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

In the Matter of

File No. ENF-96-03
Nationwide Long Distance, Inc.
NAL/Acct. No. 616EF003
Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 19, 1996; Released: January 23, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Nationwide Long Distance, Inc. ("Nationwide").[1] For the reasons discussed below, we find that Nationwide apparently willfully or repeatedly violated Commission rules and orders[2] by changing the primary interexchange carrier ("PIC") designated by Ms. Paula Januszyk ("Januszyk") of Chicago, Illinois, and Ms. Christy Iraci ("Iraci") of Buffalo, New York, without Januszyk's or Iraci's authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that Nationwide is apparently liable for a forfeiture in the amount of eighty thousand dollars ($80,000).

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 access[4] and customer presubscription[5] 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 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 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, return 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

[1] Nationwide Long Distance, Inc. is located at 2550 Gray Falls Drive, Suite 333, Houston, Texas.

[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).*

[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).*

[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, 10 FCC Rcd 9560 (1995).

[12] *See id.* at 9574-75 Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the

in clear and unambiguous language.[13] The rules prohibit all "negative option" LOAs[14] and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.[15]

III. THE IRACI AND JANUSZYK COMPLAINTS

A. Iraci Complaint

4. On May 25, 1995, the Commission received correspondence from Iraci alleging that Nationwide had converted her prescribed long distance service provider from MCI Telecommunications Corporation ("MCI") to Nationwide without her authorization.[16] Iraci states that when she received her March 1994 telephone bill she discovered that her long distance service had been switched. In pursuing the reason for the switch, Iraci says that she eventually was put in contact with Nationwide. Nationwide apparently then informed Iraci that she had signed a contest entry form containing a LOA that authorized Nationwide to change Iraci's prescribed long distance service.[17] In a response to Iraci, Nationwide defended the validity of Iraci's signature on the LOA, contending that the handwriting on the form matched the handwriting on the envelope Iraci had sent with her original letter.[18] In a responsive letter to Nationwide, Iraci states that "for obvious reasons" she left her letter to Nationwide unsigned and that she had someone else print the information on the envelope addressed to Nationwide.[19] Therefore, Iraci states that because she did not submit handwritten material to Nationwide, it was impossible for Nationwide to conclude that she signed the LOA because the signature matched the handwriting on the envelope to Nationwide. Iraci emphasizes that the signature on the LOA used by Nationwide to convert her long distance service is not hers.[20]

5. On August 31, 1995, the Common Carrier Bureau's Consumer Protection Branch[21] directed Nationwide to provide specific information regarding the conversion of Iraci's telephone service.[22] Again, on December 1, 1995, the Consumer Protection Branch directed Nationwide to respond to Iraci's complaint.[23] Nationwide responded to the Consumer Protection Branch's inquiries by letter dated December 15, 1995.[24] Nationwide states that the signature matches the penmanship on an envelope Iraci sent to Nationwide but did not provide a copy of the envelope for our review. Nationwide acknowledges that Iraci states that she did not address her envelope but contends that because the handwriting matches, Iraci must know who completed the form. Nationwide also argues that because the information on the form is accurate, either Iraci or a personal acquaintance must have completed the form.

B. The Januszyk Complaint

6. On June 22, 1995, the Commission received a written complaint from Januszyk alleging that Nationwide had converted her prescribed long distance service provider from AT&T Corporation ("AT&T") to Nationwide without her authorization.[25] Januszyk states that when she received her May 1994 telephone bill and realized her long distance service had been switched, she contacted Ameritech and was eventually put in contact with Nationwide.[26] Nationwide informed Januszyk that she had signed a contest entry form containing a LOA that authorized Nationwide to change Januszyk's prescribed long distance service. Januszyk requested a copy of the entry form; before releasing the form to Januszyk, however, Nationwide requested and obtained a signed request from Januszyk. According to Januszyk, the form captioned "Long Distance Application and Official Entry Form" submitted to her by Nationwide bears a signature that is not hers.[27]

7. The Consumer Protection Branch directed Nationwide to provide specific information regarding the conversion of Januszyk's telephone service.[28] Nationwide has not responded to the staff's request nor has it sought an extension of time in which to submit the requested information.

IV. DISCUSSION

8. We have carefully evaluated the information submitted in connection with Iraci and Januszyk's informal complaints and conclude that Nationwide is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find Nationwide's apparent actions particularly egregious. It appears that on or about March 14, 1995, and April 21, 1995, Nationwide submitted PIC change requests to NYNEX and Ameritech based on apparently forged LOAs, resulting in the conversion of Iraci's and Januszyk's telephone service from MCI and AT&T to Nationwide. The statements and information provided by Iraci and Januszyk leave virtually

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 9573.

13 *See id.* at 9564-65.

14 *See id.* at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

15 *See id.* at 9581.

16 Christy M. Iraci, Informal Complaint No. IC-95-19046 (May 25, 1995). Iraci forwarded to the Commission her correspondence with Nationwide along with Nationwide's responses. Iraci also included a copy of the sweepstakes entry form that included the LOA upon which Nationwide relied as the basis for requesting NYNEX to change her primary long distance carrier. We are treating the forwarded correspondence as an informal complaint.

17 Letter from Iraci to Kim Wilhelm of Nationwide (May 12, 1995).

18 Letter from Nationwide to Iraci (May 25, 1995).

19 Letter from Iraci to Kim Wilhelm of Nationwide (May 25, 1995).

20 Letter from Iraci to Oscar Martinez of Nationwide (May 25, 1995).

21 Formerly known as the Informal Complaints and Public Inquiries Branch.

22 Notice of Informal Complaint No. IC-95-19046 (August 31, 1995).

23 Notice of Informal Complaint No. IC-95-19046 (December 1, 1995).

24 Nationwide Response to Informal Complaint No. IC-95-19046 (December 15, 1995).

25 Paula Januszyk, Informal Complaint No. IC-95-20100 (June 22, 1995).

26 *Id.*

27 *Id.* Januszyk also states that her age is incorrectly listed on the form.

28 Notice of Informal Complaint No. IC-95-20100 (December 1, 1995).

no doubt that the LOAs were not executed by the complainants and that Nationwide lacked the requisite authorization to request a PIC change to Iraci's or Januszyk's long distance service. With regard to Iraci's complaint, there is no similarity between the signature on Iraci's complaint or her driver's license and her purported signature on the LOA form that Nationwide used as the basis for the PIC change submitted to NYNEX. The issue here is whether or not Iraci signed the LOA and authorized conversion of her long distance service. Nationwide offered no proof that the handwriting on an envelope sent by Iraci matches the signature on the LOA, nor, in this situation where Iraci has represented that she did not address the envelope, would such evidence be proof that Iraci signed the LOA. The fact that the other information on the form is accurate also does not necessarily support Nationwide's contention that the form was signed by Iraci. With regard to Januszyk's complaint, there is no similarity between the signature on Januszyk's complaint and her purported signature on the LOA form that Nationwide used as the basis for the PIC change submitted to Ameritech. Under these circumstances, we conclude that Nationwide's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

9. Furthermore, we are concerned that the LOA used by Nationwide contains a signature line with background printing that makes it virtually impossible for any signature to be legible.[29] When the validity of a signature authorizing the conversion of a consumer's long distance service provider may be at issue, it is imperative that there be no opportunity for fraud either on the part of the long distance provider or the consumer. Therefore, it is in the best interest of both Nationwide and the consumer that the signature be legible. Requiring the consumer to sign his or her name over background printing on the LOA does not support this objective.

10. We are also concerned with Nationwide's apparent policy of requiring a signed request from the consumer before releasing a copy of the LOA, purportedly signed by the consumer, to authorize a change. We believe that this practice exposes the consumer to a risk of fraud and we can discern no legitimate business purpose for it. Should Nationwide release a copy of the LOA to the consumer and the consumer claim that the signature on the LOA is not his/hers, Nationwide can, at that time, request proof of signature.

11. 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.[30] We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs, which 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 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 alleged unauthorized conversion complaints 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 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 will be responsible for ensuring its validity.

12. 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.[31] 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 matters as justice may require."[32] For purposes of " determining an appropriate forfeiture penalty in this case, we regard the conversion of Iraci's and Januszyk's telephone lines as two violations. After weighing the circumstances surrounding the violation, we find that Nationwide is apparently liable for a forfeiture of eighty thousand dollars ($80,000) for the unauthorized conversion of the Iraci and Januszyk lines. Nationwide 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.[33] 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.[34] We will give full consideration to any financial information provided by Nationwide before assessing a final forfeiture amount.

---

[29] The signature line of Nationwide's form captioned "Long Distance Application and Official Entry Form" has the words "Please Sign Here to Qualify" printed on it. The person signing the form must, therefore, sign over a printed portion of the form.

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

[31] 47 U.S.C. § 503(b)(2)(B).

[32] *Id.* § 503(b)(2)(D).

[33] *See id.* § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

[34] 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).

V. CONCLUSIONS AND ORDERING CLAUSES

13. We have carefully reviewed the information submitted in connection with Christy Iraci's and Paula Januszyk's informal complaints and conclude that on or about March 14, 1995, and April 21, 1995, Nationwide apparently converted or caused a local exchange carrier to convert Iraci's and Januszyk's telephone lines without Iraci's and Januszyk's authorization through the use of apparently forged LOAs. We further conclude that Nationwide thereby apparently willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars ($80,000).

14. 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 Nationwide Long Distance, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars ($80,000) for its willful or repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; *PIC Change Order,* 7 FCC Rcd 1038 (1992); *Allocation Order,* 101 FCC 2d 911 (1985); *Waiver Order,* 101 FCC 2d 935 (1985).

15. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Nationwide Long Distance, Inc. SHALL PAY the full amount of the proposed forfeiture[35] OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

16. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Kim Wilhelm, President of Nationwide Long Distance, Inc., 2550 Gray Falls Drive, Suite 333, Houston, Texas 77077.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

[35] The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Nationwide Long Distance, Inc. check or money order to "NAL/Acct. No. 616EF003." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.