

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Coleman Enterprises, Inc.) File No. ENF-99-09
d/b/a Local Long Distance, Inc.)
Apparent Liability for Forfeiture) NAL/ Acct. No. 916EF0004

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 18, 1999

Released: August 19, 1999

By the Commission:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture (NAL)1, we initiate enforcement action against Coleman Enterprises, Incorporated, d/b/a/ Local Long Distance (LLD).2 For the reasons set forth below, we find that LLD apparently willfully or repeatedly violated sections 201(b) and 258 of the Act,3 as well as Commission rules and orders,4 by

1 See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must either issue a written notice of apparent liability or provide notice and opportunity for hearing before imposing such penalties.

2 Coleman Enterprises, Incorporated does business as (d/b/a) Local Long Distance (LLD). Coleman Enterprises is headquartered at 6053 Hudson Road, Suite 110, Saint Paul, Minnesota 55125.

3 Section 47 U.S.C. § 201(b); 47 U.S.C. § 258. Section 201(b) provides, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with. . . communication service shall be just and reasonable. . ."; 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 procedures as the Commission shall prescribe."

4 See 47 C.F.R. § 64.1100; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (1998 Second Order & FNPRM); EqualNet Corporation Proposed Request for Waiver, 14 FCC Rcd 3975 (1999) (EqualNet Waiver Order); Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997) (1997 FNRPM & Order on Reconsideration); Policies and Rules Concerning Unauthorized Charges of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995) (LOA Order), stayed in part, 11 FCC Rcd 856 (1995) (In-bound Stay Order); Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992) (PIC Change Order), recon. denied, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (Allocation Order),

changing, without authorization, the preferred carriers for interstate service designated by fourteen small business customers.

2. As described below, the consumer complaints that support this NAL illustrate an apparent disregard for the requirements of the Act and the Commission's rules and orders. The facts presented in the record appear to establish a willful or repeated pattern of conduct by LLD to engage in the practice of "slamming."⁵ The violations are particularly egregious because LLD changed consumers' long distance carriers by intentionally misrepresenting the nature of its offering solely as a service that would consolidate the customers' local and long-distance telephone charges on one "local/ long distance" bill for the customers' convenience. LLD failed to explain to consumers that LLD would not "consolidate" their local and long distance bills without changing their long-distance service to LLD and paying LLD's rates. When consumers agreed to a bill consolidation, LLD switched consumers' interexchange carriers (IXCs) to LLD without the consumers' authorization. The evidence also suggests that the egregious nature of LLD's misrepresentations were compounded by LLD's telemarketers' practice of misrepresenting or implying that LLD was affiliated with, or was in fact, the customer's local exchange company (LEC) or interexchange company (IXC). Under these circumstances, several consumers were understandably unaware that they even spoke with representatives of a long distance company named Local Long Distance.

3. Based upon our review of the facts and circumstances surrounding these violations, we find that LLD is apparently liable for a total forfeiture amount of \$1,120,000 for violations of section 258 of the Act.⁶ In particular, we find that LLD is apparently liable for a forfeiture amount of eighty thousand dollars (\$80,000) for each of the slamming violations forming the basis of this NAL.

4. As an additional measure, we require LLD to file with this Commission within thirty (30) days of the date of this NAL, a compliance plan detailing the actions it has taken, the procedures it has established, and steps it will implement in the future to ensure compliance with section 258 of the Act and the Commission's rules and orders relating to preferred carrier changes. The plan shall set forth procedures designed to enable LLD to promptly identify and

Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (Com Car. Bur. 1985) (*Waiver Order*), recon. (of both *Allocation Order* and *Waiver Order*) denied, 102 FCC 2d 503 (1985) (*Reconsideration Order*).

⁵ Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization.

⁶ Section 503(b)(2)(B) provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license, permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(B). We note that the Debt Collection Improvement Act of 1996 (DCIA), Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996), requires that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. Thus, the statutory maxima pursuant to section 503(b)(2)(B) increased from \$100,000 and \$1,000,000 to \$110,000 and \$1,100,000 respectively. *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

address consumer inquiries and concerns about its preferred carrier change practices. We continue to review complaints filed against LLD⁷ and may assess additional forfeitures if appropriate.

II. THE CONSUMER COMPLAINTS

A. Background

5. Our action is based on an investigation conducted by the Common Carrier Bureau concerning fourteen consumer complaints, filed with the Commission between September, 1998 and May, 1999, all of which allege that LLD fraudulently switched the complainants' preferred carriers without the consumers' authorization.⁸ Upon receipt of the consumer complaints, the Common Carrier Bureau's Consumer Protection Branch forwarded the complaints to LLD along with Notices of Informal Complaint (Notices) in accordance with the Commission's rules.⁹ LLD's barebones responses generally failed to address consumers' specific concerns that the sales and verification calls were deliberately misleading and confusing.¹⁰ LLD's letters typically noted the amount of money LLD had credited to a complainant's account in an apparent attempt to resolve the complaint and eliminate further proceedings at the Commission.¹¹ In an effort to obtain additional information, the Consumer Protection Branch served upon LLD a Further Notice of Informal Complaint (Further Notice).¹² The Further Notice directed LLD to provide the Commission with responses to specific requests, including copies of audio tapes of the sales or verification calls.¹³ On May 7 and July 14, 1999, LLD submitted the material sought by the Consumer Protection Branch's Further Notice, including copies of the sales and verification scripts used by LLD and its agents.

⁷ During a period between June 1998 and May 1999, the Commission's Common Carrier Bureau Consumer Protection Branch processed 306 written consumer complaints alleging that LLD had slammed their preferred carrier.

⁸ In further support of their complaints, each complainant submitted a declaration to the Common Carrier Bureau's Enforcement Division.

⁹ See, e.g., Advance Mortgage Corporation, Notice of Informal Complaint No. IC-98-39935 (November, 12, 1998). Also see 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

¹⁰ See, e.g., LLD Response to Notice of Informal Complaint No IC-98-39935 (November 30, 1998).

¹¹ *Id.*

¹² See, e.g., Further Notice of Informal Complaint No. IC-99-01674 (April 21, 1999) (Further Notice of Jeffrey Animal Hospital Complaint).

¹³ *Id.*

B. Sales and Verification Scripts Submitted by LLD

6. Before detailing the specific complaints framing the basis of this action, we take note of the materials LLD provided in response to the Further Notice. Of particular relevance is the sales script, which by LLD's apparent own admission, formed the basis of what LLD's telemarketers were to tell consumers during telemarketing calls.¹⁴ These scripts are important to our evaluation because, while the purported verification portion of the telemarketing sale was recorded by LLD, the actual sales pitches made to consumers before this verification were not recorded.¹⁵ The text of the sales script would, even if read as written, appear to provide the customer little, if any, indication that the telemarketer is offering to switch the customer to a new long distance carrier. The sales script directs a sales representative to state:

I'm calling regarding a new billing format. Due to a lot of complaints and requests about the separate bills and monthly service fees, what we are doing is giving you the option of going to the old billing format of combined billing. What that means, is putting all of the out of state calls back on the local telephone bill. So what you receive is just one itemized bill and write only one check to your local telephone company and they will pay the long distance bill for you. It will also decrease any fee you are currently paying to \$3.95 and a discounted rate of only .25 [sic] cents. It is a free service to combine your bill.¹⁶

The language of the sales script emphasizes the offer of a bill consolidation service and does not explain to the consumer that acceptance of the bill consolidation service will result in a preferred carrier change. The only possible reference to a switch in carriers contained in the sales script is implied by the following ambiguous language: "Local Long Distance will provide the service to have the bills combined at no cost to you, and have any service fee reduced to \$3.95, and the business discount rate of \$0.25 [sic] cents a minute anywhere within the United States and Canada."¹⁷ The language of the script fails to inform the consumer that agreeing to a billing consolidation will result in a change in the consumer's preferred long distance carrier to LLD, nor is the telemarketer directed to request the consumer's authorization to make such a change.

7. As illustrated by the consumer complaints described below, we point out that LLD telemarketers apparently did not follow this script *verbatim*. Rather, the consumers assert that the telemarketing pitches they received contained misrepresentations about the service being provided and the entity providing that service. For example, consumers allege that LLD's

¹⁴ See Sales Script at Appendix B.

¹⁵ See, e.g., LLD Response to Notice of Informal Complaint No IC-99-01511 (December 15, 1998) (LLD Response to Fantasy Custom Yachts Complaint) at 2.

¹⁶ See Sales Script at Appendix B.

¹⁷ *Id.*

telemarketers claimed to be representatives of the complainant's local phone company. While LLD disclaims knowledge or responsibility for any such misrepresentations, this apparent pattern of conduct is consistent with and facilitated by the emphasis of LLD's marketing scripts on a billing service rather than long distance service, as well as the company's choice of name.

8. In response to the Branch's Further Notice, LLD also provided verification scripts used by the third party¹⁸ that verified consumers' carrier change authorizations and the corresponding audio tapes of those verifications.¹⁹ Both the verification scripts and the verification tapes reveal that LLD telemarketers conducted a three way call with the consumers and LLD's third-party verifiers purportedly to confirm that the consumers had authorized a switch to LLD's long-distance service.²⁰ The verification script states that a verifier should inform the caller, "[t]he representative will be giving me all the account information. Please feel free to correct him/her if h/she is wrong, OK?"²¹ The telemarketer and verifier then exchange pertinent information regarding the consumer's telephone numbers and address. After this exchange, the verifier addresses several questions to the consumer, including requesting the consumer's name and title. At no time during the "verification" is the consumer directly asked if he or she is authorizing LLD (or any carrier) to switch the purported long distance provider for that residence or business, although the consumer is asked if they are the "authorized person to have Local Long Distance provide long distance service for the business/residence."²² According to the script, the verifier terminates the call with the statement: "Your new long distance service starts in 5-10 days, provided by Local Long Distance, which is independent of your local telephone company." In those instances, when the verification tapes include this statement, it is generally read very rapidly.²³ This closing statement is the most direct reference found in either the marketing script or the verification script that the consumer's preferred carrier would be changed. At no time during either the marketing or verification call do the scripts show that the consumer is asked for authorization to switch their preferred carrier to LLD. Rather, both the marketing and verification scripts advise consumers that LLD's service is a billing consolidation service. Furthermore, several of the audio tapes provided by LLD

¹⁸ According to LLD, Capitol Verification performed the third party verification service for the majority of its telemarketing solicitations. *See, e.g.*, Mark Nelson Werther, Informal Complaint No. IC-99-02995 (January 20, 1999) (in which Capitol Verification states that LLD has been its client since 1996 and during that time "have verified several hundred thousand long distance accounts for them.")

¹⁹ *See* Verification Script at Appendix C.

²⁰ As set forth *infra* at paragraph 21, the Commission's rules require interexchange carriers to follow certain telemarketing "verification procedures" to ensure that carriers obtain the requisite authority prior to changing a customer's long-distance carrier. Pursuant to these procedures, an interexchange carrier may, *inter alia*, choose to have an independent third party verify the subscriber's order. *See* 47 C.F.R. § 64.1100(c).

²¹ *Id.*

²² *Id.* We note that a transcript of one verification call illustrates the verifier's continued misrepresentation of the service. *See* Transcribed Verification Conversation at Appendix D.

²³ *See* Appendices C (LLD Verification Script) and D (Transcribed Verification Conversation).

demonstrate that the verifier, when questioned by the consumer about whether their preferred long distance service carrier would change, intentionally misrepresented the nature of LLD's service as solely a billing consolidation service.

C. Consumer Complaint Profiles

9. This Order profiles three slamming complaints from small business consumers: Advance Mortgage Corporation of Bagersville, Indiana; Jeffrey Animal Hospital of Farmington Hills, Michigan; and Fantasy Custom Yachts of Monticello, Kentucky. In addition to the three profiled complaints, this action is based upon eleven other slamming complaints with supporting statements.²⁴ These complaints contain specific allegations that LLD switched the complainants' preferred carriers without proper authorization through the use of misrepresentation by its telemarketers. These complaints were filed by the following small business consumers: Eades ER Dental of San Clemente, California; Silvana R. Barahona of New York, New York ; Sage Capital of Bellevue, Idaho; Quality Pacific of Bellevue, Washington; Arco Floor Covering of Van Nuys, California; Lera/ Dynalectric of San Francisco, California; Starfire, Incorporated of Wildomar, California; Mark Dinges, Incorporated d/b/a California Creations of Brea California; Spring Valley Auto Parts of Spring Valley California; Mark Nelson Werther, A.I.A. of Bender, Pennsylvania; and Accord Interests, Inc. of Los Angeles, California. Pertinent information concerning these complaints is set forth in Appendix A to this Order. The 14 complaints upon which this action is based represents only a small portion of the 306 slamming complaints against LLD filed with the Commission and served upon LLD between June 1998 and May 1999.

1. The Advance Mortgage Corporation Complaint

10. The allegations of Ms. Sherry Johnson of Advance Mortgage Corporation (Advance Mortgage) are typical of complaints filed against LLD.²⁵ In August 1998, Ms. Johnson received a phone call from a "Sprint Local Long Distance" representative offering to waive a charge appearing on Advance Mortgage's telephone bill.²⁶ Sprint was Advance Mortgage's local telephone service provider. According to Ms. Johnson, the representative

²⁴ See, e.g., Mark Nelson Werther, Informal Complaint No. IC-99-02995 (January 20, 1999) (complainant alleges that a LLD telemarketer misrepresented that he was a Bell Atlantic operator and offered to "combine your local and long distance billings."); See also Accord Interests, Inc., Informal Complaint No. IC-99-03389 (January 20, 1999) (complainant alleges that a LLD telemarketer misrepresented that she was affiliated with Pacific Bell and offered a bill consolidation service.)

²⁵ Advance Mortgage Corporation, Informal Complaint No. 98-39935 (September 17, 1998) (Advance Mortgage Complaint).

²⁶ Advance Mortgage Complaint at 1; Also See Declaration of Sherry Johnson, IC-98-39935 (April 27, 1999) at 1 (Johnson Declaration).

required Ms. Johnson's authorization to waive the charge.²⁷ Ms. Johnson was somewhat skeptical of the alleged waiver of charges and as such, Ms. Johnson stated clearly to the sales representative that she refused to change her long distance carrier.²⁸ According to Ms. Johnson, the "Sprint Local Long Distance" representative and later, verifier, insisted that they "were just waiving the charge" that was on her bill.²⁹ Ms. Johnson discovered, however, after a review of her local telephone bill from Sprint that LLD had changed the company's preferred carrier to LLD.³⁰ Ms. Johnson states that she never received any indication from the LLD representative that she was authorizing a change in Advance Mortgage's preferred carrier.³¹

11. As outlined above, the Consumer Protection Branch forwarded the Advance Mortgage complaint to LLD along with a Notice of Informal Complaint (Notice) in accordance with the Commission's rules.³² In response, LLD filed with the Commission a letter stating that "among the services that Local Long Distance offers its customers is a consolidated billing option which allows subscribers to receive a single bill for local and long distance service."³³ LLD's response claims that LLD investigated the complaint and determined that its verification company had obtained Ms. Johnson's verbal consent to change long distance companies.³⁴ LLD's response, however, fails to address the allegations in Advance Mortgage's complaint that LLD's sales agent misrepresented herself as calling from Sprint, the company's local carrier, and misled Ms. Johnson into believing that by verifying Advance Mortgage's telephone numbers she waiving a charge rather than changing the company's preferred carrier.

12. The Consumer Protection Branch served upon LLD a Further Notice of Informal Complaint (Further Notice) which requested information, including recordings or other evidence, documenting that LLD had verified Advance Mortgage's authorization.³⁵ LLD responded by providing the Commission with a more detailed written response, sales and verification scripts, and an audio tape of Sherry Johnson's conversation with the third party verifier and the LLD

²⁷ *Id.* at 1.

²⁸ Johnson Declaration at 1.

²⁹ *Id.* at 1

³⁰ Advance Mortgage Complaint at 1.

³¹ *Id.* at 1.

³² Notice of Informal Complaint No. IC-98-39935 (November 12, 1998).

³³ LLD Response to Notice of Informal Complaint No IC-98-39935 (November 30, 1998) (LLD Response to Advance Mortgage Complaint).

³⁴ *Id.* at 2.

³⁵ Further Notice of Informal Complaint No. IC-98-39935 (April 21, 1999) (Further Notice of Advance Mortgage Complaint).

sales representative.³⁶ LLD specifically denies any wrongdoing in the matter and states its belief that “it has responded appropriately to the Further Notice.”³⁷

13. An analysis of the LLD sales and verification scripts and the audio tape of the conversation between Sherry Johnson and the verifier supports Ms. Johnson’s complaint.³⁸ As outlined above, the sales and verification scripts, on their face, misrepresent the nature of LLD’s offering. Furthermore, the verification tape provided by LLD contains evidence of egregious misrepresentations. Twice during the verification call Ms. Johnson states that she understood that her preferred carrier would not change and asks for affirmation of that fact. In response, the verifier advises Ms. Johnson that Local Long Distance merely was providing a billing service. We have included a transcribed version of Ms. Johnson’s verification call as Appendix D to this NAL.³⁹

2. The Jeffery Animal Hospital Complaint

14. Mr. Patrick Lewis, business manager for Jeffrey Animal Hospital, states in his complaint that on October 29, 1998, he received a telephone call at his office from an individual who identified herself as a representative from Ameritech, Jeffrey Animal Hospital’s local service provider.⁴⁰ According to Mr. Lewis’ account, the caller claimed that she had spoken to Dr. Jeffrey, the owner of the hospital, regarding credits due to the Hospital’s accounts as a result of having been switched to residential service.⁴¹ The caller asked Mr. Lewis to “verify”, or confirm the Hospital’s telephone numbers.⁴² Mr. Lewis verified the accuracy of the telephone numbers, and, subsequently, the caller transferred him to their “verification department.”⁴³ Mr. Lewis states that while the “verification department” listened, the alleged Ameritech representative repeated her questions to Mr. Lewis.⁴⁴ At the close of the questioning, the alleged

³⁶ LLD Response to Further Notice of Informal Complaint No. IC-99-39935 (May 7, 1999) (Further LLD Response to Advance Mortgage Complaint). A copy of (1) the LLD sales script; (2) the verification script; and (3) a transcribed version of one consumer’s conversation with the verifier is attached as Appendix B, C, and D, respectively.

³⁷ Further LLD Response to Advance Mortgage Complaint at 2.

³⁸ See Appendices B, C, & D.

³⁹ See Appendix D.

⁴⁰ Jeffrey Animal Hospital, Informal Complaint No. 99-01674 (November 17, 1998) (Animal Hospital Complaint) at 1. See also Declaration of Patrick Lewis, IC 99-01674 (May 7, 1999) (Lewis Declaration).

⁴¹ Animal Hospital Complaint at 1; Lewis Declaration at 1.

⁴² Animal Hospital Complaint at 1; Lewis Declaration at 1.

⁴³ Animal Hospital Complaint at 1; Lewis Declaration at 1.

⁴⁴ Animal Hospital Complaint at 1-2.

Ameritech representative terminated the call.⁴⁵ Soon after this call was terminated, Mr. Lewis received a call from another Ameritech representative who asked him to verify whether he wanted to change the Hospital's long distance service to a company named Local Long Distance.⁴⁶ Mr. Lewis assured the Ameritech representative that he did not want the Hospital's long distance provider changed.⁴⁷ Suspecting that the business had been slammed, Mr. Lewis confirmed that Ameritech had not called him regarding credits on the Hospital's account.⁴⁸ Mr. Lewis then contacted a LLD service representative to inform her that the Hospital "did not want her company for my long distance."⁴⁹

15. On November 9, 1998, however, Mr. Lewis received a telemarketing call from AT&T, the Hospital's preferred long distance carrier, asking the Hospital to switch back to AT&T.⁵⁰ This phone call alerted Mr. Lewis that a change had occurred in the Hospital's preferred carrier.⁵¹ Mr. Lewis determined, through phone conversations with the Hospital staff and customer service representatives from Ameritech and LLD that LLD had changed the Hospital's preferred carrier by misleading a Hospital receptionist.⁵² According to his statement, Ms. Lori Peet was misled by the LLD representative into believing that she was verifying telephone numbers at the request of Ameritech.⁵³ Rather, as Mr. Lewis and Ms. Peet later realized, LLD used that conversation as the basis as to change the Hospital's preferred carrier.⁵⁴ After discovering the fraudulent change, Mr. Lewis contacted LLD and demanded that the company send him a tape of the alleged authorization.⁵⁵

⁴⁵ Animal Hospital Complaint at 1-2, Lewis Declaration at 1.

⁴⁶ Animal Hospital Complaint at 1-2, Lewis Declaration at 1.

⁴⁷ Animal Hospital Complaint at 1-2.

⁴⁸ *Id.*

⁴⁹ Animal Hospital Complaint at 2; Lewis Declaration at 1.

⁵⁰ Lewis Complaint at 2.

⁵¹ *Id.*

⁵² Lewis Complaint at 2; Lewis Declaration at 1.

⁵³ Lewis Complaint at 2; Lewis Declaration at 1; *also see* Declaration of Lori Peet at 1, IC 99-01674 (May 7, 1999) (Peet Declaration).

⁵⁴ Peet Declaration at 1.

⁵⁵ Lewis Declaration at 1. LLD provided this tape to Mr. Lewis after the Commission made a specific request that LLD provide further information.

16. The Consumer Protection Branch forwarded the complaint to LLD along with a Notice⁵⁶ and received a letter containing boilerplate language regarding its “consolidated billing option. . . .”⁵⁷ LLD’s response claims that a third party verifier obtained customer authorization “in compliance with the Commission’s rules. . . .”⁵⁸ LLD’s responds further that it had obtained Ms. Peet’s verbal consent to change long distance companies.⁵⁹ Similar to other complaints, LLD’s response fails to address the allegations in the Hospital’s complaint that LLD’s sales agent misrepresented him or herself to Mr. Lewis and Ms. Peet as a customer service representative of Ameritech.

17. On April 21, 1999, the Consumer Protection Branch served upon LLD a Further Notice in which the Commission requested the audio tapes pertaining to the Jeffrey Animal Hospital Complaint.⁶⁰ On May 7, 1999, LLD’s counsel provided the Commission with a more detailed written response, copies of the sales and verification scripts, and an audio tape of the complainant’s conversation with the third party verifier and the LLD sales representative.⁶¹ LLD does not, however, address the allegations that LLD attempted to mislead Mr. Lewis or Ms. Peet into “verifying” the Hospital’s telephone numbers for the purpose of changing the Hospital’s preferred carrier.

18. The material provided in LLD’s response confirms the Hospital’s allegation that LLD apparently changed the Hospital’s preferred carrier without authorization.⁶² The sales script fails to inform a consumer in definitive terms that the consumer’s long distance service will be changed.⁶³ Rather, as described above, the sales script emphasizes LLD’s bill consolidation service and does not explain that in order to receive the service, the consumer’s preferred carrier would be changed to LLD.⁶⁴ LLD’s response includes a copy of the verification script and audio tape of the conversation between Lori Peet and the verifier. The audio tape

⁵⁶ Notice of Informal Complaint No. IC-98-01674 (December 14, 1998).

⁵⁷ LLD Response to Notice of Informal Complaint No. IC-98-01674 (March 4, 1999) at 1. (LLD Response to Animal Hospital Complaint).

⁵⁸ LLD Response to Animal Hospital Complaint at 2.

⁵⁹ *Id.*

⁶⁰ Further Notice of Informal Complaint No. IC-99-01674 (April 21, 1999) (Further Notice of Animal Hospital Complaint).

⁶¹ LLD Response to Further Notice of Informal Complaint No. IC-99-01674 (May 7, 1999) (Further LLD Response to Animal Hospital Complaint).

⁶² *See* Appendices C and D.

⁶³ *See* LLD Sales Script at Appendix B.

⁶⁴ *Id.*

conversation is practically identical to the information contained in the verification script. As described above, the verification script provides for the continued marketing of a bill consolidation service and does not ask the consumer if they have authorized a change in their preferred carrier.

3. The Fantasy Custom Yachts Complaint

19. James Troxell, vice-president of Fantasy Custom Yachts (Fantasy), alleges that although he never agreed to change carriers on behalf of Fantasy, LLD, nonetheless, converted the company's long distance carrier from MCI to LLD without his authorization.⁶⁵ Similar to the allegations in Advance Mortgage and Animal Hospital, Mr. Troxell states that he received a phone call on or about September 1998, from a person presenting themselves as a representative of GTE, Fantasy's local service provider.⁶⁶ The representative claimed that GTE owed Fantasy a credit of \$400 due to overbilling and needed his authorization prior to issuing a rebate check.⁶⁷ Mr. Troxell asked the representative whether she was attempting to switch his company's long distance service.⁶⁸ The representative assured Mr. Troxell that, no, she was attempting only to obtain verification for the rebate check.⁶⁹ Mr. Troxell claims that he was transferred to another person who verified Fantasy's phone numbers and address.⁷⁰ Again, Mr. Troxell insisted that he did not want his long distance service changed.⁷¹ According to Mr. Troxell, the verifier promptly hung up.⁷² Mr. Troxell claims that almost immediately, he received another call from the purported GTE representative who assured him that his service would not change.⁷³ He provided the caller with additional account information and completed the call.⁷⁴ Mr. Troxell discovered the unauthorized change to LLD on his September 10, 1998 bill and immediately changed his service back to MCI.⁷⁵

⁶⁵ Fantasy Custom Yachts, Informal Complaint No. 99-01511 (October 19, 1998) (Fantasy Complaint); *also see* Declaration of James Troxell, IC-99-01511 (May 15, 1999) at 1 (Troxell Declaration).

⁶⁶ Fantasy Complaint at 1; Troxell Declaration at 1.

⁶⁷ Fantasy Complaint at 1; Troxell Declaration at 1.

⁶⁸ Fantasy Complaint at 1.

⁶⁹ *Id*

⁷⁰ Fantasy Complaint at 1; Troxell Declaration at 1.

⁷¹ Fantasy Complaint at 1; Troxell Declaration at 1.

⁷² Fantasy Complaint at 1; Troxell Declaration at 1.

⁷³ Troxell Declaration at 1.

⁷⁴ *Id.*

⁷⁵ Fantasy Complaint at 1; Troxell Declaration at 1.

20. The Consumer Protection Branch forwarded the Fantasy complaint to LLD along with a Notice.⁷⁶ In response, LLD filed with the Commission a letter indistinguishable from its other responses.⁷⁷ LLD's response claims, in identical content and form to its other responses, that LLD investigated the complaint and determined that its verification company had obtained Mr. Troxell's verbal consent to change long distance companies.⁷⁸ LLD's response claims, in contrast to its other responses, that it considers "Mr. Troxell's accusations of misrepresentation on the part of Local Long Distance's marketing agent" as "quite troubling."⁷⁹ LLD states that, "[a]s only the verification process is recorded, it is not possible to determine what was said between Mr. Troxell and any Local Long Distance sales agent."⁸⁰ LLD continues, stating that "[m]isrepresentations of any kind are not company policy, and the company strongly condemns all misrepresentations."⁸¹

21. On April 21, 1999, the Consumer Protection Branch served upon LLD a Further Notice.⁸² LLD's counsel provided a detailed written response, copies of the sales and verification scripts, and an audio tape of the conversation with the verifier.⁸³ Although LLD specifically denies any wrongdoing,⁸⁴ its response supports Mr. Troxell's assertion that Fantasy's preferred carrier was changed without authorization. The language of LLD's sales script directs the customer service representative to state at the close of the call that "I do need to transfer you to verification, they are going to . . . let you know that Local Long Distance will combine the bill in 5 to 10 days. . . [h]old the line while I transfer you, and enjoy the combined billing."⁸⁵ Once again, LLD's response appears to support Mr. Troxell's claim that, either by representing itself as the customer's local carrier offering to credit a customer's account, or through the offer of a

⁷⁶ Notice of Informal Complaint No. IC-99-01511 (November 30, 1998).

⁷⁷ LLD Response to Notice of Informal Complaint No IC-99-01511 (December 15, 1998) (LLD Response to Fantasy Complaint) (In which LLD states that "among the services that Local Long Distance offers its customers is a consolidated billing option which allows subscribers to receive a single bill for local and long distance service.")

⁷⁸ *Id.*

⁷⁹ *Id.* at 2.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Further Notice of Informal Complaint No. IC-99-01511 (April 21, 1999) (Further Notice of Fantasy).

⁸³ LLD Response to Further Notice of Informal Complaint No. IC-99-01511 (May 7, 1999) (Further LLD Response to Fantasy).

⁸⁴ *Id.* at 2.

⁸⁵ *See* LLD Sales Script at Appendix B.

bill consolidation service, LLD apparently made intentional misrepresentations in an attempt to switch Fantasy's preferred long distance carrier.

22. LLD's counsel also provided the Commission with a copy of the audio tape of the verification call between Mr. Troxell and LLD's third party verifier.⁸⁶ On May 13, 1999, the Commission provided Mr. Troxell with an opportunity to listen to and review the contents of the audio tape.⁸⁷ Mr. Troxell declares, in a signed statement, that he "know[s] part of this tape has been edited to show that I had given authorization to LLD to have my long distance service change (sic) and to show that I agreed with the rates they were offering. At no time did I ever authorize a change in my long distance carrier, therefore I would not have agreed with any of their rates."⁸⁸ Even assuming, however, that the audiotape is an accurate reflection of the verification conversation, the tape still supports Mr. Troxell's claim that he did not knowingly authorize a change in his preferred long distance carrier because it is apparent from the transcript that the customer on the tape did not understand that he was verifying such a change.⁸⁹

D. The Remaining Consumer Complaints

23. The remaining eleven consumer complaints that are the subject of this NAL similarly allege that LLD fraudulently changed the consumers' preferred carriers without their authorization.⁹⁰ In several of the remaining complaints, the small business consumers recall their realization that LLD's telemarketer was attempting to mislead them, and as such, questioned whether the call was a pretext to deceive them into changing their long distance service.⁹¹ These complainants report further that LLD sales representatives and verifiers assured them that their preferred carrier for long distance service would not change. Nonetheless, LLD used the call, whether it was for verifying the lines, applying an account credit, or providing a bill consolidation, as authority to execute a preferred carrier change on these consumers' behalf.

⁸⁶ LLD Further Response to Fantasy at 2-3; *also see* Troxell Declaration at 1.

⁸⁷ Troxell Declaration at 1.

⁸⁸ *Id.*

⁸⁹ *See* LLD Verification Script at Appendix C; *Compare with* Transcribed Verification Conversation at Appendix D.

⁹⁰ Pertinent information concerning these complaints and the responses thereto is set forth in Appendix A to this Order. We note that LLD's responses to the Consumer Protection Branch's initial Notices regarding the remaining complaints are similar to those submitted in response to the complaints described above. In each case, LLD filed brief letters containing boilerplate language stating that the customer's service was switched to LLD "pursuant to a telemarketing order that was verified by an independent third party pursuant to 47 C.F.R. § 64.1100(c)." Further, LLD's letters consistently stated that complainants' accounts would be credited with the amount of any disputed long-distance charges, in an apparent attempt to resolve the informal complaints and terminate proceedings before the Commission.

⁹¹ *See* Mark Nelson Werther AIA Complaint.

24. In other of the remaining complaints, consumers claim that prior to discovering unauthorized long-distance charges from LLD on their telephone bills, they had no contact with LLD and that they did not authorize a switch of their long distance service to LLD.⁹² Although these consumers do not specifically recall receiving a telemarketing call from LLD, we find that the record demonstrates it is probable that these consumers were subjected to the same types of misrepresentations detailed above. Indeed, the intent of LLD's sales and verification scripts (not to mention the apparent intentional misrepresentations by LLD's telemarketers described by other consumers) was to obfuscate the origin and nature of LLD's service offering.

25. As described above, the sales script submitted by LLD illustrates that LLD marketed its service as a billing consolidation service and not as a long distance service. To the extent that the telemarketer followed the scripts, the consumer would at no time have been asked to change their preferred carrier to LLD. In fact, it is unclear to what degree that even a telemarketer reading LLD's scripts would have understood that LLD was seeking to switch consumers' preferred carriers. Furthermore, the name Local Long Distance could have reasonably contributed to consumer confusion as to the entity originating the telemarketing calls, particularly when combined with the specific misrepresentation of LLD's telemarketing agents and their emphasis that LLD's service would simply consolidate the consumers' local and long distance billing. Indeed, we believe that such confusion was likely contemplated by the company in choosing such a generic name.

26. As with the other complaints forming the basis of this order, LLD submitted audio tapes of the third party verification as evidence that these consumers had authorized LLD to switch their preferred carrier. A review of these tapes shows that they closely follow the verification script provided by LLD. As with all the verification tapes at issue in this NAL, at no time during the taped conversation is the consumer directly asked if she has authorized a change in their preferred carrier to LLD. Furthermore, the consumer is not asked if she understands that in exchange for agreeing to receive a consolidated billing service, LLD will change her service provider to LLD. Therefore, based on the scripts and audio tapes provided by LLD, as well as the pattern of behavior described by complainants who remember LLD's call, we conclude that LLD also willfully or repeatedly changed these consumers' preferred carriers without authorization through the use of misleading telemarketing calls.

III. DISCUSSION

A. Violations Evidenced in the Complaints

27. The consumer complaints described above and LLD's responses depict a disturbing pattern of willful disregard for the requirements of the Act and the Commission's rules

⁹² See, e.g., Quality Pacific; IC-99-04345 (Ms. Jackie Ends alleges that she discovered for the first time that her long distance service had been changed to LLD after reviewing her local telephone bill).

and orders. Section 258 of the Act, adopted in 1996, 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 procedures as the Commission shall prescribe."⁹³ The goal of section 258 is to eliminate the practice of "slamming." Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁹⁴ These rules and orders require that IXCs either obtain a signed letter of authorization (LOA) or, in the case of telemarketing solicitations, follow one of the telemarketing verification procedures before submitting preferred interexchange carrier (PIC) change requests to LECs on behalf of consumers.⁹⁵

28. The statements and other information provided by the complainants, and the limited responses by LLD, represent credible and compelling evidence that LLD failed to obtain the complainants' authorization prior to submitting preferred carrier-change orders. LLD's telemarketers repeatedly misrepresented the nature of LLD's service offering or in other ways engaged in practices designed to prevent consumers from understanding that LLD was seeking to change their preferred carriers.⁹⁶ In the Advance Mortgage Corporation Complaint, for example, Sherry Johnson asserts that the LLD telemarketer who slammed her merely stated that they were waiving a charge that was on her bill. Despite the use of a telemarketing and verification system which would have allowed LLD to market truthfully and verify accurately the offer of LLD's service, LLD employed fraudulent and misleading practices to lure or confuse consumers into changing their preferred carriers.

29. The record supports our finding that LLD engaged in a pattern of conduct designed to switch consumers' preferred long distance carriers without authorization. First, LLD's own sales scripts (which they submit as having been used in connection with the complaints at issue) appear intended to conceal the purpose of the telemarketing calls. The actual purpose of the calls was to change consumers' preferred long distance carriers by focusing solely upon the offer of a free billing service. As prepared by LLD, a reasonable consumer would not understand that his or her affirmative response to the billing consolidation service would result in (and, indeed, was contingent upon) a switch to LLD for long distance service.⁹⁷

⁹³ See 47 U.S.C. § 258.

⁹⁴ The Commission's rules and orders clearly contemplate that changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier, or to the customer's carrier identification code (CIC), are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁹⁵ See 47 U.S.C. § 258; 47 C.F.R. § 64.1100 (1997); *1997 FNPRM & Order on Recon.*, 12 FCC Rcd 10674; *LOA Order*, 10 FCC Rcd 9560; *PIC Change Order*, 7 FCC Rcd 1038; *Allocation Order*, 101 FCC 2d 911; *Waiver Order*, 101 FCC 2d 935.

⁹⁶ See Advance Mortgage Complaint at 1; Johnson Declaration at 1.

Second, LLD's telemarketing employees and agents further promoted this false impression to prospective customers through intentional misrepresentations concerning the nature and origin of the service being marketed. In particular, it appears that LLD's telemarketers engaged in a pattern of misrepresenting that they were calling on behalf of the consumer's local telephone company, presumably to more readily convince the prospective customer that they were merely providing a no-cost billing consolidation or other service.⁹⁸ Moreover, in those instances when the consumer nonetheless had suspicions that LLD was trying to switch his or her long distance carrier, LLD's telemarketers apparently provided false responses to specific questions in order to maintain this deception.

30. Third, we find that LLD's preferred evidence of verification in no way demonstrates consumers' authorization to switch carriers as mandated by the Commission's rules; but rather was designed to further the pattern of misrepresentations concerning the nature and origin of the services being marketed. As detailed above, the verification scripts and tapes provided to the Commission by LLD maintain the emphasis on the billing service and fail to clearly ask if the consumer is authorizing a switch of his or her preferred carrier. Indeed, as evidenced by the verification tapes, most of the conversation during this part of the telemarketing call was between the telemarketing salesperson and the asserted verifier, not between the verifier and the prospective customer. The active participation of the salesperson in this verification process undermines the ability of the consumer to understand what is being authorized, and raises doubts about the independent status of the verifier, as required by our rules. Finally, we believe that the company and its telemarketers knowingly used the generic nature of the name "Local Long Distance" in a manner intended to further this overall deception. While carriers are free to market under any name they wish, it is apparent from our review of the scripts and verification tapes that the name "local long distance" was utilized in a manner intended to convey to consumers a misunderstanding of the nature and origin of the service being marketed.

31. In sum, the statements and other information provided by the complainants, LLD's limited responses, and the scripts and audio tapes provided by LLD, demonstrate that LLD apparently changed the preferred carriers of fourteen complainants without their authorization through the use of fraudulent telemarketing. As described above, LLD has failed to provide any evidence or information to counter the complainants' claims. In fact, the evidence provided supports the complainants' allegations that the deceptive telemarketing practices were designed to mislead consumers into changing their preferred carriers. Accordingly, we conclude that LLD has apparently willfully or repeatedly violated section 258 of the Act and the Commission's rules and orders pertaining to preferred carrier changes.⁹⁹

⁹⁷ See Sales Script at Appendix B.

⁹⁸ See, e.g., Sales Script at Appendix B, Transcribed Conversation at Appendix D.

⁹⁹ See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; 1998 *Second Order & FNPRM*, 14 FCC 1508 (1998); 1997 *FNPRM & Order on Reconsideration*, 12 FCC Rcd 10674 (1997); *LOA Order*, 10 FCC Rcd 9560 (1995), *stayed in part, In-bound Stay Order*, 11 FCC Rcd 856 (1995); *PIC Change Order*, 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993); *Allocation Order*, 101 FCC 2d 911 (1985), *Waiver Order*, 101 FCC 2d 935 (Com. Car. Bur.

32. Based on LLD's apparent practices as described in this NAL, we also find LLD liable for apparent violations of section 201(b) of the Act,¹⁰⁰ which provides in pertinent part that "[a]ll charges, practices, classifications and regulations for and in connection with. . . communication service shall be just and reasonable. . . ."¹⁰¹ The Commission has previously found that the use of deceptive marketing by carriers may constitute an unjust or unreasonable practice in violation of section 201(b).¹⁰² We find that LLD's misrepresentation of its identity, its withholding of material facts regarding its service offerings, and its attempt to mislead consumers, constitute unjust and unreasonable practices.

B. Forfeiture Amount

33. LLD's apparent failure to obtain authorization to switch the preferred carriers of the consumers described in this NAL, persuade us that a significant forfeiture is warranted against LLD for willful or repeated violations of section 258 of the Act and the Commission's slamming rules and orders. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁰³ In exercising such 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."¹⁰⁴ The Commission's forfeiture guidelines currently establish a standard forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.¹⁰⁵ These policies and

1985), *recon.* (of both *Allocation Order* and *Waiver Order*) denied, 102 FCC 2d 503 (1985) (*Reconsideration Order*).

¹⁰⁰ 47 U.S.C. § 201(b).

¹⁰¹ In the *Business Discount Plan Notice of Apparent Liability*, for example we found that Business Discount Plan, Inc. (BDP) apparently willfully or repeatedly violated section 201(b) by employing unjust and unreasonable telemarketing practices, such as misrepresenting the nature of BDP's service offering. See *Business Discount Plan Inc.*, Notice of Apparent Liability, 14 FCC Rcd 340 (1998) (*BDP NAL*). The Commission found BDP apparently liable for a forfeiture of \$40,000 for each instance that it engaged in an unjust and unreasonable telemarketing practice in violation of section 201(b) of the Act. *BDP NAL*, 14 FCC Rcd at 355.

¹⁰² See *BDP NAL*, 14 FCC Rcd 340 (1998).

¹⁰³ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

¹⁰⁴ See 47 U.S.C. § 503(b)(2)(D).

¹⁰⁵ See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending) (*Forfeiture Policy Statement*).

guidelines include "upward adjustment criteria" that warrant a higher forfeiture amount based on our evaluation of the particular actions and circumstances of the violator.¹⁰⁶ These include the *egregiousness* of the misconduct, ability or inability to pay, whether the violation was an *intentional* violation, whether substantial harm resulted from the violations, history of compliance with Commission requirements, whether the violator realized substantial economic gain from the misconduct, and whether the violation is *repeated or continuous*.¹⁰⁷ The Commission retains the discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.¹⁰⁸

34. We note that on several occasions, the Commission has sternly admonished carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary fines, against any carrier found to have engaged in slamming.¹⁰⁹ More recently, the Commission has issued NALs assessing forfeitures at \$80,000 per violation for the use of forged LOAs.¹¹⁰ In those Orders, the Commission found that the higher forfeiture amounts were warranted by the egregious nature of the misconduct, the carrier's intent to slam consumers, and the repeated nature of the slamming violations.¹¹¹

35. In the instant case, the evidence before us indicates that LLD has willfully or repeatedly engaged in the use of fraudulent telemarketing and verification procedures as part of a pattern to intentionally slam consumers. The record reveals that LLD utilized and approved sales and verification scripts which evidence a clear intent to mislead and confuse consumers.¹¹² These scripts were provided by LLD in response to each of the complaints at issue and illustrate repeated attempts by LLD to sidestep the Act and the Commission's slamming rules and orders by employing telemarketing scripts designed to mislead consumers into "authorizing" a

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* See also 47 U.S.C. § 503(b)(2)(D).

¹⁰⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

¹⁰⁹ See, e.g., *Nationwide Long Distance, Inc. NAL*, 11 FCC Rcd at 3089. The Commission has also emphasized on numerous occasions that the actions of a carrier's marketing agents do not relieve a carrier of its independent obligation to ensure compliance with the rules. Rather, under the Communications Act, the acts or omissions of an agent or other person acting for a common carrier are deemed to be the acts or omissions of the carrier itself. See 47 U.S.C. § 217; see also *Heartline Communications, Inc. NAL*, 11 FCC Rcd 18487, 18494 (1996) (*Heartline Communications NAL*).

¹¹⁰ *All American Telephone Company, Inc.*, Notice of Apparent Liability, 13 FCC Rcd 15040 (1998); *Brittan Communications International Corp.*, Notice of Apparent Liability, FCC No. 98-291, rel. Oct. 29, 1998; *Amer-I-Net Services Corp.*, Notice of Apparent Liability, FCC No. 98-285, rel. Oct. 30, 1998.

¹¹¹ *Id.*

¹¹² See Appendices B, C, and D.

preferred-carrier change. Finally, the record demonstrates particularly egregious conduct on the part of LLD. For example, complaint after complaint alleges that LLD representatives made false claims regarding LLD's identity and the nature of its service offering in an apparent effort to prevent consumers from understanding that LLD was changing their preferred carriers. In the face of such a clear pattern of misconduct, we thus find that the upward adjustment criteria in our forfeiture guidelines that involve egregiousness of misconduct, intent of the carrier, and the repeated nature of violations are applicable in this case. Applying those criteria to the facts of this case, we conclude that it is appropriate to impose a forfeiture amount that is double the base amount contained in our forfeiture guidelines for those preferred carrier change requests based on fraudulent telemarketing.

36. Although we find LLD liable for apparent violations of section 201(b) of the Act, we decline to assess a forfeiture amount for these violations, and instead exercise our discretion to use this conduct to support our conclusion that the apparent violations of section 258 and the Commission's slamming rules and order were intentional or egregious.¹¹³

37. Thus, we find that LLD is apparently liable for a forfeiture of \$80,000 for each of the unauthorized conversions, via telemarketing, of fourteen complainants' preferred carriers in violation of section 258 of the Act. As evidenced by the record, LLD's deceptive telemarketing practices were aimed at slamming consumers. This NAL places carriers on notice that the Commission will not tolerate this type of violation and that carriers must take the steps necessary to inform consumers clearly in a telemarketing context that they are agreeing to change their long distance service. Taken together, the forfeitures we assess against LLD for violations of section 258 of the Act result in a total forfeiture amount of \$1,120,000. LLD shall 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.¹¹⁴

38. Finally, our review of LLD's responses indicates a need for the Commission to continue to monitor LLD's preferred carrier change practices. We, therefore, require LLD to file with this Commission a compliance plan that shall include procedures designed to promptly identify and address consumer inquiries and concerns about LLD's preferred carrier change practices.¹¹⁵ The compliance plan shall detail actions LLD will take and procedures it will establish to comply with the Act and with the Commission's rules and orders. These actions will include, at a minimum, changes in LLD's sales scripts and changes in LLD's verification practices. The Commission will closely monitor the level and content of consumer complaints to

¹¹³ We note that our action today differs from our decision in the BDP NAL to assess a forfeiture for violations of section 201(b). *BDP NAL*, 14 FCC Rcd 340. In that Order, however, we acknowledged that the unjust and unreasonable actions of a carrier may support a forfeiture of over \$40,000 for each unauthorized conversion of long distance service. *BDP NAL*, 14 FCC Rcd at 356. Here, we choose to assess a higher forfeiture amount based upon the Commission's prosecutorial discretion.

¹¹⁴ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

¹¹⁵ See 47 U.S.C. § 218.

determine whether the establishment of LLD's proposed management practices leads to a decrease in unauthorized preferred carrier changes.

VI. CONCLUSIONS AND ORDERING CLAUSES

39. We have determined that Coleman Enterprises d/b/a Local Long Distance apparently violated sections 201 and 258 of the Communications Act and the Commission's preferred carrier change rules and orders by converting the preferred carriers of the fourteen consumers identified above, on the dates and in the manner described herein. We have further determined that Coleman Enterprises d/b/a Local Long Distance is apparently liable for a total forfeiture amount of \$1,120,000.

40. Accordingly, IT IS ORDERED, pursuant to section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Coleman Enterprises, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$1,120,000 for willful or repeated violations of section 258 of the Act¹¹⁶ and the Commission's preferred carrier change rules and orders as described in the paragraphs above.¹¹⁷

41. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, Coleman Enterprises, Inc. SHALL PAY the full amount of the proposed forfeiture¹¹⁸ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

42. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 218, that Coleman Enterprises, Inc. SHALL FILE with the Commission, within thirty (30) days of the date of this NAL, a compliance plan detailing the actions it will take and the procedures it will establish, to ensure compliance with section 258 of the Act and the Commission's rules and orders relating to preferred carrier changes. The compliance plan shall set forth procedures designed to enable Coleman Enterprises d/b/a Local Long Distance to promptly identify and address consumer inquiries and concerns about its preferred carrier change practices.

¹¹⁶ 47 U.S.C. §§ 201(b); 258.

¹¹⁷ See 47 C.F.R. § 64.1150; 1998 *Second Order and FNPRM*, 14 FCC Rcd 1508; 1997 *FNPRM & Order on Recon.*, 12 FCC Rcd 10674; *LOA Order*, 10 FCC Rcd 9560; *PIC Change Order*, 7 FCC Rcd 1038; *Allocation Order*, 101 FCC 2d 911; *Waiver Order*, 101 FCC 2d 935.

¹¹⁸ 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 Coleman Enterprises, Inc.'s check or money order to "NAL/Acct. No. 916EF0004." Such remittances must be mailed to Forfeiture Collection section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

43. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to: Daniel G. Coleman, President, Coleman Enterprises, Inc. d/b/a Local Long Distance, 6053 Hudson Road, Suite 110 Saint Paul, Minnesota, 55125.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

In the Matter of
Coleman Enterprises, Inc.
d/b/a Local Long Distance, Inc.
Apparent Liability for Forfeiture

Appendix A

File No. ENF-99-09
NAL/ Acct. No. 916EF0004
FCC 99-224

	IC Number	Company	Complainant	Date Switched	Date Filed	Notice	LLD Resp.	LEC Resp.
1	98-39935	Advance Mortgage Corp.	Sherry Johnson	8/20/98	9/17/98	11/12/98	12/3/98	12/10/98
2	99-01511	Fantasy Custom Yachts	James Troxell	9/10/98	10/19/98	11/30/98	12/15/98	12/9/98
3	99-01674	Jeffrey Animal Hospital	Patrick E. Lewis	9/18/98	11/17/98	12/14/98	3/4/99	12/21/98
4	99-02238	Eades ER Dental	John D. Anderson	9/17/98	12/3/98	1/25/99	NR	2/4/99
5	99-02326	Silvana R. Barahona	Silvana R. Barahona	9/17/98	12/4/98	1/25/99	3/3/99	
6	99-02455	Sage Capital	Peter DeLisser	10/1/98	12/16/99	1/25/99	2/9/99	1/28/99
7	99-02995	Mark Nelson Werther, A.I.A.	Mark Nelson Werther	11/1/98	1/20/99	2/22/99	4/2/99	3/17/99
8	99-03389	Accord	Darla J. Nelson	11/6/98	1/20/99	2/22/99	3/4/99	3/5/99
9	99-04345	Quality Pacific	Jackie Ends	12/7/98	2/9/99	3/8/99	3/19/99	4/7/99
#	99-05133	Arco Floor Covering	Alex Weinberg	8/20/98	3/24/99	4/26/99	NR	5/5/99
#	99-05732	Lera\Dynalectric	Vicky Kopec	11/17/98	2/26/99	5/10/99	NR	5/26/99
#	99-06677	Starfire, Inc.	Ken Bennett	9/17/98	1/20/99	5/24/99	6/15/99	6/1/99
#	99-06799	Mark Dinges, Inc. dba CA Cr	William M. Schneider	11/6/98	3/1/99	5/24/99	6/15/99	6/4/99
#	99-06818	Spring Valley Auto Parts	David R. Ostercon	12/16/98	2/3/99	5/24/99	6/15/99	6/1/99

Appendix D

Transcribed Conversation of Verification of Advance Mortgage Corporation
Informal Complaint No. IC-98-39935, filed September 17, 1998.

Verifier: Hello, Ms. Johnson?

Sherry Johnson: Hello.

Verifier: Hello, My name is Allen, I'm with the Verification Center and I just need a minute of your time to verify and confirm your account information. This verification is recorded. The representative you just spoke with will be giving me all the account information. Please feel free to correct her if she's wrong and today's date is August the 14th.

Ms. Johnson: OK.

Verifier: Representative, I have the main number there at (*redacted*) 5542. Are there any additional numbers there?

Sales Rep: Yes, same prefix, 8639.

Verifier: 8639?

Sales Rep.: 1332.

Verifier: 1332. . .

Sales Rep. And 1758

Verifier: 1758, okay.

Sales Rep.: And it comes under Advance Mortgage Corp.

Verifier: Advance. . .? Advance or Advanced?

Sales Rep.: Advance.

Verifier: Mortgage Corp?

Sales Rep.: Yes.

Verifier: Mort -- gage Corp., okay.

Sales Rep.: 4830 West County Road, 144

Verifier: 4830 West Coun -- ty?

Sales Rep.: Road, 144

Verifier: 144, okay?

Sales Rep.: And that's Bargersville, let me spell that for you
B-a-r-g-e-r-s-v-i-l-l-e

Verifier: Can you repeat that one more time, sorry about that?

Sales Rep.: B-a-r-g-e-r-s-v-i-l-l-e

Verifier: okay.

Sales Rep.: 46106 with a usage of 30.

Verifier: Ms. Johnson, is all the information correct?

Ms. Johnson: Yes.

Verifier: And I see with Sherry Johnson and you are the President there, is that correct ma'am?

Ms. Johnson: Yes.

Verifier: And you're one of the authorized persons to have Local Long Distance provide Long Distance service for your business?

Ms. Johnson: Um-Hmm.

Verifier: And you spend approximately 30 dollars per month in long distance, is that correct ma'am?

Ms. Johnson: Yea (*pause*) now you know what? I thought that wouldn't change. Is that correct?

Verifier: Correct ma'am. All we're doing here ma'am is your local telephone company and Local Long Distance are consolidating your billing statement, so (*quickly*) when your bill comes in the mail, your local and your long distance, will appear on the same statement and you would just have to write out one check for both bills. Okay? Okay, there is a service fee of \$2.50 per month which is waived if you use \$25.00 or more per month in long distance. For clerical purposes, we just need the month and date of your birth, not the year.

Ms. Johnson: (Unintelligible)

Verifier: Okay.

Sales Rep.: Who is this?

Verifier: This is Allen. Okay?

Sales Rep.: Okay.

Verifier: Okay, ma'am, we're almost done. (*quickly*) You're new long distance service will turn five to ten days provided by Local Long Distance which is independent of your local telephone company. All long distance charges will be included in your local telephone company billing statement with a fla-

Ms. Johnson: Now, okay, now wait a minute. You are changing to Local Long Distance.

Verifier: Ma'am, no ma'am. The name. . . Ma'am. . . Uh. . . the name of the company. . .
Ma'am, the name of the company is just called long, Local Long Distance ma'am.
We're just. . . were just a billing service.

Ms. Johnson: Okay.

Verifier: That's it ma'am.

Ms. Johnson: Okay. Great.

Verifier: Okay. All long . . . (pause) distance calls. . . (Unintelligible) excuse me ma'am. . .
(quickly) charges will be included in your local telephone company billing
statement with a flat rate of .25 cents per minute for long distance calls made
within the United States and Canada

Ms. Johnson: Why. . . (Unintelligible) minute?

Verifier: Okay, Ma'am, this is just a flat rate, so if. . .if rates do go. . .do
change or anything, nothing will go, exceed over .25 cents ma'am.

(Pause)

Verifier: Okay?

Ms. Johnson: Um. . .

Verifier: Okay ma'am, I'm just an independent third party verifier, I'm just
verifying the information you spoke with the representative earlier.

Ms. Johnson: (Pause)

Verifier: So. . . I would not currently know what your present local long
distance company is.

Ms. Johnson: Okay.

Verifier: International rates will vary. That is all the information I need. If you have no
more questions for me, I'd like to thank you for your time and have a good day
ma'am. And if you have any additional questions? There is a 1-800 number on
the back of your billing statement. And they can, they can probably answer any
of the questions you might have that might arise.

Ms. Johnson: Okay.

Verifier: Okay?

Ms. Johnson: Thank you.

Verifier: Bye-bye.

Ms. Johnson: Alright, Bye.

Sales Rep: Okay?