing 101 and a four-digit carrier identification code.

<sup>65</sup> See, e.g., Central’s response to Complaint from S. Bingham; Central’s response to Complaint from D. Honnas. Central states that “Global Crossing and CenturyLink send [Central] traffic on a customer’s [billing telephone number], which then [Central] rates and sends to its billing aggregator, Billing Services Group (‘BSG’) to aggregate its billing and send billing to the applicable LEC for billing [Central’s] charges to the end user.” LOI Response at 4.

<sup>66</sup> See *supra* note 63.

<sup>67</sup> See Verizon bill attached to Complaint from J. Hudson. See also AT&T bill attached to Complaint from F. [REDACTED] (under “Billing Summary” there are instructions to “Visit att.com/billing” with “Billing Questions” as well as toll free numbers to call with billing questions).

<sup>68</sup> See LOI Response at 4 (stating that Central gathers information on the customers’ usage for billing purposes); see also *Office of Consumer Advocate v. Consumer Telcom, Inc.*, State of Iowa Department of Commerce Utilities Board, Docket No. FCU-2012-0011c (FCU-2012-0001, FCU-2012-0007), Global Crossing Telecommunications, Inc., Direct Testimony of Diane L. Peters (Feb. 25, 2013) (explaining the Global Crossing procedure for providing end-user information to resellers).

“truth-in-billing” rules in the bills that it sent directly to consumers.<sup>69</sup> 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 . . . .”<sup>70</sup> The purpose of the truth-in-billing rules is “to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service.”<sup>71</sup> 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.”<sup>72</sup>

23. We conclude that the bills Central issues to customers directly are neither sufficiently clear nor specific enough to aid customers in assessing their bills.<sup>73</sup> The bills are not dated, include no payment due date, and lack a brief, clear, and non-misleading description of the service or services rendered. They include a line item charge for “Long Distance Charges” or “Adjusted Long Distance Charges,” but do not specify what is included in that amount or what period of time the alleged charge covers. For instance, the bills do not identify any long distance calls made (no numbers called, dates, or length of such calls) and do not list any monthly fees or taxes;<sup>74</sup> they are thus not sufficiently detailed to support Central’s assertion that it charges customers a per-minute rate for long distance calls as well as monthly fees and charges.<sup>75</sup> They also fail to identify any services that Central claims are part of its bundled package of services or otherwise describe the charges as being for a bundled package of services. These omissions are striking given Central’s insistence that when consumers “authorize” its service, they “authorize” a bundle of services—services that appear to have never been disclosed or explained to them. Accordingly, we find that, within the last twelve months, Central has apparently failed to clearly and plainly describe charges appearing on four telephone bills, in violation of Section 64.2401(b) of the Commission’s rules.

#### IV. PROPOSED FORFEITURE

24. 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.<sup>76</sup> Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for any violation by Central occurring before September 13, 2013, and \$160,000 for any violations occurring on or after that date.<sup>77</sup> In exercising our

<sup>69</sup> 47 C.F.R. § 64.2401. See *CTI NAL*, 28 FCC Rcd at 17206–07, paras. 23–24 (discussing apparent Section 64.2401 violations in that investigation); *USTLD NAL*, 29 FCC Rcd at 834–35, paras. 21–22 (same); *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (same).

<sup>70</sup> 47 C.F.R. § 64.2401(b).

<sup>71</sup> 47 C.F.R. § 64.2400(a).

<sup>72</sup> *Id.*

<sup>73</sup> See *USTLD NAL*, 29 FCC Rcd at 834–35, paras. 21–22; *CTI NAL*, 28 FCC Rcd at 17206–07, paras. 23–24; *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27.

<sup>74</sup> The bills issued by LECs on behalf of Central, unlike those issued directly by Central, are dated, itemize any long distance calls, and itemize Central’s charges for “Federal Universal Service Fund Fee,” “Carrier Assisted USF Recovery Fee,” and “LD Network Access Mnthly Charge.” See AT&T bill attached to Complaint from F. [REDACTED].

<sup>75</sup> See generally Central Telecom Long Distance, Inc., Telecommunications Service Guide, <http://www.centraltelsite.com/guide1.pdf> (last visited Mar. 18, 2014).

<sup>76</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>77</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990,

(continued....)

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.”<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup>

25. The Commission’s forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.<sup>81</sup> Although the guidelines provide no base forfeiture for cramming, the Commission has similarly established a \$40,000 base forfeiture for cramming violations.<sup>82</sup> Applying the \$40,000 base forfeiture for each of the three slamming violations<sup>83</sup> and each of the 28 cramming violations<sup>84</sup> that occurred within the last twelve months would result in a forfeiture of \$1,240,000.

(Continued from previous page)

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 violations took place. 28 U.S.C. § 2461 note (6).

<sup>78</sup> 47 U.S.C. § 503(b)(2)(E). *See 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*).

<sup>79</sup> 47 C.F.R. § 1.80(b)(8), Note.

<sup>80</sup> *Id.*

<sup>81</sup> *See* 47 C.F.R. § 1.80, Appendix A, Section I.

<sup>82</sup> *See LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for cramming imposed by the Commission in the forfeiture order).

<sup>83</sup> 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) (“[n]o 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 6855–57, paras. 29–32, we do not propose a forfeiture for a slamming violation under Section 258 of the Act when Central 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.

<sup>84</sup> 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 CTI NAL*, 28 FCC Rcd at 17208, para. 26 (citing *NOS Commnc’ns, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001)). 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.

26. 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 recent *CTI NAL*, *USTLD NAL*, and *Advantage NAL*, the Commission proposed to triple the base forfeiture amount of \$40,000 in those instances of slamming or cramming when the carrier also engaged in deceptive marketing.<sup>85</sup> Central'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 Central 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. In addition, one consumer contended that the TPV recording appeared to be fabricated.<sup>86</sup> Central appears to have engaged in deception repeatedly and over a long period of time.<sup>87</sup> Consistent with past cramming and slamming cases involving deception,<sup>88</sup> we propose to triple the base forfeiture of \$40,000 for each of the seven especially egregious violations at issue in this NAL—the crams and slams involving misrepresentation—making the penalty for each such violation \$120,000. This adjustment increases the forfeiture amount by \$560,000.

27. There is no base forfeiture amount for violations of the Commission's truth-in-billing rules. In the recent *CTI NAL*, *USTLD NAL*, and *Advantage NAL*, we proposed a \$40,000 forfeiture penalty for each telephone bill in violation of our truth-in-billing rules that these companies sent to consumers within the year preceding the NAL that the Bureau had an opportunity to review individually.<sup>89</sup> 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 case.”<sup>90</sup> Given that Advantage, CTI, USTLD, and Central have engaged in similar violations—slamming and cramming achieved through deceiving consumers—we take the same approach in these cases and propose a \$40,000 forfeiture for each of the four bills that Central sent to complainants within the past twelve months that the Bureau had an opportunity to review. The forfeiture we propose for Central's truth-in-billing violations is \$160,000.<sup>91</sup>

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<sup>85</sup> See *USTLD NAL*, 29 FCC Rcd at 836, para. 25; *CTI NAL*, 28 FCC Rcd at 17208, para. 27; *Advantage NAL*, 28 FCC Rcd at 6855–56, para. 30; see also *United NAL*, 27 FCC Rcd at 16506–07, para. 18; *Preferred NAL*, 27 FCC Rcd at 16495, para. 15.

<sup>86</sup> See Complaint from J. Richards (“They played a tape for me and it was a dubbed tape and it was doctored up.”); see also Complaint from J. Hyde (not included in the Appendix) (despite the fact that her mother had told the telemarketer that Ms. Hyde was responsible for the telephone account, Central switched Ms. Hyde's long distance service based on a TPV of her mother where, according to Ms. Hyde, “they took a recording of her answering ‘yes’ to another question and copied it multiple times in the playback of the recording I heard”); Complaint from M. Mendez (Central refused to allow her to listen to the TPV when she called, telling her “that she cannot do that since it was recorded for quality purposes only”); Complaint from R. Pena (not included in the Appendix) (“the voice was not mine and it sounded as if it was pieced together”); Complaint from D. Cunningham (not included in the Appendix) (“I was told [the TPV] was the ‘property of the verification company’ and not available to me but would be provided to the BBB upon request.”).

<sup>87</sup> We also note that these misrepresentations started long before the time period covered by this NAL. See, e.g., Complaint from A. Henderson (“I was called by this company [on July 16, 2012] and they said they were an affiliate of AT&T”); Complaint from R. Hukill (“This company [called on Sept. 14, 2011 and] said that they were with CenturyLink . . . they were working with CenturyLink to help low usage people like us save money.”).

<sup>88</sup> See *USTLD NAL*, 29 FCC Rcd at 836, para. 25; *CTI NAL*, 28 FCC Rcd at 17208, para. 27; *Advantage NAL*, 28 FCC Rcd at 6855–56, para. 30.

<sup>89</sup> See *CTI NAL*, 28 FCC Rcd at 17208–09, para. 28; *USTLD NAL*, 29 FCC Rcd at 386–37, para. 26; *Advantage NAL*, 28 FCC Rcd at 6856–57, paras. 31–32.

<sup>90</sup> *Advantage NAL*, 28 FCC Rcd at 6856–57, para. 31. See *CTI NAL*, 28 FCC Rcd at 17208–09, para. 28; *USTLD NAL*, 29 FCC Rcd at 836–37, para. 26.

<sup>91</sup> The Appendix identifies the four consumer invoices that form the basis for assessing this part of the forfeiture.

28. 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.”<sup>92</sup> 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.”<sup>93</sup> Moreover, Central apparently engaged in slamming and cramming repeatedly, including placing unauthorized charges on consumers’ telephone bills multiple times. The Bureau reviewed over 100 consumer complaints during the course of this investigation. Under Section 503 of the Act and our forfeiture guidelines, we must take into account the egregious and repeated nature of Central’s actions and, pursuant to our prior warning to carriers, upwardly adjust the forfeitures for both slamming and cramming.<sup>94</sup> Given the egregious circumstances here and the extent of Central’s improper conduct and misrepresentation to the American public, all in the face of 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.<sup>95</sup>

29. As noted above, the Commission may at its discretion upwardly adjust a forfeiture for violations that cause substantial harm to the public.<sup>96</sup> Central’s actions caused substantial frustration and inconvenience to consumers, in addition to economic harm.<sup>97</sup> Based on the number of complaints alleging misrepresentation, and the allegations of fabricated TPV recordings, it appears that Central’s business model is to deceive and confuse consumers. Indeed, the record suggests that, at least in some instances, Central and its telemarketers and third party verifiers deliberately exploited elderly or disabled consumers’ obvious confusion and inability to understand the sales pitch they heard and the questions they were asked.<sup>98</sup> As Complainant [REDACTED] explained, after discovering unauthorized charges by Central as well as two other carriers on his AT&T bill, all billed by USBI:

[REDACTED]

<sup>92</sup> See *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

<sup>93</sup> *Main Street Tel. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8861, para. 24 (2011) (*Main Street NAL*). See *VoiceNet Tel., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, 8882, para. 24 (2011); *Cheap2Dial Tel. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8872, para. 25 (2011); *Norristown Tel. Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, 8851, para. 23 (2011).

<sup>94</sup> 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 *CCN, Inc.*, Order, 13 FCC Rcd 13599 (1998) (revoking a company’s operating authority under Section 214 for repeatedly slamming consumers).

<sup>95</sup> See *USTLD NAL*, 29 FCC Rcd at 837, para. 27; *CTI NAL*, 28 FCC Rcd at 17209, para. 29.

<sup>96</sup> 47 C.F.R. § 1.80(b)(8), Note.

<sup>97</sup> See, e.g., Complaint from L. DeRoin (“I did not authorize this company to be my long distance carrier. . . . I tried to call Central Telecom and there is no answer.”); Complaint from T. Menzer (“When I told [the Central customer service representative] I was going to complain he said he would retract his promise to stop future bills.”); Complaint from M. and D. [REDACTED] ( [REDACTED] ).

<sup>98</sup> For an explanation of how the elderly are victimized by the fraud industry, see David Kirkman, *Fraud, Vulnerability, and Aging—When Criminals Gang Up on Mom and Dad*, 18 N.C. State Bar J. 14, at 14 (Winter 2013).

30. The record reflects that Central apparently took advantage of additional senior citizens and disabled persons who did not intend to sign up for its service.<sup>100</sup> In addition, numerous complaints filed by children and grandchildren of elderly consumers that are not included in the Appendix<sup>101</sup> demonstrate Central's targeting of the elderly over a significant time period.<sup>102</sup> This behavior is

<sup>99</sup> Complaint from F. [REDACTED].

<sup>100</sup> See, e.g., Complaint from S. Bingham (elderly grandmother was billed by Central; they continued to bill her months after she died and the telephone was disconnected); Complaint from C. Elliott ("Central Telecom LD/USBI has been placing unauthorized charges for a long distance service on her Verizon local telephone bill. . . . [She is on a] fixed income."); B. Millard (Central posed as AT&T to trick her into subscribing to their service); Complaint from J. Walker (husband, who has Alzheimer's, "accepted" the service.).

<sup>101</sup> See *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 Rcd 9669, 9671-72, 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)).

<sup>102</sup> Appendix A sets forth complaints alleging apparent violations that occurred within the last twelve months. While Section 503(b)(6) of the Act, as a general rule, prohibits the Commission from assessing a forfeiture for apparent violations of common carriers that occurred more than a year ago, the Commission may consider such violations when determining the forfeiture to impose for apparent violations that occurred within the past twelve months. See, e.g., *CTI NAL*, 28 FCC Rcd at 17199-17200, note 26. The Commission has reviewed complaints filed by relatives of elderly consumers alleging that apparent violations occurred more than one year ago. See, e.g., Complaint from D. Cunningham (On Sept. 27, 2012, Central's "telemarketers called my 90 year old mom with obvious dementia and proceeded to sell her a long distance service. . . . even the USBI representative agreed that my 90 year old mom probably did not know what she was agreeing to"); Complaint from J. Darden ("Mr. Darden (my father) was defrauded by coercion and prompted into a situation that made his financial life turmoil. . . . He has dementia and is hard of hearing in his left ear."); Complaint from C. Degerlia ("My elderly uncle (Age 88) . . . does not remember details clearly, is easily influenced, [and] his ability is impaired. . . . [Central] is preying on older individuals who are easily confused by their approach. . . . Any reputable firm would have refunded the money and closed the case, but I guess that explains it all."); Complaint from H. Edwards ("Central . . . called my elderly mother and said that . . . she had been with them for many years. My mother is with CenturyLink and assumed that is who was calling."); Complaint from R. Gillespie ("When I explained to the Central Telecom service rep that to sell an additional, overlapping service to an obviously confused 93-year-old woman was unethical if not illegal, they still refused to drop the charges."); Complaint from E. Johnson ("I recently moved my 96 year old grandmother into an assisted living facility . . . She has advanced dementia. . . . Someone called my . . . grandmother . . . and she agreed supposedly [to subscribe to Central's service] . . . . It was very obvious my grandmother was confused and did not understand why this company was calling her."); Complaint from M. Johnston (elderly relative "did not understand what the caller was telling her, . . . [she] gave her age incorrectly, her answers were not always appropriate to the questions. . . . I am concerned over their practice of cold calls especially with regard to the elderly"); Complaint from T. Lambert (Central "called my elderly parents and spoke with my 87 year old father who has dementia"); Complaint from G. Miller ("My 89 year old mother is in a nursing home. . . . [Central] called her . . . she had no idea what they were talking about and she answered yes."); Complaint from D. O'Day ("My mother is an 82 year old slightly confused person. . . . This is a scam to take advantage of the elderly and it is very offensive!"); Complaint from S. [REDACTED] ("[REDACTED]"); Complaint from D. Rehmus ("USBI slammed my telephone number by reaching my 85 year old father in law . . . . My father in law was obviously confused by the sales call. [On the TPV] he couldn't verify the [current telephone] company, his own name, or what was going on."); Complaint from T. Struble ("[Central] contacted my 89 year old mother in a nursing home and changed her long distance provider."); Complaint from J. Whaley (long distance service changed (continued....))

particularly egregious. For these reasons, we find that Central caused substantial consumer harm and propose an upward adjustment of \$500,000.

31. Accordingly, the total forfeiture we propose for Central's conduct is three million nine hundred sixty thousand dollars (\$3,960,000).

## V. CONCLUSION

32. Based on the facts and record before us, we have determined that Central has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act, and Sections 64.1120 and 64.2401(b) of the Commission's rules.

## VI. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>103</sup> and Section 1.80 of the Commission's rules,<sup>104</sup> that Central Telecom Long Distance, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of three million nine hundred sixty thousand dollars (\$3,960,000) for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended,<sup>105</sup> and Sections 64.1120 and 64.2401(b) of the Commission's rules.<sup>106</sup>

34. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,<sup>107</sup> within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Central Telecom 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.

35. 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. Central Telecom 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.<sup>108</sup> 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 Central Telecom Long Distance, 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

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to Central for his sister who "is deaf and can only hear on the phone with a special device and even then she does not understand what is being said. . . . [After we complained, Central] called and played a recording and the person that made the change in the long distance plan was . . . an elderly lady that is deaf and lives in the same house. In the recording [she] said several times that she could not hear what was being said").

<sup>103</sup> 47 U.S.C. § 503(b).

<sup>104</sup> 47 C.F.R. § 1.80.

<sup>105</sup> 47 U.S.C. §§ 201(b), 258.

<sup>106</sup> 47 C.F.R. §§ 64.1120, 64.2401(b).

<sup>107</sup> 47 C.F.R. § 1.80.

<sup>108</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 12<sup>th</sup> Street, SW, Room 1-A625, Washington, DC 20554.<sup>109</sup> If Central has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

36. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> 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 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

37. 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.

38. **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 Michael L. Glaser, attorney for Central Telecom Long Distance, Inc., 1720 S. Bellaire St., Suite 607, Denver, CO 80222.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>109</sup> See 47 C.F.R. § 1.1914.

## APPENDIX

	Complainant	Carrier change date or billing date	Violation(s)
1.	D. Honnas	5/6/13	Section 201(b) misrepresentation; Section 201(b) cram
2.	S. Bingham/N. Berrett	5/10/13	Section 201(b) cram
3.	A. Stanley	5/16/13	Section 201(b) misrepresentation; Section 201(b) cram; Section 64.2401(b) Truth-In-Billing
4.	C. Moore	5/17/13	Section 258 slam
5.	D. George	5/23/13	Section 201(b) cram
6.	F. █████	5/25/13	Section 201(b) cram
7.	A. Trembley	5/28/13	Section 201(b) cram; Section 64.2401(b) Truth-In-Billing
8.	K. Presley	5/28/13	Section 201(b) cram
9.	B. Millard	6/11/13	Section 201(b) misrepresentation; Section 201(b) cram
10.	K. █████	6/12/13	Section 201(b) misrepresentation; Section 258 slam
11.	G. Seidman	6/26/13	Section 201(b) cram
12.	J. Walker	6/30/13	Section 201(b) cram
13.	C. █████	7/12/13	Section 201(b) cram; Section 64.2401(b) Truth-In-Billing
14.	M. Mendez	7/24/13	Section 201(b) cram
15.	C. Elliott	7/28/13	Section 201(b) cram
16.	J. Hudson	8/19/13	Section 201(b) cram; Section 64.2401(b) Truth-In-Billing
17.	J. Coulter	8/28/13	Section 201(b) cram
18.	J. Rule	9/1/13	Section 201(b) cram
19.	B. █████	9/4/13	Section 201(b) cram
20.	J. Richards	9/10/13	Section 201(b) cram; Section 201(b)

			misrepresentation— fabricated TPV
21.	B. [REDACTED]	9/13/13	Section 201(b) cram
22.	K. Josephsen	9/16/13	Section 201(b) misrepresentation; Section 201(b) cram
23.	M. & D. [REDACTED]	9/28/13	Section 201(b) cram
24.	D. Watkins	10/1/13	Section 201(b) cram
25.	C. Smith	10/22/13	Section 201(b) cram
26.	T. Menzer	10/23/13	Section 201(b) cram
27.	L. [REDACTED]	11/1/13	Section 201(b) cram
28.	R. Balain	12/3/13	Section 201(b) cram
29.	L. DeRoin	1/2/14	Section 258 slam
30.	J. Roberson	4/14/14	Section 201(b) cram
31.	M. Thompson	4/15/14	Section 201(b) misrepresentation; Section 201(b) cram