

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

In the Matter of	)	
	)	
Neon Phone Service, Inc.	)	File No.: EB-TCD-17-00023719
	)	NAL/Acct. No.: 201832170001
	)	FRN: 0025191750

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 3, 2017**

**Released: October 3, 2017**

By the Commission: Chairman Pai and Commissioner Clyburn issuing a joint statement; Commissioner Rosenworcel issuing a statement; Commissioner O’Rielly approving in part and dissenting in part.

**I. INTRODUCTION**

1. The Federal Communications Commission (FCC or Commission) proposes a penalty of \$3,963,722 against Neon Phone Service, Inc. (Neon or Company) for submitting requests to switch consumers’ preferred long distance carriers without their authorization (commonly known as “slamming”) and placing unauthorized charges (commonly known as “cramming”) for its long distance service on consumers’ telephone bills in apparent violation of Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act), and Section 64.1120 of the Commission’s rules (Rules). We also find that Neon deceptively marketed its service as part of its apparent slamming and cramming scheme. We take this action after reviewing numerous consumer complaints against Neon, and sending a letter of inquiry (LOI) to Neon directing the Company to provide proof of authorization for each consumer who alleged they were slammed or crammed. After receiving an extension of time within which to respond to the LOI, Neon did not provide a response to the inquiry. Moreover, in two of the instances of slamming and cramming on which this Notice of Apparent Liability for Forfeiture (NAL) is based, the evidence shows that Neon fabricated third party verification recordings to make it appear that these consumers authorized the carrier change and then provided those fabricated recordings to the Commission as evidence of consumer authorization in apparent violation of Section 1.17 of the Rules.

2. This appears to be a clear case of slamming and cramming, which the Commission will not tolerate. Slamming and cramming, and other predatory billing practices, rob consumers of valuable time and hard-earned money.<sup>1</sup> Based on a review of the facts and circumstances surrounding these apparent violations, the Commission proposes a monetary forfeiture of \$3,963,722.

**II. BACKGROUND**

3. Neon<sup>2</sup> is a non-facilities based interexchange carrier that is authorized by the Commission to provide domestic and international long distance telecommunications service.<sup>3</sup> The

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<sup>1</sup> Companies that engage in slamming commit unjust and unreasonable practices that usurp consumer choice, and cause consumers to expend significant time and effort to attempt to return to their preferred carriers, including by filing complaints with law enforcement agencies for help. Cramming is also an unjust and unreasonable practice that results in consumers paying for services they never requested and expending significant time and resources to reverse the unauthorized charges.

<sup>2</sup> According to the FCC Form 499-A filed by Neon on April 1, 2016 (Neon did not file on April 1, 2017), the Company’s headquarters is located at 3810 Murrell Road, Suite 272, Rockledge FL 32955 (the address is actually associated with a UPS mail facility). Neon’s President is Marcela Getman.

<sup>3</sup> See ITC-214-20160308-00117 (granted May 11, 2016).

Bureau reviewed numerous complaints against Neon that consumers filed with the Commission, state regulatory agencies, and the Better Business Bureau (BBB). All of the complainants contend that Neon switched their long distance service provider without their authorization and/or charged them for service they did not request. In addition, the Bureau obtained information showing that Neon's billing aggregator had issued refunds to ██████ CenturyLink customers who had been charged by Neon during the five-month period between June and October 2016.<sup>4</sup> Neon appears to be associated with another reseller, GPSPS, Inc.,<sup>5</sup> a carrier that the Commission previously sanctioned, which was found to have created fake third party verification (TPV)<sup>6</sup> recordings as purported proof of consumer authorization.<sup>7</sup>

4. Based on the consumer complaints, the Bureau initiated an investigation into Neon's practices, and issued an LOI to the Company on March 2, 2017.<sup>8</sup> The LOI instructed the Company to produce various documents and records, including evidence that it had complied with the Commission's verification procedures prior to switching consumers' long distance service providers. Neon failed to respond to the LOI.<sup>9</sup>

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<sup>4</sup> Neon contracts with an independent billing aggregator, ILD Teleservices (ILD), to bill consumers through their local exchange carriers. ILD's name generally appears on the bills, along with Neon. See Consumer Telephone Bills on file in EB-TCD-17-00023719.

<sup>5</sup> The following contact information is provided for the domain registration of Neon's website: John Buffa, GPSPS, Inc., 3050 Royal Blvd. S., Suite 170, Alpharetta, GA 30022. See registration on whois.com, <https://www.whois.com/whois/neonphoneserviceinc.com> (last visited May 19, 2017). Other resellers previously investigated by the Bureau have also used this same Royal Blvd. S. address. See, e.g., *Zoom-i-Net Communications, Inc.*, Admonishment Order, 31 FCC Rcd 5192 (EB 2016) (president and CEO is Jane Helein Scott, who also filed Neon's application to provide service in Ohio); *New Century Telecom, Inc.*, Admonishment Order, 31 FCC Rcd 5187 (EB 2016) (Karyn Bartel is president and the prior owner was Kathleen Helein); *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056 (2014) (*Optic NAL*), Forfeiture Order, 30 FCC Rcd 2539 (2015) (president is Gregory Allpow). Two additional toll resellers also share this address: Communication Telefonicas Latinas Corp. (owned by Rodney Harrison); and Tele Circuit Network Corp. (owned by Ashar Syed).

<sup>6</sup> Third party verification (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. 47 CFR § 64.1120(c)(3). TPV must comply with Section 64.1120(c)(3) of the Rules. *Id.*

<sup>7</sup> See *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522 (2015) (*GPSPS NAL*), Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 1 (2015) (*GPSPS Forfeiture Order*). Similarly, as discussed below, complainants in this investigation said that the TPV recording purportedly showing that they had authorized Neon's service was fabricated. For example, Complainant ██████ explained that the voice on the recording was not hers and the information provided by the person, such as name and address, were wrong. Neon provided the TPV recording to the Colorado Public Utilities Commission, but not to the Commission. See Complaint from ██████ (filed Apr. 7, 2017 with the Colorado Public Utilities Commission).

<sup>8</sup> See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Neon Phone Service, Inc. (Mar. 2, 2017) (on file in EB-TCD-17-00023719) (LOI).

<sup>9</sup> Neon requested a four-week extension of time to respond to the LOI, which the Bureau granted. See E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Marcela Getman, President, Neon Phone Service, Inc. (Mar. 27, 2017; 11:44 EDT). After the new due date had passed, Neon requested an additional three months to respond, but did not provide any of the information required by the LOI and did not provide a reason for the three-month extension request. See E-mail from Marcela Getman, President, Neon Phone Service, Inc., to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Apr. 29, 2017; 16:37 EDT). The Bureau therefore denied the request and warned Neon that the failure to respond to a Commission order could result in enforcement action. See E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Marcela Getman, President, Neon Phone Service, Inc. (May 1, 2017, 14:23 EDT). Neon did not respond to the LOI.

### III. DISCUSSION

5. The Commission finds that Neon apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act,<sup>10</sup> and Sections 1.17 and 64.1120 of the Rules.<sup>11</sup> Specifically, as discussed more fully below, we charge Neon with apparently violating: (i) Section 258 of the Act and Section 64.1120 of the Rules by submitting 13 requests to switch consumers' preferred long distance carriers without authorization verified in compliance with the Commission's verification procedures; (ii) Section 1.17 of the Rules by providing false and misleading material information to the Commission; (iii) Section 201(b) of the Act for deceptively marketing its service and placing 24 unauthorized charges on consumers' telephone bills; and (iv) a Commission order to produce certain information and documents related to Neon's business practices. Accordingly, the Commission proposes a forfeiture of \$3,963,722 for the apparent violations that occurred within the 12 months prior to the release date of this NAL.<sup>12</sup>

#### A. Neon Submitted Requests to Switch Consumers' Preferred Long Distance Carriers without Authorization, in Apparent Violation of Section 258 of the Act and Section 64.1120 of the Rules

6. 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."<sup>13</sup> Section 64.1120 of the Rules prohibits carriers from submitting a request to change a consumer's preferred provider of telecommunications services before obtaining authorization from the consumer; carriers can verify that authorization in one of three specified ways, including TPV.<sup>14</sup> If a carrier relies on TPV, the independent verifiers must, among other things, confirm that the consumers with whom they are speaking: (i) have the authority to change the carrier associated with their telephone number; (ii) in fact wish to change carriers; and (iii) understand that they are authorizing a carrier change.<sup>15</sup>

7. The evidence demonstrates that Neon apparently violated Section 258 of the Act and Section 64.1120 of the Rules by submitting 13 requests to switch the complainants' preferred providers of telecommunications services without proper authorization verified in accordance with the Rules.<sup>16</sup> The Bureau's LOI directed Neon to provide the TPV recordings (or other form of verification) the Company used to submit requests to switch the long distance carriers of certain identified consumers who had filed complaints with the Commission.<sup>17</sup> Neon failed to provide to the Bureau any such proof of verification. Under Section 64.1150 of the Rules, once the Commission notifies a carrier of an unauthorized carrier change complaint, "[f]ailure by the carrier to respond or provide proof of verification will be presumed to

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<sup>10</sup> 47 U.S.C. §§ 201(b), 258.

<sup>11</sup> 47 CFR §§ 1.17, 64.1120.

<sup>12</sup> The Appendix identifies the 27 complaints, evidencing 40 apparent violations of the Act that underlie the proposed forfeiture.

<sup>13</sup> 47 U.S.C. § 258(a).

<sup>14</sup> 47 CFR §§ 64.1120(c)(1)–(3). A carrier may also verify authorization by obtaining the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 or by obtaining confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically. 47 CFR §§ 64.1120(c)(2), 64.1130.

<sup>15</sup> 47 CFR § 64.1120(c)(3)(iii). Due to Neon's failure to respond to the Bureau's LOI, the Bureau obtained information from state regulatory authorities to ascertain that Neon uses TPV to verify consumer authorization.

<sup>16</sup> The attached Appendix provides a list of complainants who alleged slamming violations and the dates on which the alleged incidents took place.

<sup>17</sup> See LOI at 4.

be clear and convincing evidence of a violation.”<sup>18</sup> Due to Neon’s failure to provide proof of any form of verified authorization,<sup>19</sup> we find, based on clear and convincing evidence, that Neon apparently violated Section 258 of the Act and Section 64.1120 of the Rules. The LOI also directed Neon to provide all consumer complaints and inquiries the Company received since January 1, 2016, whether submitted directly to the Company, the Company’s billing aggregator, state commissions, the FCC, the BBB, state attorneys general offices, courts of law, or any other source,<sup>20</sup> and to provide any TPV recordings pertaining to each complaint or inquiry.<sup>21</sup> Neon failed to provide such complaints and TPV recordings to the Bureau.

8. Neon did, however, provide the Commission with two TPV recordings on April 11, 2017, in response to consumer complaints that the Consumer & Governmental Affairs Bureau (CGB) earlier served on Neon. The evidence collected by the Bureau suggests that each recording was fabricated.<sup>22</sup> For these two cases, the complainants listened to the TPVs that Neon claimed contained their voices and affirmations of carrier changes; these complainants denied to the Commission that they participated in the recorded TPV conversation. In one case, the TPV was entirely in Spanish yet the complainant stated that he speaks only English and could not understand the recording. He told Bureau staff that he did not participate in any verification call concerning changing his service and had never heard of Neon.<sup>23</sup> In the other case, the complainant stated that he was out of town and that no one could have used his phone at the time of the alleged telemarketing call from Neon.<sup>24</sup> “That is not my voice. It is not my wife’s voice. That is a ridiculous claim . . . although I have practiced with some Spanish language tapes and my wife took Spanish in [high school], neither one of us speak Spanish. Neither one of us would agree to phone service in Spanish in any event. I find Neon’s claim to be totally false.”<sup>25</sup> Based on the evidence in the record and consistent with Commission precedent regarding fabricated TPVs, we find that in these two instances Neon also apparently violated Section 258 of the Act and Section 64.1120 of the Rules.<sup>26</sup>

9. Accordingly, based on the evidence in the record, including evidence that Neon fabricated recordings to make it appear that it had verified in two instances consumers’ authorizations in compliance with Section 64.1120(c) when it did not, we find that Neon apparently violated Section 258 of the Act and Section 64.1120 of the Rules by submitting requests to switch 13 consumers’ preferred providers of telecommunications services without proper authorization verified in accordance with the Rules.

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<sup>18</sup> 47 CFR § 64.1150(d).

<sup>19</sup> See *United Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 16499, 16504, para. 13 & n.33 (2012) (*United NAL*).

<sup>20</sup> LOI at 5.

<sup>21</sup> *Id.* The Commission’s rules require carriers to maintain audio verification records of consumer authorization for a minimum of two years from the time of the verification. 47 CFR § 64.1120(c)(3)(iv).

<sup>22</sup> Even if Neon did not fabricate the TPV recordings, the evidence shows that the submitted TPVs were not actual recordings of the two consumers at issue and thus were false and misleading and not evidence of the consumers’ authorization.

<sup>23</sup> See Complaint from R. Toepfer (filed Oct. 24, 2016).

<sup>24</sup> See Complaint from S. Deganis (filed Nov. 11, 2016).

<sup>25</sup> See E-mail from S. Deganis to Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 2, 2017; 11:27 EDT).

<sup>26</sup> See *GPSPS NAL*, 30 FCC Rcd at 2528, para. 15 (finding that the carrier violated Section 258 of the Act when it submitted fabricated TPV recordings to make it appear that it had verified consumers’ authorizations in compliance with the Commission’s rules when it did not).

**B. Neon Provided False and Misleading Material Information to the Commission in Apparent Violation of Section 1.17 of the Rules**

10. Based on the evidence discussed above, we find that Neon also apparently violated Section 1.17 of the Rules when it submitted false and misleading information to the Commission in the form of apparently fabricated TPVs. Section 1.17(a)(2) of the Rules provides that no person may provide to the Commission, in any written statement of fact, “material factual information that is incorrect or omit material information . . . without a reasonable basis for believing that any such material factual statement is correct and not misleading.”<sup>27</sup> This requirement is intended, in part, to enhance the effectiveness of the Commission’s enforcement efforts.<sup>28</sup> Thus, even absent an intent to deceive, a false statement may constitute a violation of Section 1.17 if provided without a reasonable basis for believing that the information is truthful and not misleading.<sup>29</sup> In response to slamming complaints CGB forwarded to Neon, Neon submitted apparently fabricated TPV recordings to the Commission.<sup>30</sup> As we have previously stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission.”<sup>31</sup> This includes taking appropriate steps to determine the truthfulness of what is being submitted. Neon apparently failed to do so. Accordingly, we find that Neon lacked a reasonable basis for believing that the submitted TPVs were authentic and, in providing them to the Commission, Neon apparently violated Section 1.17(a)(2) of the Rules.<sup>32</sup>

**C. Neon Engaged in Deceptive Marketing and Placed Unauthorized Charges on Consumers’ Telephone Bills in Apparent Violation of Section 201(b) of the Act**

11. Section 201(b) of the Act makes it unlawful for a carrier, including Neon, to engage in any practice in connection with its provision of a telecommunications service that is unjust and unreasonable.<sup>33</sup> The Commission has held that unfair and deceptive marketing practices by interstate common carriers as a general matter, and misrepresentations about a carrier’s identity or the nature of its service to obtain a consumer’s authorization to change his or her preferred long distance carrier specifically, constitute unjust and unreasonable practices under Section 201(b) of the Act.<sup>34</sup>

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<sup>27</sup> 47 CFR § 1.17(a)(2).

<sup>28</sup> See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-17, 4021, paras. 1-2, 12 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (*Amendment of Section 1.17*).

<sup>29</sup> See *id.* at 4017, para. 4 (stating that the revision to Section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”).

<sup>30</sup> See *supra* para. 8. We consider the TPV recordings to be “written statements” as they were submitted as part of written responses to CGB’s Notices of Informal Complaints.

<sup>31</sup> *Amendment of Section 1.17*, 18 FCC Rcd at 4021, para. 12. See *GPSPS NAL*, 30 FCC Rcd at 2526-27, para. 12; *Onelink Communications, Inc., Teledias Communications, Inc., Teleuno, Inc., Cytel, Inc.*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 1403, 1420-21, paras. 17-18 (2016) (*Onelink NAL*) (each finding that the carriers apparently violated Section 1.17 of the Rules for submitting fabricated TPV recordings to the Commission).

<sup>32</sup> The complaints to which Neon responded to the Commission with false material information were filed by R. Toepfer and S. Deganis.

<sup>33</sup> 47 U.S.C. § 201(b).

<sup>34</sup> See *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13714-23, paras. 9-24 (2015); *Business Discount Plan, Inc.*, Forfeiture Order, 15 FCC Rcd 14461, 14469, para. 17 (2000); *OneLink NAL*, 31 FCC Rcd at 1420, para. 16; *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517, 5520, para. 7 (2014) (*Central NAL*), Forfeiture Order, 31 FCC Rcd 10392, 10403, para. 25 (2016) (*Central Forfeiture Order*); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823, 825-26, para. 7 (2014) (*USTLD NAL*), Forfeiture Order, 31 FCC Rcd 10413, 10424, para. 25 (2016) (*USTLD Forfeiture Order*); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd

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12. The evidence demonstrates that in at least one instance, Neon’s telemarketer tricked the complainant into believing that they were calling on behalf of the consumer’s existing provider—and doing so simply to authorize a change to the existing service the consumer had with that provider—not to switch his provider to Neon. Complainant Llerandi explained,

On Nov 12 someone purporting to be CenturyLink called to say they had new discounts to offer their customers. I said I was busy preparing dinner so please call back another day. I NEVER authorized any changes to our carrier. The next thing we received was a notice from CenturyLink stating ‘this is a confirmation of your service change order.’ I immediately called . . . and explained we'd been slammed, to revert everything back to CenturyLink. However, . . . ILD Telephone Service [on behalf of Neon] charged us for their monthly long distance charge. These people are CROOKS, please take action against them!<sup>35</sup>

13. In addition, the Commission has found that the inclusion of unauthorized charges and fees on consumers’ telephone bills (i.e., cramming) is an “unjust and unreasonable” practice under Section 201(b).<sup>36</sup> Cramming can occur either when third parties place or cause to be placed unauthorized charges on consumers’ local telephone bills or when billing carriers place unauthorized charges on the telephone bills of their customers for their services or those of a third party.<sup>37</sup> In either case, any assessment of an unauthorized charge or fee on a telephone bill is an “unjust and unreasonable” practice under Section 201(b) of the Act.<sup>38</sup>

14. The Commission has reviewed the evidence in the record, including consumers’ complaints and their telephone bills, and finds that the charges Neon caused to be placed on complainants’ telephone bills were apparently unauthorized, in violation of Section 201(b) of the Act. All of the complainants maintain that they neither requested nor agreed to receive service provided by Neon, and therefore that they were billed for service that they never authorized. In some of the cases, Neon switched the consumer’s long distance carrier to Neon and began charging them for its service. In other cases, Neon did not complete a carrier switch, but nevertheless charged the complainants a monthly fee

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6843, 6849, para. 16 (2013) (*Advantage NAL*), Forfeiture Order, 32 FCC Rcd 3723, 3725, para. 7 (2017) (*Advantage Forfeiture Order*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17198-99, para. 7 (2013) (*CTI NAL*), Forfeiture Order, 31 FCC Rcd 10435, 10446, para. 25 (2016) (*CTI Forfeiture Order*); *United NAL*, 27 FCC Rcd at 16502, para. 9 (2012); *Silv Communication Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180-82, paras. 5-7 (2010) (*Silv NAL*).

<sup>35</sup> See Complaint from J. Llerandi (filed Dec. 19, 2016).

<sup>36</sup> See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 14; *CTI Forfeiture Order*, 31 FCC Rcd at 10441-42, para. 15; *Central Forfeiture Order*, 31 FCC Rcd at 10392, para. 15; *USTLD Forfeiture Order*, 31 FCC Rcd at 10419-10420, para. 15; see also *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that the company’s practice of cramming membership fees and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services).

<sup>37</sup> See *Advantage Forfeiture Order*, 32 FCC Rcd at 3728, para. 14; see also *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, 4439, paras. 1, 6 (2012); *Main Street Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8853-54, para. 2 (2011) (*Main Street NAL*).

<sup>38</sup> See, e.g., *LDDI MO&O*, 15 FCC Rcd at 3302, para. 14; see also *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558, 15564, 15567, paras. 12, 16 (2012); *Cheap2Dial Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8870, para. 22 (2011); *Main Street NAL*, 26 FCC Rcd at 8859, para. 21; *Norristown Telephone Company, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, 8849, para. 20 (2011); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, 8880, para. 21 (2011).

for its long distance service. The charges were placed on the complainants' local exchange carrier (LEC)<sup>39</sup> bills.

15. Accordingly, we find Neon in apparent violation of Section 201(b) of the Act, for engaging in deceptive practices by representing to at least one consumer that it was calling on behalf of the consumer's existing long distance carrier. In addition, as we have said on several occasions, a carrier that engages in an initial slam that leads to a subsequent cram violates both Sections 258 and 201(b) of the Act.<sup>40</sup> In such cases, we may exercise our authority to assess forfeitures for both violations.<sup>41</sup> Accordingly, the Commission finds that Neon apparently violated Section 201(b) for placing unauthorized charges on 24 consumers' telephone bills.<sup>42</sup>

**D. Neon Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI**

16. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers such as Neon to provide the information and documents sought by the Bureau's LOI.<sup>43</sup> It is well established that a failure to respond to a Bureau LOI constitutes a violation of a Commission order.<sup>44</sup>

17. The LOI was validly issued by the Bureau pursuant to delegated authority. The LOI directed Neon to provide information related to its compliance with Sections 201(b) and 258 of the Act and the Commission's anti-slamming rules. This information is necessary to enable the Bureau to perform its investigatory function. Neon did not respond to the LOI. Specifically, Neon failed to provide the Bureau with any consumer complaints or inquiries as required by the LOI, and this was after the Bureau granted a four-week extension of time to respond.<sup>45</sup> Further, it failed to provide the Bureau the TPV recordings Neon used to submit requests to switch consumers' long distance service providers. Accordingly, in light of well-established precedent, the Commission finds that Neon's failure to provide

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<sup>39</sup> AT&T, Verizon, and CenturyLink are examples of LECs. "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).

<sup>40</sup> See *Optic NAL*, 29 FCC Rcd at 9063, para. 19; *Advantage NAL*, 28 FCC Rcd at 6850, para. 18 & n.48.

<sup>41</sup> See *Central NAL*, 29 FCC Rcd at 5529, para. 25 & n.83; *USTLD NAL*, 29 FCC Rcd at 835–836, para. 24 & n.93; *CTI NAL*, 28 FCC Rcd at 17208, para. 26 & n.78. For those complainants whose slams took place outside of the one-year statute of limitations period, we are proposing a forfeiture based only on the unlawful cramming that took place within the last 12 months. The complainants are A. Crabtree, E. Muniz, and R. Rodriguez.

<sup>42</sup> In some of these cases, the evidence shows that Neon did not submit a request to change the complainant's long distance service provider, but nevertheless began charging the complainant for monthly service that was not authorized. The complainants are A. Bazan, L. Castillo, [REDACTED], J. Llerandi, O. Martinez, C. Quave, J. Ruedisueli, and E. Ybarra. See Complainant LEC Information on file in EB-TCD-17-00023719.

<sup>43</sup> 47 U.S.C. §§ 154(i), 218, 155(c)(3). "Any order . . . or action made or taken pursuant to any [ ] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission." 47 U.S.C. § 155(c)(3).

<sup>44</sup> 47 U.S.C. § 503(b)(1)(B). See *GPSPS NAL*, 30 FCC Rcd at 2522, para. 1; *GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 2; *Net One Int'l, Net One, LLC, Farrahel Int'l, LLC*, Order of Forfeiture, 29 FCC Rcd 264 (EB 2014) (*Net One Forfeiture Order*); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318 (2013); *Technical Communication Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018 (EB 2013) (*Technical NAL*); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012); *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002).

<sup>45</sup> See E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Marcela Getman, President, Neon Phone Service, Inc. (Mar. 27, 2017; 11:44 EDT).

the information and documents required by the Bureau's LOI constitutes an apparent willful violation of a Commission order.

### E. Proposed Forfeiture

18. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”<sup>46</sup> Here, Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Neon of up to a statutory maximum of \$189,361 for a single act or failure to act.<sup>47</sup> In exercising our forfeiture authority, we must consider “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.”<sup>48</sup> In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>49</sup> Under the guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>50</sup>

19. Section 1.80(b) of the Rules sets a base forfeiture amount of \$40,000 for violations of our slamming rules and orders.<sup>51</sup> Although the guidelines provide no base forfeiture for cramming, the Commission has established through case law a base forfeiture of \$40,000 for cramming violations.<sup>52</sup> As discussed above, the Commission can assess separate forfeitures for an unlawful carrier change request and for any unauthorized charges that result from that unlawful carrier change request.<sup>53</sup> However, where Neon submitted the unlawful carrier change request more than a year prior to the date of this NAL, we assess a forfeiture not for the slam, but for the unauthorized charges Neon placed on the consumers' telephone bills within the last 12 months of the release date of this NAL.<sup>54</sup> Similarly, in those cases where Neon apparently did not submit a request to change the consumer's preferred carrier,<sup>55</sup> but nevertheless charged the consumer for service without authorization, we assess a forfeiture for the cram

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<sup>46</sup> See 47 U.S.C. § 503(b).

<sup>47</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). 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), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461) (the 2015 Inflation Adjustment Act), requires the Commission to adjust annually its forfeiture penalties for inflation. See 28 U.S.C. § 2461. The Commission most recently amended its relevant rules on December 30, 2016, effective January 24, 2017. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 13485 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 82 Fed. Reg. 8170 (Jan. 24, 2017).

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

<sup>49</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>50</sup> *Id.*

<sup>51</sup> See 47 CFR § 1.80, Appendix A, Section I.

<sup>52</sup> See *LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for each cramming violation imposed by the Commission in the forfeiture order).

<sup>53</sup> See *supra* para. 15.

<sup>54</sup> See also *supra* note 41.

<sup>55</sup> See *supra* note 42.



only.<sup>56</sup> Applying the \$40,000 base forfeiture to each of the 37 slamming and cramming violations<sup>57</sup> identified in the Appendix results in a proposed forfeiture of \$1,480,000.

20. Given the facts presented here, and consistent with similar cramming and slamming enforcement actions, we conclude that a significant upward adjustment to the base forfeiture penalty is warranted. In the *Silv NAL*, the Commission “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.”<sup>58</sup> Likewise, in the *CTI NAL*, we explained that the Commission has warned carriers that engaged in cramming that “we may propose more significant forfeitures in the future as high as is necessary, within the range of our statutory authority, to ensure that such companies do not charge consumers for unauthorized services.”<sup>59</sup>

21. The record shows that Neon’s conduct was egregious. Neon apparently engaged in slamming and cramming repeatedly over an extended period of time, including placing unauthorized charges on consumers’ telephone bills multiple times.<sup>60</sup> Neon engaged in deceptive marketing, fabricated TPV recordings, and provided false and misleading information to the Commission.<sup>61</sup> Further, Neon as both a common carrier and international section 214 authorization holder was on notice that the Commission takes the specific issue of fabricated TPVs seriously. In 2015, the Commission released a Notice of Apparent Liability for Forfeiture against GPSPS—another toll reseller that appears to be associated with Neon<sup>62</sup>—for fabricating TPVs in order to show that it had consumer authorization for carrier changes.<sup>63</sup> Notwithstanding the release of the *GPSPS NAL* and subsequent Forfeiture Order, Neon has disregarded the Rules and the Act by submitting unauthorized carrier change requests over several

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<sup>56</sup> The Commission has made clear that each unauthorized charge a carrier places on a consumer’s bill—or cram—constitutes a separate and distinct violation of Section 201(b). *See, e.g., CTI NAL*, 28 FCC Rcd at 17208, para. 26 & n.79 (citing *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001)). While Neon placed multiple unauthorized charges on many complainants’ telephone bills, in this case we do not take that approach but instead propose a forfeiture for just one cramming violation per complainant. However, we caution other carriers that the Commission is committed to aggressive enforcement of its rules, especially in addressing the protections afforded consumers.

<sup>57</sup> A slamming violation occurs whenever a carrier submits an unlawful request to change service providers regardless of whether the change actually takes place. *See* 47 U.S.C. § 258(a) (“[n]o telecommunications carrier shall 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 [the Commission’s] verification procedures . . .”).

<sup>58</sup> *See Silv NAL*, 25 FCC Rcd at 5186, para. 16.

<sup>59</sup> *CTI NAL*, 28 FCC Rcd at 17209, para. 29 (citing *Main Street NAL*, 26 FCC Rcd at 8861, para. 24).

<sup>60</sup> Neon placed unauthorized charges on more than one telephone bill for the following complainants: [REDACTED], R. Gonzalez, [REDACTED], [REDACTED], G Gubert, C. Quave, R. Rodriguez, E. Muniz, [REDACTED], A. Crabtree, L. Castillo, and E. Ybarra.

<sup>61</sup> *See* Complaint from R. Toepfer (filed Oct. 24, 2016); Complaint from S. Deganis (filed Nov. 11, 2016) (each alleging that Neon’s TPV recording was fabricated); Complaint from J. Llerandi (filed Dec. 19, 2016) (alleging that Neon’s telemarketer misrepresented their identity).

<sup>62</sup> As noted above, John Buffa of GPSPS, Inc., is identified as the contact for the domain registration of Neon’s website. *See supra* note 5.

<sup>63</sup> *GPSPS NAL*, 30 FCC Rcd at 2522, para. 1. The Commission also took action against Optic Internet Protocol, Inc. (which used the same telemarketer, third party verifier, and customer service staff as GPSPS) for relying on fabricated TPVs. *See Optic NAL*, 29 FCC Rcd at 9061-63, paras. 14-17. *See also Central NAL*, 29 FCC Rcd at 5530, para. 26 (observing that the apparently fabricated TPV was a factor to consider in proposing a significant upward adjustment of the forfeiture amount); *OneLink NAL*, 31 FCC Rcd at 1426-27, paras. 29-30 (the fake TPVs and misrepresentations to consumers supported the Commission’s finding that the companies were conducting business in an entirely fraudulent manner).

months without any evidence of completing a single authentic verification recording. And the TPVs produced in two instances in response to consumer complaints are by all accounts fabricated. Moreover, Neon's actions caused substantial frustration and inconvenience to consumers, who had to spend significant time and effort to return to their preferred carriers, to get the charges removed from their bills,<sup>64</sup> and to file complaints with law enforcement agencies.<sup>65</sup>

22. Under Section 503 of the Act and our forfeiture guidelines, we must take into account the egregious and repeated nature of Neon's actions and the harm Neon caused consumers<sup>66</sup> and, pursuant to our prior warnings to carriers, upwardly adjust the forfeitures for both slamming and cramming.<sup>67</sup> In this case, the consumer complaints we act on represent a small fraction of the consumers who have been slammed or crammed by Neon. [REDACTED] consumers complained to the billing aggregator and received refunds over a five-month period due to Neon slams/crams of one carrier's customers alone.<sup>68</sup> In addition, consumers were often charged numerous times by their billing carrier for Neon's unauthorized charges, causing significant disruption to their lives. Given the egregious circumstances here and the extent of Neon's improper conduct, all in the face of repeated warnings from the Commission that practices such as these would be met with significant and substantial penalties, we determine that an upward adjustment to the overall base forfeiture in the amount of \$2,000,000 is appropriate.<sup>69</sup> We also conclude that, consistent with the *Forfeiture Policy Statement*,<sup>70</sup> an additional upward adjustment is warranted for the apparent cramming violation at issue here that is coupled with direct evidence of deceptive marketing. In past cases we have upwardly adjusted slamming and cramming penalties by \$80,000, and we have repeatedly warned carriers that "we may propose more significant forfeitures in the future as high as necessary, within the range of our statutory authority, to ensure that such companies do not charge consumers for unauthorized services."<sup>71</sup> Accordingly, we propose an additional upward

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<sup>64</sup> See *supra* para. 3 (explaining that ILD issued refunds of Neon charges to [REDACTED] CenturyLink customers between June and October 2016).

<sup>65</sup> See, e.g., Complaint from G. Quintas (filed May 22, 2017) ("My regular phone company (Windstream) was notified by a company called 'Neon Phone Service Inc' that I had changed my long-distance telephone services to their company . . . . I have attempted to contact [Neon] multiple times to no avail, and I would truly appreciate any help on this issue."); Complaint from R. Gonzalez (filed Feb. 15, 2017) ("a 3<sup>rd</sup> party company [Neon] appeared on my phone bill . . . . I have repeatedly contacted CenturyLink and . . . even contacted the Nevada Public Utilities Commission . . . . I am pleading for your assistance in getting this issue rectified."); Complaint from V. Brown (filed Dec. 22, 2016) ("Got slammed in November . . . . I called to discontinue Neon, which I never authorized in the first place. When I called they said it would be two billing cycles before I would get a refund.").

<sup>66</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>67</sup> Where appropriate, we may also seek to revoke a carrier's authorization. See *OneLink NAL*, 31 FCC Rcd at 1429-30, para. 36 (noting that the Commission will consider initiating proceedings against carriers to revoke their Commission authorizations in cases involving egregious misconduct).

<sup>68</sup> See *supra* para. 3.

<sup>69</sup> See *Central NAL*, 29 FCC Rcd at 5531, para. 28; *Central Forfeiture Order*, 31 FCC Rcd at 10408-09, paras. 39-41; *CTI NAL*, 28 FCC Rcd at 17209, para. 29; *CTI Forfeiture Order*, 31 FCC Rcd at 10451-53, paras. 38-40 (each assessing an upward adjustment of \$1,500,000 for egregious misconduct related to slamming and cramming violations).

<sup>70</sup> *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, 17100-01, para. 27 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>71</sup> See, e.g., *USTLD NAL*, 29 FCC Rcd at 837, para. 27; *Central NAL*, 29 FCC Rcd at 5531, para. 28; *Silv NAL*, 25 FCC Rcd at 5186, para. 16.

adjustment of \$80,000 to the forfeiture assessed for the one cramming violation that occurred in the past 12 months for which there is evidence that Neon apparently misrepresented its identity to the consumer.<sup>72</sup>

23. The Commission's forfeiture guidelines provide that the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum,<sup>73</sup> or, in this case, \$189,361.<sup>74</sup> Considering the circumstances of this case, we find that the base forfeiture is warranted for Neon's willful violations of Section 1.17. The Commission relies heavily on the truthfulness and accuracy of the information provided to it. "If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities."<sup>75</sup> Here, Neon provided to the Commission TPV recordings that were apparently fabricated, as evidence that the consumers had agreed to the carrier change. Such fake TPVs hamper our ability to properly enforce the carrier change rules. Therefore, applying the base forfeiture of \$189,361 to the two instances when Neon provided false material information to the Commission within the last 12 months results in a proposed forfeiture of \$378,722.<sup>76</sup>

24. Pursuant to Section 1.80 of the Rules and the Commission's *Forfeiture Policy Statement*, the base forfeiture amount for failure to respond to Commission communications is \$4,000.<sup>77</sup> Using our discretion to adjust the base forfeiture as circumstances warrant, however, we have imposed penalties that are many times higher when the failure to respond properly to an LOI is egregious and intentional.<sup>78</sup> Consistent with prior cases involving carriers that failed to comply with Bureau LOIs, we find that Neon's apparent failure to respond to the Bureau's LOI in the circumstances presented here warrants a forfeiture of \$25,000.<sup>79</sup> Neon clearly received and was aware of the deadline to respond as it requested, and was granted, a four-week extension of time to respond to the LOI. Notwithstanding this extension, Neon failed to provide any response, not even a partial response. Instead, Neon requested three additional months to respond without providing any justification for the additional time. The Bureau denied the further extension and warned Neon that failing to respond could result in enforcement action. Neon, however, completely disregarded the LOI deadline and the Bureau's warning by not providing the requested information as required by the Rules. As the Commission has stated in cases where carriers have not provided responses to Commission orders, "misconduct of this type exhibits contempt for the Commission's authority, and threatens to compromise the Commission's ability to adequately investigate violations of its rules."<sup>80</sup> A higher proposed forfeiture is thus appropriate given the extent and willfulness

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<sup>72</sup> Under the circumstances here we do not propose a separate forfeiture for Neon's deceptive marketing. Rather, consistent with prior slamming and cramming NALs that involved evidence of deceptive marketing, we upwardly adjust the proposed base forfeiture for the underlying cram violation that is coupled with direct evidence of such misconduct. *See, e.g., USTLD NAL*, 29 FCC Rcd at 836, para. 25; *Central NAL*, 29 FCC Rcd at 5530, para. 26.

<sup>73</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 CFR § 1.80(b)(4), Note to Paragraph (b)(4); Section I. *Base Amounts for Section 503 Forfeitures*.

<sup>74</sup> *See supra* para. 18, note 47.

<sup>75</sup> *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297, para. 3 (2002).

<sup>76</sup> The two instances of apparent violations of Section 1.17 of the Rules are identified in the Appendix.

<sup>77</sup> 47 CFR § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114, Appendix A, Section I.

<sup>78</sup> *See, e.g., GPSPS NAL*, 30 FCC Rcd at 2533, para. 28 (upwardly adjusting the base forfeiture to \$25,000 for the failure to respond fully to an LOI).

<sup>79</sup> *See, e.g., Net One Forfeiture Order*, 29 FCC Rcd at 264-66, paras. 1-4 (imposing \$25,000 penalty for failure to respond fully to an LOI after the deadline for responding was extended by the Bureau), *petition for reconsideration denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015).

<sup>80</sup> *Technical NAL*, 28 FCC Rcd at 1020, para. 8 (alteration omitted) (proposing a \$25,000 forfeiture for failure to provide a complete response to an LOI).

of Neon's violation.<sup>81</sup> In addition, in light of the Company's egregious misconduct and the demonstrated harm to consumers from the apparent violations, we will consider initiating proceedings against the Company to revoke its Commission authorizations after the Company has an opportunity to respond to this Notice of Apparent Liability for Forfeiture.

25. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$3,963,722, for which Neon is apparently liable.

#### IV. CONCLUSION

26. Based on the facts and record before us, we have determined that Neon has apparently willfully and repeatedly violated Sections 201(b) and 258 of the Act, Sections 1.17 and 64.1120 of the Rules, and a Commission order. As such, Neon is apparently liable for a forfeiture of \$3,963,722.

#### V. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>82</sup> and Section 1.80 of the Rules,<sup>83</sup> Neon Phone Service, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of three million, nine hundred and sixty-three thousand, and seven hundred twenty-two dollars (\$3,963,722) for willful and repeated violations of Sections 201(b) and 258 of the Act,<sup>84</sup> Sections 1.17 and 64.1120 of the Rules,<sup>85</sup> and a Commission order.

28. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>86</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Neon Phone Service, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 31 and 32 below.

29. 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. Neon Phone Service, Inc. shall send electronic notification of payment to Lisa Williford at [lisa.williford@fcc.gov](mailto:lisa.williford@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.<sup>87</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter 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:

- 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

<sup>81</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>82</sup> 47 U.S.C. § 503(b).

<sup>83</sup> 47 CFR § 1.80.

<sup>84</sup> 47 U.S.C. §§ 201(b), 258.

<sup>85</sup> 47 CFR § 64.1120.

<sup>86</sup> 47 CFR § 1.80.

<sup>87</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

30. Any request for making 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.<sup>88</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

31. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>89</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau, Telecommunications Consumers Division, and to Kristi Thompson, Acting Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Mika Savir and Erica McMahon at mika.savir@fcc.gov and erica.mcmahon@fcc.gov.

32. 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 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.

33. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Marcela Getman, President, Neon Phone Service, Inc., 3810 Murrell Road, Suite 272, Rockledge FL 32955.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>88</sup> See 47 CFR § 1.1914.

<sup>89</sup> 47 CFR §§ 1.16, 1.80(f)(3).

## APPENDIX

Apparent violations of Sections 258 and 201(b) of the Act			
	Complainant	Date of carrier change and/or date charge placed on consumer's bill	Apparent violation
1.	██████████	10/3/16 11/13/16	Section 258 slam Section 201(b) cram
2.	██████████	10/4/16 11/22/16	Section 258 slam Section 201(b) cram
3.	Toepfer, R. #1283394	10/11/16	Section 201(b) cram
4.	Deganis, S. #1311588	10/11/16	Section 258 slam
5.	Brown, V. #1364417	10/17/16 10/18/16	Section 258 slam Section 201(b) cram
6.	Martinez, O. #1275685	11/1/16	Section 201(b) cram
7.	Torres, R. #1332814	11/4/16 11/19/16	Section 258 slam Section 201(b) cram
8.	Domingo, J. BBB	11/7/16	Section 258 slam
9.	██████████	11/7/16	Section 258 slam
10.	██████████	11/8/16	Section 201(b) cram
11.	Gubert, G. #1379535	11/16/16 12/24/16	Section 258 slam Section 201(b) cram
12.	██████████	11/19/16 12/25/16	Section 258 slam Section 201(b) cram
13.	Quave, C. #1387956	11/25/16	Section 201(b) cram
14.	Rodriguez, R. #1279647	12/1/16	Section 201(b) cram
15.	Llerandi, J. #1359770	12/3/16	Section 201(b) cram Section 201(b) misrepresentation
16.	Ruedisueli, J. #1355199	12/13/16	Section 201(b) cram
17.	Muniz, E. #1336704	12/17/16	Section 201(b) cram
18.	██████████	12/17/16 4/13/17	Section 258 slam Section 201(b) cram
19.	Crabtree, A. #1381424	1/2/17	Section 201(b) cram
20.	██████████	1/3/17	Section 201(b) cram
21.	Castillo, L. #1310925	1/3/17	Section 201(b) cram
22.	Bazan, A. #1368430	1/24/17	Section 201(b) cram

23.	Gonzalez, R. #1458481	2/3/17	Section 201(b) cram
24.	Ybarra, E. #1502397	2/13/17	Section 201(b) cram
25.	Danus, B. #1659317	3/14/17 5/12/17	Section 258 slam Section 201(b) cram
26.	Quintas, G. #1658952	4/20/17 5/16/17	Section 258 slam Section 201(b) cram
27.	Quinones. C. #1729823	4/17/17 5/18/17	Section 258 slam Section 201(b) cram
<b>Apparent Violations of Section 1.17 of the Rules</b>			
	<b>Complainant</b>	<b>Date Neon provided TPV to the Commission</b>	<b>Violation</b>
1.	R. Toepfer	4/11/17	Section 1.17
2.	S. Deganis	4/11/17	Section 1.17

**JOINT STATEMENT OF  
CHAIRMAN AJIT PAI AND COMMISSIONER MIGNON CLYBURN**

Re: *Neon Phone Service, Inc.*, File No. EB-TCD-17-00023719.

Today's proposed penalty of nearly \$4 million against Neon Phone Service, Inc. (Neon) once again sends a clear message: American consumers may not be charged for services that they did not request, and when the Commission finds evidence that companies have engaged in this conduct, we will not hesitate to act.

We're also pleased that the Commission has agreed to consider revoking Neon's Commission authorizations after it has had the opportunity to respond to this Notice of Apparent Liability. If companies egregiously flout our rules, this option should be on the table.



**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Neon Phone Service, Inc.*, File No. EB-TCD-17-00023719.

Fraudsters who exploit consumer phone bills deserve no quarter. With today's Notice of Apparent Liability, we propose a penalty of nearly \$4 million on Neon Phone Service for engaging in all sorts of ugly behavior: switching consumers' service providers without their consent, sticking unwanted charges on consumer bills, and lying to the Commission. These charges are serious, but they are not unique, because they are part of a pattern of similar behavior by others associated with Neon Phone Service, some of whom previously have been subject to multiple Commission enforcement actions.

When do we say enough is enough?

I believe Neon Phone Service deserves due process under the law. But I also believe the Commission should go further to stop these bad actors from engaging in this same fraud again. This agency should use every tool we have at our disposal to stop wrongdoers in their tracks and prevent them from repeating these scams. When entities repeatedly violate our universal service rules, the Commission suspends and debars them from participation in agency programs. It is time for the Commission to take a fresh look at its authority so it can put in place similar policies here—and stop fraudulent actors before they cheat any other consumers.