

**Before the
Federal Communications Commission
Washington, DC 20554**

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

FORFEITURE ORDER

Adopted: September 14, 2016

Released: September 15, 2016

By the Commission: Commissioner O’Rielly concurring in part and dissenting in part.

I. INTRODUCTION

1. We impose a penalty of \$4,480,000 against U.S. Telecom Long Distance, Inc. (USTLD or Company) for improperly changing the preferred long distance carriers of consumers, a practice commonly known as “slamming,” and charging consumers directly or through their local telephone companies for long distance service that they had never authorized, a practice commonly referred to as “cramming.” USTLD also deceptively marketed its services to consumers as part of its slamming and cramming scheme. In addition, where USTLD billed consumers directly, it failed to clearly and plainly describe the charges, in violation of the Commission’s truth-in-billing rules. Slamming and cramming are deceptive business practices that result in consumers paying for services they never requested and then expending great time and personal effort to return to their preferred carriers. These practices are made even more egregious where, as here, they are coupled with deceptive marketing. After reviewing USTLD’s response to the Notice of Apparent Liability for Forfeiture (*NAL*), we reduce the penalty proposed in the *NAL* and assess a \$4,480,000 forfeiture.

II. BACKGROUND

2. The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) initiated an investigation of USTLD¹ after reviewing numerous consumer complaints filed against the Company. As discussed in more detail in the *NAL*,² many of the consumers who filed complaints contended that USTLD misrepresented that the Company was (or was affiliated with) the complainant’s existing long distance carrier and that the purpose of the Company’s marketing call was to obtain the complainant’s authorization to change the current service plan with his or her existing carrier—not to switch carriers.³ According to the complainants, after obtaining and recording their “authorization,” USTLD then attempted to switch their long distance carrier to USTLD.⁴ In some cases, USTLD successfully effected the carrier change and in other cases USTLD could not because, for

¹ USTLD, located at 3960 Howard Hughes Parkway, 5th Floor, Suite 5001F, Las Vegas, NV 89109, is a non-facilities-based interexchange carrier.

² *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823 (2014) (*NAL*). The *NAL* contains a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *NAL*, 29 FCC Rcd at 823–832, paras. 2–15. The Appendix to the *NAL* contains a list of complaints, including the complainant’s name, date of carrier change or billing date, and violation. *Id.* at 841–43.

³ *Id.* at 824, para. 3.

⁴ *Id.*

example, a consumer had taken the initiative through a “PIC freeze” to block unauthorized carrier changes.⁵ In both types of cases, USTLD charged the complainants for long distance services. The charges were billed directly to the complainants or were placed on the complainants’ local exchange carrier (LEC)⁶ bill.⁷ For example, Complainant Freeman’s Verizon bill contained charges from USTLD and after she advised Verizon that the charges were unauthorized USTLD sent her a direct bill.⁸ Complainants contended that they did not authorize USTLD’s service and that they had no need to pay USTLD for the same service that they already had with their existing carriers. The *NAL* ordered USTLD to, within 30 days, either pay the proposed forfeiture amount or submit evidence or arguments in response to the *NAL* that no forfeiture should be imposed or that some lesser amount should be assessed. USTLD filed a response to the *NAL* on March 12, 2014.⁹

3. The slamming and cramming scheme in this case is very similar to that in two other recent cases: Consumer Telcom, Inc. (CTI),¹⁰ and Central Telecom Long Distance, Inc. (Central);¹¹ all three companies are operated by a fourth company, the “hub” of the operation, Data Integration Systems, Inc. (DIS) that handles the day-to-day operations of the three companies.¹² All three companies—USTLD, CTI, and Central—are managed from DIS’s offices at 17832 Gillette Ave., Irvine, CA 92416. DIS, whose sole owner, officer, and director is Craig Konrad (Konrad),¹³ “provides billing, training, customer service, . . . and other data management and retrieval services for USTLD”¹⁴ as well as CTI, and Central.¹⁵ According to Konrad,¹⁶ DIS would provide services pursuant to the contract with USTLD, including:

⁵ *Id.* A preferred or presubscribed interexchange carrier (PIC) freeze “prevents a change in a subscriber’s preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent.” See 47 CFR § 64.1190(a).

⁶ *E.g.*, AT&T, Verizon, or CenturyLink. “The term ‘local exchange carrier’ means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332 (c) of this title, except to the extent that the Commission finds that such service should be included in the definition of such term.” 47 U.S.C. § 153(32).

⁷ *NAL*, 29 FCC Rcd at 824, para. 3.

⁸ See Complaint from M. Freeman.

⁹ See U.S. Telecom Long Distance, Inc.’s Response to Notice of Apparent Liability for Forfeiture (Mar. 12, 2014) (*NAL Response*) (on file in EB-TCD-13-00008959).

¹⁰ *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196 (2013) (*CTI NAL*).

¹¹ *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517 (2014) (*Central NAL*).

¹² *Central NAL*, 29 FCC Rcd at 5517-18, para. 2.

¹³ According to the 2015 FCC Form 499-A, filed March 17, 2015, Konrad is also the chief executive officer of the toll reseller, Business Discount Plan, Inc.

¹⁴ *USTLD NAL*, 29 FCC Rcd at 823, para. 2.

¹⁵ See *NAL Response* at Exhibit 2, Affidavit of Craig Konrad.

¹⁶ Konrad provided a “declaration under penalty of perjury” to the Bureau’s letter of inquiry (LOI), stating that “[a]ll of the information requested by the Letter of Inquiry that is locatable and in DIS’s possession, custody, control or knowledge has been produced.” In addition, Konrad provided the substantive responses to the LOI, and stated that “DIS’s responses to the questions directed to USTLD . . . which DIS assisted UST in preparing its responses, are true and correct to the best of my personal knowledge and belief.” See “Responses of U.S. Telecom Long Distance, Inc. to Letter of Inquiry, Dated May 31, 2013, Issued by the Enforcement Bureau of the Federal Communications Commission” (July 19, 2013) (on file in EB-TCD-13-00008959). Konrad provided the substantive information in the *NAL Response* regarding USTLD operations. See *NAL Response* at Exhibit 2 (Affidavit of Craig Konrad).

collecting and managing data needed for billing and collect[ion] services; interfacing with billing aggregators, interexchange carriers and local exchange carriers; training telemarketers; providing software and software services; managing databases; reviewing services and other non-service contracts; and overseeing regulatory matters.¹⁷

4. With respect to marketing, “[USTLD], through its agent DIS, trains and instructs its sales representatives”¹⁸ and “also has a quality assurance monitoring program in which it, through its agent DIS, regularly listens in on the sales representative’s calls.”¹⁹ DIS provides the “telemarketers with [USTLD]’s training materials.”²⁰ According to the Konrad affidavit, “[USTLD], through its agent DIS, trains its employees well and consequently, [USTLD] has not had to terminate many employees for engaging in misconduct during the telemarketing sales calls.”²¹ After the third party verifier process, DIS “uses [the name and address of new customers] to prepare address labels.”²² DIS provides these address labels to its subcontractor, National Customer Service Center (NCSC), which then affixes these address labels to envelopes. DIS pays for the postage that is loaded into a postage meter, and NCSC will then mail the customer various promotional materials. If the documents are undeliverable, “DIS will then double check the customer’s name and address and correct the address label, if necessary, and re-mail the envelope.”²³ According to Konrad, NCSC prepares all of the responses to the consumer complaints.²⁴

5. The three companies, USTLD, CTI, and Central, have different owners, although the owner of CTI, Joseph Nicotra, was previously an officer of USTLD;²⁵ however, they are all operated by DIS. Konrad, the owner of DIS, is also the president of another toll reseller, Business Discount Plan, Inc.²⁶ This system of using multiple companies, all run by one person or company, is used to dilute the number of complaints against each specific reseller and to make it more difficult for regulatory and law enforcement agencies to know how much cramming (or slamming) is occurring.²⁷

6. On January 24, 2014, the Commission released the *NAL* proposing a \$5,230,000 forfeiture against USTLD for its apparently willful and repeated violations of Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act),²⁸ and Sections 64.1120 and 64.2401(b) of the Commission’s rules (Rules).²⁹ The *NAL* found that the Company apparently violated Section 258 of the Act and Section 64.1120 of the Rules by changing the preferred carriers of three consumers without

¹⁷ *Id.* at Exhibit 2, p. 1.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9.

²¹ *Id.* at 11.

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.* at 21.

²⁵ *Id.* at Exhibit 5, p. 216.

²⁶ See *Central NAL*, 29 FCC Rcd at 5518 & n.5. The Commission had previously investigated Business Discount Plan for slamming and misrepresentation when Konrad was the Vice President of that company. See *Bus. Disc. Plan, Inc.*, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 340 (1998) (*BDP NAL*), Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*BDP Forfeiture Order*).

²⁷ See United States Senate Committee on Commerce, Science, and Transportation, Office of Oversight and Investigations, “Unauthorized Charges on Telephone Bills,” Staff Report for Chairman Rockefeller, July 12, 2011 (Senate Report) at pp. 9-10, available at <http://apps.fcc.gov/ecfs/document/view?id=7021859847>.

²⁸ 47 U.S.C. §§ 201(b), 258.

²⁹ 47 CFR §§ 64.1120, 64.2401(b).

authorization (slams), and Section 201(b) of the Act by assessing 33 unauthorized charges (crams) on bills to consumers. In addition, USTLD apparently further violated Section 201(b) by engaging in eight instances of misrepresentation, and apparently violated Section 64.2401(b) of the Rules by committing 10 truth-in-billing violations when sending bills directly to consumers.

7. USTLD makes a number of arguments in its NAL Response as to why the *NAL* should be canceled or reduced. The Company contends that: (i) it did not slam consumers because it complied with the Commission's verification rules for carrier changes; (ii) it did not cram consumers because the recurring charges it assessed were for "bundled services" authorized by consumers; (iii) it did not deceptively market its services because it has implemented telemarketer training and other safeguards; (iv) the Commission's reliance on unsworn consumer complaints was unreasonable and denied the Company due process; (v) it did not violate the Commission's truth-in-billing rules because the Company was billing consumers for previous unpaid bills; and (vi) the *NAL* upward adjustments of the proposed forfeiture amount were arbitrary and capricious.³⁰ As we discuss below, we reject each of USTLD's arguments. However, based on all the evidence in the record, we reduce the penalty proposed in the *NAL* and assess a forfeiture amount of \$4,480,000.

III. DISCUSSION

8. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,³¹ Section 1.80 of the Rules,³² and the Commission's *Forfeiture Policy Statement*.³³ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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."³⁴ As discussed below, we have fully considered USTLD's response to the *NAL*, but we do not find its arguments persuasive. Based on the preponderance of the evidence in the record, we assess a \$4,480,000 forfeiture.

A. USTLD Slammed Consumers in Violation of Section 258 of the Act and Section 64.1120 of the Rules

9. Section 258 of the Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."³⁵ Section 64.1120 of the Rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before verifying authorization from the consumer. Carriers can verify that authorization in one of three specified ways, including "Third Party Verification" (TPV).³⁶ If a carrier relies on a TPV,³⁷ the verifier must be independent of the carrier and, among other things, must confirm that the consumer with whom the verifier is speaking: (i) has the authority to change

³⁰ In addition, the Company submitted two years of federal tax returns to support its claim that it was not able to pay the proposed forfeiture.

³¹ 47 U.S.C. § 503(b).

³² 47 CFR § 1.80.

³³ *The 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) (*Forfeiture Policy Statement*), reconsideration denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

³⁴ 47 U.S.C. § 503(b)(2)(E).

³⁵ 47 U.S.C. § 258(a).

³⁶ 47 CFR § 64.1120(c)(1)–(3).

³⁷ TPV is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. TPV must comply with Section 64.1120(c)(3) of the Commission's rules. 47 CFR § 64.1120(c)(3).

the carrier associated with the telephone number in question; (ii) in fact wishes to change carriers; and (iii) understands that he or she is authorizing a carrier change.³⁸ The rules expressly prohibit verifiers from misleading consumers while attempting to obtain the required authorization (i.e., the rules require, *inter alia*, that a verifier's description of the carrier change not be misleading).³⁹ In its NAL Response, USTLD makes a number of arguments in an attempt to avoid liability, but we find none of them persuasive and, based on the preponderance of the evidence in the record, we affirm the NAL's finding of violations of Section 258 of the Act and Section 64.1120 of the Rules.

10. In the NAL we found that USTLD apparently violated Section 258 of the Act and Section 64.1120 of the Rules by switching three consumers' preferred providers of telecommunications services without proper authorization that was verified in accordance with the Commission's rules.⁴⁰ Specifically, in all three cases the third party verifier's description of the carrier change was misleading in violation of the Rules, and failed to confirm that the consumer wished to change carriers and understood that they were authorizing such a change.⁴¹ As consumers repeatedly described, USTLD's telemarketers initially led the consumers to believe that they were speaking to their existing carrier and that the purpose of the call was to discuss the consumer's *existing service*.⁴² After those misrepresentations were made by USTLD's telemarketers, the consumer's call was passed to the third party verifier, who told consumers that "[t]he reason we are speaking to you is to confirm the change in long distance service to U.S. Telecom Long Distance, Inc. as your long distance carrier."⁴³ As we explained in the NAL, simply tacking on the words "as your long distance carrier" does not change the fact that the verifier stated that the purpose of the call was to change the consumer's "service," rather than the *carrier* providing that service, and that consumers believed their service would continue to be through their existing preferred carrier because of the initial misrepresentations made by USTLD's telemarketers (discussed in greater detail in the NAL and below).⁴⁴ The consumers had not agreed to change their carriers and there were no agreements for a carrier change to "confirm" with the third party verifier. It is well established law that changing service is not equivalent to changing carriers,⁴⁵ and USTLD's statements suggesting that it was seeking verification only for a change in "service" were misleading and in violation of Section

³⁸ *Id.* § 64.1120(c)(3)(iii).

³⁹ *Id.*

⁴⁰ NAL, 29 FCC Rcd at 825–29, paras. 6–13.

⁴¹ *See id.* at 827–28, paras. 10–11.

⁴² *Id.* at 826–27, para. 9.

⁴³ *Id.* at 827–28, para. 10.

⁴⁴ *Id.* at 826–28, paras. 9–10 & n.39 (citing *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Fourth Report and Order, 23 FCC Rcd 493, 501, para. 19 (2008) (footnotes omitted) (*Slamming Fourth Report and Order*)).

⁴⁵ *See, e.g., Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding "the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*."); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 4624 (CGB 2013) (same, for three complaints); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 4619 (CGB 2013) (same, for six complaints); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscribers' Telecommunications Carrier*, Order, 25 FCC Rcd 3202 (CGB 2010) (same, for two complaints); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same).

64.1120(c)(3), notwithstanding the addition of the phrase “as your long distance carrier” at the end of the sentence.⁴⁶

11. USTLD argues that the Commission should not focus on a single statement by the verifier, which it claims was taken “out of context,” and that its TPVs, when reviewed in their entirety “did not lead to consumer confusion concerning the true purpose of the solicitation call.”⁴⁷ According to USTLD, the verifications “confirmed that the person on the call understood that a *carrier change*, not an upgrade to existing service, bill consolidation, or other misleading description of the underlying transaction, was being authorized.”⁴⁸ The evidence shows otherwise. Notably, after the three consumers discovered that their carrier was changed without their authorization they immediately took steps to switch back to their prior carrier, obtain a refund of the USTLD charges, and file complaints against USTLD due to the unauthorized carrier change and resulting unauthorized charges.⁴⁹

12. Further, USTLD is mistakenly focusing on one small part of the TPV—i.e., the reference to a consumer’s “long distance carrier”—to show that the TPV complied with our verification rules. The evidence shows that prior to the TPV, the USTLD telemarketer led the three consumers to believe that the purpose of the call was to discuss the existing service, *not* to change carriers. Consequently, the vague language of the TPV, “confirm the change in long distance service,” did not significantly contradict what the USTLD telemarketer had just told the consumers, i.e., that they were discussing a change in their current service (not a carrier change), and was misleading and therefore in violation of our verification rules. As the Commission stated in its *Slamming Fourth Report and Order*, “some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose.”⁵⁰ Here, the evidence

⁴⁶ USTLD contends that it is “incomprehensible” and “inconceivable” that we find fault with its TPVs because according to USTLD, there have been numerous CGB orders that reviewed similar language used by USTLD which CGB found did not constitute a slam. NAL Response at 31-32. USTLD’s contention, however, is based entirely upon old CGB orders dating back to 2008. NAL Response at 16-18. USTLD conveniently ignores the subsequent CGB orders that supersede that prior precedent. In these more recent orders CGB specifically found USTLD violated the slamming rules because its TPVs asked consumers about a change in “service” and not a change in “carrier.” *See supra*, note 45. These orders put USTLD on notice prior to the slams at issue in the NAL that the old CGB precedent no longer applied following the Commission’s 2008 rulemaking and that USTLD needed to change its TPVs to bring them into compliance with the slamming rules. We find no merit in USTLD’s argument and affirm our findings in the NAL. CGB has released more recent orders with the same conclusion. *See, e.g., U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5805 (CGB 2014) (finding that the statement that the purpose of the recorded conversation was “to confirm the change in long distance service to US Telecom Long Distance as your long distance carrier” was in violation of FCC carrier change rules); *Consumer Telecom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5800 (CGB 2014) (same, regarding Consumer Telecom, Inc.); *Central Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5795 (CGB 2014) (same, regarding Central Telecom Long Distance, Inc.); *Central Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5790 (CGB 2014) (same); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 16640 (CGB 2013) (same).

⁴⁷ NAL Response at 26. USTLD argues that the TPVs complied with our rules and were not misleading, combining, to some extent, the slamming and misrepresentation issues.

⁴⁸ *Id.*

⁴⁹ *See, e.g.,* Complaint from E. Greuling (describing how, after the telemarketer misled him into believing the call was from CenturyLink and the next telephone bill had USBI charges, he contacted CenturyLink and USBI repeatedly to complain about the unauthorized carrier change and charges; his subsequent bill had additional unauthorized charges which led him to file his complaint.).

⁵⁰ *Slamming Fourth Report and Order*, 23 FCC Rcd at 501, para. 19 (footnotes omitted). Moreover, the Commission has previously stated that third party verifier scripts “should clearly and conspicuously confirm that the

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demonstrates that USTLD “obscured the true purpose” of its interactions with consumers for the purpose of switching their carriers without their authorization.

13. USTLD also argues that instead of looking at the allegations of each complaint, including the statements and representations made to consumers *prior* to the TPV, if the TPV, standing alone, complies with our Rules, then it “necessarily means that the customers were authorized to make a carrier change, wanted to make a carrier change, and understood that they were making a carrier change.”⁵¹ Essentially, the Company’s position is that as long as there is a “valid” TPV, the associated carrier change is justified regardless of what a telemarketer may have told the consumer.⁵² As discussed above, we have reviewed the relevant USTLD TPVs and determined that they do not comply with our verification rules and thus, do not prove authorization. Even if we were to accept USTLD’s argument (that a valid TPV standing alone proves authorization), it would be of no avail in the instant case. USTLD’s TPV argument also fails because the misrepresentations told to consumers by USTLD’s telemarketers alone invalidate the TPVs, making the subsequent carrier changes invalid.⁵³ Moreover, a falsified TPV⁵⁴ could make it appear that a complainant had agreed to a carrier change when no such agreement had occurred.⁵⁵ Accordingly, we reject the contention that we should look no further than the TPV in determining whether a particular carrier change comports with the Act and our Rules.

14. For all these reasons, and based on the preponderance of the evidence in the record, we affirm the finding in the *NAL* that USTLD, in violation of Section 258 of the Act and Section 64.1120 of the Rules, changed the preferred carriers of three consumers without proper authorization verified in accordance with the Commission’s rules.

B. USTLD Placed Unauthorized Charges on Consumers’ Telephone Bills (“Cramming”)

15. USTLD also violated Section 201(b) of the Act by placing 33 unauthorized charges on consumers’ telephone bills.⁵⁶ The Commission has previously held that the placement of unauthorized

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subscriber has previously authorized a carrier change.” *Id.* (citing *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

⁵¹ NAL Response at 36.

⁵² *Id.*

⁵³ See *supra* para. 10. See also *NAL*, 29 FCC Rcd at 828, para. 11 (explaining that due to the misrepresentations by the telemarketer, USTLD cannot demonstrate the complainants wanted to make a carrier change and understood that they were authorizing a carrier change.).

⁵⁴ See Complaint from M. Loma; *NAL*, 29 FCC Rcd at 826-27, para 9.

⁵⁵ This is consistent with *AT&T Corporation v. FCC*, 323 F.3d 1081, 1086 (DC Cir. 2003) (*AT&T v. FCC*). In *AT&T v. FCC*, the court agreed with AT&T that “carriers seeking new customers via telemarketing have little choice but to depend on the veracity of the person answering the phone.” The matter of a falsified TPV was not at issue in the two slamming instances before the court; in fact, the court repeatedly noted that the telemarketer following our verification procedures would have to rely on the person who answered the telephone call. Our position here, however, is that a falsified TPV cannot comply with our verification rules because it is not the subscriber’s verification but a faked recording created solely to mislead state and federal agencies that the subscriber agreed to the carrier change.

⁵⁶ USTLD’s process for third party billing generally involves three parties: USTLD; its billing aggregator, Billing Services Group (known as BSG or USBI); and the LEC that issues the consumer’s bill. As we described in the *NAL*, USBI “supplies USTLD’s billing information to local exchange carriers for billing USTLD’s charges for its services to its customers.” For direct billing, USTLD obtains information on its customers’ usage from its underlying carriers, Global Crossing Telecommunications, Inc. (Global Crossing) and CenturyLink. USTLD then “applies its rates to the [customer’s] usage and includes its monthly fees for the long distance service plan selected by the

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charges and fees on consumers' telephone bills—known as “cramming”—is an “unjust and unreasonable” practice under Section 201(b).⁵⁷ Cramming can occur either when third parties place unauthorized charges on consumers' existing carriers' telephone bills or when carriers place unauthorized charges on their own customers' telephone bills.⁵⁸ Any assessment of an unauthorized charge on a telephone bill or for a telecommunications service is an “unjust and unreasonable” practice under Section 201(b) of the Act.⁵⁹ USTLD argues in their NAL Response that: (1) it did not cram consumers, but instead charged them for a “bundled” service that the consumers had authorized;⁶⁰ and (2) by failing to comply with USTLD's complaint procedures, consumers authorized any charges billed by USTLD.⁶¹ For the reasons discussed below, we reject these arguments and, based on the preponderance of the evidence in the record, affirm the *NAL*'s finding that USTLD violated Section 201(b) of the Act by placing 33 unauthorized charges on consumers' telephone bills.

1. Complainants did not authorize USTLD's “bundled” services

16. In the *NAL* we found that USTLD apparently violated Section 201(b) of the Act by placing 33 unauthorized charges on consumers' telephone bills, in some cases multiple charges on the same consumer's bills.⁶² When USTLD was able to change a consumer's long distance carrier to itself, it would charge the consumer for itemized long distance calls as well as a monthly recurring charge. When USTLD was unable to change a consumer's carrier (such as when the consumer had a PIC freeze in place), or when a consumer discovered the unauthorized carrier change to USTLD and switched back to his or her original carrier, USTLD nonetheless assessed the same monthly recurring charge even though USTLD was not the consumer's presubscribed long distance carrier. USTLD contends that it sells a “bundle” of services and thus did not cram these consumers because it was billing them for its “bundled long distance service,” not just for the long distance service that the consumer either was never subscribed to (i.e., because a PIC freeze was in place) or that was canceled (because the consumer switched back to their preferred carrier).⁶³ As discussed below, however, the evidence demonstrates that the complainants had not authorized USTLD to charge them for any service, including this “bundled” service.

17. USTLD states that its bundled service includes “subscribed casual calling, calling card, and directory assistance long-distance service.”⁶⁴ We understand that the “casual calling”⁶⁵ service

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customer. USTLD then mails the bill to the customer using its normal mailing procedures.” See *NAL*, 29 FCC Rcd at 829, n.50.

⁵⁷ See, e.g., *Long Distance Direct, Inc., Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that the company's practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

⁵⁸ See *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (“Cramming”)*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4437, paras. 1–2 (2012); see also *Advantage Telecommunications Corp., Notice of Apparent Liability for Forfeiture*, 28 FCC Rcd 6843, 6850, para. 17 (2013) (*Advantage NAL*).

⁵⁹ See *Advantage NAL*, 28 FCC Rcd at 6850, para. 17 (regardless of the method used to bill consumers, “any assessment of an unauthorized charge billed to consumers is an ‘unjust and unreasonable’ practice under Section 201(b)”).

⁶⁰ *NAL* Response at 48-68.

⁶¹ *Id.* at 55-68.

⁶² *NAL*, 29 FCC Rcd at 829–834, paras. 14–20.

⁶³ *NAL* Response at 49.

⁶⁴ *Id.*

USTLD is referring to is a dial around service, i.e., the caller would dial 10-10 followed by the carrier identification code, or CIC, for the underlying carrier.⁶⁶ Despite USTLD's claims that these recurring charges are "valid accrued charges for long distance service provided"⁶⁷ the evidence shows that complainants had not authorized or used such "bundled long-distance service."⁶⁸ As we discussed in the *NAL*, the bundle is not mentioned in the TPV and is not described or listed on the telephone bills from the LEC or from USTLD.⁶⁹ USTLD admits that the TPV transcript does not "refer to a bundled package of services that includes casual calling, free directory assistance minutes and a calling card."⁷⁰

18. The complainants all contended that USTLD billed them for services they did not authorize.⁷¹ In most cases, USTLD initially switched their service away from their carrier to USTLD. Then, once they had returned to their original carriers, USTLD continued to bill them for monthly service and other fees and taxes—either through their LEC bills or on bills sent to them directly by USTLD. Numerous complainants described discovering unauthorized charges from USTLD on their local telephone bills, or on bills sent to them directly by USTLD, for long distance service they did not authorize and USTLD did not provide.⁷² USTLD has not offered any evidence to dispute the record evidence and justify its practice of continuing to bill consumers for several months after the unauthorized service was cancelled. USTLD explains that after a consumer had cancelled the USTLD service and the underlying carrier (Global Crossing or CenturyLink) has deactivated the account—due to the consumer's request for a PIC change back to the previous carrier—Konrad would activate the line if it had been deactivated.⁷³ Thus, after the service was cancelled by both the consumer and the underlying wholesale carrier, USTLD would "go back in and click that back to active"⁷⁴ to continue billing the consumer unauthorized charges. The complainants' assertions that such charges were unauthorized, described in detail in the *NAL*, are not credibly refuted. Therefore, we find, based on the preponderance of the evidence in the record, that USTLD did not have the complainants' authorization to charge for any service and thus crammed consumers by charging complainants for those unauthorized services.⁷⁵

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⁶⁵ Casual calling services are those services that do not require the calling party to establish an account with an interexchange carrier or otherwise subscribe to a service. A casual calling service is not a subscribed service and the caller using a casual calling service would not have an account with the interexchange carrier. Therefore, if USTLD offered a casual calling service, it would not charge a recurring fee for such service because a casual calling service, by definition, does not have subscribed customers.

⁶⁶ Dial around long distance can be an economical service in certain circumstances, in lieu of a 1+ long distance service. For example, some carriers offer discounted international services to certain countries on a dial around basis that consumers may prefer to the international service offered by the consumer's PIC-ed carrier. There is no evidence in the record that USTLD offers any such discounted services.

⁶⁷ *NAL* Response at 50.

⁶⁸ *NAL*, 29 FCC Rcd at 833-34, paras. 17-20.

⁶⁹ *Id.* at 833, para. 17.

⁷⁰ *NAL* Response, Exhibit 5 at 478-79.

⁷¹ *NAL*, 29 FCC Rcd at 833-34, paras. 17-20.

⁷² *Id.* at 830-832, para. 15 & n.69.

⁷³ *NAL* Response at Exhibit 5, pp. 463-470. Specifically, Konrad said that this would be done by himself "or somebody that works for Data Integration Systems, and we have subsequently handed that over to Priscilla's company here just recently." *Id.* at 465.

⁷⁴ *Id.* at 466.

⁷⁵ In addition to the above described unauthorized charges, USTLD's position is that after cancellation of its service by a consumer, the Company will still bill a consumer for several months—despite the fact that no charges were ever authorized. For example, USTLD's letter to complainant Clegg asserts (referring to a Sept. 16, 2013 call to USTLD's customer service to complain about unauthorized charges) "[d]epending on the timing of the local phone

(continued...)

19. In its NAL Response, USTLD first tries to establish that consumers authorized the recurring charges by providing an undated rate card describing a Utah calling plan (none of the complainants lived in Utah).⁷⁶ USTLD has not demonstrated that the complainants received this Utah rate card, or any rate card, containing information about the bundle of services.⁷⁷ USTLD also provided a “General Service Agreement” from August 2009.⁷⁸ USTLD has not shown that the August 2009 Agreement was in effect in 2013, during which the apparent violations relevant to the NAL occurred, or that the complainants received this Agreement. Further, USTLD has not explained why a consumer, already paying his or her presubscribed carrier for 1+ long distance service, would knowingly pay USTLD a monthly recurring charge for its dial around long distance service. We do not find that USTLD’s evidence refutes the complainants’ assertions that they did not sign up for these services and that the charges were unauthorized.

20. With respect to the casual calling service element of the bundle, USTLD speculates that the casual calling service, would be a “convenient service for customers who are away from their presubscribed phone.”⁷⁹ However, this explanation appears to confuse casual calling, pay-per-call dial around long distance service, and a subscribed calling card service because it fails to take into account that the call would be charged to the person whose telephone is used for the call, not the customer who made the call. Assuming USTLD was referring to a subscribed calling card service using a toll free number and a PIN, also allegedly part of the bundle, USTLD fails to show that any customer authorized the service or, in fact, even used the service. USTLD also contends that subscribers could use the casual calling service if they “want to use UST’s deeply discounted international rates to make international calls.”⁸⁰ However, there is no evidence in the record that USTLD had “deeply discounted” international rates, that any consumers were aware of international rates offered by USTLD, or that any consumers had used this service. USTLD’s “Telecommunications Service Guide”⁸¹ lists various “International Message Telecommunications Services” plans⁸² and states that the international rates are listed “below,” but no international rates are listed at all in the document. USTLD has not given any examples of the complainants, or any other person, using the casual calling dial around service.⁸³

21. Finally, USTLD contends that the 20 pages of invoices from Global Crossing/Level 3 provided in the NAL Response show that consumers had used directory assistance and calling card services.⁸⁴ After reviewing these invoices we conclude that they do not, however, show that the complainants used these services or authorized them. All the invoices but two provided by USTLD are for 2010 through 2012 (i.e., before the complaints at issue) and thus are not germane to the violations in

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company billing cycle, it may be 1-2 billing cycles before she receives the final US Telecom charges for the billing cycle ending September 30, 2013.” See USTLD’s Response to Informal Complaint of W.C. Clegg at 2.

⁷⁶ NAL Response at Attachment 2. In Konrad’s affidavit, he states that “[a]ttached hereto as Attachment 2 are sample rate cards.” NAL Response at Exhibit 2, p. 4. Only one rate card was attached, however.

⁷⁷ This rate card does not list directory assistance as part of the bundled plan. See NAL Response at Attachment 2.

⁷⁸ *Id.* at Attachment 4.

⁷⁹ *Id.* at Exhibit 2, para. 14.

⁸⁰ *Id.* at 53–54.

⁸¹ The “Telecommunications Service Guide” is available at <http://ustelus.com/Part1.pdf>.

⁸² “Telecommunications Service Guide” at 63.

⁸³ The wholesale invoices provided by USTLD do not categorize the dial around calls separately; there is no evidence in the record that any consumer used USTLD’s dial around service at any time. See NAL Response at Attachment 5.

⁸⁴ *Id.* at 66.

the NAL.⁸⁵ With respect to the two invoices provided by USTLD from 2013, all they show is that a total of three directory assistance calls (and zero calling card calls) were made.⁸⁶ USTLD has not identified who made the three directory assistance calls, or any of the calls on the invoices. USTLD did not submit any evidence in the record that the complainants made any directory assistance calls. Based on these facts, we are not persuaded that three directory assistance calls made by unknown persons shows that the complainants authorized USTLD's bundle of services as USTLD would have us believe. Further, none of USTLD's bills (neither those issued by the LEC nor those issued by USTLD directly) identifies or even reflects any charges for a "bundled service" or mentions a bundle of services at all.⁸⁷ Accordingly, based on the preponderance of the evidence in the record, we conclude that USTLD has failed to show that the complainants authorized the bundled services.

2. Complainants' failure to follow USTLD's "cancellation procedures" is not a substitute for authorization to be billed

22. USTLD further argues that the recurring charges described above were authorized because consumers must contact USTLD directly in order to cancel its services and stop USTLD from continuing to charge them.⁸⁸ Otherwise, according to USTLD, it bills the consumer monthly fees regardless of whether USTLD is the preferred carrier.⁸⁹ Thus, a consumer who discovered an unauthorized carrier change to USTLD and charges on his or her telephone bill and complained to the LEC to have the carrier changed back and the charges removed would, according to the argument put forth by USTLD, be authorizing further USTLD charges because the cancellation was not performed in accordance with USTLD's procedures, of which the consumer was unaware having never sought service by USTLD in the first place. The LEC bills upon which USTLD was billing the consumers specifically instructed the consumers to contact the LEC with any billing questions.⁹⁰ A consumer faced with an unauthorized charge from USTLD on his or her telephone bill would therefore reasonably follow the instructions on the telephone bill and contact the LEC to have the charge removed. According to USTLD, after a consumer canceled USTLD's service through his or her LEC, and USTLD received the cancellation information from its underlying carrier,⁹¹ instead of honoring the consumer's request for

⁸⁵ See *id.* at Attachment 5.

⁸⁶ *Id.* at Attachment 5, pp. 5, 7.

⁸⁷ See direct bills sent to Complainants D. [REDACTED]; M. Freeman; E. Graham; T. Green; D. Holmes; M. Kurten; L. Marks; C. Supanchick; M. [REDACTED]. The direct bills list "U.S. Telecom Long Distance, Inc. Charges" beside a line for "Adjusted Long Distance Charges" or "Long Distance Charges." On the bottom of the bill USTLD states: "This letter is being sent to inform you of charges that were sent back to U.S. Telecom Long Distance, Inc., by your local carrier. These are charges that you contacted your local phone company about, that you were not aware of, or did not understand." There is no other description of the service or the charges or any mention of "bundled services," such as a travel card, directory assistance, or casual calling long distance, on the bill.

⁸⁸ NAL Response at 51. USTLD contends that this cancellation policy is explained during the "initial sales call." *Id.*

⁸⁹ The complainants' telephone bills do not mention the bundled services or the particular requirements for cancelling USTLD services.

⁹⁰ See, e.g., Complaint from C. Heatherly (AT&T bill attached to complaint has instructions, under Billing Summary, "Questions? Visit att.com" as well as a toll free number to call.); Complaint from M. Freeman (Verizon bill attached to complaint states "Questions about your bill or service? View your bills in detail at verizon.com or call 1-800-VERIZON (1-800-837-4966."); Complaint from E. Greuling (CenturyLink bill attached to complaint states "Do you have questions about your long distance service or bill? Simply call 1-800-244-1111 and a Service Representative will be happy to assist you.").

⁹¹ USTLD gathers information on the customers' usage for billing purposes. See Office of Consumer Advocate v. Consumer Telcom, Inc., State of Iowa Department of Commerce Utilities Board, Docket No. FCU-2012-0011c (FCU-2012-0001, FCU-2012-0007), Global Crossing Telecommunications, Inc., Direct Testimony of Diane L. Peters (Feb. 25, 2013) (explaining the Global Crossing procedure for providing end-user information to resellers).

cancellation of the unauthorized service, it continued to send the consumer a direct bill for “services.”⁹² Thus, USTLD, on notice of the cancellations, continued to bill consumers on the pretext that the consumers failed to follow USTLD’s cancellation procedure, which USTLD contends was explained to consumers during the course of its initial sales call.⁹³ USTLD has not provided a recording or script of its initial sales call or any other evidence to support this contention.

23. Notwithstanding USTLD’s unsubstantiated claim that it notified consumers of its cancellation policy, USTLD cannot deliberately ignore the consumers’ cancellations and expect them to follow particular USTLD procedures to cancel a bundled service they had not previously ordered and of which, according to the available evidence, they were unaware. Indeed, USTLD has not shown that the complainants had any information about the Company’s particular cancellation procedures. We find it unjust and unreasonable to expect a consumer to do anything more to cancel a service on his or her telephone bill than what the consumer is instructed to do on the bill containing the charge. Moreover, as discussed in the *NAL*, the initial sales call misrepresented the services and the purpose of the call and thus, the consumer acting reasonably at the time of cancellation would have no reason to refer back to that initial call for clarity as to his or her obligation in cancelling a service that was never authorized in the first instance.⁹⁴

24. We therefore, affirm the finding in the *NAL* and find that the record here establishes that USTLD placed charges on consumers’ local telephone bills or billed them directly for service without the consumers’ authorization. Any carrier that charges consumers for services without authorization from the consumer is in violation of Section 201(b) and that violation is even more egregious when, as in this case, the carrier has actual knowledge that the charge is not authorized through a cancellation notice.

C. USTLD Deceptively Marketed its Services to Consumers

25. As stated in the *NAL*, USTLD violated Section 201(b) of the Act by misrepresenting its identity to consumers.⁹⁵ The Company makes two arguments in an attempt to refute this finding. USTLD argues: (i) that its training of telemarketers makes it unlikely that they misrepresented the identity or affiliation of the Company to consumers, and (ii) that the TPVs and unsigned responses to complaints prove that no misrepresentations took place. We reject these arguments and find that USTLD violated Section 201(b) of the Act by engaging in misrepresentation of its identity to consumers.

1. Telemarketer Training Does Not Refute the Findings in the *NAL* that the Company Deceptively Marketed its Services

26. We found in the *NAL* that USTLD’s telemarketers apparently misrepresented that the Company was (or was affiliated with) complainants’ existing long distance carriers. For example, Complainant Rogowski stated that the USTLD telemarketer “made it seem like they were calling on behalf of my phone provider, Centurylink.” Complainant Elvira, an AT&T customer, explained that she “received a call from a company which said to be AT&T . . . it turn[ed] out to be it was not AT&T, it was [USTLD].”⁹⁶ USTLD argues that it is highly improbable that the Company tricked any of its customers into believing the telemarketer was calling from their own carriers because USTLD instructs the telemarketers that “they must advise prospective customers during the telemarketing call that they are with ‘U.S. Telecom Long Distance, Inc.’” the telemarketers must sign a marketing practices agreement; USTLD has a quality assurance monitoring program; and the dialing software program has a 17 second delay before the telemarketer is shown the customer’s telephone number and address, making it

⁹² See *NAL*, 29 FCC Rcd at 841–42 for the list of complainants who received direct bills from USTLD.

⁹³ *NAL* Response at 58-68.

⁹⁴ *NAL*, 29 FCC Rcd at 825-827, paras. 7-9.

⁹⁵ *Id.* at 826–27, para. 9

⁹⁶ *Id.*

“extremely difficult” to misrepresent that the telemarketer is affiliated with or actually is the consumer’s long distance carrier.⁹⁷

27. We are not persuaded that the existence of a telemarketing agreement prevented USTLD telemarketers from the acts of misrepresentation described above and in the *NAL*. The evidence in the record reflects, for example, that Complainant Greuling was led to believe that the USTLD telemarketer was calling from CenturyLink,⁹⁸ Complainant Elvira “received a call from a company which said to be AT&T,”⁹⁹ Complainant Rogowski believed that the telemarketer was “calling on behalf of my phone provider, CenturyLink;”¹⁰⁰ and Complainant Helterbrand “[r]eceived a call from company that represented themselves as AT&T.”¹⁰¹ We also disagree that the 17 second delay described by USTLD¹⁰² precludes a telemarketer from misrepresenting his or her identity to consumers. USTLD has not shown that during the 17 seconds before the telemarketer is shown the consumer’s telephone number and address,¹⁰³ the telemarketer would be prevented from saying that he or she was calling from the consumer’s long distance carrier. With respect to the “quality assurance monitoring program,”¹⁰⁴ we do not find that the allegation that DIS “regularly listens in on the sales representative’s calls”¹⁰⁵ refutes the misrepresentations described by the complainants. USTLD has not provided recordings of the telemarketer for the specific complaints at issue to refute the record evidence of misrepresentation. Based on the evidence in the record, we find the multiple consumers who took the time to file complaints against USTLD describing instances of misrepresentation to be far more persuasive than the USTLD statement that a telemarketer has signed a marketing practices agreement and that some calls are monitored.

28. We reject the argument that USTLD’s telemarketing safeguards, anti-slamming policies, and telemarketer contracts prevented misrepresentations, cramming, or slamming, or in any way alleviated USTLD of its statutory and rule obligations.¹⁰⁶

2. USTLD Has Not Refuted Evidence that it Misrepresented Itself to Consumers

29. As discussed above, in the *NAL* we found that USTLD apparently misrepresented itself to consumers by claiming that it was their existing long distance carrier and that the purpose of its call was to modify the consumers’ current service plan. USTLD contends that it did not misrepresent itself to consumers.¹⁰⁷ USTLD uses the unsigned response it sent to each consumer complaint, with some revisions, as support for its arguments.¹⁰⁸ Not only does USTLD fail to provide any evidence to refute the

⁹⁷ NAL Response at 40–41.

⁹⁸ Complaint from E. Greuling (when asked who his long distance carrier was, he said “CenturyLink, you guys are.”).

⁹⁹ Complaint from M. Elvira.

¹⁰⁰ Complaint from B. Rogowski.

¹⁰¹ Complaint from M. Helterbrand.

¹⁰² NAL Response at 41.

¹⁰³ Although not explained in the NAL Response, presumably the issue is that once the telemarketer has this information he or she can do an internet search to determine the consumer’s carrier.

¹⁰⁴ NAL Response at 41.

¹⁰⁵ *Id.*

¹⁰⁶ *See id.* at 6–14.

¹⁰⁷ *Id.* at 34–40.

¹⁰⁸ *See id.*, Appendix.

specific allegations of misrepresentation described in the complaints, it also provides an inconsistent summary of its interaction with the consumers.

30. For example, USTLD attempts to refute the allegation of misrepresentation in the complaint filed by M. Lona.¹⁰⁹ Ms. Lona stated that when she paid her mother's October 2013 bills, she noticed "that her phone bill had an additional charge of US Telecom My mother was sure she had not changed any services and recalls receiving 1 phone call from a telemarketer but did not give them a chance to finish and rejected whatever they were trying to sell."¹¹⁰ After Ms. Lona called USTLD to cancel and ask for a refund, the customer service representative played the recorded TPV as "proof" of her authorization.¹¹¹ According to Ms. Lona, the voice on the TPV was "clearly not my mother" . . . "it clearly was NOT HER."¹¹² In the USTLD letter in response to Ms. Lona's complaint, USTLD stated that a USBI employee named Angel heard Ms. Lona's mother speaking with Ms. Lona during the telephone call and "the voice on the recording was similar."¹¹³ Notwithstanding the significant credibility issue raised by various inconsistencies within USTLD's NAL Response (including Angel's identity and employer),¹¹⁴ even if the voice that Angel heard was "similar" to Ms. Lona's mother's voice, it does not contradict Ms. Lona's position as set forth in her complaint that the voice on the TPV was not her mother's.

31. USTLD also discusses other complaints alleging misrepresentation and relies on the fact that there was a TPV to support its contention that there was no misrepresentation.¹¹⁵ We find these arguments unconvincing as well, for the same reasons discussed above. Bureau staff reviewed many misrepresentation complaints lodged against USTLD, although only the complaints that were within our 12 month statute of limitations were included in the NAL's proposed forfeiture. Our review of the record, the complaints outlined in the NAL, as well as the other evidence described in this proceeding, all support the findings in the NAL, including the finding that the USTLD telemarketers engaged in misrepresentations. We conclude that USTLD has not refuted the evidence of misrepresentations as described in the NAL and, based on the evidence in the record, we affirm the findings and conclusions in the NAL.

¹⁰⁹ NAL, 29 FCC Rcd at 826-27, para. 9.

¹¹⁰ Complaint from M. Lona.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Letter from USTLD to Better Business Bureau (Nov. 7, 2013) at 1. This (unsigned letter on USTLD letterhead) provides that "[t]he USBI representative, Angel, stated that he had heard Ms. Lona speaking with her mother during this phone call and Angel stated that the voice on the recording was similar to her mother's voice." This is also described in the NAL Response: "Notably, a USBI representative (Angel) stated that he had heard Ms. Lona speaking with her mother during the phone call between [USTLD] and Ms. Lona, and represented that the voice on the recording was similar to her mother's voice." NAL Response at 37-38 (on file in EB-TCD-13-00008959). Angel did not provide a statement or any information in support of USTLD.

¹¹⁴ In the Appendix to the NAL Response, USTLD states that Angel is a USTLD employee, although he was previously described by USTLD as a USBI employee. In the response to Ms. Lona's complaint Angel was described as a male; in the Appendix to the NAL Response Angel is described as female in one paragraph and male in another paragraph on the same page. See NAL Response at Appendix, p. 11. Further, USTLD states in the Appendix that "Ms. Lona stated" that Angel said that "the voice on the recording sounded similar to her mother's voice." NAL Response at Appendix, p. 11. Specifically, "Ms. Lona stated that Angel (the [USTLD] representative) had stated that he believed the voice on the recording sounded similar to her mother's voice, but Ms. Lona did not believe it was her mother's voice." *Id.* In the NAL Response and in the letter USTLD sent in response to Ms. Lona's complaint, Angel is volunteering this opinion; it is not offered by Ms. Lona. An additional inconsistency in the Appendix to the NAL Response is that the Lona/Tover complaint is referred to as "Mrs. Gray's complaint." See NAL Response at Appendix, p. 10.

¹¹⁵ *Id.* at 34-40.

D. The NAL's Reliance on Consumer Complaints was Reasonable and USTLD was not Denied Due Process

32. USTLD contends that the Commission's reliance on consumer complaints, instead of a "sworn statement" is "suspect."¹¹⁶ We disagree. There is no requirement in the Act¹¹⁷ or in our Rules¹¹⁸ that we use sworn statements or even that we base our investigations on consumer complaints. Further, the Commission decides on a case-by-case basis whether to obtain declarations in support of complaints.¹¹⁹ The *NAL* was primarily based on consumer complaints the Bureau reviewed and it followed a similar process as used in other recent slamming and cramming investigations.¹²⁰ In this investigation, the Bureau reviewed over 60 complaints filed against USTLD and interviewed many of the complainants. The complaints, all of which stated that the carrier change and/or charges were unauthorized, were filed with the Commission, various state regulatory agencies,¹²¹ the Federal Trade Commission, and the Better Business Bureau. In investigating the other two companies that were part of this operation, Central and CTI, the Bureau found similar complaints from consumers, i.e., that the carrier change to Central or CTI and/or charges assessed by those companies were not authorized.¹²² USTLD had more than enough information about the complaints upon which the *NAL*'s proposed forfeiture was based to allow it to rebut the *NAL*'s findings and contest the complainants' veracity in its *NAL* Response. Nonetheless, the Company did not submit any evidence disputing the veracity of the complainants. USTLD has not offered any evidence that the complainants are not truthful.

33. We also reject USTLD's claim that it was denied due process because the complaints were "unsworn" and there are "numerous reasons why a customer would mistakenly describe the substance of his telephone conversation with a telemarketer" or "intentionally falsely describe" the telemarketing call.¹²³ USTLD was on notice that its actions and practices were in violation of our Rules

¹¹⁶ *Id.* at 43. USTLD's responses to the consumer complaints were all unsigned and USTLD has never identified the employee(s) or contractor(s) who provided the information for those letters.

¹¹⁷ See Section 403 of the Act, providing, in pertinent part, that "[t]he Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing ... concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act." 47 U.S.C. § 403.

¹¹⁸ USTLD erroneously cites to 47 CFR § 1.351, for the proposition that using consumer complaints in lieu of sworn statements was "afoul" of our rules. *NAL* Response at 43. Section 1.351, however, specifically pertains to formal hearings. The rule section also states that "[s]uch rules may be relaxed if the ends of justice will be better served by so doing." 47 CFR § 1.351.

¹¹⁹ See *Business Discount Plan, Inc.*, Order on Reconsideration, 15 FCC Rcd 24396, 24401, para. 12 (2000).

¹²⁰ See, e.g., *Central NAL*, 29 FCC Rcd at 5518, para. 3; *CTI NAL*, 28 FCC Rcd at 17197, para. 4; *Advantage NAL*, 28 FCC Rcd at 6845, para. 6; *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16500, para. 3 (2012) (*United NAL*); *Preferred Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16489, 16489, para. 2 (2012) (*Preferred NAL*), Forfeiture Order, 30 FCC Rcd 13711 (2015); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5179, para. 2 (2010) (*Silv NAL*).

¹²¹ USTLD provided complaints filed against USTLD with the California Public Utilities Commission, Kansas Corporation Commission, Mississippi Public Service Commission, Missouri Attorney General, Nebraska Public Service Commission, New Jersey Board of Public Utilities, South Carolina Office of Regulatory Staff Consumer Services Division, South Dakota Public Utility Commission, Public Utility Commission of Texas, Washington Utilities and Transportation Commission, and West Virginia Attorney General.

¹²² See *Central NAL*, 29 FCC Rcd at 5518, para. 3 (reviewed over 100 complaints); *CTI NAL*, 29 FCC Rcd at 17197, para. 4 (reviewed over 100 complaints).

¹²³ *NAL* Response at 47-48.

and the Act¹²⁴ and of the allegations in each complaint. USTLD had contacted each of the complainants to address their complaints, and had also sent some of the complainants direct bills.¹²⁵ The consumer complaints were all initially served on USTLD; the Company had ample opportunity to investigate any complaint regardless of whether the complaint contained a sworn declaration. With respect to the notice aspect of due process, USTLD had advance notice that slamming, cramming, and misrepresentation were in violation of the Act and our Rules. Prior to the time frame of the complaints at issue here, the Commission had released one forfeiture order and several notices of apparent liability that address the very same practices and actions we find in this case to be in violation of the Act and our Rules.¹²⁶ Further, the *NAL*, as a notice of proposed forfeiture liability, affords USTLD the due process right to respond and offer any evidence to rebut the apparent findings of the *NAL*. Accordingly, we reject this argument and find that the *NAL* is appropriately supported.

E. USTLD Violated the Commission’s Truth-in-Billing Rules

34. We found in the *NAL* that where USTLD billed consumers directly, it failed to clearly and plainly describe the charges, in violation of the Commission’s truth-in-billing rules. Under these rules, “[c]harges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received”¹²⁷ The purpose of the truth-in-billing rules is “to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service.”¹²⁸ In addition, the rules are “intended to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service.”¹²⁹

35. In the *NAL*, we concluded that the bills USTLD issued to customers directly were neither sufficiently clear nor specific enough to aid customers in assessing their bills.¹³⁰ In particular, the monthly recurring charge for USTLD’s “bundled” services was not described as such on either the LEC bill or on the USTLD bill. The USTLD bills were not dated, included no payment due date, and lacked a brief, clear, and non-misleading description of the service or services rendered.¹³¹ They included a line item charge for “Long Distance Charges” or “Adjusted Long Distance Charges” but had no information

¹²⁴ See, e.g., *BDP Forfeiture Order*, 15 FCC Rcd at 14469, para. 17; *Central NAL*, 29 FCC Rcd at 5520, para.7; *CTI NAL*, 28 FCC Rcd at 17198–99, para. 7; *Advantage NAL*, 28 FCC Rcd at 6849, para. 16; *United NAL*, 27 FCC Rcd at 16502, para. 9; *Preferred NAL*, 27 FCC Rcd at 16491, para. 7; *Silv NAL*, 25 FCC Rcd at 5180–82, paras. 5–7.

¹²⁵ As we discuss in more detail below, on several occasions after consumers complained about USTLD’s unauthorized charges and the LEC removed the charges, USTLD then billed the consumers directly.

¹²⁶ See, e.g., *BDP Forfeiture Order*, 15 FCC Rcd 14461, 14469, para. 17 (Business Discount Plan’s telemarketers unlawfully deceived consumers about the identity of the carrier and the nature of the service offering); *CTI NAL*, 28 FCC Rcd at 17198–99, para. 7 (misrepresentation about a carrier’s identity is an unjust and unreasonable practice under Section 201(b)); *Advantage NAL*, 28 FCC Rcd at 6849, para. 16 (same); *United NAL*, 27 FCC Rcd at 16502, para. 9 (same); *Preferred NAL*, 27 FCC Rcd at 16491, para. 7 (same); *Silv NAL*, 25 FCC Rcd at 5180–82, paras. 5–7 (same).

¹²⁷ 47 CFR § 64.2401(b).

¹²⁸ *Id.* § 64.2400.

¹²⁹ *Id.*

¹³⁰ *NAL*, 29 FCC Rcd at 834–35, paras. 21–22; see also *Central NAL*, 29 FCC Rcd at 5527–28, paras. 22–23 (finding that the carrier’s descriptions of billed charges were neither sufficiently clear nor specific enough to aid consumers in assessing their bills); *CTI NAL*, 28 FCC Rcd at 5527–28, paras. 23–24 (same); *Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (same).

¹³¹ *NAL*, 29 FCC Rcd at 834, para. 22.

about what was included in that amount or what time period was covered by the alleged charge. The bills did not identify any long distance calls made (such as numbers called, dates, or length of such calls), did not list any fees or taxes, and failed to identify any specific services that USTLD claims are part of its “bundled package of services.”¹³² USTLD contends that the bills complied with our truth-in-billing rules because they were merely billing consumers for unpaid bills, analogous to a carrier billing for a previous unpaid charge.¹³³ We reject this argument for the reasons discussed below and affirm the *NAL*’s findings.

36. USTLD’s argument fails to recognize that in the case at hand, the bill or charge received by the consumer was from a carrier other than the consumer’s preferred carrier and was an unauthorized charge. Complainants were initially charged on their LEC bill by USTLD, an unauthorized carrier, which the consumers then complained about, had the USTLD service cancelled, and received a credit for the unauthorized charges. The unauthorized charges thus remained rightfully unpaid by consumers. After USTLD received information about the cancellations and billing credits the Company nonetheless continued to pursue payment by directly sending the consumers bills for these disputed charges. The USTLD bills (mailed long after the initial LEC bill containing the unauthorized charges) had no information about the specific charges and in some cases were sent many months after the consumers had received a credit from the LEC for the unauthorized charges. This failure to include a non-misleading plain language description of the charges sufficiently clear so as to allow consumers the ability to ascertain what the charges were for is in direct violation of Section 64.2401 of the Commission’s “truth-in-billing” rules. Accordingly, we find USTLD’s unpaid bill argument to be unpersuasive and we affirm the finding that USTLD failed to clearly and plainly describe charges appearing on its telephone bills, in violation of Section 64.2401(b) of the Commission’s rules.¹³⁴

F. Forfeiture Amount

37. In the *USTLD NAL*, we found that after considering the relevant statutory factors and the Commission’s *Forfeiture Policy Statement*, USTLD was liable for a proposed total forfeiture amount of \$5,230,000. As we explained in the *NAL*,¹³⁵ this proposed amount resulted from a \$40,000 forfeiture for the 36 instances of slamming and cramming¹³⁶ and the ten truth-in-billing violations, as well as an upward adjustment of \$80,000 for each of the eight instances of misrepresentation, and other upward adjustments based on the egregious circumstances presented in the record here. USTLD argues that the forfeiture amount is not supported by the facts and that it is unable to pay the proposed forfeiture.¹³⁷

38. As discussed at length above, USTLD has failed to refute the evidence in the record in support of the slamming, cramming, misrepresentation, and truth-in-billing violations. In particular, it does not address the fact that the Commission reviewed over 60 complaints from consumers who alleged improper conduct on the part of USTLD and determined that this conduct was extensive and repeated. For example, USTLD’s slamming actions were particularly egregious because the Consumer &

¹³² *Id.*

¹³³ *NAL* Response at 69.

¹³⁴ *NAL*, 29 FCC Rcd at 834–35, paras. 21–22; *see also Advantage NAL*, 28 FCC Rcd at 6854–55, paras. 26–27 (discussing apparent Section 64.2401 violations in that investigation).

¹³⁵ *See NAL*, 29 FCC Rcd at 837838, paras. 27–28 (upward adjustment of \$2,000,000 due to the egregious circumstances, including misrepresentation to the public and that it “held itself out as the ‘FCC’ in its interactions with at least three consumers” and an additional upward adjustment of \$750,000 due to the exploitation of elderly or disabled consumers).

¹³⁶ Although the forfeiture guidelines do not provide a base forfeiture amount for cramming, we have established a base forfeiture of \$40,000 for cramming violations. *See LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (“The imposition of charges on a telephone bill for ‘services’ the consumer has not authorized is sufficiently egregious to warrant a forfeiture in an amount equal to that for slamming.”).

¹³⁷ *NAL* Response at 71–79.

Governmental Affairs Bureau repeatedly notified USTLD that its verification practices (at issue here) violated the Commission's slamming rules.¹³⁸ In addition, USTLD, as a common carrier, is responsible for the conduct of third parties acting on its behalf, such as Konrad.¹³⁹ Konrad, an agent of USTLD, was responsible for running the Company and is also the president of another toll reseller, BDP.¹⁴⁰ The Commission investigated BDP for slamming and misrepresentation¹⁴¹ and described, in the *BDP Forfeiture Order*, that “[b]etween December 1997 and October 1998, the Commission processed thousands of written consumer complaints alleging slamming by BDP Each complainant contended that BDP had converted his or her designated PIC without authorization, and that BDP used unjust and unreasonable telemarketing practices in effecting these unauthorized PIC changes.”¹⁴² At the time of the BDP investigation, Konrad was the Vice President of BDP, and, in such capacity, was served with a copy of the *BDP NAL*.¹⁴³ As USTLD's agent, Konrad, conducting the day-to-day operations of USTLD, engaged in the same slamming and misrepresentation practices discussed in the *BDP Forfeiture Order*. Further, Konrad testified that after a consumer had cancelled the USTLD service and the underlying carrier deactivated the account, Konrad would activate the line if it had been deactivated and “go back in and click that back to active”¹⁴⁴ to continue billing the unauthorized charges. Konrad would continue to bill consumers after they had cancelled, conduct that we find particularly egregious.

39. Due to the egregious nature of USTLD's conduct, the Commission proposed an upward adjustment of \$2,000,000 and an additional upward adjustment of \$750,000 for substantial consumer harm and USTLD's exploitation of the elderly and infirm.¹⁴⁵ USTLD argues that the upward adjustments were not supported by facts because it “did not engage in any slamming or cramming misconduct,”¹⁴⁶ it did not hold “itself out as the ‘FCC’ in its interactions with at least three consumers,”¹⁴⁷ and “it would be virtually impossible for UST to exploit the elderly.”¹⁴⁸ We disagree. In the *NAL* we stated that we had reviewed over 60 consumer complaints alleging slamming, cramming, and misrepresentation.¹⁴⁹ The *NAL*

¹³⁸ See, e.g., *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding “the verifier’s question, ‘Do you have authority to make changes to your long distance service?’ did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier.*”); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4624 (CGB 2013) (same, for three complaints); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4619 (CGB 2013) (same, for six complaints); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscribers’ Telecommunications Carrier*, Order, 25 FCC Rcd 3202 (CGB 2010) (same, for two complaints); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same).

¹³⁹ See 47 U.S.C. § 217 (“[T]he act, omission, or failure of any . . . agent [] or other person acting for or employed by any common carrier . . . , acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier”); see also *LDDI MO&O*, 15 FCC Rcd at 3300, para. 9; *Silv NAL*, 25 FCC Rcd at 5180, para. 5 & n.18.

¹⁴⁰ See FCC Form 499-A, filed by Business Discount Plan, Inc. on Apr. 1, 2015.

¹⁴¹ *BDP NAL*, 14 FCC Rcd at 353-363, paras. 27-44.

¹⁴² See *BDP Forfeiture Order*, 15 FCC Rcd at 14461-62, para. 2.

¹⁴³ *BDP NAL*, 14 FCC Rcd at 364, para. 49.

¹⁴⁴ *NAL* Response at Exhibit 5, p. 466.

¹⁴⁵ *NAL*, 29 FCC Rcd at 835-838, paras. 24-29.

¹⁴⁶ *NAL* Response at 74.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 77.

¹⁴⁹ *NAL*, 29 FCC Rcd at 824, para. 3.

discussed numerous instances of these violations.¹⁵⁰ For the reasons discussed above, we therefore reject USTLD's claim that it did not engage in slamming or cramming misconduct and find that the factual record in this case supports the slamming and cramming forfeitures and the \$80,000 upward adjustment for each of the eight complaints that involved misrepresentation.

40. USTLD contends, in attempting to refute the three complaints cited in the *NAL* where USTLD's representatives pretended to be calling from the FCC,¹⁵¹ that "it cannot locate any reference in either Ms. Freeman or Mr. Clegg's respective complaint alleging that UST held itself out as the FCC."¹⁵² Nevertheless, as discussed in the *NAL*, Ms. Freeman stated, "I received a call on March 27, 2013 from a lady who stated she was 'the FCC.' When I asked her to tell me her name, all she would say was 'This is the FCC.' . . . She proceeded to tell me that the FCC had already resolved the case and it was not in my favor. . . . I, then, fully realized the person on the other end of the phone was impersonating the FCC. I told her she was Allison Coons [sic]."¹⁵³ Similarly, Complainant Clegg stated that he "was called from US Telecom and the representative pretended to be an agent from FCC. She stated she worked for FCC for 6 years."¹⁵⁴ We find the consumer complaints more persuasive than USTLD's mere assertion that it cannot locate these statements. In the *NAL*, the Commission also alleged that USTLD and its telemarketers and third party verifiers deliberately exploited elderly or disabled consumers' obvious confusion and inability to understand the sales pitch they heard and understand the questions they were asked.¹⁵⁵ In response, USTLD argues that it would be "virtually impossible" for the Company to exploit senior citizens "because of the methodology which UST uses to solicit its long-distance services from potential consumers."¹⁵⁶ Specifically, USTLD claims it purchases lists of land line telephone numbers from several sources, including Info USA, which contain numbers in the states where USTLD provides long distance service.¹⁵⁷ USTLD has the burden of providing evidence to disprove the allegation in the *NAL*. We find that the evidence in the record on this point is inconclusive. Accordingly, we conclude that the upward adjustment of \$2,000,000 is sufficient to deter further egregious conduct by USTLD and do not impose an additional upward adjustment of \$750,000.

41. Finally, USTLD states that it "is not financially able to pay the proposed forfeiture" and in support, submits federal income tax returns for the years 2010 and 2011.¹⁵⁸ The *NAL* stated that

[t]he Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year

¹⁵⁰ *Id.* at 825–832, para. 6–15.

¹⁵¹ *See, e.g., id.* at 836, para. 27 & n.103 (USTLD held itself out as the "FCC" in its interactions with at least three consumers); Complaint from M. Freeman; Complaint from W.C. Clegg; *see also* Complaint from R. Laird (stating that when he contested the USTLD charges he did not even have a wireline telephone in his house and, according to CenturyLink, the telephone number was "inactive" during the period USTLD contended someone had requested its service. Complainant Laird stated that USTLD "lied when they said the charges were authorized on my account by a stranger, because the account was closed at the time. US Telecom began harassing [me] on the phone. They also pretended to be the regulator [i.e., the FCC] who received a complaint.").

¹⁵² *NAL* Response at 74.

¹⁵³ *NAL*, 29 FCC Rcd at 830, para. 15 (*quoting from* Complaint from M. Freeman). Ms. Freeman's complaint was granted by CGB on May 30, 2014. *See U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 29 FCC Rcd 5808 (CGB 2014).

¹⁵⁴ *See* Complaint from WC Clegg, *quoted in NAL*, 29 FCC Rcd at 830, n.54.

¹⁵⁵ *NAL*, 29 FCC Rcd at 838, para. 28 & n.111.

¹⁵⁶ *NAL* Response at 77.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 78–79 & Exhibit 10 (on file in EB-TCD-13-00008959). USTLD did not give an explanation as to why its 2012 tax return was not provided.

period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.¹⁵⁹

Upon review of USTLD's financial information, and the totality of the circumstances presented here, we decline to reduce the forfeiture amount further. Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture against USTLD of up to \$150,000 for each willful or repeated violation in this case of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁶⁰ In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁶¹

42. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹⁶² However, a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive in setting a forfeiture amount.¹⁶³ The other four factors are: (i) the nature, circumstances, extent, and gravity of the violation; (ii) the degree of culpability; (iii) any history of prior offenses; and (iv) such other matters as justice may require. With respect to the nature, circumstances, extent, and gravity of the violation and the degree of culpability, in particular, we have described the large number of consumer complaints against the Company for slamming and cramming and misrepresentation.¹⁶⁴ The *NAL* also describes the nature of the misrepresentations by USTLD.¹⁶⁵ In addition, USTLD continued to bill consumers for the unauthorized charges after the consumers had canceled the USTLD "service" that they never authorized in the first place and returned to their prior carriers.¹⁶⁶ In some cases, USTLD sent consumers a direct bill for the unauthorized service after the consumers' LEC had credited the unauthorized USTLD charges.¹⁶⁷ Finally, as discussed in the *NAL*, three complainants stated that USTLD's representatives pretended to be calling from the FCC.¹⁶⁸

¹⁵⁹ *NAL*, 29 FCC Rcd at 839–840, para. 35.

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

¹⁶¹ *See* 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01, para. 27.

¹⁶² *See Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

¹⁶³ *See* 47 U.S.C. § 503(b)(2)(E).

¹⁶⁴ *See NAL*, 29 FCC Rcd at 824, para. 3 ("over 60 complaints recently filed").

¹⁶⁵ *Id.* at 826-827, para. 9.

¹⁶⁶ *Id.* at 829-834, paras. 14-20.

¹⁶⁷ *Id.* at 834-35, paras. 21-22.

¹⁶⁸ *See, e.g., id.* at 836, para. 27 & n.103 (USTLD held itself out as the "FCC" in its interactions with at least three consumers).

43. We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations. Given the record evidence here that USTLD willfully and repeatedly violated the Act and the Commission's rules, and the egregious nature of its misrepresentations and exploitive tactics, we find that these factors outweigh any inability to pay claim raised by USTLD and that therefore, the record does not warrant any further mitigation of the proposed forfeiture amount. Accordingly, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$4,480,000 is warranted.

IV. CONCLUSION

44. We have reviewed USTLD's arguments and based on the evidence before us, we reduce the penalty proposed in the *NAL* and assess a \$4,480,000 forfeiture. We find that the preponderance of the evidence in the record establishes that USTLD changed the preferred carriers of three consumers without authorization, assessed unauthorized charges on 33 occasions, and that in eight of those slamming and cramming instances made misrepresentations to those consumers. In addition, we find that the preponderance of the evidence in the record establishes that USTLD violated the truth-in-billing rules when in 10 instances it sent consumers bills that were not accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. We conclude that the evidence cited in the *NAL* was not refuted by USTLD. Accordingly, the Commission finds that USTLD violated Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401 of the Commission's rules and we assess a \$4,480,000 forfeiture.

V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁶⁹ and Section 1.80 of the Commission's rules,¹⁷⁰ U.S. Telecom Long Distance, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four million four hundred eighty thousand dollars (\$4,480,000) for willfully and repeatedly violating Sections 201(b) and 258 of the Act and Sections 64.1120 and 64.2401(b) of the Commission's rules.¹⁷¹

46. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁷² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁷³

47. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. U.S. Telecom Long Distance, Inc. shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷⁴ When completing the FCC Form 159, U.S. Telecom Long Distance, Inc. should enter the Account Number in block number 23A (call sign/other ID) and the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

¹⁶⁹ 47 U.S.C. § 503(b).

¹⁷⁰ 47 CFR § 1.80.

¹⁷¹ *Id.* §§ 64.1120, 64.2401(b).

¹⁷² *Id.* § 1.80.

¹⁷³ 47 U.S.C. § 504(a).

¹⁷⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

48. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁷⁵ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

49. **IT IS FURTHER ORDERED** that a copy of this Order for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to U.S. Telecom Long Distance, Inc.'s attorneys, Michael L. Glaser and Michael D. Murphy, 1720 S. Bellaire St., Suite 607, Denver, CO 80222.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁷⁵ See 47 CFR § 1.1914.