

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. ENF-95-17
TELCAM, Telecommunications Company)	
of the Americas, Inc.)	NAL/Acct. No. 516EF0006
)	
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 6, 1995

Released: October 6, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against TELCAM, Telecommunications Company of the Americas, Inc. ("TELCAM").¹ For the reasons discussed below, we find that TELCAM willfully violated Commission rules and orders² by changing the primary interexchange carrier ("PIC") designated by Mr. Jimmy D. Coleman ("Coleman") of Houston, Texas, without Coleman's authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that TELCAM is apparently liable for a forfeiture in the amount of forty thousand dollars (\$40,000).

¹ TELCAM, Telecommunications Company of the Americas, Inc., is a Texas corporation located at 901 Rosenberg, Galveston, Texas, 77550. Mr. Jim Edwards is President and Chief Operating Officer.

² 47 C.F.R. § 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (Allocation Order); recon. denied, 102 FCC 2d 503 (1985) (Reconsideration Order); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (Waiver Order).

II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS

2. In its Allocation Order and subsequent Reconsideration Order and Waiver Order,³ the Commission set forth rules and procedures for implementing equal access⁴ and customer presubscription⁵ to an interexchange carrier ("IXC").⁶ The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.⁷ After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission later modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."⁸ In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes.⁹ Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization

³ See supra proceedings cited at note 2.

⁴ Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. United States v. American Tel. & Tel., 552 F. Supp. 131, 227 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (Modification of Final Judgement or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." Allocation Order, 101 FCC 2d at 911.

⁵ Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). Allocation Order, 101 FCC 2d at 911, 928. Thus, when a customer dials "1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). Id. at 911.

⁶ Pursuant to the MFJ, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. Id.

⁷ An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. Allocation Order, 101 FCC 2d at 929.

⁸ Waiver Order, 101 FCC 2d at 942.

⁹ Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038-39 (1992) (PIC Change Order).

by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.¹⁰ Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.¹¹ The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.¹² The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written in clear and unambiguous language.¹³ The rules prohibit all "negative option" LOAs¹⁴ and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.¹⁵

III. THE COLEMAN COMPLAINT

4. On February 3, 1995, the Commission received a written complaint from Coleman alleging that TELCAM had converted his prescribed long distance service provider from Touch-1

¹⁰ See 47 C.F.R. § 64.1100; PIC Change Order, 7 FCC Rcd at 1045.

¹¹ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, FCC 95-225 (June 14, 1995) (LOA Order).

¹² See LOA Order, FCC 95-225 at para. 27. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. Id. at para. 25.

¹³ See id. at para. 10.

¹⁴ See id. at para. 11. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

¹⁵ See id. at para. 40.

Long Distance, Inc. ("Touch-1") to TELCAM without his authorization.¹⁶ Coleman states that when he received his October telephone bill and realized his long distance service had been switched, he contacted U. S. Billing ("USBI"), the billing agent for TELCAM.¹⁷ Coleman apparently then received a copy of the sweepstakes entry form that included an LOA purporting to bear his signature. According to Coleman, the signature on the sweepstakes entry form authorizing the change in his prescribed long distance service is not his. Attached to Coleman's complaint is his correspondence with TELCAM and a duplicate photocopy of his driver's license matching the copy he provided by facsimile transmission to TELCAM as verification that the signature on the sweepstakes entry form does not match his.¹⁸

5. The Common Carrier Bureau's Informal Complaints and Public Inquiries Branch ("Informal Complaints Branch") sent a letter to TELCAM directing it to provide specific information regarding the alleged conversion of Coleman's telephone service.¹⁹ The information that TELCAM provided in response to the staff's inquiry indicates that Coleman's service was switched to TELCAM on the basis of a sweepstakes entry form bearing the caption "Entry Blank and LD Application Benefitting Community-Based Charities" that was purportedly signed by Coleman.²⁰ In its response, TELCAM concedes that the signature on Coleman's driver's license does not match the signature on the TELCAM sweepstakes entry form relied upon by TELCAM to request the conversion of Coleman's PIC. TELCAM does not, however, provide any explanation of how the LOA was obtained or submitted, or why TELCAM accepted the LOA as verification of a PIC change request.²¹

IV. DISCUSSION

6. We have carefully evaluated the information submitted in connection with Coleman's informal complaint and conclude that TELCAM is apparently liable for forfeiture for willful violation of the Commission's rules and PIC change requirements. We find TELCAM's

¹⁶ Jimmy D. Coleman, Informal Complaint No. IC-95-08121.

¹⁷ Id.

¹⁸ Id.

¹⁹ Notice of Informal Complaint, June 12, 1995.

²⁰ TELCAM Response to Informal Complaint No. IC-95-08121, June 14, 1995. TELCAM's response includes a copy of the sweepstakes entry form allegedly signed by Coleman that TELCAM used to request a PIC change to Coleman's long distance service.

²¹ Id.

apparent actions particularly egregious. It appears that on or about October 10, 1994, TELCAM submitted a PIC change request to Southwestern Bell Telephone Company ("Southwestern Bell") based on an apparently forged LOA resulting in the conversion of Coleman's telephone service from Touch-1 to TELCAM. The statements and information provided by Coleman and TELCAM leave virtually no doubt that the LOA was not executed by the complainant and that TELCAM lacked the requisite authorization to request a PIC change to Coleman's long distance service. There is no similarity between the signature on Coleman's driver's license and his purported signature on the LOA form that TELCAM used as the basis for the PIC change submitted to Southwestern Bell. Under these circumstances, we conclude that TELCAM's apparent actions were in willful violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

7. As a general matter, the unauthorized conversion of a customer's presubscribed long distance carrier continues to be a wide-spread problem in the industry.²² We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs that turn out to be falsified or forged to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law to date has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to consumer complaints alleging slamming rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules and orders, we intend to scrutinize carefully consumer complaints and to take prompt enforcement action, including the imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized. If carriers intend to rely on a LOA to request a PIC change, they have the responsibility to make sure it is valid.

8. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$100,000) for each violation or each day of a continuing violation up to a statutory maximum of one million dollars (\$1,000,000) for a single act or failure to act.²³ In exercising such authority, the Commission is 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

²² From June of 1994 to June of 1995, of the 28,773 informal complaints filed, 7,960 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

²³ 47 U.S.C. § 503(b)(2)(B).

matters as justice may require."²⁴ For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of Coleman's telephone line as a single violation. After weighing the circumstances surrounding the violation, we find that TELCAM is apparently liable for a forfeiture of forty thousand dollars (\$40,000) for the unauthorized conversion of the Coleman line. TELCAM will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²⁵ In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.²⁶ We will give full consideration to any financial information provided by TELCAM before assessing a final forfeiture amount.

V. CONCLUSIONS AND ORDERING CLAUSES

9. We have carefully reviewed the information submitted in connection with Jimmy D. Coleman's informal complaint and conclude that on or about October 10, 1994, TELCAM apparently converted or caused a local exchange carrier to convert Coleman's telephone line without Coleman's authorization through the use of an apparently forged LOA. We further conclude that TELCAM thereby willfully violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of forty thousand dollars (\$40,000).

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of 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 TELCAM, Telecommunications Company of the Americas, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of forty thousand dollars

²⁴ Id. § 503(b)(2)(D).

²⁵ See id. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

²⁶ PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$5,000 and \$3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount (\$8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$395,469); see also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).