

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

In the Matter of	)	
	)	
CCN, INC.,	)	
CHURCH DISCOUNT GROUP, INC.,	)	
DISCOUNT CALLING CARD, INC.,	)	
DONATION LONG DISTANCE, INC.,	)	
LONG DISTANCE SERVICES, INC.,	)	CC Docket No. 97-144
MONTHLY DISCOUNTS, INC.,	)	
MONTHLY PHONE SERVICES, INC., and	)	NAL/Acct. No. 816EF0003
PHONE CALLS, INC.,	)	
	)	
	)	
Order to Show Cause and	)	
Notice of Opportunity for Hearing	)	

**ORDER**

Adopted: April 21, 1998; Released: April 21, 1998

By the Commission:

**I. INTRODUCTION**

1. In this Order, we revoke the operating authority of the above-captioned nondominant telephone

companies (collectively, the "Fletcher Companies"),<sup>1</sup> because they have repeatedly "slammed"<sup>2</sup> long distance telephone subscribers and committed numerous other violations of the Communications Act of 1934, as amended ("the Act") and our rules.<sup>3</sup> Commission staff has determined that each of the companies, all apparently owned and operated by Daniel Fletcher,<sup>4</sup> ceased providing common carrier services in 1997 while the Commission staff was engaged in a massive investigation into their slamming practices.<sup>5</sup> We take this revocation action today to ensure that none of the companies can resume common carrier operations and once again engage in slamming or other conduct that is harmful to consumers. As an additional measure, because the principals of these companies have ignored or evaded numerous requests by the Commission that they appear before the Commission and provide some explanation for their actions, we enjoin Daniel Fletcher and all other principals associated with the Fletcher Companies from providing any telephone services in the future without the prior consent and authorization of the Commission.<sup>6</sup> In this order, we also assess forfeitures

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<sup>1</sup> For purposes of this Order, the term "Fletcher Companies" includes any successors or assigns of the entities identified in the above caption. *See CCN, Inc., Church Discount Group, Inc., Discount Calling Card, Inc., Donation Long Distance, Inc., Long Distance Services, Inc., Monthly Discounts, Inc., Monthly Phone Services, Inc., and Phone Calls, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 8547, 8547 n.2 (1997) ("*Show Cause Order*") (provided as Attachment A). We note that there are several companies currently incorporated under the name "Long Distance Services, Inc." This order, however, in addition to the companies named in the above caption, concerns only that "Long Distance Services, Inc." that was incorporated in the Commonwealth of Virginia on January 10, 1994, under the name "Long Distance Services, Inc.," and whose executive officer and/or registered agent is Daniel Fletcher. We also note that there appear to be a number of names under which Long Distance Services, Inc. marketed its services, such as "Long Distance Services of Virginia," "Charity Long Distance," and "Church Long Distance." *See id.* at 8547 n.1.

<sup>2</sup> Slamming occurs when a company changes a consumer's primary interexchange carrier ("PIC") from his/her presubscribed carrier to another company without the consumer's knowledge and authorization.

<sup>3</sup> *See infra* paras. 2-7.

<sup>4</sup> Daniel Fletcher appears to be the principal owner and operator of each of the Fletcher Companies. Other individuals who appear to be connected with the Fletcher Companies in some capacity as either principals or officers are Robert Motter and Sandra Platt. *See Show Cause Order*, 12 FCC Rcd at 8548 n.3 & 8555, para. 11 (stating that Daniel Fletcher appears to be the "common thread" among all of the entities described herein).

<sup>5</sup> Several states also instituted enforcement actions against the Fletcher Companies contemporaneous with the Commission's investigation. *See Show Cause Order*, 12 FCC Rcd at 8548 nn.4-5 (discussing enforcement actions in Alabama, New York, Louisiana, South Carolina and Virginia).

<sup>6</sup> We emphasize that the Fletcher Companies includes any successors or assigns of the entities identified above. *See supra* note 1. Therefore, we not only order the Fletcher Companies to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission, but also order any successor or assign of the Fletcher Companies and any other company that the principal and or principals of the Fletcher Companies have established or seek to establish to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission.

against the Fletcher Companies and their principals that total \$5,681,500. We also deny the petition to intervene and motion to enlarge the issues of Atlas Communications, Ltd. and Billing Concepts, Inc.

## II. BACKGROUND

2. The Fletcher Companies are interexchange carriers ("IXCs") that currently provide, or have provided, resale interstate long distance telecommunications services to consumers in various states throughout the country as well as limited international service.<sup>7</sup> On June 13, 1997, the Commission released its *Order to Show Cause and Notice of Opportunity for Hearing*, FCC 97-210 ("*Show Cause Order*")<sup>8</sup> in this proceeding. The *Show Cause Order* ordered the Fletcher Companies to show cause why the operating authority of the Fletcher Companies should not be revoked and whether the principal or principals of the Fletcher Companies and the Fletcher Companies should not be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission. The facts and circumstances leading to the issuance of the *Show Cause Order* are recited therein and need not be reiterated at length.<sup>9</sup> The Commission adopted the *Show Cause Order* in response to over 1400 complaints, beginning in 1993, with the majority of the complaints from mid-1996 through 1997, alleging, *inter alia*, that certain of the Fletcher Companies had changed consumers' primary interexchange carriers ("PICs") from their presubscribed carriers to one of the Fletcher Companies without the consumers' knowledge and authorization.<sup>10</sup> The Commission has long prohibited slamming and has promulgated rules and issued orders to protect consumers from this practice.<sup>11</sup> The Commission's PIC-change rules and orders require, among other things, that IXCs obtain signed letters of agency ("LOAs") or, in the case of telemarketing solicitations, complete one of four telemarketing

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<sup>7</sup> The Fletcher Companies operate as common carriers subject to Title II of the Act.

<sup>8</sup> *Show Cause Order*, 12 FCC Rcd at 8547.

<sup>9</sup> *See id.*

<sup>10</sup> Generally, when a consumer elects to subscribe to an IXC, that IXC notifies the consumer's local exchange carrier ("LEC") of the consumer's decision. Thereafter, the LEC routes the consumer's long distance calls to the chosen IXC and takes other steps to effect the PIC change.

<sup>11</sup> *See* 47 C.F.R. §§ 64.1100, 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, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10,674 (1997) (*1997 FNPRM & Order on Recon.*); *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*). *See infra* para. 6.

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verification procedures before submitting PIC-change requests to LECs on behalf of consumers.<sup>12</sup>

3. Most of the complaints detail the Fletcher Companies' use of misleading, and in some cases fraudulent, marketing practices to effect the unauthorized PIC changes, including submitting, directly or through marketing agents, forged or falsified letters of agency ("LOAs") to the local exchange carriers responsible for effecting the PIC changes. Some complaints further alleged that some of the Fletcher Companies billed them for long distance calls that they did not place, or assessed monthly fees for services without their knowledge or authorization.<sup>13</sup>

4. Under the Commission's rules for resolving consumer complaints,<sup>14</sup> the Common Carrier Bureau's Enforcement Division ("Enforcement Division") forwarded each consumer complaint filed against the Fletcher Companies to the appropriate company with the requisite Official Notice of Informal Complaint ("Official Notice").<sup>15</sup> The Fletcher Companies failed to respond to the vast majority of the Official Notices issued by the staff. In the few instances when the Fletcher Companies filed responses to the Commission's Official Notices, the responses were poorly prepared, failed either to satisfy the complaints within the meaning of Section 208 of the Act<sup>16</sup> and Section 1.717 of our rules or to explain the Fletcher Companies' refusal or inability to do so,<sup>17</sup> and otherwise fell far short of the information required by the staff to further investigate

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<sup>12</sup> See *PIC Change Order*, 7 FCC Rcd at 1038-39.

<sup>13</sup> See *Show Cause Order*, 12 FCC Rcd at 8552, para. 7.

<sup>14</sup> See 47 C.F.R. §§ 1.716-1.718.

<sup>15</sup> Upon receipt of a consumer complaint, the Enforcement Division routinely issues an Official Notice to all carriers identified in the complaint or that may, in the staff's view, assist in the resolution of the complaint. The Official Notice requires the common carrier to satisfy or answer the complaint and respond to the Commission's Official Notice with a written report, a copy of which must be sent directly to the complainant. The Official Notice also outlines specific consequences of failing to respond to an informal complaint. See Sections 1.716-1.718 of the Commission's rules, 47 C.F.R. §§ 1.716-1.718. Because none of the Fletcher Companies had filed with the Secretary of the Commission the name of a designated agent for service of Official Notices as required by Section 413 of the Act, the Commission served the Official Notices on business addresses gleaned from, among other things, inquiries made to LECs and to the Fletcher Companies' billing agents.

<sup>16</sup> The Commission has established rules and procedures that enable consumers to bring to the Commission's attention allegations of misconduct by carriers and to obtain relief from rates and practices found to be unlawful or otherwise contrary to the public interest. See 47 U.S.C. § 208; see also 47 C.F.R. §§ 1.716-1.718.

<sup>17</sup> 47 C.F.R. § 1.717. Section 1.717 provides in pertinent part:

[T]he Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its

the complaints and make determinations about the carriers' compliance with the Act and our rules and orders.<sup>18</sup> The responses merely contained what amount to vague denials of the complainants' allegations and conveyed virtually no specific information about the carriers' practices or any facts and circumstances pertaining to the complainants' allegations.<sup>19</sup>

5. Furthermore, beginning in June 1996, a number of Official Notices issued by the staff to the Fletcher Companies concerning consumer complaints were returned to the Commission by the U.S. Postal Service marked "unclaimed," "moved," or "refused."<sup>20</sup> Thereafter, the staff attempted repeatedly and unsuccessfully to contact representatives of the Fletcher Companies by telephone and by mail.<sup>21</sup> Based on staff investigations, the staff subsequently obtained a new address for service of Official Notices filed against Phone Calls, Inc. and Monthly Phone Services, Inc. The staff mailed Official Notices relating to approximately 500 informal complaints to this address. The majority of these Official Notices were returned to the Commission marked either "moved, left no address" or "return to sender -- not at this address."

6. Based on the information described above, and set forth in greater specificity in the *Show Cause Order*, the Commission found that the Fletcher Companies apparently were either unwilling or unable to conduct lawful common carrier operations -- even within the broad parameters established by the Act and rules and orders governing nondominant carriers.<sup>22</sup> As the Commission pointed out in the *Show Cause Order*,

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satisfaction of the complaint or its refusal or inability to do so ....

<sup>18</sup> See *Show Cause Order*, 12 FCC Rcd at 8553, para. 9.

<sup>19</sup> See *id.*

<sup>20</sup> See *id.* at 8554, para. 10 & n.24.

<sup>21</sup> On August 20, 1996, an individual identifying himself as "Dan Fletcher," apparently aware of the staff's repeated efforts to contact him and his companies regarding the unresolved consumer complaints, left a voice mail message on the telephone line of an Enforcement Division staff member. In that message, the caller represented that all Official Notices concerning complaints filed against the Fletcher Companies should be mailed to the following address: Long Distance Services, 2117 L Street, N.W., No. 293, Washington, D.C., 20037, which was subsequently identified as a mail drop location, "Mailboxes, Etc." To date, neither the Fletcher Companies nor Mr. Fletcher himself have responded to any of these Official Notices either in writing or by telephone. Representatives of Mailboxes, Etc. reported that the individuals who leased the mail drop on behalf of Long Distance Services failed to pay the requisite fees, and that consequently, Mailboxes, Etc. is no longer accepting mail on behalf of Long Distance Services. The Commission further enlisted the assistance of Dun & Bradstreet, a corporation that provides business-to-business information and services for marketing and commercial credit and collection and maintains a business database covering 41 million companies worldwide. Based on information obtained from staff investigations and the Dun & Bradstreet reports, the Commission learned that all of the addresses listed in the Dun & Bradstreet reports for the Fletcher Companies were mail drop locations rather than business locations maintained or operated by the Fletcher Companies. See *id.* at 8554-56, paras. 10-12.

<sup>22</sup> See *id.* at 8558, para. 17.

many of the consumer complaints involved allegations that one or more of the Fletcher Companies changed consumers' PICs without their authorization, in violation of the Commission's slamming rules and orders. We have previously found the practice of slamming through the use of forged or falsified LOAs to be a particularly egregious violation of our rules because such practices undermine the competitive nature of the interexchange marketplace and deprive consumers of their right to select the services of particular interexchange carriers to satisfy their long distance service needs.<sup>23</sup>

7. In the *Show Cause Order*, we expressed concern that the Fletcher Companies compounded the egregious nature of their slamming practices by failing to respond to or accept Official Notices issued by the staff in response to consumer complaints, and by failing to designate agents for the receipt of notices, orders, or other correspondence issued by the Commission, as required by Section 413 of the Act.<sup>24</sup> Moreover, we stated that Daniel Fletcher and the Fletcher Companies apparently deliberately acted to frustrate the staff's efforts to investigate consumer complaints and to inquire into the Companies' practices by failing to provide legitimate business addresses or telephone numbers.<sup>25</sup>

### III. HEARING AND DISCUSSION

8. Based on the actions of the Fletcher Companies described above and further set forth in the *Show Cause Order*, the Commission convened an evidentiary hearing to determine whether the operating authority of the Fletcher Companies should be revoked and whether the Fletcher Companies and/or their principals should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission. Specifically, the Commission convened a hearing to provide the Fletcher Companies and their principals an opportunity to demonstrate facts and circumstances that might refute the Commission's findings that the Fletcher Companies and their principals had committed numerous violations of the Act and the Commission's rules and that would persuade the Commission that the operating authority of the Fletcher Companies should not be revoked. For example, the Commission sought to develop record evidence concerning the PIC changes made or requested to be made by the Fletcher Companies. The Commission also sought to develop record evidence regarding Long Distance Services, Inc.'s, Phone Calls, Inc.'s., and Discount Calling Card, Inc.'s failure to accept and/or respond to Official Notices, and the companies' inadequate responses to certain Official Notices, as well as their failure to file with the Secretary of the Commission the name of a designated agent for service of all notices and process, orders, and

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<sup>23</sup> See, e.g., *LDS, Inc.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 14,105 (1996) (this "LDS, Inc." is not affiliated with Daniel Fletcher).

<sup>24</sup> 47 U.S.C. § 413. In pertinent part, Section 413 states:

It shall be the duty of every common carrier subject to this Act to designate in writing an agent in the District of Columbia, upon whom service of all notices and process and all orders, decisions, and requirements of the Commission may be made for and on behalf of said carrier in any proceeding or suit pending before the Commission, and to file such designation in the office of the secretary of the Commission . . . .

<sup>25</sup> See *Show Cause Order*, 12 FCC Rcd at 8559, para. 18.

requirements of the Commission.<sup>26</sup> Furthermore, the Commission sought to develop record evidence pertaining to Long Distance Services, Inc.'s failure to file tariffs covering its interstate telecommunications service offerings during the period from May 1, 1996 to present.<sup>27</sup>

9. The Commission also sought to develop record evidence concerning the Fletcher Companies' violations of one or more of the following provisions of the Communications Act of 1934, as amended, and the Commission's rules: 47 U.S.C. §§ 203(a), 208(a), 413, and 416(c) and 47 C.F.R. §§ 1.717, 64.1100, and 64.1150.<sup>28</sup> The Commission further sought to determine whether the continued operation of the Fletcher Companies as common carriers would serve the public convenience and necessity, and whether the issuance of an order restraining the Fletcher Companies and their principals from future provision of interstate common carrier services would be in the public interest.<sup>29</sup>

10. Notwithstanding the Fletcher Companies' failure to designate an agent for the receipt of notices, orders, or other correspondence issued by the Commission, and to file such designation with the Commission, in violation of Section 413 of the Act,<sup>30</sup> the Commission made significant efforts to locate the Fletcher Companies and their principals, including, but not limited to enlisting the assistance of Dun & Bradstreet and repeatedly attempting to contact representatives of the Fletcher Companies by telephone and by mail.<sup>31</sup> The Commission also mailed a copy of the *Show Cause Order* to the Fletcher Companies' last known address. Despite these efforts, neither Daniel Fletcher nor any other representative of any of the Fletcher Companies filed a written appearance stating that the Fletcher Companies' principals or other legal representative would appear at the hearing and present evidence on the matters specified in the *Show Cause Order*.<sup>32</sup> Moreover, neither Fletcher nor any of his representatives appeared at the prehearing held on July 15, 1997. Accordingly, by Order released July 17, 1997, Administrative Law Judge Joseph Chachkin terminated the proceeding and certified the case to the Commission,<sup>33</sup> for the Commission to determine whether, on the

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<sup>26</sup> See *id.* at 8560-61, para. 23.

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> See 47 U.S.C. § 413; see also *supra* para. 7 & note 24 (citing Section 413 of the Act).

<sup>31</sup> See *Show Cause Order*, 12 FCC Rcd at 8554-56, paras. 10-12.

<sup>32</sup> The failure of a principal, principals, or other legal representative to file a notice of appearance or to appear at the hearing waives their right to a hearing. See 47 C.F.R. § 1.92 (stating in pertinent part, "[a]fter issuance of an order to show cause . . . calling upon a person to appear at a hearing before the Commission, the (1) fail[ure] to file a timely written appearance as prescribed in § 1.91(c) indicating that he will appear at a hearing and present evidence on the matters specified in the order" constitutes a waiver of such hearing).

<sup>33</sup> Order, CC Docket No. 97-144, FCC 97M-125 (rel. July 17, 1997).

basis of all available information, a revocation order and/or a cease and desist order should issue.<sup>34</sup>

11. Because neither Daniel Fletcher nor any other representative of the Fletcher Companies filed a notice of appearance or appeared at the hearing, we deem each allegation set forth in the *Show Cause Order* to be admitted.<sup>35</sup> Therefore, we find that the Fletcher Companies committed numerous violations of both our rules and the Act, including, but not limited to submitting unauthorized PIC changes; charging consumers for calls that they did not make; failing to file and maintain with the Commission tariffs containing schedules of the charges, terms, and conditions of their common carrier offerings in the manner prescribed by Section 203(a) of the Act and the Commission's rules and orders;<sup>36</sup> failing to file with the Secretary of the Commission the name of a designated agent for service of all notices and process, orders, and requirements of the Commission pursuant to Section 413 of the Act; and failing to observe and comply with all Commission orders as required by Section 416(c) of the Act.<sup>37</sup> Further, because the Fletcher companies have failed to follow corporate formalities, we find it appropriate to assess liability for the violations committed by the Fletcher companies against the company principals.

12. Because the Fletcher Companies are classified as non-dominant interexchange carriers,<sup>38</sup> their authority to provide domestic, interstate services was obtained automatically pursuant to Section 63.07 of our rules.<sup>39</sup> As such, the Fletcher Companies are considered to have "blanket" authority to operate domestic

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<sup>34</sup> See 47 C.F.R. § 1.92(c).

<sup>35</sup> See 47 C.F.R. § 1.724(d).

<sup>36</sup> Section 10 of the 1996 Act provides the Commission with authority to forbear from applying the provisions of Title II, including the tariffing provisions, subject to certain, limited exceptions. On October 31, 1996, the Commission released the *Tariff Forbearance Order*, which adopted a complete detariffing policy for the domestic interstate, interexchange services of nondominant, interexchange carriers, pending a nine-month transition period. *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report and Order, 11 FCC Rcd 20,730 (1996) (*Tariff Forbearance Order*), *stayed sub nom. MCI Telecommunications Corp. v. FCC*, Consolidated Cases 96-1459, 96-1477, 97-1009, Feb. 13, 1997; *Order on Reconsideration*, 12 FCC Rcd 15,014 (1997), *further recon. pending*. Because the alleged violations at issue in this proceeding predate the Commission's adoption of a complete detariffing policy, the Fletcher Companies were responsible for filing tariffs for all their domestic interstate, interexchange services.

<sup>37</sup> 47 U.S.C. §§ 413; 416(c). Section 416(c) states that "[i]t shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect."

<sup>38</sup> See *Show Cause Order*, 12 FCC Rcd at 8548-49, para. 2 & n.6.

<sup>39</sup> See 47 C.F.R. § 63.07(a), which states in pertinent part that "[a]ny party that would be a non-dominant domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point . . . ."



common carrier facilities within the meaning of Section 214 of the Act.<sup>40</sup> Accordingly, the Fletcher Companies could "construct, acquire, or operate" any transmission line for domestic telecommunications service without obtaining prior written authorization from the Commission.<sup>41</sup> In addition, Phone Calls, Inc., one of the Fletcher Companies, maintained an international Section 214 authorization.<sup>42</sup> Pursuant to our authority under Section 4(i) of the Act,<sup>43</sup> we hereby revoke the operating authority of the Fletcher Companies because of the egregious actions and blatant violation of our rules and the Act committed by the Fletcher Companies and the principal and/or their principals.<sup>44</sup>

13. We hereby delegate to the Chief, Common Carrier Bureau, authority to issue orders revoking a common carrier's operating authority pursuant to Section 214 of the Act, and to issue orders to cease and desist such operations, in cases where the Chief Administrative Law Judge, or the Presiding Officer designated, has issued a certification order to the Commission pursuant to Section 1.92(c) of our rules that the carrier has waived its opportunity for hearing under that section.<sup>45</sup>

14. We also order the Fletcher Companies and each principal of the Fletcher Companies to cease and desist from any future provision of interstate common carrier service without the prior consent of the Commission. In addition, we find that the egregious actions of the Fletcher Companies and their principals, who have committed numerous violations of our rules and the Act, warrant the imposition of forfeitures against them. In the *Show Cause Order*, we included a Notice of Apparent Liability for willful or repeated violations

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<sup>40</sup> See 47 U.S.C. § 214; 47 C.F.R. § 63.07; see also *Show Cause Order*, 12 FCC Rcd 8549, para. 2 & n.7. This "blanket" operating authority extends to the provision of both domestic and international common carrier service. Therefore, we note that one of the Fletcher Companies, Phone Calls Inc., provided international service pursuant to its "blanket" operating authority under Section 214 of the Act.

<sup>41</sup> See *id.*

<sup>42</sup> See File No. ITC 96-312, effective, Aug. 2, 1996.

<sup>43</sup> 47 U.S.C. § 154(i).

<sup>44</sup> Revocation of the operating authority extends to the Fletcher Companies' provision of domestic interexchange service and Phone Calls, Inc.'s provision of international service pursuant to its international Section 214 authorization.

<sup>45</sup> See 47 U.S.C. § 5(c); 47 C.F.R. § 1.91(a). Section 1.92(a) provides that after the issuance of an order to show cause, pursuant to § 1.91, that calls upon a person to appear at a hearing before the Commission, the occurrence of any one of the following events or circumstances, constitutes waiver of such hearing: (1) respondent fails to file a timely written appearance indicating that he will appear at the hearing; (2) respondent fails to appear at the hearing after providing notification that he will appear; or (3) the respondent files a written statement with the Commission that he waives his right to a hearing. See 47 C.F.R. § 1.92(a); see also *supra* para. 9 & note 23.

of the Commission rules,<sup>46</sup> under the authority of Section 503(b) of the Act.<sup>47</sup> Under the proposals set forth in the *Show Cause Order*, the amount of forfeiture would be calculated as follows: a) \$15,000 for each unauthorized conversion of complainants' long distance service in violation of 47 C.F.R. §§ 64.1100 and/or 64.1150; b) \$5,000 for each failure to respond to an Official Notice of Informal Complaint or inadequate response to an Official Notice of Informal Complaint in violation of 47 U.S.C. §§ 208(a) and 416(c) and 47 C.F.R. § 1.717; c) \$1,000 for violation of 47 U.S.C. § 413; and d) \$6,000 for each failure to comply with the requirements of 47 U.S.C. § 203(a), plus \$300 for each and every day of the continuance of each such violation.

15. When determining the amount of forfeiture to be imposed, we are required to consider such factors, *inter alia*, as the "nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require."<sup>48</sup> Neither the Fletcher Companies nor their principals have identified any facts or circumstances to persuade us that there is any basis for reconsidering our proposed forfeitures set forth in the *Show Cause Order* nor have they presented any mitigating circumstances that would warrant a reduction in the proposed forfeiture amounts. Therefore, based on the numerous violations of our rules and the Act committed by the Fletcher Companies and their principals, we assess forfeitures against the Fletcher Companies and their principals that total \$5,681,500, as described in the following paragraphs.

16. As discussed above, we received over 1400 complaints containing allegations of slamming by the Fletcher Companies, in many cases, through the use of false or misleading practices, in violation of our rules, 47 C.F.R. §§ 64.110 and/or 64.1150.<sup>49</sup> In the *Show Cause Order* we proposed a forfeiture amount of \$15,000 per violation of 47 C.F.R. §§ 64.1100 and/or 64.1150.<sup>50</sup> Calculating upon this basis, we assess a forfeiture of \$3,600,000 for slamming violations against Long Distance Services, Inc. (LDSI) and its

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<sup>46</sup> See *Show Cause Order*, 12 FCC Rcd at 8562, para. 26.

<sup>47</sup> 47 U.S.C. § 503(b).

<sup>48</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>49</sup> See *supra* para. 2. Although some of the slamming complaints against the Fletcher Companies are time barred by the Commission's one year statute of limitations in slamming cases, 47 U.S.C. § 503(b), we note that at least 350 complaints against certain of the Fletcher Companies are within the Commission's statute of limitations, including at least 240 slamming complaints against LDSI and at least 110 slamming complaints against PCI.

<sup>50</sup> We note that the Commission recently adopted a policy statement and guidelines regarding unauthorized PIC changes. See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, CI Docket No. 95-6, at 18 (rel. July 28, 1997). Although we do not rely on these guidelines, because they were not in place at the time of the complaints filed against the Fletcher Companies', we note that these guidelines recommend an assessment of forfeitures in the amount of \$40,000 for violations such as those present here, where the carrier's "deliberate failure to ensure that letters of authorization are valid and properly authorized" leads to an unauthorized conversion. *Id.*

principals, and a forfeiture of \$1,650,000 for slamming violations against Phone Calls, Inc. (PCI) and its principals. We also find that certain of the Fletcher Companies failed to respond to at least 61 Notices of Informal Complaint, in violation of 47 U.S.C. §§ 208(a) and 416(c) and 47 C.F.R. § 1.717.<sup>51</sup> Therefore, we assess the proposed forfeiture amount, \$5,000, for each such violation. Thus, we assess a forfeiture of \$100,000 for failure to respond against Discount Calling Card, Inc. (DCC) and its principals, a forfeiture of \$105,000 for failure to respond against LDSI and its principals, and a forfeiture of \$100,000 for failure to respond against PCI and its principals. We also find that each of the eight Fletcher Companies and their principals failed to provide a registered agent in violation of Section 413 of the Act; therefore, we assess a forfeiture in the amount of \$1,000 for each violation.

17. Lastly, we assess a forfeiture due to the Fletcher Companies' failure to maintain tariffs in violation of Section 203(a) of the Act. In the *Show Cause Order*, we stated that it appeared that the majority of the Fletcher Companies provided telecommunications services without maintaining tariffs on file with the Commission.<sup>52</sup> Specifically, we found that LDSI provided service in May 1996 without having a tariff on file with the Commission.<sup>53</sup> We also found that PCI, which maintained a tariff on file with the Commission, provided service prior to the effective date of its tariff.<sup>54</sup> Therefore, we find it appropriate to assess a forfeiture in the amount of \$6,000 for failure by these two entities to maintain a tariff in violation of Section 203 of the Act. We also assess a forfeiture in the amount of \$300 per day for which LDSI provided service without a tariff. As we stated in the *Show Cause Order*, it appears that LDSI provided service as early as May 15, 1996 and continuing at least through January 1997.<sup>55</sup> Therefore, we assess a forfeiture in the amount of \$300 per day from May 15, 1996 through January 1, 1997, for a total of 232 days, due to LDSI's failure to maintain a tariff on file with the Commission, which results in a forfeiture of \$69,600.<sup>56</sup> We also assess a forfeiture in the amount of \$300 per day from March 31, 1996 through August 1, 1996, for a total of 123 days, due to PCI's failure to maintain a tariff on file with the Commission, which results in a forfeiture of \$36,900.<sup>57</sup> Therefore,

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<sup>51</sup> This includes at least 20 such failures to respond on the part of DCC, 21 such failures on the part of LDSI, and 20 such failures on the part of PCI.

<sup>52</sup> *See Show Cause Order*, 12 FCC Rcd at 8557-58, paras. 14-15 (stating that Phone Calls, Inc. and Discount Calling Card, Inc. maintained tariffs with the Commission).

<sup>53</sup> *See id.*

<sup>54</sup> *See id.*

<sup>55</sup> *See id.* (stating that the Commission received complaints that LDSI slammed consumers and billed them for calls in May 1996). The Commission continued to receive slamming complaints against LDSI through January 1997. *See id.* at Attachment.

<sup>56</sup> We note that this amount (\$69,600) is for a continuing failure to maintain a tariff on file with the Commission, and therefore, is in addition to the \$6,000 fine for failing to maintain a tariff on file with the Commission.

<sup>57</sup> We note that this forfeiture is in addition to the \$6,000 fine for failing to maintain a tariff on file with the Commission.

because neither the Fletcher Companies nor their principals provided any evidence that might mitigate the foregoing proposed forfeiture amounts, we assess forfeitures against the Fletcher Companies and their principals that total aggregate amount of \$5,681,500.

#### V. ATLAS COMMUNICATIONS, LTD. AND BILLING CONCEPTS, INC. PETITION TO INTERVENE AND MOTION TO ENLARGE THE ISSUES

18. On July 14, 1997, Atlas Communications, Ltd. ("Atlas") and Billing Concepts, Inc. ("USB")<sup>58</sup> petitioned the Commission for leave to intervene in the above proceeding and enlarge the issues of such proceeding.<sup>59</sup> Specifically, Atlas requests that the Commission enlarge the issues in the proceeding to include whether and how Atlas and USB should be permitted to continue supplying telecommunications and related services to those customers identified to Atlas and USB by Phone Calls, Inc. (PCI) under the certification and tariffs of PCI.<sup>60</sup> In support of its motion, Atlas focuses on the business relationship between Atlas and PCI, and contends that there are currently approximately 50,000 PCI telephone customers on the Atlas network, and that if the Commission revoked PCI's operating authority, Atlas could no longer service these customers.<sup>61</sup>

19. We hereby deny the Atlas Petition to intervene in this proceeding, because the matters raised in the Atlas Petition do not touch upon the specific issues designated for hearing. As discussed above, the Commission convened an evidentiary hearing to determine whether, based on the facts and circumstances before the Commission, the operating authority of the Fletcher Companies should be revoked and whether the Fletcher Companies and their principals should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission.<sup>62</sup> Atlas has cited no authority mandating that we enlarge the issues in this proceeding, and we see no reason to delay the proceeding to address Atlas' obligation to PCI customers, a matter peripheral to the issues in this proceeding. To the extent that Atlas raises issues outside of the scope of the hearing, such as determining Atlas' obligation to PCI's customers, we note that the Common Carrier Bureau will continue to work with Atlas to craft a solution to protect those current PCI customers.

#### V. CONCLUSION AND ORDERING CLAUSES

20. For the reasons discussed above, we hereby revoke the operating authority of the Fletcher Companies. We also order the Fletcher Companies and each principal of the Fletcher Companies to cease and

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<sup>58</sup> Billing Concepts, Inc. conducts business as U.S. Billing. *See* Petition to Intervene and Motion to Enlarge Issues of Atlas Communications, Ltd. and Billing Concepts, Inc. at para. 3 (July 14, 1997) ("Atlas Petition").

<sup>59</sup> *See id.*

<sup>60</sup> *See id.* at 9.

<sup>61</sup> *See id.* at para. 1.

<sup>62</sup> *See supra* para. 6.

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desist from any future provision of interstate and international common carrier services without the prior consent of the Commission.

21. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 214, and 312 of the Act, 47 U.S.C. §§ 154(i), 214, 312, that the operating authority of the Fletcher Companies IS REVOKED.

22. IT IS FURTHER ORDERED that the Fletcher Companies and each principal of the Fletcher Companies CEASE AND DESIST from any future provision of interstate common carrier services without the prior consent of the Commission.

23. IT IS FURTHER ORDERED that Atlas' Petition to Intervene and Motion to Enlarge Issues of Atlas Communications, Ltd. and Billing Concepts, Inc. IS DENIED.

24. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 503 of the Act, 47 §§ 154(i), 503, that Long Distance Services, Inc. (LDSI) and its principals shall FORFEIT to the United States Government \$3,600,000, and Phone Calls, Inc. (PCI) and its principals SHALL FORFEIT to the United States Government \$1,650,000, for violating the Commission's rules governing primary interexchange carrier conversions.<sup>63</sup> Payment may be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days from the release of this Order.<sup>64</sup> If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.<sup>65</sup>

25. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 503 of the Act, 47 §§ 154(i), 503, that Discount Calling Card, Inc. (DCC) and its principals shall FORFEIT to the United States Government \$100,000, Long Distance Services, Inc. (LDSI) and its principals shall FORFEIT to the United States Government \$105,000, and Phone Calls, Inc. (PCI) and its principals SHALL FORFEIT to the United States Government \$100,000, for failure to respond to Notices of Informal Complaint, in violation of the Commission's rules. Payment may be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days from the release of this Order.<sup>66</sup> If the forfeiture is not paid within the period specified,

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<sup>63</sup> See *supra* note 11.

<sup>64</sup> See 47 C.F.R. § 1.80. Such forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order from the Fletcher Companies to NAL/Acct. No. 816EF0003. Such remittance should be mailed to the Forfeiture/Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

<sup>65</sup> See 47 U.S.C. § 504(a).

<sup>66</sup> See 47 C.F.R. § 1.80. Such forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order from the Fletcher Companies to NAL/Acct. No. 816EF0003. Such remittance should be mailed to the Forfeiture/Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482,

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the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.<sup>67</sup>

26. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 503 of the Act, 47 §§ 154(i), 503, each of the Fletcher Companies named in the caption of this order and their principals SHALL FORFEIT to the United States Government \$1,000 for failing to provide a registered agent in violation of section 413 of the Communications Act. Payment may be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days from the release of this Order.<sup>68</sup> If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.<sup>69</sup>

27. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 503 of the Act, 47 §§ 154(i), 503, that Long Distance Services, Inc. (LDSI) and its principals shall FORFEIT to the United States Government \$75,600, and Phone Calls, Inc. (PCI) and its principals shall FORFEIT to the United States Government \$42,900, for failing to maintain tariffs with the Commission, in violation of section 203(a). Payment may be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days from the release of this Order.<sup>70</sup> If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.<sup>71</sup>

28. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau, is hereby delegated the authority to issue orders revoking a common carrier's operating authority pursuant to Section 214 of the Act, and to issue orders to cease and desist such operations, in cases where the Chief Administrative Law Judge, or the Presiding Officer designated, has issued a certification order to the Commission pursuant to Section 1.92(c) of our rules that the carrier has waived its opportunity for hearing under that section.

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Chicago, Illinois 60673-7482.

<sup>67</sup> See 47 U.S.C. § 504(a).

<sup>68</sup> See 47 C.F.R. § 1.80. Such forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order from the Fletcher Companies to NAL/Acct. No. 816EF0003. Such remittance should be mailed to the Forfeiture/Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

<sup>69</sup> See 47 U.S.C. § 504(a).

<sup>70</sup> See 47 C.F.R. § 1.80. Such forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. Reference should be made on the check or money order from the Fletcher Companies to NAL/Acct. No. 816EF0003. Such remittance should be mailed to the Forfeiture/Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

<sup>71</sup> See 47 U.S.C. § 504(a).

29. IT IS FURTHER ORDERED pursuant to Section 1.4(b)(2) of the Commission's rules, 47 C.F.R. § 1.4(b)(2), that this order is effective upon release.

30. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

31. IT IS FURTHER ORDERED, that a copy of this order shall be sent by certified mail, return receipt requested to Daniel Fletcher; Robert Motter; Sandra Platt; CCN, Inc.; Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc., Monthly Phone Services, Inc.; and Phone Calls, Inc.; 201 West Broad Street, Suite 181, Falls Church, Virginia 22206.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary