

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

In the Matter of
Vista Group International, Inc.
Apparent Liability for Forfeiture
File No. ENF-99-10
NAL/Acct. No. 916EF0005

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), we initiate enforcement action against Vista Group International, Inc. (Vista), a reseller of long distance telephone service. For the reasons set forth below, we find that Vista apparently willfully or repeatedly violated section 258 of the Communications Act of 1934, as amended (the Act), as

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 assess such penalties through the use of a written notice of apparent liability.

2 Vista is a privately-held company headquartered at 821 Westpoint Parkway, Suite 920, Westlake, Ohio, 44145. According to Dun & Bradstreet's Business Information Report, Vista, which was incorporated in Ohio in 1993, began operations in 1989 to provide telecommunications and long distance services. Thomas Coughlin is the chief executive officer and owns 100 percent of Vista's capital stock. Philip Bethune serves as president, and Mark Little as vice president and controller. Vista employs 17 people, including its officers. See Dun & Bradstreet Business Information Report, June 7, 1999.

3 Resellers purchase "bulk" telecommunications services from long-distance providers and resell them to their customers. Resellers that do not own or operate their own facilities, known as "non-facilities based" or "switchless resellers," use their access to other carriers' networks to provide long-distance service to their customers.

4 47 U.S.C. § 258. 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."

well as Commission rules and orders,⁵ by changing, without authorization, the preferred carriers for interstate service designated by the 18 small business consumers described herein. Seven of these "slamming" violations⁶ are compounded by compelling evidence that Vista, in effecting the unauthorized preferred carrier changes,⁷ engaged in intentional, egregious, and repeated misconduct designed to deceive customers, including misrepresenting the nature of Vista's service during telemarketing calls,⁸ and, in at least one case, falsifying a customer's verification audiotape.⁹ With respect to the remaining 11 slamming complaints, Vista admits in its responses to the complaints that it "purchased" from one of its telemarketing agents, American Telecommunications Systems, Inc. (ATS), customer accounts that were not verified in accordance with the Commission's rules and orders.

2. Based upon our review of the facts and circumstances surrounding the egregious violations before us, we find that Vista is apparently liable for forfeiture in the amount of eighty thousand dollars (\$80,000) for each of the seven slamming violations that, as described in detail

⁵ See, e.g., 47 C.F.R. § 64.1150; *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*); Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997) (*1997 FNPRM & Order on Reconsideration.*); *Policies and Rules Concerning Unauthorized Changes 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*), *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*).

⁶ Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization.

⁷ The Commission's rules and orders require that long-distance service providers such as Vista submit preferred carrier change orders to local exchange carriers, who are then obligated to make the preferred carrier changes absent some indication that the requests are not legitimate. See *LOA Order*, 10 FCC Rcd 9560 (1995); *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (Com. Car. Bur. 1985).

⁸ For example, a number of complaints allege that Vista and its agents misrepresented or implied that it was affiliated with the customers' local exchange or long-distance carriers, and, after gaining the consumers' trust, mischaracterized Vista's offering as a bill consolidation service. When consumers agreed to a bill consolidation, Vista apparently switched their preferred carrier to Vista without their authorization. See, e.g., paragraph 5.

⁹ As discussed below in paragraph 28, we also find that Vista's intentional, egregious, and repeated misconduct apparently violates section 201(b) of the Act, 47 U.S.C. § 201(b), 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. . . ." Nevertheless, as discussed below, we decline, at this time, to assess a forfeiture for these apparent section 201(b) violations. See *infra* paragraph 34.

below, was accompanied by Vista's apparently intentional, egregious, and repeated misconduct. In addition, we find that Vista is apparently liable for forty thousand dollars (\$40,000) for each of the 11 remaining violations, resulting in a total forfeiture amount of one million dollars (\$1,000,000).¹⁰

3. As an additional measure, we require Vista to file with this Commission within thirty days of the date of this NAL, a compliance plan detailing the actions it has taken and the procedures it has established to ensure compliance with section 258 of the Act and this Commission's rules and orders relating to preferred carrier changes. The compliance plan shall set forth procedures designed to enable Vista promptly to identify and address consumer inquiries and concerns about its preferred carrier change practices. We note that we are continuing to review the consumer complaints filed against Vista, and that the Commission may assess additional forfeitures or take other enforcement action if appropriate.

II. THE CONSUMER COMPLAINTS

A. Introduction

4. To illustrate Vista's apparent violations of the Act and the Commission's rules and orders, this Order profiles four of the 18 slamming complaints in the record.¹¹ We note that these 18 complaints represent only a small portion of the 907 slamming complaints against Vista that were processed by the Consumer Protection Branch (Branch) of the Common Carrier Bureau between September 1, 1998 and July 30, 1999. We have targeted these 18 complaints for development of a full record in support of the instant enforcement action. The Commission retains discretion, however, to pursue further action with respect to any of the complaints it has received against Vista.

5. Three of the profiled complaints show a clear pattern of conduct by Vista to engage in apparently intentional, egregious, and repeated misconduct in effecting unauthorized preferred carrier changes, such as misrepresenting the nature of Vista's service during telemarketing calls. These complaints were filed by the following small business customers:

¹⁰ 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).

¹¹ Pertinent information concerning all 18 complaints and Vista's responses thereto is set forth in the Appendix to this Order. The record also includes supporting statements for each of these complaints.

Sterling Travel of Nashville, Tennessee; Porter & Associates, Inc. of Seattle, Washington; and W.F. Magann Corporation of Portsmouth, Virginia. The fourth profiled slamming complaint is illustrative of how Vista, by its own admission, relied on unverified customer accounts that it purchased from ATS. The Import Camera Service Complaint, described below, details one customer's discovery that Vista had purchased his account from ATS without verifying that Import Camera Service wanted to switch to Vista.

B. Consumer Complaint Profiles

1. The Sterling Travel Complaint

6. Mr. David Lankford, the owner of Sterling Travel,¹² asserts that in October of 1998, he received a call from a telemarketer claiming to represent BellSouth, Mr. Lankford's local exchange carrier. According to Mr. Lankford, the telemarketer claimed that she was calling to combine Sterling Travel's long distance and local charges on one bill. Further, Mr. Lankford alleges, the telemarketer offered Sterling Travel a credit of "about \$75.00" if Mr. Lankford agreed to "single billing" for all of his company's phone lines.¹³ Although he agreed to the combined billing, Mr. Lankford denies that he ever gave the telemarketer authorization to switch his preferred carrier. After discovering that he had been switched from MCI/Worldcom to Vista without his authorization, Mr. Lankford filed an informal complaint to alert the Commission to Vista's "deceptive" tactics.¹⁴

7. The Branch forwarded the Sterling Travel Complaint to Vista along with a Notice of Informal Complaint (Notice).¹⁵ In response, Vista filed a brief letter generally acknowledging that there are "reliability problems associated with soliciting orders through independent sales agents, especially through telemarketing."¹⁶ However, Vista failed to address Mr. Lankford's allegations that Vista's telemarketer misrepresented her affiliation with BellSouth and portrayed Vista as a consolidated billing service. Vista also submitted an audiotape that, it asserts, demonstrates that Mr. Lankford authorized a change to Vista.¹⁷ As discussed below, however, a

¹² Sterling Travel, Informal Complaint No. 99-01655 (Oct. 26, 1998) (Sterling Travel Complaint). *See also* Declaration of David Lankford (May 10, 1999).

¹³ Sterling Travel Complaint at 1; Declaration of David Lankford at 1.

¹⁴ Sterling Travel Complaint at 1.

¹⁵ Notice of Informal Complaint No. 99-01655 (Dec. 14, 1998).

¹⁶ Vista Response to Notice of Informal Complaint No. 99-01655 (Dec. 22, 1998). In an apparent attempt to resolve the complaint and terminate proceedings at the Commission, Vista states that it credited all of Sterling Travel's usage charges. Vista Response at 2.

¹⁷ *Id.* at 1.

review of the audiotape provides no evidence to counter Mr. Lankford's assertion that Vista slammed him.¹⁸

2. The Porter & Associates Complaint

8. Mr. Benjamin Porter of Porter & Associates alleges that Vista's telemarketer claimed to represent Porter & Associates' local exchange carrier, U S WEST.¹⁹ Further, Mr. Porter asserts that Vista's telemarketer offered to provide "single billing" for local and long distance calls that would allegedly "protect [Porter & Associates] against a practice known as slamming."²⁰ Mr. Porter states that the telemarketer claimed that there would be no change in his company's long-distance carrier, AT&T Corp. (AT&T).

9. Mr. Porter eventually agreed to the billing change, but only after "repeatedly questioning the caller" to confirm that he was "an agent of US WEST, and that there would be no change in Porter & Associates' long-distance carrier or rates."²¹ Mr. Porter discovered that he had been slammed when he reviewed his telephone bill and noticed that his long-distance rates were twice as high as what he had paid while an AT&T customer.²²

10. In response to the Branch's Notice of the Porter & Associates' Complaint,²³ Vista filed a brief letter that fails to address Mr. Porter's specific allegations and, like Vista's response to the Sterling Travel Complaint, cites "reliability problems associated with soliciting orders through independent sales agents, especially through telemarketing."²⁴ Vista also submitted an audiotape which, Vista asserts, demonstrates that Porter & Associates agreed to become Vista's customer.²⁵

¹⁸ See *infra* paragraph 25.

¹⁹ Porter & Associates, Inc., Informal Complaint No. 99-2754 (Dec. 15, 1998) (Porter & Associates Complaint). See also Declaration of Benjamin Porter (May 18, 1999).

²⁰ Porter & Associates Complaint at 1; Declaration of Benjamin Porter at 1.

²¹ Porter & Associates Complaint at 1.

²² Declaration of Benjamin Porter at 1.

²³ Notice of Informal Complaint No. 99-02754 (Feb. 1, 1999).

²⁴ Vista Response to Notice of Informal Complaint No. 99-02754 (Feb. 9, 1999). In an apparent attempt to resolve the complaint, Vista stated that all of Porter & Associates' calls had been "re-rated" to the rate of its previous long-distance carrier. Vista Response at 2.

²⁵ *Id.* at 1.

However, as discussed below, the proffered audiotape provides no evidence to counter Mr. Porter's assertion that Vista slammed him.²⁶

3. The Magann Complaint

11. Ms. Ricki Bittle of the W.F. Magann Corporation (Magann) alleges that when she discovered Vista had slammed her, she requested a copy of the audiotaped verification upon which Vista supposedly relied in submitting a preferred carrier change to Magann's local exchange carrier.²⁷ Subsequently, Ms. Bittle received a copy of an audiotape from Quick Response, a company that performs third-party verification of telemarketing calls for Vista.

12. Upon listening to the audiotape, Ms. Bittle realized that it was not her voice on the tape, but someone pretending to be her. According to Ms. Bittle, all of the information on the tape was incorrect, including the spelling of her name, her company's current long-distance carrier, her company's monthly long-distance usage, and her birthdate.²⁸ Ms. Bittle immediately called Quick Response, which denied responsibility, stating that its role was merely to "verify that a call was made."²⁹ Ms. Bittle then contacted Vista, and was informed that a company named Viacom had contacted Magann on Vista's behalf. When Ms. Bittle called Viacom, a representative explained that the individual who had solicited Magann's order no longer worked at Viacom. Further, he suggested to Ms. Bittle that he would "make up" for her inconvenience by buying her dinner for two at a local restaurant.

13. In its response to the Branch's Notice of the Magann Complaint,³⁰ Vista claims that "a person by the name of Ricki Bittle authorized the changing of the Complainant's long distance service to Vista Group International."³¹ Noting Ms. Bittle's allegation that it is not her voice on the audiotape, Vista states that Viacom "is no longer marketing on behalf of Vista Communications," and that Vista "regrets Complainants [sic] experience with the service in this matter."³²

²⁶ See *infra* paragraph 25.

²⁷ W.F. Magann Corporation, Informal Complaint No. 99-02498 (Nov. 5, 1998) (Magann Complaint). See also Declaration of Ricki Bittle (August 3, 1999).

²⁸ Magann Complaint at 1.

²⁹ Magann Complaint at 1.

³⁰ Notice of Informal Complaint No. 99-02498 (Jan. 25, 1999).

³¹ Vista Response to Notice of Informal Complaint No. 99-02498 (Feb. 1, 1999).

³² *Id.*

4. The Import Camera Service Complaint

14. In his complaint, Mr. Jack Hendler of Import Camera Service chronicles his efforts to determine how his preferred carrier had been changed. Mr. Hendler alleges that in September 1998, he called Vista's main office and was told by a representative that his telephone number "was bought from a company called ATS."³³ The Vista representative further stated that the numbers purchased from ATS were "actually not verified."³⁴ Mr. Hendler asked Vista to produce the verification it relied upon when submitting the change request, but Vista never provided Mr. Hendler with a verification audiotape. Subsequently, a representative from Vista's legal department informed Mr. Hendler that she was aware of the "bad numbers from ATS," but asserted that "no one should have given [him] this information."³⁵

15. Vista's response to the Branch's Notice of the Import Camera Service Complaint³⁶ provides no evidence to rebut Mr. Hendler's claim that Vista slammed him.³⁷ Vista filed a brief letter generally citing "reliability problems" associated with using independent sales agents.³⁸ Vista failed to submit an audiotaped verification, admitting that no verification was ever performed.³⁹ Vista explains that Import Camera Service was one of the customers that was "acquired by purchase" from ATS, one of Vista's telemarketing agents.⁴⁰ According to Vista, the Import Camera Service account was telemarketed by ATS, and "sold to Vista with the express or implied representation that it was properly verified by an independent third party verification company in accordance with federal and state law."⁴¹ Vista asserts that it requested taped verifications from ATS, but that

³³ Import Camera Service, Informal Complaint No. 99-02188 (Dec. 1, 1998) (Import Camera Service Complaint). *See also* Declaration of Jack Hendler (June 18, 1999).

³⁴ Import Camera Service Complaint at 1.

³⁵ *Id.*

³⁶ Notice of Informal Complaint No. 99-02188 (Jan. 25, 1999).

³⁷ Vista Response to Notice of Informal Complaint No. 99-02188 (Jan. 27, 1999) (Vista Response).

³⁸ Vista Response at 1.

³⁹ *See* Vista Response to Second Further Notice, May 21, 1999 (request for additional information concerning Vista's so-called "reliability problems") (Vista Second Response).

⁴⁰ Vista Second Response at 4.

⁴¹ *Id.* at 1.

ATS now takes the position that it was merely providing Vista with leads for potential customers. This is certainly not Vista's understanding, and Vista is considering initiating litigation against ATS.⁴²

5. The Remaining Consumer Complaints

16. The remaining 14 consumer complaints that form the basis for this NAL similarly allege that Vista changed the consumers' preferred carriers without their authorization.⁴³ Four of these complaints show a clear pattern of conduct by Vista to engage in apparently intentional, egregious, and repeated misconduct in effecting unauthorized preferred carrier changes, such as misrepresenting the nature of Vista's service during telemarketing calls. These complaints were filed by the following small business customers: Colorado Partnership of Denver, Colorado; Leasco, Inc. of Saginaw, Michigan; CUM Save N'Share of McPherson, Kansas; and John R. Trauth of Sausalito, California. In response to the Branch's Notices concerning these complaints, Vista furnished audiotapes allegedly verifying their authorization of a switch in service. As above, review of the audiotapes provides no evidence to counter the complainants' assertions that Vista slammed their accounts.⁴⁴

17. The other ten complaints upon which this action is based were filed by customers whose unverified accounts were, by Vista's own admission, purchased from ATS. These complaints were filed by the following small business customers: Better Built Transmissions of Columbia, Tennessee; Family Intervention Services of South Orange, New Jersey; Victorian Gifts & Specialties of Ridgely, West Virginia; Sound Fighter Systems of Shreveport, Louisiana; Robert W. Taylor of Hoboken, New Jersey; Farmers Insurance Group of Companies of Mesa, Arizona; Batoray, Inc. of Ludlow, Kentucky; Flexible Engineering Resources of Kennesaw, Georgia; Karastan of Downingtown, Pennsylvania; and Alan Schreer of San Diego, California. Vista has not furnished the Commission with audiotaped verifications associated with these customers.⁴⁵

III. DISCUSSION

A. Commission Investigation of Vista

⁴² *Id.*

⁴³ We note that Vista's responses to the Branch's initial Notices regarding the remaining complaints are similar to those submitted in response to the complaints profiled above. In each case, Vista filed brief letters containing primarily boilerplate language.

⁴⁴ *See* Vista Response to Sterling Travel Complaint (99-01655); Vista Response to Porter Complaint (99-2754); Vista Response to Magann Complaint (99-02498).

⁴⁵ *See generally* Vista Response to First Further Notice; Vista Response to Second Further Notice.

18. Our action is based on an investigation conducted by the Common Carrier Bureau concerning 18 consumer complaints, filed with the Commission between October 26, 1998 and February 3, 1999, all of which allege that Vista converted the complainants' preferred carriers without their authorization. The Consumer Protection Branch forwarded the complaints to Vista along with Notices in accordance with the Commission's rules.⁴⁶ Vista generally responded to these Notices with brief letters containing minimal information and "boilerplate" language. Vista noted that it "recognizes certain reliability problems associated with soliciting orders through telemarketing."⁴⁷ Vista's response letters typically noted the amount of money that Vista had credited to a complainant's account in an apparent attempt to resolve the complaint and terminate proceedings at the Commission.

19. On March 30, 1999, the Branch issued to Vista the first of two "Further Notices of Informal Complaint" concerning many of the complaints referenced in this NAL (First Further Notice). In the First Further Notice, the Branch required Vista to submit certain information pertaining to a number of consumer complaints, including audiotape recordings of sales and verification calls. The Branch also asked Vista to furnish the identities of its telemarketing agencies and third-party verification companies, and to provide an explanation of Vista's admitted "reliability problems." Vista submitted most of the material sought by the Branch's First Further Notice, including copies of several sales scripts allegedly followed by Vista and its agents.⁴⁸

20. Vista asserted that despite its earlier statement that it recognized certain reliability problems associated with telemarketing, "[t]he statement does not refer to specific instances of Vista experiences, but rather to the industry awareness that some telemarketing companies do not always comply with state or federal laws when obtaining orders."⁴⁹ Nevertheless, Vista responded to the Branch's request for audiotapes of certain verification calls with the following statement:

This account was telemarketed by . . . [ATS]⁵⁰ and was sold to Vista with the express or implied representation that it was properly verified by an independent third party verification company in accordance with federal and state law. Vista has requested taped verifications from ATS and ATS now takes the position that it was merely providing Vista with leads for potential customers. This is certainly

⁴⁶ See 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

⁴⁷ See, e.g., Vista Response to Informal Complaint No. 99-02498 (Feb. 1, 1999).

⁴⁸ We note that the text of these sales scripts bears no resemblance to the complainants' accounts of their initial sales calls from Vista's telemarketers, as described in the complaint profiles above.

⁴⁹ See Vista Response, April 9, 1999, at 3.

⁵⁰ American Telecommunications Systems, Inc. (ATS) is a company that apparently served as both a telemarketing firm and a third-party verification company for Vista. See Vista April 9 Response, Attachment B.

not Vista's understanding, and Vista is considering initiating litigation against ATS.⁵¹

21. On May 17, 1999, the Branch issued a second Further Notice (Second Further Notice) seeking additional data concerning certain slamming complaints filed against Vista.⁵² In response, Vista asserted that it had requested audiotaped verifications from ATS, but that ATS had refused to provide the material.⁵³ Vista could not furnish the Branch with the number of preferred carrier changes that had occurred as a result of orders obtained.⁵⁴

B. Violations Evidenced in the Complaints

22. 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."⁵⁵ 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.⁵⁶ These rules and orders require that carriers either obtain a signed letter of agency (LOA), or, in the case of telemarketing solicitations, follow one of the telemarketing verification procedures before submitting preferred carrier change requests to local exchange carriers on behalf of consumers.⁵⁷

⁵¹ To date, Vista has not provided the Commission with any audiotapes associated with accounts allegedly telemarketed by ATS.

⁵² Vista Response to Second Further Notice (May 21 Response).

⁵³ May 21 Response at 4.

⁵⁴ *See generally* Vista Response to First Further Notice; Vista Response to Second Further Notice.

⁵⁵ 47 U.S.C. § 258.

⁵⁶ 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, are nonetheless subject to the Commission's authorization and verification rules. *See Section 258 Order* at paras. 145-46; *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).

⁵⁷ *See* 47 C.F.R. § 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.

23. The 18 consumer complaints at issue here depict a disturbing pattern of willful disregard for the requirements of section 258 and the Commission's rules and orders.⁵⁸ The record contains credible and compelling evidence that, in the case of all 18 complaints, Vista failed to obtain the complainants' authorization before changing their preferred carriers. In seven of these cases, it appears that Vista's telemarketers intentionally misrepresented the nature of Vista's service offering or engaged in other business practices designed to prevent consumers from understanding that Vista was seeking to change their preferred carriers.⁵⁹ For example, several complainants allege that Vista's sales personnel fraudulently represented or implied that Vista was affiliated with or otherwise represented customers' existing local or long-distance carriers, in an apparent effort to deceive customers into switching from their long-distance service providers to Vista.⁶⁰

24. The record further establishes that after gaining customers' trust by falsely claiming an affiliation with an existing local or long-distance carrier, Vista representatives offered to provide a complimentary "consolidated billing service." Vista apparently failed to inform these customers, however, that if they agreed to a bill consolidation, their long-distance service would be switched to Vista. Indeed, there was nothing in Vista's telephone solicitations to suggest that customers would be switched to Vista. Instead, the profiled complaints demonstrate that Vista representatives went to great lengths to disguise the true nature of Vista's service offering. For example, in the Porter & Associates complaint, Mr. Porter alleges that Vista telemarketer promised "protection" against slamming.⁶¹ Other complainants allege that Vista offered account credits if the customer agreed to a consolidated billing format.⁶²

25. Vista has failed to provide evidence or information to counter the complainants' claims. As noted above, Vista's responses to individual consumers' Notices contain little more than boilerplate language acknowledging "reliability problems" associated with utilizing independent sales agents to solicit orders through telemarketing. Further, Vista has failed to

⁵⁸ We note that Vista's business practices have been the subject of state action. For example, on December 22, 1998, the United States District Court for the Northern District of Georgia granted BellSouth a preliminary injunction to stop Vista from engaging in certain marketing practices. In particular, the court's ruling prevents Vista from: 1) doing any act to induce the mistaken belief that BellSouth's services are in any way associated with Vista's products; and 2) using the BellSouth name or mark in any manner.

⁵⁹ *See supra* footnote 58.

⁶⁰ In the Porter & Associates Complaint, for instance, Benjamin Porter asserts that the Vista representative claimed to represent US WEST, Porter & Associates' local exchange carrier. Mr. Porter alleges that he repeatedly questioned the telemarketer to confirm that he was an agent of US WEST, and that there would be no change in Porter & Associates' long-distance carrier or rates.

⁶¹ Porter & Associates Complaint at 1; Declaration of Benjamin D. Porter at 1.

⁶² *See, e.g.*, Sterling Travel Complaint.

furnish audiotapes that refute the complainants' allegations that Vista's telemarketers engaged in deceptive telemarketing practices during initial sales calls. Although Vista submitted audiotapes of some of the complainants' verification calls, these audiotapes do not demonstrate that the complainants understood that they were agreeing to change their long-distance service providers - particularly in view of the overwhelming record evidence that Vista mischaracterized its service during the initial sales calls to these complainants.⁶³

26. In the absence of any evidence to refute the complainants' claims, we conclude that Vista has apparently willfully or repeatedly violated section 258 of the Act and the Commission's rules and orders by effecting unauthorized preferred carrier changes. Given Vista's apparent use of deceptive telemarketing practices as a means of effecting these unauthorized preferred carrier changes, we find Vista's actions to constitute particularly egregious slamming violations. We note that the pattern of intentional misrepresentation demonstrated by the complaints was particularly offensive because many of Vista's telemarketers apparently sought to take advantage of consumers' fear of being slammed.

27. The record also reflects that Vista changed the W.F. Magann Company's preferred long-distance carrier based upon an apparently falsified verification tape.⁶⁴ We find Vista's reliance on an apparently falsified verification tape to be a particularly egregious violation of section 258 of the Act and the Commission's slamming rules and orders. We liken Vista's action to a carrier's reliance on letters of agency that contain forgeries of the signatures of unsuspecting customers. The Commission has previously found the use of forged letters of agency to be a particularly egregious form of slamming, demonstrating egregious misconduct and a carrier's intent to slam customers.⁶⁵ We apply the same reasoning in our treatment of Vista's apparent reliance on a falsified verification tape, and consider the Magann Complaint to demonstrate a particularly egregious apparent violation of section 258 of the Act.

28. With regard to the Magann Complaint and the other particularly egregious slamming violations described above,⁶⁶ the Commission also finds Vista liable for apparent

⁶³ Moreover, it appears from a review of the proffered verification tapes that Vista's verifiers "came on line" immediately after Vista's telemarketers had finished their initial sales pitch. Consequently, complainants who had been led to believe that they had been speaking with a representative of their current local or long-distance carriers regarding a bill consolidation reasonably did not expect that their long-distance service would be switched after they verified their company names and account information. *See also* footnote 58.

⁶⁴ Vista's response to the Magann Complaint provides no information to counter the company's claim that the verification tape had been falsified.

⁶⁵ *See, e.g., Brittan Communications International Corp.*, Notice of Apparent Liability, FCC No. 98-291, rel. Oct. 29, 1998); *Excel Telecommunications Incorporated*, 11 FCC Rcd 19765 (1997).

⁶⁶ The seven complaints in which we find particularly egregious violations are as follows: Sterling Travel Complaint; Porter & Associates Complaint; Magann Complaint; Colorado Partnership Complaint; Leasco, Inc.

violations of section 201(b) of the Act, 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. . . ." ⁶⁷ The record reveals that Vista's sales personnel repeatedly deceived consumers by representing that Vista was affiliated with the consumers' existing local exchange or long-distance carriers. Further, Vista representatives deliberately mischaracterized Vista's service offering as a bill consolidation service. ⁶⁸ Consumers relied, to their detriment, on Vista's misrepresentations of these material facts. We find that, Vista's fraudulent misrepresentation of its identity, as well as its repeated efforts to obscure the true nature of its service offering, constitute unjust and unreasonable business practices within the meaning of section 201(b). ⁶⁹

29. Finally, this NAL is based on an additional 11 slamming complaints for which Vista essentially admits in its responses that it violated section 258 of the Act by "purchasing" from one of its telemarketing agents, ATS, customer accounts that were not verified in accordance with the Commission's rules and orders. This includes the Import Camera Service Complaint, profiled above, in which the complainant alleges that Vista was aware of these unverified customer accounts. ⁷⁰ Vista has not challenged this allegation, and more importantly, has failed to proffer any evidence to show that any of the preferred carrier changes based on ATS accounts were verified in accordance with the Commission's rules.

30. Based on this evidence that ATS failed to obtain these 11 complainants' authorization before changing their preferred carriers, we conclude that Vista's actions constitute apparent violations of section 258 and the Commission's rules and orders governing slamming. ⁷¹

Complaint; CUM Save N'Share Complaint; and John R. Trauth Complaint.

⁶⁷ 47 U.S.C. § 201(b).

⁶⁸ See, e.g., Sterling Travel Complaint.

⁶⁹ We note that in the *BDP NAL*, the Commission found that Business Discount Plan, Inc. (BDP) had 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 in an attempt to deceive customers into agreeing to change their preferred carriers. 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 in which it engaged in an unjust and unreasonable telemarketing practice in violation of section 201(b) of the Act. *BDP NAL*, 14 FCC Rcd at 356. See *infra* paragraph 34.

⁷⁰ See *supra* paragraph 14.

⁷¹ We note that aside from the Import Camera Service Complaint, our record contains no other complaints that address Vista's knowledge of the ATS problem. Indeed, none of the other complaints for which Vista admits (in its responses) purchasing unverified customer accounts identifies ATS as Vista's telemarketing agent. We note our disapproval of Vista's failure, in its responses to the Commission's Further Notices of Complaint, to candidly address the ATS problem. As set forth above, Vista vaguely referred to the issue as a "reliability problem," not

In reaching our conclusion, we give no weight to Vista's statement that ATS sold the unverified accounts to Vista with the "express or implied representation that they were properly verified by an independent third party verification company in accordance with federal and state law." ATS's actions neither relieve Vista of its independent obligation to ensure compliance with our rules nor otherwise mitigate Vista's role in the apparent violations of section 258. The Communications Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of the carrier itself.⁷²

B. Forfeiture Amount

31. Vista's apparently intentional, egregious, and repeated misconduct in effecting changes in the long-distance service of seven consumers described in this NAL, and its admission that its agent failed to obtain authority to effectuate changes in 11 of the complainants' service, persuades us that a significant forfeiture is warranted against Vista for willful or repeated violations of section 258 of the Act and the Commission's rules and orders regarding slamming. 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.⁷³ 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."⁷⁴

32. 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.⁷⁵ These policies and guidelines include "upward adjustment criteria" that warrant a higher forfeiture amount based on our evaluation of the particular actions

mentioning the purchase of unverified accounts from ATS until the Commission specifically requested verification audiotapes for a number of complaints. *See supra* paragraph 20.

⁷² *See* 47 C.F.R. § 217.

⁷³ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission 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).

⁷⁴ *See* 47 U.S.C. § 503(b)(2)(D).

⁷⁵ *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*).

and circumstances of the violator.⁷⁶ 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.⁷⁷ The Commission retains the discretion, moreover, 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.⁷⁸

33. 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.⁷⁹ Recently, the Commission has issued NALs assessing forfeitures at \$80,000 per violation for the use of forged letters of agency.⁸⁰ In those Orders, the Commission found that the higher forfeiture amounts were warranted by the egregiousness of the misconduct, the carrier's intent to slam consumers, and the repeated nature of the slamming violations.

34. In the instant case, seven of the slamming complaints upon which this action is based demonstrate that Vista has willfully or repeatedly engaged in particularly egregious conduct as part of a pattern to intentionally slam consumers.⁸¹ In light of this clear pattern of repeated misconduct, we find that the upward adjustment criteria in our forfeiture guidelines that involve egregiousness of misconduct, intent of the carrier, and the repeated nature of the violations, are applicable in this case. Applying these criteria to the facts of this case, we conclude that it is appropriate to impose a forfeiture amount that is double the forty thousand dollar (\$40,000) base amount contained in our forfeiture guidelines for violations of section 258 of the Act, or eighty thousand dollars (\$80,000) per incident. As in previous NALs, we find each unauthorized conversion of the preferred carrier of a complainant to constitute a separate violation.⁸² Although

⁷⁶ *Id.*

⁷⁷ *Id.* See also 47 U.S.C. § 503(b)(2)(D).

⁷⁸ *Id.*

⁷⁹ See, e.g., *Nationwide Long Distance, Inc. NAL*, 11 FCC Rcd 3087 (1996).

⁸⁰ *All American Telephone Company, Inc.*, Notice of Apparent Liability, 13 FCC Rcd 15040 (1998) (*All American NAL*); *Brittan Communications International Corp.*, Notice of Apparent Liability, FCC No. 98-291, rel. Oct. 29, 1998 (*Brittan NAL*); *Amer-I-Net Services Corp.*, Notice of Apparent Liability, FCC No. 98-285, rel. Oct. 30, 1998 (*Amer-I-Net NAL*).

⁸¹ See *supra* footnote 66; see also Appendix (containing a list of complaints and proposed forfeiture amounts).

⁸² See, e.g., *All American NAL*; *Brittan NAL*; *Amer-I-Net NAL*; *BDP NAL*.

we also find Vista liable for apparent violations of section 201(b) of the Act, we decline, at this time, to assess a forfeiture in connection with these violations, and instead exercise our discretion to use these acts to support our finding of egregious slamming violations.⁸³

35. We will apply the \$40,000 base slamming forfeiture amount for each of the remaining 11 violations, all of which involve Vista's apparent purchase of unverified customer accounts from ATS.⁸⁴ Taken together, the forfeitures we assess for violations of section 258 of the Act result in a total forfeiture amount of one million dollars (\$1,000,000). Vista 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.⁸⁵

36. Finally, we note that our review of Vista's inadequate responses indicates a need for the Commission to continue to monitor Vista's preferred carrier change practices. We, therefore, require Vista to file with this Commission a compliance plan that shall include procedures designed to promptly identify and address consumer inquiries and concerns about Vista's preferred carrier change practices.⁸⁶ The compliance plan shall also detail actions Vista will take and procedures it will establish to comply with the Act and with the Commission's rules and orders. The Commission will closely monitor the level and content of consumer complaints to determine whether the establishment of Vista's proposed management practices leads to a decrease in unauthorized preferred carrier changes.

VI. CONCLUSIONS AND ORDERING CLAUSES

37. We have determined that Vista apparently violated section 258 of the Communications Act and the Commission's preferred carrier change rules and orders by converting the preferred carriers of the 18 consumers identified above, on the dates and in the manner described herein. In addition, for each of the seven section 258 violations that was heightened by Vista's apparently intentional, egregious and repeated misconduct, we have determined that Vista apparently violated section 201(b) of the Act. With regard to forfeitures, we have concluded that Vista is apparently liable for forfeitures in the amount of eighty thousand dollars (\$80,000) for each of the seven section 258 violations that was heightened by Vista's

⁸³ Cf. *BDP NAL*, 14 FCC Rcd at 356. In the *BDP NAL*, the Commission found BDP apparently liable for a forfeiture of \$40,000 for each instance in which it engaged in an unjust and unreasonable practice in violation of section 201(b), but imposed only a \$40,000 base slamming forfeiture amount for each violation of section 258. By contrast, the Commission today finds Vista apparently liable for \$80,000, higher than the base forfeiture amount for section 258 violations, for each unauthorized conversion that was compounded by evidence that Vista engaged in unjust and unreasonable business practices.

⁸⁴ See Appendix for a list of these complaints and proposed forfeiture amounts.

⁸⁵ See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

⁸⁶ See 47 U.S.C. § 218.

apparently intentional, egregious, and repeated misconduct. Further, we have concluded that Vista is apparently liable for forty thousand dollars (\$40,000) for each of the 11 remaining section 258 violations, resulting in a total forfeiture amount of one million dollars (\$1,000,000).

38. 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 Vista Group International, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of one million dollars (\$1,000,000) for willful or repeated violations of section 258 of the Act⁸⁷ and the Commission's preferred carrier change rules and orders as described in the paragraphs above.⁸⁸

39. 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, Vista Group International, Inc. SHALL PAY the full amount of the proposed forfeiture⁸⁹ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

40. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that Vista Group International, Inc. SHALL FILE with the Commission, within thirty (30) days of the date of this NAL, a compliance plan detailing the actions it has taken and the procedures it has established, 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 Vista Group International, Inc. to promptly identify and address consumer inquiries and concerns about its preferred carrier change practices.

41. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to: Thomas Coughlin, Owner and Chief Executive Officer, Vista Group International, Inc., 821 Westpoint Parkway, Suite 920, Westlake, Ohio, 44145.

FEDERAL COMMUNICATIONS COMMISSION

⁸⁷ 47 U.S.C. § 258.

⁸⁸ See 47 C.F.R. § 64.1150; 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.

⁸⁹ 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 Vista Group International, Inc.'s check or money order to "NAL/Acct. No. 916EF0005." Such remittances must be mailed to Forfeiture Collection section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

Magalie Roman Salas
Secretary

Appendix

In the Matter of
 Vista Group International, Inc.
 Apparent Liability for Forfeiture

File No. ENF-99-10
 NAL/Acct No. 916EF0005
 FCC 99-225

NO.	IC NO.	COMPANY	COMPLAINANT	DATE SWITCHED	DATE FILED	NOTICE	VISTA RESPONSI	PROPOSED ORFEITUR AMOUNT
1	99-0165	Sterling Travel	David W. Lankfor	10/12/98	10/26/98	12/14/98	12/22/98	\$80,000
2	99-0224	Leasco Inc.	Jean Bixby	11/11/98	12/15/98	1/25/99	2/2/99	80,000
3	99-0249	W. F. Magann Corporation	Ricki Bittle	8/21/98	11/5/98	1/25/99	2/1/99	80,000
4	99-0262	CUM Save N'Share	Vaughn Ingram	9/23/98	12/28/98	2/1/99	2/12/99	80,000
5	99-0275	Porter & Associates	Benjamin D. Porte	10/8/98	12/15/98	2/1/99	2/9/99	80,000
6	99-0427	Colorado Partnership	Elizabeth Parmale	9/23/98	2/3/99	3/8/99	3/15/99	80,000
7	99-1568	John R. Trauth	John R. Trauth	1/12/99	6/10/99	6/28/99	7/15/99	80,000

In the Matter of
 Vista Group International, Inc.
 Apparent Liability for Forfeiture

File No. ENF-99-10
 NAL/Acct No. 916EF0005
 FCC 99-225

NO.	IC NO.	COMPANY	COMPLAINANT	DATE SWITCHED	DATE FILED	NOTICE	VISTA RESPONS	PROPOSED ORFEITURE AMOUNT
8	99-0132	Family Intervention Services, Inc.	Barbara P. Repetto	8/21/98	10/29/98	11/30/98	12/14/98	\$40,000
9	99-0137	Victorian Creations Gift & Specialt	Reba L. Kriglein	8/26/98	11/2/98	11/30/98	12/8/98	40,000
10	99-0140	Better Built Transmissions	Mike Millikan	8/24/98	10/30/98	11/30/98	12/14/98	40,000
11	99-0151	Flexible Engineering Resources, In	Eugene F. Rohling	10/17/98	11/2/98	11/30/98	12/14/98	40,000
12	99-0218	Import Camera Service	Jack R. Hendler	8/28/98	12/1/98	1/25/99	1/27/99	40,000
13	99-0218	Karastan	J. Kent Liddle	9/9/98	12/1/98	1/25/99	1/29/99	40,000
14	99-0219	Alan Schreer	Alan Schreer	9/16/98	11/30/98	1/25/99	2/1/199	40,000
15	99-0229	Farmers Insurance Group of Comp	Bill Tekien	9/15/98	12/2/98	1/25/99	1/27/99	40,000
16	99-0338	Sound Fighter Systems	Patrick Harrison	9/2/98	1/21/99	2/22/99	3/8/99	40,000
17	99-0347	Robert W. Taylor	Robert W. Taylor	9/9/98	1/20/99	2/22/99	3/8/99	40,000
18	99-0350	Batoray, Inc.	David T. Egbers	9/16/98	1/19/99	2/22/99	3/8/99	40,000

TOTAL \$1,000,000