Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	File No.: EB-TCD-13-00008959
	)	
U.S. Telecom Long Distance, Inc.	)	NAL/Acct. No. 201432170002
	)	
Apparent Liability for Forfeiture	)	FRN: 0004964417

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 24, 2014 **Released: January 24, 2014**

By the Commission:

I. INTRODUCTION

1. We find that U.S. Telecom Long Distance, Inc. (USTLD or Company)[1] apparently willfully and repeatedly violated Sections 201(b) and 258 of the Communications Act of 1934, as amended (Communications Act or Act),[2] and Sections 64.1120 and 64.2401(b) of the Commission's rules.[3] Specifically, we find that USTLD apparently (i) engaged in deceptive marketing practices; (ii) changed the preferred telecommunications service providers of consumers without proper authorization verified in accordance with the Commission's rules (commonly known as "slamming"); (iii) placed unauthorized or "crammed" charges on numerous consumers' telephone bills; and (iv) failed to clearly and plainly describe charges on consumers' telephone bills in violation of the Commission's truth-in-billing rules. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of five million, two hundred thirty thousand dollars ($5,230,000).

II. BACKGROUND

2. USTLD is a non-facilities-based interexchange carrier[4] authorized to provide service in 47 states. Robert H. Young is the sole officer, director, and shareholder of USTLD.[5] USTLD uses a data management and customer service center, Data Integration Systems, Inc. (DIS), to manage its operations. DIS, "whose sole owner, officer, and director is Craig Konrad[,] . . . provides billing, training, customer service, . . . and other data management and retrieval services for USTLD."[6] The Company hires its own

---

[1] USTLD is located at 3960 Howard Hughes Parkway, 5th Floor, Suite 5001F, Las Vegas, NV 89109. *See* FCC Form 499-A filed by USTLD on April 1, 2013.

[2] 47 U.S.C. §§ 201(b), 258.

[3] 47 C.F.R. §§ 64.1120, 64.2401(b).

[4] USTLD is authorized to provide facilities-based and resold international telecommunications services. *See* ITC-214-19971125-00736; Public Notice, "Overseas Common Carrier Section 214 Applications Actions Taken," 13 FCC Rcd 807 (1998).

[5] *See* Letter from Michael L. Glaser to Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 2 (July 19, 2013) (on file in EB-TCD-13-00008959) (LOI Response).

[6] LOI Response at 2. DIS is the same management and customer service center used by Consumer Telcom, Inc. (CTI), another long distance reseller. In a recent Notice of Apparent Liability (NAL) against CTI, the Commission

(continued . . .)

sales representatives to contact potential customers.[7] According to USTLD, if the sales representatives determine that a consumer "wishes to enroll in USTLD's long distance services, [they] transfer the call . . . to United Verification, Inc. ('UVI'), an independent third party verification company,"[8] to verify and record the customer's authorization of USTLD as his or her primary long distance carrier.[9]

3. The Enforcement Bureau (Bureau) reviewed over 60 complaints recently filed with the Commission, various state regulatory agencies,[10] the Federal Trade Commission, and the Better Business Bureau against USTLD.[11] Many complainants contend that USTLD misrepresented that the Company 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," USTLD then attempted to switch the long distance carrier (e.g., AT&T, Verizon, or CenturyLink) to USTLD. In some cases, USTLD successfully effected the change and in others USTLD did not because, for example, a consumer had blocked carrier switches.[12] Either way, USTLD apparently charged the complainants for services by billing them directly or by placing charges on their telephone bills from their respective local exchange carriers (LECs).[13]

4. As part of its investigation, the Bureau sent USTLD a letter of inquiry directing the Company to answer a number of questions regarding its business practices and compliance with the Act and Commission rules.[14] The LOI also directed USTLD to explain how it had responded to consumers'

(Continued from previous page)
found, on facts very similar to those discussed here, that CTI had apparently engaged in deceptive marketing, slamming, cramming, and truth-in-billing violations. *See Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 13-161 (rel. Dec. 17, 2013) (*CTI NAL*).

[7] LOI Response at 8.

[8] LOI Response at 9. United Verification Services, Inc. (referred to as "UVI" by USTLD) is a California corporation located at 2942 Daimler St., Santa Ana, CA 92705. Previously, Robert H. Young, the president of USTLD, was the owner of another California corporation, United Telecenter, Inc., at the same address.

[9] "Third party verification" (TPV) is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. TPV must comply strictly with Section 64.1120(c)(3) of the Commission's rules. 47 C.F.R. § 64.1120(c)(3). USTLD provided some TPV recordings and a sample script used by its third party verifier to validate the subscriber's authorization to switch telephone carriers. *See* LOI Response, Bates-stamped document USTLD-19-000001.

[10] With its LOI Response, USTLD provided complaints filed against USTLD with the California Public Utilities Commission, Kansas Corporation Commission, Mississippi Public Service Commission, Missouri Attorney General, Nebraska Public Service Commission, New Jersey Board of Public Utilities, South Carolina Office of Regulatory Staff Consumer Services Division, South Dakota Public Utility Commission, Public Utility Commission of Texas, Washington Utilities and Transportation Commission, and West Virginia Attorney General.

[11] The Appendix identifies the 35 complaints, evidencing 55 apparent violations of the Communications Act and the Commission's rules occurring in the last year that form the basis of the proposed forfeiture.

[12] A preferred interexchange carrier (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).

[13] LOI Response at 5. In addition to LEC billing, USTLD bills customers directly, through DIS. LOI Response at 2.

[14] Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Robert H. Young, USTLD (May 31, 2013) (on file in EB-TCD-13-00008959) (LOI).

allegations that its sales representatives had deceived consumers by misrepresenting their identity. USTLD responded to the LOI on July 19, 2013,[15] and later supplemented its response.[16]

III. DISCUSSION

5. We find that USTLD apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act[17] and Sections 64.1120 and 64.2401(b) of the Commission's rules.[18] Specifically, we find that USTLD 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 USTLD apparently violated Section 201(b) of the Act by deceptively marketing its long distance service and placing unauthorized charges on consumers' local telephone bills or on bills it issued directly. Finally, we find that when USTLD 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.[19] Accordingly, we propose a forfeiture of $5,230,000 for the apparent violations that occurred within the twelve months prior to the release date of this NAL.[20]

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

6. USTLD 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."[21] 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 (TPV).[22] If a carrier relies on TPV, the independent verifiers must, among other things, confirm that the consumers with whom they are speaking: (i) have the authority to change the carrier associated with the telephone number, (ii) in fact wish to change carriers, and (iii) understand that they are authorizing a carrier change.[23] The rules expressly prohibit verifiers from presenting any misleading information.[24]

7. Section 201(b) also prohibits misrepresentation. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with

---

[15] *See* LOI Response. Although the Bureau directed the LOI to USTLD, both USTLD and DIS responded with information and supporting attestations. *See* LOI Response at 22; Declarations of Robert Young and Craig Konrad, attached to the LOI Response.

[16] After the Bureau requested more complete responses, USTLD supplemented its LOI response on Aug. 23, 2013. *See* First Supplemental Responses of U.S. Telecom Long Distance, Inc. to Letter of Inquiry, Dated May 31, 2013, Issued by the Enforcement Bureau of the Federal Communications Commission (Aug. 23, 2013) (on file in EB-TCD-13-00008959) (Supplemental LOI Response).

[17] 47 U.S.C. §§ 201(b), 258.

[18] 47 C.F.R. §§ 64.1120, 64.2401(b).

[19] *See* 47 C.F.R. § 64.2401(b).

[20] *See* Appendix.

[21] 47 U.S.C. § 258(a).

[22] 47 C.F.R. § 64.1120(c)(1)–(3). *See supra* note 9.

[23] 47 C.F.R. § 64.1120(c)(3)(iii).

[24] *Id.*

[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."[25] The Commission has held that unfair and deceptive marketing practices by interstate common carriers generally, 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.[26]

8. The evidence demonstrates that USTLD 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 shows that USTLD's sales representatives 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 USTLD.

9. Numerous complaints allege, among other things, that the Company misrepresented its identity to consumers and charged consumers for a service they never authorized. For example:

- Complainant Greuling received a call from a sales representative offering unlimited long distance service.[27] Mr. Greuling believed that the call was from his own carrier because that is what the sales representative had told him. So, when asked on the recorded verification who his long distance carrier was, he responded, "CenturyLink, you guys are."[28] After the third party verification, the Greulings called CenturyLink and discovered that the telemarketer had not been calling for CenturyLink and in fact CenturyLink already provided them unlimited long distance service. When they received their next telephone bill, however, they saw that their preferred long distance carrier had been changed from CenturyLink to USTLD and that both companies had charged them for long distance service.[29]
- Complainant Elvira, an AT&T customer, explained: "I received a call from a company which said to be AT&T and offer[ed] me [a] long distance plan . . . it turn[ed] out to be it was not AT&T, it was a company named U.S. Telecom Long Distance . . . This month they are back in my bill. There are no long distance calls but they do charge me for their service $3.43."[30]
- Complainant Lona stated that she handles her mother's bills, and that when she paid the October 2013 bills, she noticed "that her phone bill had an additional charge of US Telecom . . . . My mother was sure she had not changed any services and recalls receiving 1 phone call from a telemarketer but did not give them a chance to finish and rejected whatever they were trying to sell." After Ms. Lona called USTLD to cancel and ask for a refund, the customer service

[25] 47 U.S.C. § 201(b).

[26] *See Bus. Disc. Plan, Inc., Apparent Liability for Forfeiture*, Order of Forfeiture, 15 FCC Rcd 14461, 14469, para. 17 (2000) (*BDP Forfeiture Order*); *Advantage Telecomms., Inc.,* 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, 5180–81, paras. 5–7 (2010) (*Silv NAL*).

[27] Complaint from E. Greuling.

[28] *Id.*

[29] *Id.*

[30] Complaint from M. Elvira.

representative played the recorded TPV as "proof" of her authorization. According to Ms. Lona, the voice on the TPV was "clearly not my mother" . . . "it clearly was NOT HER."[31]

- Complainant Rogowski explained that the telemarketer "made it seem like they were calling on behalf of my phone provider, CenturyLink."[32] According to Mr. Rogowski, after he cancelled the service, he "received a bill for $31.52 on March 17, 2013.[33]

Other complainants described similar instances of misrepresentation.[34] In addition, the Bureau contacted numerous complainants and in each case the complainant claimed that the sales representative had told the consumer that the call was being made on behalf of the consumer's long distance carrier.[35]

10. USTLD's actions were apparently unlawful not only because of its misleading marketing, but also because its third party verification recordings failed to satisfy the Commission's rules.[36] 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. As consumers repeatedly describe, however, USTLD's telemarketers led them to believe that the purpose of the call was to discuss the consumer's existing service with his or her current carrier even though the verification that followed immediately attempted to change the consumer's long distance carrier to USTLD—a request which bore no relation to the previous portion of the call. USTLD's verifiers state that "[t]he reason we are speaking is to confirm the change in long distance service to US Telecom long distance as your long distance carrier."[37] The consumers heard the verifiers confirming a change in "service" after the sales representatives had just told them that they were calling on behalf of consumers' *existing* carrier, and merely attempting to change the existing *service*—but not the *carrier*. The statement reinforces the overall impression that the call does not relate to a carrier change. The consumers had not agreed to change their carrier; therefore, there was no change to

[31] Complaint from M. Lona.

[32] Complaint from B. Rogowski.

[33] *Id.*

[34] *See, e.g.*, Complaint from M. Helterbrand ("Received call from company that represented themselves as AT&T and they said they had a better plan. . . . no one authorized a switch from AT&T to another company."); Complaint from L. Reyes ("my wife answered a 'phishing call' from [USTLD] . . . and right after that [USTLD] added charges for long distance service I do not need on my AT&T account."); Complaint from [redacted] (USTLD "gave me false information when their representative called to tell me about the service. He said the company had an agreement with Verizon to provide [long distance] service to low usage [long distance] users. [Verizon] told me they had no agreement with US Telecom Long Dist.").

[35] For purposes of this NAL, references to "complaints" and "complainants" include both e-mails from consumers and statements consumers made during interviews with the Bureau.

[36] The Consumer & Governmental Affairs Bureau (CGB) recently issued orders granting informal complaints filed against USTLD. *See, e.g., U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, DA 13-2380 (CGB 2013) (granting one complaint on the grounds that USTLD had not confirmed whether the consumer was "authorized to make the carrier change"); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 4624 (CGB 2013) (granting three complaints on the grounds that USTLD had asked the consumer whether he or she was authorized to make changes to the "long distance service" but not whether he or she was "authorized to make the *carrier change*") (emphasis added); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 4619 (CGB 2013) (granting six complaints on the same grounds). Under the Commission's rules, CGB adjudicates individual slamming complaints and may order financial restitution for consumers who have been slammed. *See* 47 C.F.R. §§ 64.1150–1170. The Enforcement Bureau may take separate enforcement action, under Section 503(b) of the Act or otherwise, for a carrier's willful or repeated violations of Section 258 of the Act and Section 64.1120 of the rules.

[37] *See, e.g.*, TPV recordings submitted in response to the Complaints from B. Beal, [redacted], B. Fisher, E. Graham, E. Greuling, M. Kurten, J. Madsen, L. Marks, B. Rogowski, J. Schroeder, C. Supanchick, [redacted].

"confirm."[38] 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."[39] Enforcement of the verification rules is crucial to protect consumers, especially when consumers contend that they did not intend to change carriers at all,[40] 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.[41]

11. Moreover, under Section 64.1120(c)(3) of the Commission's rules, 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.[42] The TPV recordings demonstrate, however, that at most the third party verifier met only the first of these three requirements. In most cases the verifiers also asked the person on the call: "Do you have the authority to make changes to your long distance service?"[43] The verifiers do not, however, confirm that the consumers both understand that they are authorizing a carrier change and want to do so. Compliance with these requirements is crucial to prevent confusion and ambiguity about the carrier change.[44] A switch from one carrier to another differs greatly from merely making changes to the customer's existing service with its current carrier.[45]

12. In its LOI Response, USTLD explained that it "has a policy that requires its sales representatives not to mention the name of any carrier other than USTLD in making telemarketing calls to potential customers" and that it "has a quality assurance program in which it randomly monitors sales representatives, and has not found any sales representatives to violate USTLD's policy of not mentioning the name of a telecommunications carrier other than USTLD."[46] However, USTLD admitted in its LOI Response that it knew consumers were alleging its sales representatives were misrepresenting USTLD's

---

[38] *See, e.g.*, Complaint from L. Reyes (service switched after "phishing call from . . . US Telecom Long Distance."); Complaint from B. Rogowski ("They made it seem like they were calling on behalf of my phone provider, Century Link.").

[39] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 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)).

[40] As Complainant Schroeder explained, "why would I sign up for such a service when we have a bundled unlimited plan with our current phone company?" *See* Complaint from J. Schroeder.

[41] *See Silv NAL*, 25 FCC Rcd at 5184, para. 12.

[42] 47 C.F.R. § 64.1120(c)(3)(iii).

[43] *See, e.g.*, TPV recordings submitted in response to the Complaints from B. Beal, [redacted], [redacted], B. Fisher, E. Graham, J. Madsen, L. Marks, C. Supanchick.

[44] *See Silv NAL*, 25 FCC Rcd at 5184, para. 12.

[45] *See Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340 (CGB 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*.").

[46] LOI Response at 21. USTLD states that it "hires its own sales representatives to contact potential customers." LOI Response at 8. The "USTLD sales representatives call prospective customers between the hours of 8:00 AM and 9:00 PM, Monday through Friday. USTLD's telemarketers do not use scripts to market USTLD services." *Id.* at 9.

identity in sales calls.[47] USTLD did not provide evidence that it had investigated these complaints or taken any action to resolve them. Rather, USTLD denied that it had any specific consumer complaints and characterized the complaints as consumer "comments" that asserted "they believed USTLD's sales representatives were selling the services of other telecommunications [carriers] such as AT&T and Verizon" instead of its own services.[48]

13. Based on the evidence from the investigation and the analysis above, we conclude that USTLD apparently violated Section 258(a) of the Act and Section 64.1120(c)(3) of the Commission's rules by submitting changes to consumers' choices for long distance carriers without proper authorization verified in accordance with the Commission's rules. We further conclude that USTLD knew its sales representatives 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 USTLD liable for the acts of its sales representatives and accordingly find that USTLD is apparently liable for deceptive marketing practices in violation of Section 201(b) of the Act.[49]

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

14. USTLD also apparently violated Section 201(b) of the Act by placing unauthorized charges on the consumers' telephone bills, in some cases multiple times.[50] 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).[51] Cramming can occur either when third parties place unauthorized charges on consumers' local telephone bills or when carriers place unauthorized charges on their own telephone bills.[52] Indeed, any assessment of an

---

[47] *Id.*

[48] LOI Response at 21. 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 recording of the consumer's authorization. *See, e.g.*, USTLD Response to Complaint from E. Greuling (Bates No. 20-000198); USTLD Response to Complaint from L. Reyes; USTLD Response to Complaint from B. Rogowski (Bates No. 20-00159); USTLD Response to Complaint from [redacted] (Bates No. 21-00156).

[49] 47 U.S.C. § 217. Although we find that USTLD knew of its sales representatives' misdeeds, Section 217 imposes liability on a carrier for the acts and omissions of its employees and agents simply if those employees and agents act within the scope of their employment; a carrier's knowledge of its employees' and 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).

[50] USTLD's process for third party billing generally involves three parties: USTLD; its billing aggregator, Billing Services Group (BSG or USBI); and the LEC that issues the consumer's bill. USBI "supplies USTLD's billing information to local exchange carriers for billing USTLD's charges for its services to its customers." LOI Response at 5. For direct billing, USTLD obtains information on its customers' usage from its underlying carriers, Global Crossing Telecommunications, Inc. (Global Crossing) and CenturyLink. USTLD then "applies its rates to the [customer's] usage and includes its monthly fees for the long distance service plan selected by the customer. USTLD then mails the bill to the customer using its normal mailing procedures." LOI Response at 5–6.

[51] *See, e.g., 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).

[52] *See Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437, paras. 1–2 (2012); *see also Advantage NAL*, 28 FCC Rcd at 6850, para. 17.

unauthorized charge on a telephone bill or for a telecommunications service is an "unjust and unreasonable" practice under Section 201(b) of the Act.[53]

15. The following are examples of consumers who contend that USTLD billed them for services they did not authorize. In most cases, USTLD initially switched their service away from their carrier to USTLD. Then, once they had returned to their original carriers, USTLD continued to bill them for monthly service and other fees and taxes—either through their LEC bills or on bills sent to them directly by USTLD.

- Complainant Freeman, a senior citizen, initially had her long distance service switched from Verizon to USTLD. She successfully had her service switched back to Verizon and obtained a credit from Verizon for the unauthorized charges. Ms. Freeman then filed an informal slamming complaint with the Commission against USTLD. Subsequently (and before CGB ruled on her complaint), she received a telephone call "on March 27, 2013 from a lady who stated she was 'the FCC.' When I asked her to tell me her name, all she would say was 'This is the FCC.' . . . . She proceeded to tell me the FCC had already resolved the case and it was not in my favor. I, then, fully realized the person on the other end of the phone was impersonating the FCC. I told her she was Allison Coons [sic], and I did not believe the call was from the FCC."[54] Notwithstanding this conversation, the following month USTLD sent Ms. Freeman a bill for the same unauthorized charges that Verizon had credited to her account. Ms. Freeman stated, "Under no circumstances will I ever pay this bill. I did not authorize any change in my service contract with Verizon . . . [t]his is nothing more than robbery without a gun."[55] Ms. Freeman never heard from USTLD again until November 14, 2013, when USTLD sent her another bill for the unauthorized charges.[56]
- USTLD continued to bill Complainant Madsen after she had switched her long distance service back to CenturyLink on June 11, 2012, detailing the charges on the bill as "$10.88 a month through [her] CenturyLink bill for netwk access charge, ustelcmbillstatmnt fee, carr rcv fee, and universal service fnd."[57] Ms. Madsen stated that when she called to complain about the continuing bills from USTLD, the customer service representative "stated that her company had received no word that I had switched to another long distance carrier, but she assured me she would have the charges for November reversed to the account and cancel services."[58] When Ms. Madsen filed her complaint with the FCC on February 13, 2013, she explained that "in my

[53] *See Advantage NAL*, 28 FCC Rcd at 6850, para. 17 (regardless of the method used to bill consumers, "any assessment of an unauthorized charge billed to consumers is an 'unjust and unreasonable' practice under Section 201(b)").

[54] Complaint from M. Freeman. Ms. Freeman told the Bureau that she recognized the voice as a customer service representative from USTLD with whom she had previously spoken about the unauthorized charge. The Bureau confirmed that Allison Bloom worked for or acted on behalf of USTLD. *See* USTLD FCC Form 499-A filed with USAC Mar. 20, 2013. *See also* Complaint from W.C. Clegg ("the representative pretended to be an agent from FCC.").

[55] Complaint from M. Freeman.

[56] To calculate the forfeiture, we consider this second invoice a separate and distinct case of cramming and thus charge USTLD with two instances of cramming Ms. Freeman. *See* Appendix.

[57] Complaint from J. Madsen. In response, USTLD denied that Ms. Madsen had complained about the unauthorized charges prior to January 14, 2013, but the Company did not specifically deny that Ms. Madsen had cancelled the long distance service on June 11, 2012 when she switched her long distance carrier to CenturyLink. *See* Letter from USTLD to FCC (Mar. 29, 3013).

[58] Complaint from J. Madsen.

current bill, there are no charges reversed and no credit for the month of November charges (or any prior months either)."[59]

- Complainant Supanchick advised USTLD's sales representative that she was not interested in its service because she uses her cell phone for long distance; nevertheless, USTLD switched her long distance carrier and billed her through her local telephone company. "She was examining her bill a few months ago and discovered that her long distance service was with US Telecom. . . . She has switched back to the long distance company of her choice but US Telecom is continuing to bill her."[60] Ms. Supanchick stated "I had called them in Nov. [2012] and told them to [cancel] all of this. Then I got this bill in February [2013]."[61]
- According to Ms. [redacted], "This is a service that I did not request, authorize or utilize. I do all my long distance calling through my cell phone. They have never explained to me why I received any of these billings [after cancelling the service] either direct or third party."[62]
- Complainant [redacted]'s elderly father was "charged for two long distance carriers since 2003."[63] Ms. [redacted] "called USBI [USTLD's billing aggregator] to get them to cancel . . . and give him a credit for the charges . . . USBI told her they could only give him 1 years' worth of credit on his AT&T bill. She got his bill today [February 6, 2013] and they still have not stopped the USBI service."[64]
- Complainant Lende explains that he was "[d]eceived . . . into paying for Fake or Fraudulent long distance services over time. [USTLD] continue[s] to send invoices to us for long distance service and we do not have a land[line] phone line requiring long distance service."[65]
- Complainant Terry stated: "I immediately instructed Verizon to remove the [charge] from my bill and notified them I would not recognize further charges from the USTLD. Further digging failed to yield either any product for the USTLD nor any service provided by them, except for trying to loot more change with serial billings, which I ignored. Last week, I received another billing along with a threat to attempt action to tamper with my pristine credit rating."[66]
- Complainant Solis, after discovering that her mother had been slammed by USTLD, explained: "My mother has dementia and I had contacted [USTLD] months ago when this first occurred and they stated that the charges would be taken off and yet in the month of April [2013] they have billed her again for long distance service she has never requested or utilized. I strongly believe that they contact elderly Spanish speaking individuals and use language that is difficult to understand . . . until they get the YES they are seeking."[67]
- Complainant Beal explains, "U.S. Telecom Long Distance, Inc. continues to bill for a cancelled service. U.S. Telecom Long Distance, Inc. took advantage of an elderly dementia patient (Edward Beal) when they sold long distance service. [After Ms. Beal cancelled the service,] U.S.

[59] *Id.*

[60] Complaint from C. Supanchick.

[61] *Id.*

[62] Complaint from [redacted].

[63] Complaint from [redacted].

[64] Complaint from [redacted]. USBI is USTLD's billing aggregator. *See supra* note 50.

[65] Complaint from S. Lende. *See also* Complaint from B. Fisher (slammed on Dec. 11, 2002 and received separate invoices from USTLD in Nov. 2012 and Feb. 2013 after cancelling long distance service for landline telephone).

[66] Complaint from D. Terry (complaint not included in Appendix).

[67] Complaint from I. Solis.

Telecom continues to send monthly bills separately. [Their] charges are fraudulent; their customer service representatives do not honor the cancellation. I believe that this is a scam."[68]

Numerous other complainants shared similar stories of discovering charges from USTLD on their local telephone bills or on bills sent to them directly by USTLD for long distance service that they assert they did not authorize and USTLD did not provide.[69]

16. In response to these consumer complaints, USTLD defends its actions by first asserting that it provides a "bundled package" of service which includes, in addition to 1+ dialing long distance service, a "travel card, directory assistance, and casual calling long distance."[70] USTLD claims that when consumers agreed to its service (allegedly during the telemarketing calls) they authorized USTLD to change their preferred carrier and to charge them for its entire bundle of services, not simply its 1+ dialing

[68] Complaint from B. Beal.

[69] *See, e.g.,* Complaint from G. Castillo ("Received fraudulent bill . . . after we moved out of state and no longer had telephone number being charged. Have NEVER had US Telecom as service [provider]. Invoice has no contact phone numbers to call. Invoice has no explanation of what charges are for or what dates they were incurred."); Complaint from J. & C. Chambers ("My home phone service was changed to Cable One TV on Jan. 4, 2013. . . . On 8-1-13 I learned that [USTLD was] billing me for services when I was with AT&T."); Complaint from W.C. Clegg ("AT&T is her local and long distance provider. USBI is billing [on] behalf of US telecom long distance in the amount of $10.53."); Complaint from M. Finne ("The [unauthorized] charges grew over time. [USTLD] and our landline provider (centurylink) refuse to refund any of the charges."); Complaint from E. Graham (long distance service was through Comcast but USTLD billed her in Oct. 2012, which she paid even though she did not understand why she owed it, and then billed her again for nonexistent service in June 2013); Complaint from J. Gray ("Since attempting to cancel . . .I have received several additional bills. I paid the first two. . .[and] I continue to receive bills. The customer service agents have been unhelpful in resolving the issues. . . . The business seems to target senior citizens. . . . The sales and customer service is dishonest."); Complaint from T. Green ("I never authorized this long distance service to be put on my home phone."); Complaint from C. Heatherly (Ms. Heatherly, who is 89 years old, "makes no long distance phone calls. She is not physically capable of manipulating the phone buttons to do so." In the TPV recording, Ms. Heatherly was unable to state the name of her long distance provider.); Complaint from D. Holmes (cancelled all long distance service but USTLD keeps charging her); Complaint from M. Kurten ("U.S. Telecom charges showed up on our bill with no authorization by me. . . . There is no explanation of charges on the U.S. Telecom invoices as to date, etc."); Complaint from R. Marks (Complainant Marks' mother was billed by USTLD for several years; when her son contacted Frontier he discovered that Frontier was Ms. Marks' preferred long distance carrier and "Frontier has been handling all the [long distance] calls."); Complaint from A. Morrissette (despite the fact that the long distance service was with Comcast since January 2013, and she had paid her last USTLD bill, USTLD continued to send her direct bills for "service."); Complaint from C. Olayvar ("[We were] not aware that US telcom had been billing us even though we had another long distance carrier. . . . [W]e cancelled [the USTLD service] but later received a bill from US telcom. . . . [T]hey acknowledged receipt [of my mother's death certificate] and told me charges will be cancelled and account closed. The following month I received another bill. . . . I again received another bill the following month and then again this month. Each time with an increased amount due. I am feeling both scammed and harassed."); Complaint from [redacted] ("I keep getting a bill from U.S. Telecom Long Distance, Inc. but I am not getting any services from that company. I contacted them 6 months ago asking why they were sending me an invoice and they told me to pay the $6.87 they were charging me and they would stop charging me but they recently sent me another invoice."); Complaint from J. Schroeder ("unauthorized charges from USTLD on her CenturyLink bill starting in Jan. 2013"); Complaint from K. Skinner ("[I] was told [the bill] was for a service that was authorized in 2003. This is unauthorized! . . . This is a bogus bill! Have never received anything from this company ever until now. I have NEVER asked for their service yet they are trying to bill me all these service charges."); Complaint from [redacted] ("I'm having unauthorized charges for long distance service, and I'm complaining with them every month and they can't do anything to fix the problem. I get my credit for amount charged every month but the problem is still there for the next month.").

[70] *See, e.g.,* USTLD Response to Complaint from [redacted] (Bates No. 21-00029); USTLD Response to Complaint from J. Madsen; USTLD Response to Complaint from C. Supanchick (Bates No. 21-00142); USTLD Response to Complaint from E. Greuling (Bates No. 20-0002000).

long distance service.[71] USTLD then points to the TPV recording, during which the consumer allegedly verifies his or her authorization to change carriers, and argues that the recording also establishes that the consumer authorized USTLD's entire bundle of services.[72]

17. We disagree with USTLD that the TPV recordings demonstrate the complainants' authorization to be charged for all of USTLD's products and services. Nothing in the recordings USTLD provided during the investigation suggests that the consumers agreed to USTLD's "bundled package" of services. In fact, nothing in the recordings suggests that consumers were even aware that USTLD offered a bundled package of services. The Bureau specifically asked USTLD to provide "the dates such 'service' was provided to the customer" and "evidence of the customer's authorization for such 'service.'"[73] USTLD failed to do so and merely asserted that the rate plans are explained by the sales representative and verified by the third party verifier.[74] Further, the script used by USTLD's third party verifier contains no information about a bundled package of services and does not even mention any other service such as a travel card or directory assistance. Finally, there is nothing in USTLD's bills (neither those issued by the LEC nor those issued by USTLD directly) that reflects charges for a "bundled service."[75] Without any evidence to refute complainants' assertions that they did not authorize USTLD's bundle of services—including, for instance, evidence that they used USTLD's travel card or directory assistance service—we conclude that USTLD did not have complainants' authorization to charge them for *any* services.

18. USTLD also argues that in order for consumers to "cancel" all of its services and stop USTLD from continuing to charge them, they must contact USTLD directly.[76] Otherwise, according to USTLD, it bills the consumer monthly fees regardless of whether the consumer is placed on its network or subsequently cancels long distance service.[77] USTLD's position seems to be that as a switchless reseller of telecommunications services, it does not know if and when a consumer is placed on its network by USTLD's underlying carrier or when a consumer is deactivated from USTLD's network after contacting his or her LEC to cancel USTLD's services.[78]

---

[71] USTLD explains that "[s]ince USTLD is not notified of a customer's 'PIC Freeze' on potential customer's account before USTLD telemarketers contact the potential customer, USTLD will enroll the customer in one of USTLD's bundled service packages." Supplemental LOI Response at 3.

[72] *See* LOI Response at 8 ("USTLD enrolls the customer in one of USTLD's rate plans explained to the customer who consents to the service, which is then verified by [third party verifier] UVI.").

[73] LOI request no. 14.

[74] LOI Response at 8.

[75] *See* direct bills sent to Complainants [redacted] (Bates No. 21-00008); M. Freeman; E. Graham; T. Green; D. Holmes; M. Kurten; L. Marks; C. Supanchick; [redacted]. The direct bills list "U.S. Telecom Long Distance, Inc. Charges" beside a line for "Adjusted Long Distance Charges" or "Long Distance Charges." On the bottom of the bill USTLD states: "This letter is being sent to inform you of charges that were sent back to U.S. Telecom Long Distance, Inc., by your local carrier. These are charges that you contacted your local phone company about, that you were not aware of, or did not understand." There is no other description of the service or the charges or any mention of "bundled services," such as a travel card, directory assistance, or casual calling long distance, on the bill.

[76] USTLD states that its procedures for cancelling service 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.*, USTLD Response to Complaint from [redacted] at 2 (Bates No. 21-00138).

[77] The charges on the complainants' telephone bills—both the third party bills and the direct bills—do not mention the bundled services USTLD purports to provide.

[78] *See* LOI Response at 10. USTLD states that the underlying carrier, Global Crossing or CenturyLink, records the new USTLD customer "in its database as a USTLD customer" and that "USTLD relies on Global [Crossing's] or CL's electronic database to notify the end-users['] LEC of the change." *Id.*

19. The record, however, shows that complainants did not sign up for USTLD's services; therefore, USTLD cannot reasonably expect them to "cancel" a service they never ordered in the first place. The record further refutes USTLD's assertions because it shows that USTLD receives the relevant information from its underlying carriers.[79] USTLD cannot simply ignore the customer information provided by its wholesale carriers and continue to bill consumers for unauthorized charges.

20. In sum, the record shows that USTLD charged consumers for service, in some cases multiple times, after it was on notice that certain consumers had not been activated on USTLD's account or that other consumers had "cancelled" USTLD's service. There is no evidence suggesting that consumers were ever aware of or had authorized any of USTLD'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 USTLD apparently placed charges on consumers' local telephone bills or billed them directly for service without the consumers' authorization. Accordingly, we find that USTLD 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. USTLD Apparently Violated the Commission's Truth-in-Billing Rules

21. We also find that USTLD apparently violated Section 64.2401 of the Commission's "truth-in-billing" rules in the bills that it sent directly to consumers.[80] 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 . . . ."[81] The purpose of the truth-in-billing rules is "to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service."[82] 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."[83]

22. We conclude that the bills USTLD issues to customers directly are neither sufficiently clear nor specific enough to aid customers in assessing their bills.[84] 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 is covered by the alleged charge. 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 fees or taxes; they are thus inconsistent with USTLD's assertion that it charges customers not only per-minute rates for long distance calls but also monthly fees and

---

[79] *See* LOI Response at 5–6 (USTLD 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).

[80] *See CTI NAL* at paras. 23–24; *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (discussing apparent Section 64.2401 violations in that investigation).

[81] 47 C.F.R. § 64.2401(b).

[82] 47 C.F.R. § 64.2400.

[83] *Id.*

[84] *See CTI NAL* at paras. 23–24; *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (finding that the carrier's descriptions of billed charges were neither sufficiently clear nor specific enough to aid consumers in assessing their bills).

surcharges.[85] Moreover, the bills fail to identify any specific services that USTLD claims are part of its "bundled package of services." These omissions are striking, given USTLD's insistence that when consumers "authorize" its service, they "authorize" a bundle of services—services that appear to have never been fully disclosed or explained to them. We therefore conclude that it is impossible for reasonable subscribers to assess whether they are being charged appropriately for services. Accordingly, we find that USTLD has apparently failed to clearly and plainly describe charges appearing on its telephone bills, in violation of Section 64.2401(b) of the Commission's rules.

IV. PROPOSED FORFEITURE

23. 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.[86] Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture against USTLD of up to $150,000 for each willful or repeated violation in this case of the Act or of any rule, regulation, or order issued by the Commission under the Act.[87] In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[88] 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.[89] 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.[90]

24. The Commission's forfeiture guidelines currently establish a base forfeiture amount of $40,000 for violations of our slamming rules and orders.[91] Although the guidelines provide no base forfeiture for cramming, the Commission has similarly established a $40,000 base forfeiture for cramming violations.[92] Applying the $40,000 base forfeiture to each of the three slamming violations[93] and each of the 33 cramming violations[94] would result in a forfeiture of $1,440,000.

---

[85] LOI Response at 5–6.

[86] 47 U.S.C. § 503(b)(1).

[87] 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment "shall apply only to violations that occur after the date the increase takes effect," however, we apply the forfeiture penalties in effect at the time the apparent violation took place. 28 U.S.C. § 2461 note (6).

[88] *See* 47 U.S.C. § 503(b)(2)(E); *see also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*).

[89] 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

[90] *Id.*

[91] *See* 47 C.F.R. § 1.80, Appendix A, Section I.

[92] *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).

[93] A slamming violation occurs whenever a carrier submits an unlawful request to change service providers regardless of whether the change actually takes place. *See* 47 U.S.C. § 258(a) ("no telecommunications carrier *shall*

(continued . . .)

25. The Commission has previously determined that misrepresentations such as the ones in the instant case are serious and warrant significant upward adjustments. For example, in the *Advantage NAL*, the Commission proposed to triple the base forfeiture amount of $40,000 in those instances of slamming and cramming when the carrier also engaged in deceptive marketing.[95] USTLD'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 USTLD was calling on behalf of their current carrier or was affiliated with their current carrier. As additional evidence of USTLD's deception, in at least one instance, the Company appears to have completely fabricated a TPV recording.[96] We further note that USTLD appears to have engaged in this kind of deception repeatedly. Consistent with past cramming and slamming cases involving deception,[97] we propose to triple the base forfeiture for each of the eight especially egregious violations at issue in this NAL—the crams and slams involving misrepresentation—making the penalty for each such violation $120,000. This is consistent with recent enforcement actions involving similar instances of misrepresentation, where we have warned carriers that a significant upward adjustment is warranted in cases involving such deception.[98] This adjustment increases the forfeiture amount by $640,000.

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

(Continued from previous page)
submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with [the Commission's] verification procedures. . . .") (emphasis added). Consistent with our past practice to date, *see, e.g., Advantage NAL*, 28 FCC Rcd at 6855–6857, paras. 29–32, we do not propose a forfeiture for a slamming violation under Section 258 of the Act when USTLD 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.

94 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* at para. 26 n.79 (citing *NOS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133 (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.

95 *See Advantage NAL*, 28 FCC Rcd at 6856–857, para. 30; *see also CTI NAL* at para. 27; *United NAL*, 27 FCC Rcd at 16505–06, para. 17; *Preferred NAL*, 27 FCC Rcd at 16494, para. 14; *Silv NAL,* 25 FCC Rcd at 5186, para. 16.

96 *See* Complaint from M. Lona.

97 *See Advantage NAL*, 28 FCC Rcd at 6856–857, paras. 30–32.

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

circumstances of this case."[99] Given that Advantage, CTI, and USTLD 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 10 bills that USTLD sent to complainants within the past twelve months and that the Bureau had an opportunity to review. The forfeiture we propose for USTLD's truth-in-billing violations is $400,000.[100]

27. 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."[101] 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."[102] USTLD apparently engaged in slamming and cramming repeatedly, including placing unauthorized charges on consumers' telephone bills multiple times. The evidence also shows that USTLD held itself out as the "FCC" in its interactions with at least three consumers.[103] By engaging in such deception, USTLD demonstrated a blatant contempt for the Commission's authority as it attempted to deceive consumers with a stamp of government authority and discourage them from pursuing their complaints. This behavior is particularly egregious. Under Section 503, we may take into account the egregious and repeated nature of USTLD's actions and, pursuing our prior warning to carriers, upwardly adjust the forfeitures for both slamming and cramming.[104] Given the egregious circumstances here and the extent of USTLD'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 $2,000,000 is appropriate here.

28. Finally, as noted above, the Commission may at its discretion upwardly adjust a forfeiture for violations that cause substantial harm to the public.[105] USTLD's actions caused substantial frustration and inconvenience to consumers,[106] and the record suggests that, at least in some instances,

[99] *CTI NAL* at para. 28; *Advantage NAL*, 28 FCC Rcd at 6856–57, para. 31.

[100] The Appendix identifies the 10 consumer invoices that form the basis for assessing this part of the forfeiture.

[101] *See Silv NAL,* 25 FCC Rcd at 5186, para. 16.

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

[103] *See* Complaint from M. Freeman; Complaint from W.C. Clegg; *see also* Complaint from R. Laird (complaint not included in the Appendix) who stated that when he contested the USTLD charges—he did not even have a wireline telephone in his house and, according to CenturyLink, the telephone number was "inactive" during the period USTLD contended someone had requested its service—USTLD "lied when they said the charges were authorized on my account by a stranger, because the account was closed at the time. US Telecom began harassing [me] on the phone. They also pretended to be the regulator [i.e., the FCC] who received a complaint."

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

[105] 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8).

[106] *See, e.g.*, Complaint from E. Hug (complaint not included in Appendix) ("I [was on hold] for FOUR CONSECUTIVE HOURS WITHOUT HANGING UP. Each time a rep came on the [line], they would tell me they were handling it. Each time I would wait 15-20 minutes on hold, being switched four times and going thru same, forced to reiterate problem again and again. I believe strongly that it was a way to wear me down so that I would

(continued . . .)

USTLD 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 understand the questions they were asked.[107] For example, Complainant Beal explained that USTLD "took advantage of an elderly dementia patient.[108] Complainant Heatherly stated that his 89-year-old mother was unable to identify her carrier on the TPV and was physically unable to make telephone calls.[109] Complainant Solis stated that her mother has dementia.[110] The record reflects that USTLD apparently took advantage of additional senior citizens and disabled persons who did not intend to sign up for its service.[111] Consumers like these are especially vulnerable to the deceptive tactics employed by USTLD. For these reasons, we find that USTLD caused substantial consumer harm and propose an upward adjustment of $750,000.

29. Accordingly, the total forfeiture we propose for USTLD's conduct is $5,230,000.

V. CONCLUSION

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

VI. ORDERING CLAUSES

31. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that U.S. Telecom Long Distance, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of five million, two hundred thirty thousand dollars ($5,230,000) for willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201(b), 258, and Sections 64.1120 and 64.2401(b) of the Commission's rules, 47 C.F.R. §§ 64.1120, 64.2401(b).

(Continued from previous page)
give up."); Complaint from S. Lende (the representative "tells you to wait for a supervisor [and] puts you on hold. We haven't had a supervisor take a call in this transfer as far as we can tell. You get put on hold for a very, very, very long time until you hang up in frustration with no answer."); Complaint from M. Lona (after listening to the TPV that was clearly not her mother's voice, "Mr. Abraham, a supervisor, . . . was very rude and refused to help us investigate how this could have [happened]."); Complaint from L. Romo (complaint not included in Appendix) ("When I inquired about this bill they would first give me the runaround until I became upset with the first [customer service representative] because he was literally laughing at me telling me I couldn't do anything about it. He even asked me if I knew the right company name, at the time it was unclear since they also bill under a different name making it even more confusing to the average consumer."); Complaint from J. Schroeder ("When I received this bill I called U.S. Telecom and spoke to a gentleman, don't have his name, who was very rude to me, unprofessional, and told me I had no choice but to pay the bill, that I signed up for the service. . .").

[107] For an explanation of how the elderly are victimized by the fraud industry, *see* "Fraud, Vulnerability, and Aging—When Criminals Gang Up on Mom and Dad," North Carolina State Bar Journal (Winter 2013) at 14.

[108] Complaint from B. Beal.

[109] Complaint from C. Heatherly.

[110] Complaint from I. Solis.

[111] *See also* Complaint from [redacted]; Complaint from M. Freeman; Complaint from E. Graham; Complaint from J. Gray; Complaint from C. Olayvar. In addition, several complaints that are not included in the Appendix demonstrate that USTLD charged the elderly or disabled individuals for "service." *See, e.g.,* Complaint from C. Bell-Parsley (USTLD contended that her deceased father, who had a stroke in 2006 and could not speak due to the stroke, had requested its long distance service and that her parents had used the long distance service in 2011; however, her (elderly) mother had subscribed to Cox Cable in 2010 for telephone service, did not have long distance service on her landline telephone at all, and could not even use that telephone to make long distance calls.); Complaint from [redacted] (elderly aunt "who did not understand the charge or service" was charged by USTLD); Complaint from P. Messinger (her husband, a stroke victim, had allegedly "authorized" the USTLD service); Complaint from D. Polin (89 years old and unable to identify his carrier on the TPV).

32. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's rules,[112] within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, U.S. 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.

33. 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. U.S. 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.[113] 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 U.S. Telecom Long Distance, Inc. should follow based on the form of payment selected:

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

Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.[114] If U.S. Telecom Long Distance, Inc. has questions regarding payment procedures, the company should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

35. 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

[112] 47 C.F.R. § 1.80.

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

[114] *See* 47 C.F.R. § 1.1914.

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

36. **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 Robert H. Young, President of U.S. Telecom Long Distance, Inc., 3960 Howard Hughes Parkway, 5th Floor, Suite 5001F, Las Vegas, NV 89109 and to Michael L. Glaser, attorney for U.S. Telecom Long Distance, Inc., 1720 S. Bellaire St., Suite 607, Denver, CO 80222.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

	Complainant	Carrier change date or billing date	Violation(s)
1.	M. Freeman	1/26/13 11/14/13	Section 201(b) crams; Section 64.2401(b) truth-in-billing violation
2.	[redacted]	1/29/13	Section 258 slam; Section 201(b) misrepresentation
3.	[redacted]	2/4/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
4.	B. Beal	2/5/13	Section 201(b) cram
5.	[redacted]	2/6/13	Section 201(b) cram
6.	J. Madsen	2/13/13	Section 201(b) cram
7.	B. Fisher	2/27/13	Section 201(b) cram
8.	A. Morrissette	2/27/13	Section 201(b) cram
9.	I. Solis	3/8/13	Section 201(b) cram
10.	L. Marks	3/9/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
11.	B. Rogowski	3/17/13	Section 201(b) misrepresentation; Section 201(b) cram
12.	E. Greuling	3/22/13	Section 258 slam; Section 201(b) misrepresentation
13.	M. Elvira	4/3/13	Section 201(b) misrepresentation; Section 201(b) cram
14.	M. Kurten	4/4/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation

15.	C. Supanchick	4/8/13	Section 201(b) cram; Section 201(b) misrepresentation; Section 64.2401(b) truth-in-billing violation
16.	[redacted]	4/15/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
17.	S. Lende	4/24/13	Section 201(b) cram
18.	M. Finne	5/6/13	Section 201(b) cram
19.	[redacted]	5/13/13	Section 201(b) cram
20.	E. Graham	5/20/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
21.	J. & C. Chambers	6/1/13	Section 201(b) cram
22.	[redacted]	6/6/13	Section 201(b) cram
23.	C. Heatherly	6/7/13	Section 201(b) cram
24.	L. Reyes	6/7/13	Section 201(b) cram; Section 201(b) misrepresentation
25.	J. Schroeder/J. Rose	6/21/13	Section 201(b) cram
26.	D. Holmes	7/16/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
27.	C. Olayvar/C. Coelho	7/30/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
28.	J. Gray	8/29/13	Section 201(b) cram
29.	M. Lona	8/29/13	Section 258 slam; Section 201(b) misrepresentation (and fabricated TPV)
30.	G. Castillo	9/6/13	Section 201(b) cram
31.	T. Green	9/19/13	Section 201(b) cram; Section 64.2401(b) truth-in-billing violation
32.	J. Fonseca	10/23/13	Section 201(b) cram

33.	M. Helterbrand	10/31/13	Section 201(b) cram; Section 201(b) misrepresentation
34.	W.C. Clegg	11/21/13	Section 201(b) cram
35.	K. Skinner	11/26/13	Section 201(b) cram