

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	File No. EB-09-TC-443
)	
Silv Communication Inc.)	NAL/Acct. No. 201032170002
)	
Apparent Liability for Forfeiture)	FRN: 0006087761
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 12, 2010

Released: May 12, 2010

By the Commission:

I. INTRODUCTION AND BACKGROUND

1. In this Notice of Apparent Liability for Forfeiture (“NAL”),¹ we find that Silv Communication Inc. (“Silv”) apparently willfully and repeatedly violated sections 258 and 201(b) of the Communications Act of 1934, as amended (the “Act”),² and section 64.1120 of the Commission’s rules.³ As discussed in more detail herein, we have complaints from twenty-five consumers who contend that Silv changed their telecommunications carriers without authorization. Of the twenty-five complainants, twelve were told by the telemarketer, untruthfully, that they were changing to another plan offered by their current carrier or that the caller was merely verifying information regarding their current account. We find that Silv has apparently changed the preferred carriers of these twenty-five consumers without proper authorization, a practice commonly known as “slamming.” Silv apparently failed to follow our rules with respect to the third party verifications in all of these twenty-five cases and, in twelve instances, apparently engaged in unjust and unreasonable marketing practices as well. Based upon our review of the facts and circumstances surrounding these apparent violations, we

¹ 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Communications Act of 1934, as amended (the “Act”) to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act”

² 47 U.S.C. §§ 201(b), 258.

³ 47 C.F.R. § 64.1120.

propose a monetary forfeiture of \$1,480,000 against Silv for the apparent violations described herein.⁴

2. Silv's apparent violations are discussed individually in detail below. Briefly, Silv is a non-facilities-based interexchange carrier, based in Los Angeles, California. Silv has been in business since 2001 and operates in thirty states. The Commission has received numerous slamming complaints against Silv⁵ through our informal complaints process. Informal complaints are processed by the Commission's Consumer and Governmental Affairs Bureau ("CGB").⁶ When such complaints are filed with the Commission, the carrier, *e.g.*, Silv, is contacted and given a copy of the complaint. After reviewing the carrier's response to the consumer's complaint, CGB then rules on whether the carrier violated our rules. While CGB's informal complaints process addresses and resolves individual consumer complaints, the volume of slamming complaints against Silv reflects a systemic problem involving violations of our rules that the Commission must address.⁷ Accordingly, the Enforcement Bureau ("Bureau") sent Silv a Letter of Inquiry ("LOI") on September 25, 2009, directing the company to answer a number of questions regarding its business practices and its compliance with various Commission rules.⁸ Silv submitted a response to the LOI on October 22, 2009.⁹ Following receipt of Silv's response to the first LOI, the Bureau sent a second LOI to Silv on November 20, 2009.¹⁰ Silv responded, in part, on December 4, 2009.¹¹ Silv updated its response on December 11, 2009.¹² The second LOI followed up on several questions raised in the first LOI and also requested copies of complaints that were not provided by Silv in response to the first LOI.

⁴ This forfeiture amount is based on the Commission's forfeiture guidelines of \$40,000 for each of the twenty-five violations, *see* 47 C.F.R. § 1.80(b)(4), with an additional \$40,000 upward adjustment for twelve of the apparent violations due to the apparent unjust and unreasonable telemarketing practices and based on our finding that these acts were egregious and intentional. *See Business Discount Plan, Inc. Apparent Liability for Forfeiture, Order of Forfeiture*, 15 FCC Rcd 14461 (2000) ("*BDP Forfeiture Order*").

⁵ *See* Appendix for a list of complaints.

⁶ *See* <http://www.fcc.gov/cgb/>.

⁷ In the course of this investigation, Silv produced over one hundred complaints filed within a twelve month period, of which a large majority involved the type of misrepresentations addressed herein. Many complaints are handled by state commissions instead of by CGB; this NAL is limited to Silv complaints filed with CGB arising out of slamming incidents within the previous twelve months.

⁸ Letter from Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Maria Zepeda, Vice President, Silv Communication Inc. (Sept. 25, 2009) ("LOI").

⁹ Letter from Andrew O. Isar, Regulatory Consultant to Silv Communication Inc. to Kimberly A. Wild and Mika Savir, (Oct. 22, 2009) ("Response to LOI").

¹⁰ Letter from Kimberly A. Wild, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Maria Zepeda, Vice President, Silv Communication Inc. (Nov. 20, 2009) ("Second LOI").

¹¹ Letter from Andrew O. Isar, Regulatory Consultant to Silv Communication Inc. to Kimberly A. Wild and Mika Savir (Dec. 4, 2009) ("Response to Second LOI").

¹² *See* email from Maria Zepeda to Kimberly A. Wild (Dec. 11, 2009) ("Updated Response to Second LOI").

II. DISCUSSION

3. At issue here is whether Silv changed the preferred carrier of the complainants without the proper authorization, in violation of section 258 of the Act and our rules.¹³ In addition, we consider whether Silv engaged in unjust and unreasonable marketing practices in violation of section 201(b) of the Act.¹⁴

4. As noted above, CGB reviews informal slamming complaints to determine if the complaints should be granted or denied.¹⁵ All twenty-five complaints listed in the Appendix have been granted by CGB on the basis of incorrect statements made by the third party verifier, a violation of section 64.1120 of our rules.¹⁶

A. Section 201(b) violations

5. Section 201(b) prohibits “unjust and unreasonable” practices by common carriers “in connection with” communications service.¹⁷ In addition to Silv’s third party verification rule violations discussed below, we are concerned about the apparent misrepresentations made by Silv’s telemarketer.¹⁸ Out of the twenty-five complainants, twelve contend they were told by Silv’s telemarketer that they were changing to another plan offered by their current carrier or that the caller was verifying information regarding their current account.¹⁹ For example,

¹³ 47 U.S.C. § 258; 47 C.F.R. § 64.1120.

¹⁴ Section 201(b) states in pertinent part that “all charges, practices, classifications, and regulations for and in connection with communications service shall be just and reasonable” 47 U.S.C. § 201(b).

¹⁵ In the reviewing process, CGB reviews the consumer’s complaint, contacts the carrier and reviews the carrier’s response to the complaint, and makes a factual determination regarding whether the carrier violated the Commission’s rules. The complaint is granted if CGB determines the carrier violated our rules and is denied if no violation is found.

¹⁶ See *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 10111 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 10031 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 11071 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 11226 (CGB 2009); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 11107 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 11086 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13421 (CGB 2009); *Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13376 (CGB 2009); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13359 (CGB 2009); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13290 (CGB 2009).

¹⁷ 47 U.S.C. § 201(b).

¹⁸ See 47 U.S.C. § 217. The Commission has held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors, and consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations. See *Eure Family Limited Partnership*, 17 FCC Rcd. 21861, 21863-21864 (2002) (citing *American Paging, Inc. of Virginia*, 12 FCC Rcd 10417, 10420 (Wireless Bur., Enf. and Cons. Inf. Div., 1997), quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1244 (1984)).

¹⁹ See Appendix.

Complainant Hohe states that she was told that the telemarketer was from AT&T and that AT&T was lowering her long distance rates.²⁰ Complainant Ferguson alleges that she was told that the caller was just verifying information for her current AT&T account.²¹ Complainant Gralike states: “[s]omeone called and said they were AT&T [and] my current plan was expiring and they had a good deal for my new plan since there is competition. I asked 3 times if they were AT&T.”²²

6. In its response, Silv admits that its “former telemarketing company had employed individuals who may have implied a connection to AT&T or Qwest.”²³ According to Silv, it “first became aware . . . that its former telemarketing company had employed individuals who may have implied a connection with AT&T or Qwest on February 16, 2009.”²⁴ As discussed above, Silv received copies of all complaints filed with the Commission and was, therefore, on notice of all the complainants’ allegations. Silv “contacted its telemarketing company and demanded that the individuals be immediately terminated.”²⁵ Silv advised the telemarketing company of this issue by telephone on February 16, 2009²⁶ and by letter on February 26, 2009, but did not terminate the contract until September 18, 2009.²⁷ Our review of the complaints reveals that during this seven month period, and despite the fact that the contract between the parties required the telemarketer to comply with all “federal and state telemarketing regulations,”²⁸ Silv continued to receive complaints contending that the telemarketer was claiming affiliation with other carriers.²⁹ For example, in May 2009, Complainant Murray

²⁰ Complaint # 09-S0296736, granted by CGB. *See Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13454 (CGB 2009).

²¹ Complaint # 09-R2141661S, granted by CGB. *See Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13421 (CGB 2009).

²² Complaint # 09-S0296703, granted by CGB. *See Silv Communication Inc.*, Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, 24 FCC Rcd 13421 (CGB 2009)

²³ Response to LOI at 7-8.

²⁴ Response to Second LOI at 3.

²⁵ Response to LOI at 8.

²⁶ Response to Second LOI at 3. According to Silv, it contacted its telemarketing company, Nationwide Marketing, about this issue on Feb. 16, 2009 (telephone), Feb. 26, 2009 (letter), May 20, 2009 (telephone), May 28, 2009 (letter), and finally cancelled the contract on Sept. 18, 2009 (letter). *Id.* at 4.

²⁷ We note that Silv states that during this time period, the company also intended to use Nationwide to telemarket for Silv in Tennessee. On May 22, 2009, three months after Silv’s first letter to Nationwide regarding this issue, Silv advised the Tennessee Regulatory Authority that Nationwide Marketing “strictly complies with federal and state Do-Not-Call list requirements and other telemarketing requirements, subject further to strict Company guidelines.” *See* Letter from Andrew O. Isar, Regulatory Consultant to Silv Communication Inc. to Darlene Standley, Utilities Division Chief, Tennessee Regulatory Authority (May 22, 2009). *See* <http://www.state.tn.us/tra/orders/2009/0900054c.pdf>.

²⁸ Response to Second LOI, Attachment 1, p. 2. The contract required the parties to seek resolution of disagreements through telephone discussions, mediation, and then arbitration. With respect to termination, the contract provided that it may be voided at any time by mutual consent.

²⁹ The following examples, provided by Silv in response to the LOI, show that this misrepresentation continued each month in 2009: in slamming complaint IC 09-S0295308, Complainant Smith states that on Jan. 15, 2009, “Mr. Michael Johnson called and said he was with AT&T and could pass on 35% savings now because of the economy. I (continued....)

contends that he was told that the caller was from Qwest and was offering a lower rate,³⁰ and Complainant Stockwell alleges that he was told, in September 2009, that the caller was a Frontier representative and that he was due a credit for excess charges.³¹ Yet, despite notice that this problem was ongoing, Silv permitted the misrepresentations to continue.

7. Silv acknowledges that misrepresentations of the nature described by the complainants did indeed occur and provides no evidence to counter the complainants' claims. As discussed above, carriers are held responsible for the actions of their agents. Furthermore, we are troubled that by failing to address the misrepresentations with its telemarketer in a timely fashion, Silv's actions contributed to seven months of additional apparent rule violations. As noted above, section 201(b) prohibits "unjust and unreasonable" practices by common carriers "in connection with" communications service."³² These marketing practices were related directly to Silv's provision of long distance service to the complainants and were therefore in connection with Silv's communications service. Consistent with Commission precedent, we find that the misrepresentations described above constitute unjust and unreasonable practices in violation of section 201(b).³³ We therefore conclude that Silv apparently willfully or repeatedly violated section 201(b) of the Act by engaging in unjust and unreasonable telemarketing practices for twelve of the complainants listed in the Appendix. Accordingly, a proposed forfeiture is warranted against Silv for these apparent willful or repeated violations.

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then asked him 'are you with AT&T?' His reply to me was 'yes, I am.'" In slamming complaint IC 09-S0295360, Complainant Warner states that on 2/12/09 a "company called and stated that they were AT&T. They wanted to offer me a better long distance rate...They promised a 25% [discount] from what I was paying." In slamming complaint IC 09-S0295656, Complainant Beverungen states: "In March 2009 I [received] a call impersonating Verizon stating they have lower [service] costs for me." In IC 09-C00149027, filed by Complainant Drost regarding an unauthorized carrier change that took place on Apr. 28, 2009, he states: "This company has been calling me representing itself as Verizon asking to re-verify my service." In IC 09-S002411, Complainant Cantrell states: "I received a phone call on the week of May the 11th from someone claiming to be from AT&T asking if I would like to switch our long distance service to a business package." Complainant Gralike, IC 09-S0296703, slammed on June 19, 2009, stated: "someone called and said they were AT&T and my current plan was expiring and they had a good deal for my new plan since there is competition. I asked 3 times if they were AT&T." Complainant Gehman, IC 09-S0296891, slammed on July 6, 2009, said he received a call "who stated she was calling from Verizon and was pleased to offer a reduction of phone rates [retroactive] to start date. All I needed to do was to verify the phone numbers." Complainant Suarez, IC 09-S0297047, slammed on Aug. 20, 2009, stated: "We were contacted [by] a woman who said she was an AT&T rep, my current provider. She said that AT&T was lowering their rates for their current customers starting Sept.1, 2009. Then she said that in order to get the discount on my service I need to confirm that [I] wanted it in a recording." Complainant Johns, IC 09-S0296973, said that on Sept. 23, 2009, "[The] representative, Tiffany, outright lied about who she worked for. She incorrectly stated that she worked for Verizon and that Verizon had merged with . . . SILV." Complainant Rey, IC 09-S0297054, stated: "This company called and represented itself as our telephone carrier and stated that they had overcharged us and that we would be [receiving] a service value package but not a refund."

³⁰ Complaint # 09-S002478, granted by CGB. *See Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13359 (CGB 2009).

³¹ Complaint # 09-S002568, granted by CGB. *See Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).

³² 47 U.S.C. § 201(b).

³³ *See BDP Forfeiture Order*, 15 FCC Rcd at 14468.

B. Section 258 Violations

8. Section 258 of the Act prohibits the practice of “slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service (“preferred carrier”).³⁴ 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

9. In accordance with section 258, section 64.1120(a) of the Commission’s rules prescribes that no carrier “shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) Authorization from the subscriber, and (ii) Verification of that authorization in accordance with the procedures prescribed in this section.”³⁶ Specifically, a carrier must: (1) obtain the subscriber’s written or electronically signed authorization in a format that meets the requirements of section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber’s order.³⁷

10. For third party verification, our rules require that the verification method confirm the following: the identity of the subscriber; that the person on the call is authorized to make the carrier change; that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved.³⁸ Our rules also require that carriers keep audio records of the verification for a minimum of two years.³⁹

11. Section 64.1120(c)(3)(iii) of our rules prohibits the third party verification from including any “misleading description of the transaction . . .”⁴⁰ This rule specifically states that the third party verification must elicit, among other things, “confirmation that the person on the call understands that a carrier change, not an upgrade to existing services, bill consolidation, or any other misleading description of the transaction is being authorized.”⁴¹ In addition, the rule requires any description of interLATA or long distance service to convey that it encompasses both international and state-to-state calls as well as some intrastate calls where applicable.⁴² This requirement was adopted to ensure that consumers understand precisely the service changes they

³⁴ 47 U.S.C. § 258(a).

³⁵ 47 U.S.C. § 258(a).

³⁶ 47 C.F.R. § 64.1120(a)(1)(i), (ii).

³⁷ See 47 C.F.R. § 64.1120(c).

³⁸ 47 C.F.R. § 64.1120(c)(3)(iii).

³⁹ 47 C.F.R. § 64.1120(c)(3)(iv).

⁴⁰ See 47 C.F.R. § 64.1120(c)(3)(iii).

⁴¹ *Id.*

⁴² *Id.*

are approving and to increase consumer confidence, decrease the administrative costs for carriers, and alleviate the enforcement burden on the Commission.⁴³

12. Each of the twenty-five consumers who filed the complaints that form the basis of this NAL contends that Silv changed their carriers without authorization. The consumers contend that they were incorrectly told that the caller was from his or her own carrier, as discussed above, or the consumers apparently had no contact with a telemarketer; in either case, the consumer was unaware of the carrier change until receiving a bill with charges from Silv. After the consumers filed complaints with the Commission, Silv provided a copy of the third party verification recording. We have reviewed the third party verification tapes submitted by Silv and find that Silv's verifier either failed to confirm that the consumer wanted to switch carriers because the verifier incorrectly stated that the purpose of the recorded conversation was for "quality control and ... data entry purposes,"⁴⁴ or failed to confirm the types of service involved by failing to state that long distance service encompasses international calls.⁴⁵ While these violations may appear to be technical in nature in this case where the complainants contend that they did not intend to change carriers at all, this rule is crucial to protect consumers. For example, if the verifier states, incorrectly, that the call was for quality control and data entry purposes, the consumer may be unaware that he agreed to a carrier change until receiving the bill containing the new charges. If the verifier fails to state that long distance service includes all international calls, consumers may be unaware that their international rates had changed until they received their bills. Consumers who make multiple international calls may choose a carrier and plan with low international rates and not realize that their international rates will change when they make a change to their interLATA long distance carrier. Consumers receiving their bills with the Silv charges and realizing they were slammed would be further inconvenienced by needing to contact Silv to negotiate a refund, contact their previous carrier to have their services switched back or rate plans changed, and potentially file complaints.

13. In its October 22, 2009 response to the LOI, Silv "concedes that it has recently experienced an increase in the number of inquiries regarding unauthorized account transfers."⁴⁶ Silv states that "its former telemarketing company had failed to follow strict guidelines and scripts, contributing to the increased number of inquiries."⁴⁷ Silv also contends that "the root cause [of problems with verifications was] the phrasing of third party verifications – as opposed

⁴³ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Fourth Report and Order, 23 FCC Rcd 493, 493, ¶ 1 (2008).

⁴⁴ See *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-302, rel. Feb. 24, 2010 (CGB 2010); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13454 (CGB 2009); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13450 (CGB 2009); *Silv Communication Inc.*, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 14199 (CGB 2009).

⁴⁵ See cases cited at *supra* note 15.

⁴⁶ Response to LOI at 1.

⁴⁷ *Id.* at 1-2.

to material violations of Commission rules.”⁴⁸ Silv contends that it has “become more rigorous in proactively monitoring and enforcing script adherence by its telemarketer and third party verification company particularly within the past two (2) months when the level of inquiries began to rise.”⁴⁹ Silv also stated that it “amended its verification script to adopt Commission recommendations for compliance to ensure that the script was undeniably in compliance beginning in October 2009.”⁵⁰ Silv contends that it received 49 slamming complaints in 2008 and 44 slamming complaints as of October 22, 2009 that were filed with the Commission.⁵¹

14. Under the authority of section 217 of the Act,⁵² the Commission has held carriers to be responsible for the failures of their telemarketers and third party verification companies to obtain proper authorization and verification for changes made to consumers’ primary carriers. The consumers listed in the Appendix all allege that they did not authorize a carrier change. Silv has failed to provide any evidence that the carrier changes to the consumers listed in the Appendix were properly authorized and verified. Furthermore, Silv has failed to provide any evidence that it should not be held responsible for the actions of its former telemarketing company or its third party verification company. We therefore conclude that in each case, Silv apparently willfully or repeatedly violated a Commission rule by submitting carrier change orders without proper authorization in accordance with our rules and section 258 of the Act of every consumer listed in the Appendix. We propose a forfeiture for these apparent willful or repeated violations.

III. FORFEITURE AMOUNT

15. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.⁵³ The Commission may assess this penalty if it determines that the carrier’s noncompliance is “willful or repeated.”⁵⁴ For a violation to be

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 4.

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 6.

⁵² 47 U.S.C. § 217.

⁵³ Section 503(b)(2)(B) provides for forfeitures against common carriers of up to \$150,000 for each violation or each day of a continuing violation up to a maximum of \$1,500,000 for each continuing violation. 47 U.S.C. § 503(b)(2)(B). *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (increasing maximum forfeiture amounts to account for inflation). *See also* FCC Enforcement Advisory, DA 10-91 (rel. Jan. 15, 2010).

⁵⁴ 47 U.S.C. § 503(b)(1)(B) (the Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has “willfully or repeatedly” failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act); *see also* 47 U.S.C. § 503(b)(4)(A) (providing that the Commission must assess such penalties through the use of a written notice of apparent liability or notice of opportunity for hearing).

willful, it need not be intentional.⁵⁵ 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.”⁵⁶ In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.⁵⁷

16. The Commission’s forfeiture guidelines currently establish a base forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.⁵⁸ The Commission has warned carriers that it would take swift and decisive enforcement action, including the imposition of substantial monetary forfeitures, against any carrier found to have engaged in slamming.⁵⁹ Applying the \$40,000 base forfeiture to each of the twenty-five unauthorized carrier changes would result in a forfeiture of \$1,000,000. In this case, however, Silv’s conduct was particularly egregious, as demonstrated by our conclusion that the company also violated section 201(b) of the Act in twelve of the cases at issue. We therefore find that an upward adjustment is appropriate here.⁶⁰ In light of the misrepresentations by Silv’s telemarketer and Silv’s long delay in addressing the misrepresentations, we propose an additional \$40,000 forfeiture for the twelve instances in which Silv engaged in such unjust and unreasonable telemarketing practices. This results in an additional \$480,000,⁶¹ for a total forfeiture amount of \$1,480,000.⁶² Carriers should be on notice that the Commission considers violations such as the ones discussed herein to be serious and that future violations may receive significant upward adjustments.

17. Silv will have an opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.⁶³

⁵⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵⁶ See 47 U.S.C. § 503(b)(2)(D); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999).

⁵⁷ *Forfeiture Policy Statement*, 12 FCC Rcd 17098-99, ¶ 22.

⁵⁸ See 47 C.F.R. § 1.80(b)(4).

⁵⁹ See, e.g., *Brittan Communications International Corp.*, 15 FCC Rcd 4852 (2000); *Amer-I-Net Services Corp.*, 15 FCC Rcd 3118 (2000); *All American Telephone Company, Inc.*, 13 FCC Rcd 15040 (1998).

⁶⁰ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17117, Appendix A, Section II.

⁶¹ There were twelve instances where the consumers were told, incorrectly, that they were changing to another plan offered by their current carrier or that the caller was verifying information regarding their current account.

⁶² In the *BDP Forfeiture Order*, as in the instant case, BDP’s telemarketer apparently represented that it was affiliated with the customers’ existing carriers. *BDP Forfeiture Order*, 15 FCC Rcd at 14468. The Commission found that the telemarketer repeatedly deceived consumers as to BDP’s identity and the nature of its service, and imposed a \$40,000 forfeiture for each instance of slamming and an additional \$40,000 forfeiture for each instance in which BDP engaged in an unjust and unreasonable telemarketing practice.

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

IV. CONCLUSION AND ORDERING CLAUSES

18. We have determined that Silv Communication Inc. has apparently willfully or repeatedly violated sections 201(b) and 258 of the Communications Act, as amended, 47 U.S.C. §§ 201(b), 258, and section 64.1120 of the Commission's rules, 47 C.F.R. § 64.1120.

19. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Silv Communication Inc. is HEREBY NOTIFIED of its Apparent Liability for Forfeiture in the amount of \$1,480,000 for willful or repeated violations of sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201(b), 258, and section 64.1120 of the Commission's rules and orders as described above.

20. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,⁶⁴ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Silv Communication Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

21. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Silv will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

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

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately

⁶⁴ 47 C.F.R. § 1.80.

reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

24. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the company at 3460 Wilshire Blvd., Suite 1103, Los Angeles, CA 90010 and to Andrew O. Isar, Regulatory Consultant to Silv Communication Inc., 4423 Point Fosdick Drive, NW, Suite 306, Gig Harbor, WA 98335.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX
List of Complaints

Complainant	Commission File no., if filed with FCC	Date of carrier change (per Silv, phone bill, or complaint) or date of TPV	Consumer's explanation	CGB Order
M. Eiken	09-S0296014	5/13/09	Was told by someone from AT&T billing department that she was being charged at a higher rate than her plan stated and it was being fixed.	Granted by CGB. <i>See Silv Communication Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 11226 (CGB 2009).</i>
C. Ferguson	09-R2141661S	5/13/09	Was told that they were just verifying information for her current AT&T account	Granted by CGB. <i>See Silv Communication Inc., Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13421 (CGB 2009).</i>
E. Hohe	09-S0296736	5/19/09	Caller said she was from AT&T, offering a discount rate	Granted by CGB. <i>See Silv Communication Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13454 (CGB 2009).</i>
G. Murray	09-S002478	5/20/09	Told that the carrier was Qwest and was offering a lower	Granted by CGB. <i>See Silv Communication Inc., Complaint</i>

			rate	Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13359 (CGB 2009).
R. Wade	09-S0296379	5/20/09	Was told that the carrier was AT&T	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13376 (CGB 2009).
K. Pearson	09-S0296397	5/20/09	Did not agree to change carriers	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13359 (CGB 2009).
T. Mitchell	09-S0296808	5/27/09	Phone bill had charges from Silv	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 14199 (CGB 2009).
J. Kendrick	09-S0296351	6/6/09	Told that the carrier was AT&T and she was asked to verify her phone numbers	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaints Regarding Unauthorized

				Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13376 (CGB 2009).
T. Meyers-Keeling	09-S002454	6/12/09	Told that the carrier was AT&T and she was not switching companies, just getting a discount	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 10031 (CGB 2009).
A. Wright	09-S002457	6/12/09	Phone bill had charges from Silv	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 11107 (CGB 2009).
K. Gralike	09-S0296703	6/19/09	Told that the carrier was AT&T and they had new rates to offer her due to competition	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13421 (CGB 2009).
P. Dean	09-S0296744	6/23/09	Phone bill had charges from Silv	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's

				Telecommunications Carrier, 24 FCC Rcd 13359 (CGB 2009).
C. Justice	09-S002562	6/29/09	Silv informed Verizon that he had switched carriers	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-302, rel. Feb. 24, 2010 (CGB 2010).
T. Rhoads	09-S0296906	7/3/09	Caller, claiming to be from CenturyTel, said she would get a credit on her next bill and had to verify information and answer questions "yes" or "no". In her next bill she saw that she had changed carriers from CenturyTel to Silv.	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
N. Spargo	09-S0296661	7/6/09	Was never contacted by Silv to change carriers, was switched without knowledge	Granted by CGB . <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, 24 FCC Rcd 13450 (CGB 2009).
J. Gehman	09-S0296891	7/6/09	Caller said she was from Verizon and would reduce	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint

			rates due to competition	Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-302, rel. Feb. 24, 2010 (CGB 2010).
B. Wexler	09-S0297092	7/20/09	Thought the call was from AT&T	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
W. Snipes	09-S0296820	8/13/09	Verizon told him he had switched carriers	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
D. Picatte	10-S0297368	8/24/09		Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
D. Stockwell	09-S002568	9/14/09	Caller stated she was a Frontier	Granted by CGB. <i>See Silv</i>

			representative and they were due a credit for excess charges	<i>Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
D. Swineford	09-S0297077	9/14/09	Was called by telemarketer about a web site, which he declined because he does not have Internet access. He found out he was slammed when he got his phone bill.	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
L. Sadler	09-S0297287	9/30/09		Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
D. Wallen	09-S0297140	10/5/09	Was never contacted by Silv; first notice of the additional Silv line was in phone bill	Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-302, rel. Feb. 24, 2010 (CGB 2010).

S. Smith	09-S0297296	10/14/09		Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).
L. Sweeney- Christensen	09-S002656	11/21/09		Granted by CGB. <i>See Silv Communication Inc.</i> , Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, DA 10-301, rel. Feb. 24, 2010 (CGB 2010).