

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

In the Matter of	)	
	)	File No. ENF-99-01
Long Distance Direct, Inc.	)	
	)	NAL/Acct. No. 916EF0003
Apparent Liability for Forfeiture	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: December 16, 1998;

Released: December 17, 1998

By the Commission:

**I. INTRODUCTION**

1. By this Notice of Apparent Liability for Forfeiture (NAL),<sup>1</sup> we initiate enforcement action against Long Distance Direct, Inc. (LDDI).<sup>2</sup> For the reasons set forth below, we find that LDDI apparently willfully or repeatedly violated section 258 of the Communications Act of 1934, as amended (the Act),<sup>3</sup> as well as Commission rules and

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<sup>1</sup> See 47 U.S.C. § 503(b)(4)(A). The Commission has authority under this section of the Act to assess a forfeiture penalty against a common carrier if the Commission determines that the carrier has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation, or order issued by the Commission under the Act. The section provides that the Commission must assess such penalties through the use of a written notice of apparent liability.

<sup>2</sup> LDDI is a wholly owned subsidiary of Long Distance Direct Holdings (LDDI Holdings), both of which are headquartered at One Blue Hill Plaza, Suite 1430, Pearl River, New York 10965. According to Dun & Bradstreet Business Information Report # 78-587-0239, LDDI, a New York corporation, began operations in 1991 and serves as the long distance resale component of LDDI Holdings. LDDI Holdings, a publicly traded Nevada corporation, currently controls both LDDI and LDDI Marketing, the sales and marketing component of the holding company. Steven L. Lampert serves as the President and Chairman of LDDI and LDDI Marketing. LDDI currently employs 40 persons and reports approximate sales for 1997 of \$4,900,000. LDDI Holdings reported to the Securities and Exchange Commission gross revenues of \$8,500,000 for the year ending December 31, 1997. See Form 10KSB, Securities and Exchange Commission File No. 0-22591, June 19, 1998; also see Dun & Bradstreet Business Information Report, DUNS # 61-447-4310, November 7, 1998.

<sup>3</sup> 47 U.S.C. § 258. Section 258 makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."

orders,<sup>4</sup> by changing the preferred interexchange carriers (PICs) of twenty-five consumers without their proper authorization.<sup>5</sup> We also find that LDDI apparently willfully or repeatedly violated Section 201(b) of the Act,<sup>6</sup> by including charges on the complainants' telephone bills for services or products which the complainants neither requested nor authorized. The practice of including, placing, or submitting unauthorized, misleading, or deceptive charges for products or services on an end-user consumer's telephone bill is commonly referred to as "cramming." These violations are particularly egregious because LDDI, a long distance reseller,<sup>7</sup> appears to have submitted the change in the complainants' long-distance service providers, and billed the complainants for "membership fees," simply based upon consumers' calls to a "psychic hotline service," or in some cases, without any evidence of contact with the consumer prior to imposing the charges.<sup>8</sup> Based upon our review of the facts and circumstances surrounding these egregious apparent violations, we find that LDDI is apparently liable for a forfeiture in the amount of forty thousand (\$40,000) for each of the slamming violations, and forty thousand (\$40,000) for each of the cramming violations, resulting in a total forfeiture amount of two million dollars (\$2,000,000).<sup>9</sup>

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<sup>4</sup> See, e.g., 47 C.F.R. § 64.1150; *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket. No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997) (*1997 FNPRM & Order on Reconsideration.*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995) (*LOA Order*), stayed in part, 11 FCC Rcd 856 (1995) (*In-bound Stay Order*); *Policies and Rules Concerning Changing Long Distance Carriers*, 7 FCC Rcd 1038 (1992) (*PIC Change Order*), recon. denied, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 911 (1985) (*Allocation Order*), *Investigation of Access and Divestiture Related Tariffs*, 101 FCC 2d 935 (Com. Car. Bur. 1985) (*Waiver Order*), recon. (of both *Allocation Order* and *Waiver Order*) denied, 102 FCC 2d 503 (1985) (*Reconsideration Order*).

<sup>5</sup> The practice of changing a consumer's PIC without the consumer's proper authorization is commonly referred to as "slamming."

<sup>6</sup> 47 U.S.C. § 201(b). This section provides in pertinent part that "[a]ll charges, practices, classifications, and regulations for and in connection with ... communication service shall be just and reasonable...."

<sup>7</sup> Resellers purchase "bulk" telecommunications services from long-distance providers and resell them to their customers.

<sup>8</sup> We note that the Commission's rules and orders require that interexchange carriers (IXCs) submit PIC-change orders to local exchange carriers (LECs), who are then obligated to make the PIC-change absent some indication that the request is not legitimate. See *LOA Order*, 10 FCC Rcd 9560 (1995); *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (Com. Car. Bur. 1985).

<sup>9</sup> Section 503(b)(2)(B) provides for forfeitures up to \$100,000 for each violation or a maximum of \$1,000,000 for each continuing violation by common carriers or an applicant for any common carrier license,

2. As described in more detail below, the consumer complaints that support this NAL paint a disturbing picture of LDDI's apparent disregard for following the requirements of the Communications Act and the Commission's rules and orders. The facts in the complaints appear to establish a repeated pattern of conduct by LDDI to change consumers' long distance services and to bill consumers for "membership fees" without their authorization. In fact, a number of consumers state that they never contacted or engaged in any transaction with LDDI to request either a change in their PIC or membership in any type of psychic network prior to receiving a bill from LDDI. Each of the complainants here initially discovered that his or her long distance service had been changed to LDDI after a review of their long distance telephone bills or after receiving a solicitation by another long distance carrier. The complainants then attempted to contact LDDI to determine under what authority LDDI had changed their PIC. Many consumers were unable to reach LDDI even after repeated attempts. Those that were successful in reaching LDDI were often told that the PIC change had been authorized by a call made from the complainant's telephone to the Psychic Friends hotline. After complainants' contact with LDDI to complain about the unauthorized PIC changes, the complainants discovered on their next telephone bill that not only had LDDI continued to provide service, it had also imposed additional, unauthorized charges on the complainants' telephone bills. Despite being confronted with repeated evidence of this unreasonable behavior, LDDI alleges that the complainants contacted one of LDDI's marketing partners to request the PIC change and the services or products subsequently billed by LDDI. According to LDDI, it is not required to obtain any authorization or verification from a consumer to change the consumer's PIC or to include unexplained charges on the consumer's bill if the consumer initiated the transaction with LDDI through the use of a customer-initiated call. As discussed below, we find LDDI's practices to be a violation of sections 201(b) and 258 of the Act, and Commission rules and orders.

3. As an additional measure, we require LDDI to file with this Commission within thirty (30) days of the date of this NAL, a compliance plan detailing the actions it has taken and the procedures it has established to ensure compliance with sections 201(b) and 258 of the Act and this Commission's rules and orders relating to PIC changes. The compliance plan shall set forth procedures designed to enable LDDI promptly to identify and address consumer inquiries and concerns about its PIC-change practices. The plan shall also include the steps LDDI will take to ensure that the charges it places on consumer's telephone bills are legitimate. This may include the authorization and verification procedures LDDI will utilize to ensure charges are accurate and clearly understood by consumers. We take this action in response to the egregious and repeated

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permit, certificate or similar instrument. 47 U.S.C. § 503(b)(2)(B). We note that the Debt Collection Improvement Act of 1996 (DCIA), Pub L. No. 104-134, § 31001, 110 Stat. 1321 (1996), requires that civil monetary penalties assessed by the federal government be adjusted for inflation based on the formula outlined in the DCIA. Thus, the statutory maxima pursuant to section 503(b)(2)(B) increased from \$100,000 and \$1,000,000 to \$110,000 and \$1,100,000 respectively. *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

nature of the apparent violations and LDDI's repeated failure to respond fully to Commission Notices of Informal Complaint. We note that we are continuing to review complaints filed against LDDI<sup>10</sup> and that the Commission may assess additional forfeitures or take other enforcement action if appropriate.

## II. THE CONSUMER COMPLAINTS

4. Our action is based on a joint investigation conducted by the Common Carrier Bureau and the Compliance and Information Bureau concerning twenty-five consumer complaints, filed with the Commission between May 22, 1998 and June 30, 1998, that allege both slamming and cramming by LDDI. As set forth below, all of the complainants contend that LDDI converted their preferred interexchange carriers without their express knowledge and consent. Complainants also contend that they were charged a membership fee for a service that they did not request. Further, some complainants assert that LDDI did not have adequate consumer service lines or representatives to resolve their complaints. The complainants are: Ms. Georgette Cox of Daytona Beach, Florida; Ms. Beverly Kelly of Manahawkin, New Jersey; Mr. William Spreine of Costa Mesa, California; Ms. Sharon Morey of Nottingham, New Hampshire; Ms. Rochelle Hoffman of Lakewood, Colorado; Dr. Angela Rhone of Coral Ridge, Florida; Dr. Arthur M. Riehl of Jeffersonville, Indiana; Mr. Robert Trumbauer of Annapolis, Maryland; Ms. Catherine Yerly of Pasadena, California; Ms. Connie Sapp of Broken Arrow, Oklahoma; Mr. Gerald Holliday of Richmond, Virginia; Ms. Claire Hart of North Conway, New Hampshire; Mr. David Pearson of Springfield, Virginia; Ms. Mary Collins of Corona, California; Mr. Paul James Dimitriu of San Diego, California; Mr. Erwin Ross of Centerville, Massachusetts; Mr. Joseph Volanto, Jr. of Santa Maria, California; Mr. Gregory Fisher of Franklin Park, Illinois; Ms. Irene Baran of Brooklyn, New York; Ms. Karen Jones of Riverdale, Georgia; Ms. Elizabeth Alderson of Kennewick, Washington; Mr. and Mrs. Russell Kostige of Miramar, Florida; Ms. Diane Loosbrock of Naperville, Illinois; Gary Barney of Vernal, Utah; and Gene Brewer of Wixom, Michigan. The pertinent facts underlying these complaints are set forth below.

### A. The Cox Complaint

5. The complaint filed by Ms. Georgette Cox on June 1, 1998 represents a typical example of the apparent fraudulent activity engaged in by LDDI in connection with its PIC-

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<sup>10</sup> During a period between January 1, 1998 and October 31, 1998, the Commission's National Call Center received 410 consumer complaints alleging unauthorized PIC changes by LDDI. During the same period, the National Call Center received 139 consumer complaints alleging cramming by LDDI. During that same period, Common Carrier's Bureau's Consumer Protection Branch received 291 consumer complaints also alleging unauthorized PIC changes and cramming by LDDI. We have targeted these twenty five complaints described herein for development of a full record in support of the instant enforcement action. The Commission retains its discretion, however, to pursue further action with respect to any of the complaints it has received against LDDI.

change and cramming practices.<sup>11</sup> In her complaint, Ms. Cox alleges that her preferred interexchange carrier was changed from AT&T Corporation (AT&T) to LDDI without her knowledge or consent.<sup>12</sup> Ms. Cox explains that she first became aware that her long distance service had been switched when she received a marketing solicitation from AT&T on March 16, 1998, requesting that she switch her service back to AT&T.<sup>13</sup> Ms. Cox states that she eventually contacted LDDI and advised the company that she had not given it permission to change her PIC and she would not be paying any LDDI bill. Then, in May 1998, Ms. Cox states that she received a second bill<sup>14</sup> from LDDI containing charges in the amount of \$44.85 for a "membership fee" and \$15.85 for "other charges."<sup>15</sup> This bill also contains a message welcoming the recipient as a "Friends to Friends Charter Member."<sup>16</sup> Ms. Cox states that she did not authorize a membership to "Friends to Friends." In her statement supporting her complaint, Ms. Cox explains that "out of curiosity" she did place a call to a 900 number for the Psychic Friends Network in August or September of 1997. She contends that she was immediately put on hold after reaching the service and hung up before speaking with anyone. Ms. Cox states that she never agreed to accept membership in "Friends to Friends Psychic" or any similar service, never received a courtesy call from LDDI, as LDDI contends, and was unaware of any welcoming postcards for LDDI long distance service.<sup>17</sup>

6. The Common Carrier Bureau's Consumer Protection Branch forwarded the Cox Complaint to LDDI along with a Notice of Informal Complaint (Notice) in accordance with the

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<sup>11</sup> Georgette P. Cox, Informal Complaint No. 98-14510 (June 1, 1998) (Cox Complaint).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* BellSouth reported that a PIC-change occurred on February 24, 1998. *See* BellSouth Response to Notice of Informal Complaint No. IC-98-14510 (filed July 9, 1998).

<sup>14</sup> Ms. Cox states that the first bill she received from LDDI for the amount of \$10.31 arrived in mid-April 1998. Ms. Cox declined to pay this bill as she believed she had been slammed. *See* Declaration of Georgette P. Cox, IC-98-14510 (July 23, 1998) and Cox Complaint. Ms. Cox includes in her complaint to the Commission copies of the telephone bills at issue.

<sup>15</sup> In further support of her complaint, Ms. Cox submitted a to the Compliance and Information Bureau a declaration filed on July 28, 1998. *See* Declaration of Georgette P. Cox, IC-98-14510 (July 28, 1998).

<sup>16</sup> The message reads as follows:

"Welcome! You are now confirmed as a Friends to Friends Charter Member. This exciting new program is joining friends from all across the country to create the most powerful psychic force ever! Your February membership is shown as an adjustment on this invoice. . . ."

<sup>17</sup> *See* Supplemental Declaration of Georgette P. Cox, IC-98-14510 (November 11, 1998).

Commission's rules.<sup>18</sup> In response, LDDI filed with the Commission a brief letter stating that LDDI had received the order to transfer Ms. Cox's long distance service from one of its previous marketing partners, Psychic Friends Network.<sup>19</sup> LDDI states that Psychic Friends Network provided LDDI with orders for long distance changes and membership billing. According to LDDI, subsequent to receiving Ms. Cox's order for a change in long distance service, Psychic Friends Network filed for Chapter 11 bankruptcy protection. Finally, LDDI states that it had cancelled Ms. Cox's account and "issued a credit for membership and membership fees."

7. On August 24, the Commission issued to LDDI a Second Notice of Informal Complaint (Second Notice) concerning a number of complaints, including the Cox Complaint.<sup>20</sup> In the Second Notice, the Commission asked LDDI to submit information regarding, *inter alia*, LDDI's written authorization procedures and whether calls made to the Psychic Friends Network automatically authorized a change in a consumer's long distance service. As part of its information request, the Commission asked LDDI to produce copies of marketing or information scripts LDDI used during the complainant's initial telephone call to LDDI, audio tapes of marketing or authorization presentations, and a copy of the "Courtesy Call" information script and "Welcome Postcard" LDDI referred to in earlier correspondence with the Commission.<sup>21</sup> In response, LDDI filed a brief letter explaining that Friends to Friends Network, LDDI's former marketing partner responsible for soliciting the Cox account, had filed for Chapter 11 bankruptcy protection and thus LDDI was unable to retrieve the information that LDDI had referred to in prior correspondence with the Commission.<sup>22</sup> LDDI also included a copy of the flyer it claimed to have mailed to Ms. Cox with her first membership billing sent by LDDI. The flyer explains that "The Psychic Friends is pleased to enroll you in the all-new *FRIENDS TO FRIENDS* total telephone communications program. As a *FRIENDS TO FRIENDS* Charter Member you have been switched *FREE OF CHARGE* to America's lowest cost, highest quality long-distance provider LDDI absolutely *FREE* of charge."<sup>23</sup> Finally, LDDI stated that it did not provide any

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<sup>18</sup> Notice of Informal Complaint No. IC-98-14510 (June 24, 1998). *See also* 47 C.F.R. §§ 1.711-1.718 (regarding the Commission's procedures for processing informal complaints filed against carriers).

<sup>19</sup> LDDI Response to Notice of Informal Complaint No. IC-98-14510 (July 9, 1998).

<sup>20</sup> Second Notice of Informal Complaint No. IC-98-14510 (August 24, 1998).

<sup>21</sup> *Id.* In a response to a Specialized Notice of Informal Complaint for related complaints, LDDI stated that "[e]very order received by LDDI is given a courtesy call and sent a Welcome Postcard." *See* LDDI Responses to Specialized Notice of Informal Complaint (August 3, 1998).

<sup>22</sup> LDDI Response to Second Notice of Informal Complaint, IC-98-14510 (September 1, 1998).

<sup>23</sup> *Id.* LDDI does not explicitly state whether there is a connection between the "Psychic Friends" and "Friends to Friends" network.

scripts for customer service representatives to use during welcome calls to new customers.<sup>24</sup> According to LDDI, the call it made to Ms. Cox was informal and the customer had a chance to cancel service at that time. We note that there is no evidence that LDDI sent Ms. Cox a copy of the Welcome Postcard.<sup>25</sup>

## B. The Kelly Complaint

8. The complaint filed by Mrs. Beverly Kelly on June 22, 1998, provides a very similar description of the apparent fraudulent activity engaged in by LDDI related to its PIC-change and cramming practices.<sup>26</sup> In her complaint, Mrs. Kelly alleges that her preferred interexchange carrier was switched from EXCEL Telecommunications, Inc. (EXCEL) to LDDI without her knowledge or consent.<sup>27</sup> Mrs. Kelly explains that she first became aware that her long distance service had been switched when she received a second phone bill from LDDI.<sup>28</sup> As with Ms. Cox, this bill contained charges in the amount of \$44.85 for a "membership fee" and \$15.85 for "other charges" in addition to a message welcoming the recipient as a "Friends to Friends Charter Member."<sup>29</sup> In her statement supporting her complaint, Ms. Kelly explains that as a result of a television advertisement, she placed a call to the Psychic Friends Network in January 1998, although she spoke to no one during that call.<sup>30</sup> She contends that she was unable to speak with a representative about the Psychic Friends Network and therefore "dropped the matter."<sup>31</sup> Ms. Kelly unsuccessfully attempted to contact LDDI on three different occasions to ask LDDI how it had received authority to change her preferred interexchange service and bill her for a membership

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<sup>24</sup> *Id.*

<sup>25</sup> *See* Cox Complaint and Supplemental Declaration of Georgette P. Cox. LDDI does not provide a copy of the "Welcome Postcard" in its responses.

<sup>26</sup> Beverly & Joseph Kelly, Informal Complaint No. 98-16587 (June 22, 1998) (Kelly Complaint).

<sup>27</sup> *Id.* In further support of her complaint, Ms. Kelly submitted to the Compliance and Information Bureau a declaration dated June 29, 1998. *See* Declaration of Beverly Kelly, IC-98-16587 (June 29, 1998); *see also* Supplemental Declaration of Beverly Kelly, IC-98-16587 (October 20, 1998). Bell Atlantic reported that a PIC-change occurred on February 19, 1998. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-16587 (filed December 17, 1998).

<sup>28</sup> *See* Kelly Complaint; Declaration of Beverly Kelly.

<sup>29</sup> *See* Kelly Complaint. Ms. Kelly, in filing her complaint with the Commission, attaches a copy of the telephone bill in question.

<sup>30</sup> *See* Declaration of Beverly Kelly.

<sup>31</sup> *Id.* Mrs. Kelly notes that she "spoke to no person, gave no address. . . ." *See* Kelly Complaint.

that she had not requested.<sup>32</sup>

9. On July 24, 1998, the Commission issued to LDDI a Specialized Notice of Informal Complaint (Specialized Notice) concerning a number of complaints, including the Kelly Complaint.<sup>33</sup> In the Specialized Notice, the Commission asked LDDI to submit information regarding, *inter alia*, LDDI's PIC-change verification procedures, whether Ms. Kelly's long distance service was changed, or charges were placed on her telephone bill, after her call to the "Psychic Friends Network," and procedures LDDI utilizes to respond and resolve consumer complaints.<sup>34</sup> As part of its information request, the Commission asked LDDI to produce Letters of Agency (LOAs), tape recordings of sales calls, marketing scripts, or any type of verification LDDI utilized to change the consumer's PIC or place charges on consumer's bills.<sup>35</sup> In response to the Specialized Notice, LDDI explains that consumers signed up for LDDI service by calling a toll-free number shown on a television commercial.<sup>36</sup> LDDI did not provide the Commission with any evidence of authorization or verification. According to LDDI, because the call was made by the complainant, "a written and/or recorded authorization is not required for transfer of service."<sup>37</sup> LDDI's response also details the credits it made to Ms. Kelly's account and argues that the consumer was not injured by the unauthorized switch and charges because of the credits issued.<sup>38</sup>

10. On August 24, 1998, the Commission included the Kelly Complaint in its Second Notice of Informal Complaint as described above in the Cox Complaint.<sup>39</sup> On September 1, 1998, LDDI submitted the same form letter regarding the Kelly Complaint that it submitted regarding the Cox complaint along with a flyer LDDI mailed to Kelly explaining the Friends to Friends program.<sup>40</sup>

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<sup>32</sup> See Kelly Complaint.

<sup>33</sup> Specialized Notice of Informal Complaint No. IC-98-16587 (July 24, 1998). The Commission issued identical notices for other related complaints on July 27 and July 28, 1998.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16587 (August 3, 1998) (LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16587).

<sup>37</sup> In its response, LDDI cites to the Commission's *In-Bound Stay Order*, 11 FCC Rcd at 856.

<sup>38</sup> LDDI Response to Specialized Notice of Informal Complaint No. 98-16587.

<sup>39</sup> Second Notice of Informal Complaint No. IC-98-16587 (August 24, 1998).

<sup>40</sup> LDDI Response to Second Notice of Informal Complaint, IC-98-16587 (September 1, 1998).



### C. The Spreine Complaint

11. The complaint filed by Mr. William Spreine on May 27, 1998, further illustrates LDDI's apparently fraudulent activities. Mr. Spreine states that sometime in late 1997, he telephoned the Psychic Friends Network to request that they stop sending him unsolicited mail.<sup>41</sup> Mr. Spreine states further that before anyone answered, he hung up and decided to send a written request.<sup>42</sup> According to his complaint, on May 16, 1998, Mr. Spreine received a bill from LDDI for long distance charges, in addition to charges in the amount of \$44.85 for a "membership fee" and \$16.11 for "other charges."<sup>43</sup> This bill included a message welcoming the recipient as a "Friends to Friends Charter Member."<sup>44</sup> Mr. Spreine states that of the long distance calls itemized on his bill, only two are legitimate.<sup>45</sup> Mr. Spreine further states that the "[t]he LDDI bill was a surprise to me because neither I nor my wife had requested a switch of our long distance service."<sup>46</sup> According to Mr. Spreine, he neither provided authorization nor received any notice which specified a change in his long distance service from AT&T to LDDI.<sup>47</sup> In addition, Mr. Spreine provides the Commission with a declaration that he never requested nor authorized a membership in the Psychic Friends or Friends to Friends Network.<sup>48</sup>

12. On June 24, 1998, the Commission forwarded a Notice of Informal Complaint to LDDI regarding Mr. Spreine's complaint.<sup>49</sup> LDDI's response was practically identical to the letter

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<sup>41</sup> William Spreine, Informal Complaint No. 98-14550 (May 27, 1998) (Spreine Complaint).

<sup>42</sup> *Id.*

<sup>43</sup> *See* Spreine Complaint. Mr. Spreine, in filing his complaint with the Commission, attaches a copy of the telephone bill in question.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> In support of his complaint, Mr. Spreine filed a declaration in support of his complaint. *See* Declaration of William Spreine, IC-98-14550 (July 27, 1998).

<sup>47</sup> *Id.* Pacific Bell reported that a PIC-change occurred on March 3, 1998. *See* Pacific Bell Response to Notice of Informal Complaint No. IC-98-14550 (filed November 24, 1998).

<sup>48</sup> *See* Declaration of William Spreine and Supplemental Declaration of William Spreine (November 23, 1998).

<sup>49</sup> Notice of Informal Complaint No. IC-98-14550 (June 24, 1998).

it submitted in response to the Cox complaint.<sup>50</sup> LDDI's response claimed that it had received the order to transfer Mr. Spreine's long distance service from one of its previous marketing partners, Psychic Friends Network.<sup>51</sup> LDDI states further that it had cancelled Mr. Spreine's account and "issued a credit for membership and membership fees."<sup>52</sup> On August 24, 1998, the Commission included the Spreine Complaint in its Second Notice of Informal Complaint as described above in the Cox and Kelly Complaints.<sup>53</sup> On September 1, 1998, in response to the Spreine Complaint, LDDI submitted the same form reply letter and flyer that it submitted regarding the Cox and Kelly complaints.<sup>54</sup>

#### D. The Morey Complaint

13. Ms. Sharon Morey filed a complaint that illustrates perhaps one of the most flagrant examples of apparent fraudulent activity by LDDI. In Ms. Morey's complaint filed on May 28, 1998, she explains that she never contacted Psychic Friends nor telephoned the Psychic Friends Network or LDDI.<sup>55</sup> Furthermore, Ms. Morey states that she is the only adult in the household capable of making such a call.<sup>56</sup> Nonetheless, her long distance service was converted and unauthorized charges were included in a LDDI telephone bill.<sup>57</sup> Ms. Morey claims that after receiving a telephone call from AT&T in February asking her to return to its service and after placing a call to her local telephone company, Bell Atlantic, she realized her long distance service had been changed to LDDI.<sup>58</sup> Ms. Morey states that she then contacted LDDI who claimed that Psychic Friends Network submitted her name. Subsequently, Ms. Morey claims that she received

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<sup>50</sup> LDDI Response to Notice of Informal Complaint No. IC-98-14550 (July 9, 1998).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Second Notice of Informal Complaint No. IC-98-14550 (August 24, 1998).

<sup>54</sup> LDDI Response to Second Notice of Informal Complaint, IC-98-14550 (September 1, 1998).

<sup>55</sup> Sharon Morey, Informal Complaint No. 98-14542 (May 28, 1998) (Morey Complaint).

<sup>56</sup> In support of her complaint, Ms. Morey provided a declaration to the Compliance and Information Bureau dated July 13, 1998. *See* Declaration of Sharon Morey, IC-98-14542 (July 13, 1998).

<sup>57</sup> *Id.* Bell Atlantic reported that a PIC-change occurred on February 17, 1998. *See* Bell Atlantic Response to Notice of Informal Complaint No 98-14542. (filed July 15, 1998).

<sup>58</sup> *Id.*

a bill for \$76.95, the majority of which was for membership fees in the amount of \$59.80.<sup>59</sup> According to Ms. Morey's statement to the Commission, she "had never heard of" LDDI and "never ordered a membership."<sup>60</sup>

14. LDDI's responses to the Commission's Notice and Second Notice of Informal Complaint<sup>61</sup> regarding the Morey complaint contain information identical to LDDI's responses as described above. LDDI's response is again limited to reference to LDDI's marketing partnership with Psychic Friends and Friends to Friends Network and LDDI's efforts to provide credit for membership and long distance fees.<sup>62</sup> Contrary to Ms. Morey's statement that she never ordered a membership in Psychic Friends or Friends to Friends Network, never made a call to either service, and never authorized PIC-change to LDDI, LDDI insists that Ms. Morey placed a call to its marketing partners to authorize a PIC-change and membership charges.<sup>63</sup> LDDI provided no evidence, however, of when such call was made, what number was called, or any details about the marketing material soliciting such a call.

#### **E. The Hoffman Complaint**

15. The informal complaint filed by Rochelle Hoffman alleges that LDDI converted her long distance carrier from AT&T to LDDI without her authorization.<sup>64</sup> Ms. Hoffman states that she never had any contact with LDDI prior to the apparent slamming and cramming incidents.<sup>65</sup>

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<sup>59</sup> *Id.* Ms. Morey, in filing a her complaint with the Commission, attaches a copy of the telephone bill in question.

<sup>60</sup> *See* Declaration of Sharon Morey, *also see* Supplemental Declaration of Sharon Morey (November 9, 1998).

<sup>61</sup> Notice of Informal Complaint No. IC-98-14542 (June 24, 1998); Second Notice of Informal Complaint No. IC-98-14542 (August 24, 1998).

<sup>62</sup> LDDI Response to Notice of Informal Complaint No. IC-98-14542 (July 9, 1998); LDDI Response to Second Notice of Informal Complaint, IC-98-14542 (September 1, 1998).

<sup>63</sup> *See* Declaration of Sharon Morey; *also see* LDDI Response to Second Notice of Informal Complaint IC-98-14542.

<sup>64</sup> Rochelle Hoffman, Informal Complaint No. IC-98-16613 (June 19, 1998) (Hoffman Complaint).

<sup>65</sup> In support of her complaint, Ms. Hoffman provided a declaration and supplemental declaration to the Compliance and Information Bureau. *See* Declaration of Rochelle Hoffman, IC-98-16613 (June 25, 1998), also

In a manner similar to the Cox and Kelly complaints, Ms. Hoffman states that she contacted the Psychic Friends network in 1997, but was placed on hold and never spoke to anyone regarding psychic services.<sup>66</sup> The telephone bill included in Ms. Hoffman's complaint shows charges for a "Membership Fee" in the amount of \$44.85 and "Other Charges" in the amount of \$16.08.<sup>67</sup> Ms. Hoffman's complaint further contends that, upon determining that LDDI had converted her long distance service from AT&T, she contacted LDDI to cancel the service.<sup>68</sup> According to Ms. Hoffman, she never received any notification from LDDI indicating that her long distance service would be changed, never requested or agreed to membership in a psychic service, and never received information from LDDI regarding membership.<sup>69</sup> Finally, Ms. Hoffman refers to the LDDI bill which references her husband William Hoffman as the party for billing purposes.<sup>70</sup> Ms. Hoffman states in her complaint and her declaration that her husband has been deceased for over four years and was removed from the billing account shortly after his death.<sup>71</sup>

16. LDDI's responses to the Commission's Specialized Notice and Second Notice of Informal Complaint<sup>72</sup> for Ms. Hoffman contain identical information as LDDI provided in the response for the Kelly complaint.<sup>73</sup>

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*see* Supplemental Declaration of Rochelle Hoffman, IC-98-16613 (October 29, 1998).

<sup>66</sup> *See* Supplemental Declaration of Rochelle Hoffman.

<sup>67</sup> *See* Hoffman Complaint.

<sup>68</sup> *Id.* U.S. West reported that a PIC-change occurred on February 4, 1998. *See* US WEST Response to Notice of Informal Complaint No. 98-16613 (filed December 10, 1998).

<sup>69</sup> *See* Declaration of Rochelle Hoffman.

<sup>70</sup> *Id.* In her complaint, Ms. Hoffman provides the Commission with a copy of the LDDI telephone bill at issue.

<sup>71</sup> *See* Declaration of Rochelle Hoffman; *also see* Hoffman Complaint.

<sup>72</sup> Hoffman Complaint, Specialized Notice of Informal Complaint No. IC-98-16613 (July 24, 1998), Second Notice (August 24, 1998).

<sup>73</sup> Hoffman Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16613 (August 3, 1998); Hoffman Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14380 (September 1, 1998).

## F. The Rhone Complaint

17. The informal complaint of Dr. Angela Rhone is a further example of the apparent fraudulent activity by LDDI.<sup>74</sup> Dr. Rhone's complaint alleges that LDDI converted her preferred interexchange carrier from LCI to LDDI and included charges on her telephone bill without her authorization.<sup>75</sup> Dr. Rhone contends in her complaint and the declaration in support of her complaint, that she was unaware of how LDDI changed her service or imposed charges on her bill.<sup>76</sup> Dr. Rhone notes that she did place a call to a psychic line in 1995 or 1996, but did not discuss or authorize conversion of long distance service.<sup>77</sup> Subsequently, Dr. Rhone received mail from Psychic Friends but treated it "as junk mail" and discarded the correspondence.<sup>78</sup> She states, however, that she never contacted LDDI, never requested a membership of any type, never received a "welcome postcard," and never received a courtesy call from LDDI.<sup>79</sup>

18. LDDI's responses to the Commission's Notice and Second Notice of Informal Complaint are practically identical to those discussed in the Cox, Kelly, Spreine, and Morey complaints.<sup>80</sup> In its July 9, 1998 response to the Commission's Notice of Informal Complaint, LDDI emphasizes its firm opinion that "Ms. Rhone is still responsible for any charges incurred while on service with LDDI" pursuant to Commission order.<sup>81</sup> LDDI, unlike other initial responses to Commission notices, offers to assess Dr. Rhone's charges at a rate equal to those she would have paid under service provided by LCI.<sup>82</sup> Two months later, in response to the Commission's Second Notice, LDDI then states that "Ms. Rhone (sic) account with our company

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<sup>74</sup> Angela Rhone, Informal Complaint No. 98-14389 (June 1, 1998) (Rhone Complaint).

<sup>75</sup> *Id.* Bell South reported that a PIC change occurred on February 20, 1998. *See* Bell South Response to Notice of Informal Complaint No. IC-98-14389 (filed July 28, 1998).

<sup>76</sup> In support of her complaint, Dr. Rhone provided a declaration to the Compliance and Information Bureau. *See* Declaration of Angela Rhone, IC-98-14389 (September 3, 1998).

<sup>77</sup> *See* Declaration of Angela Rhone.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> LDDI Response to Notice of Informal Complaint No. IC-98-14542 (July 9, 1998); LDDI Response to Second Notice of Informal Complaint, IC-98-14542 (September 1, 1998).

<sup>81</sup> LDDI Response to Notice of Informal Complaint No. IC-98-14542 (July 9, 1998).

<sup>82</sup> *Id.*

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has been cancelled and a full credit has been issued."<sup>83</sup>

### G. The Remaining Consumer Complaints

19. The remaining consumer complaints<sup>84</sup> that are the subject of this NAL are factually similar to the allegations in the complaints described above, and appear to establish a pattern of conduct by LDDI to change consumers' preferred long distance providers without authorization and to "cram" consumers by placing unauthorized charges on their telephone bills.<sup>85</sup> In each case,

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<sup>83</sup> LDDI Response to Second Notice of Informal Complaint, IC-98-14542 (September 1, 1998).

<sup>84</sup> The remaining consumer complaints are as follows: Arthur Riehl, Informal Complaint No. IC-98-14493 (May 28, 1998) (Riehl Complaint); Robert Trumbauer, Informal Complaint No. IC-98-16585 (June 25, 1998) (Trumbauer Complaint); Catherine Yerly, Informal Complaint No. IC-98-14381 (June 3, 1998) (Yerly Complaint); Connie Sapp, Informal Complaint No. IC-98-16599 (June 28, 1998) (Sapp Complaint); Gerald Holliday, Informal Complaint No. 98-16589 (June 24, 1998) (Holliday Complaint); Claire Hart, Informal Complaint No. IC-98-16574 (June 29, 1998) (Hart Complaint); David Pearson, Informal Complaint No. IC-98-14388 (May 28, 1998) (Pearson Complaint); Mary Collins, Informal Complaint No. IC-98-16610 (June 25, 1998) (Collins Complaint); Paul James Dimitriu, Informal Complaint No. IC-98-16611 (June 30, 1998) (Dimitriu Complaint); Erwin Ross, Informal Complaint No. IC-98-14557 (May 27, 1998) (Ross Complaint); Joseph Volanto, Informal Complaint No. IC-98-14537 (May 28, 1998) (Volanto Complaint); Gregory Fisher, Informal Complaint No. IC-98-16604 (May 18, 1998) (Fisher Complaint); Elizabeth Alderson, Informal Complaint No. IC-98-16598 (June 25, 1998) (Alderson Complaint); Irene Baran, Informal Complaint No. IC-98-16576 (June 30, 1998) (Baran Complaint); Gary Barney, Informal Complaint No. IC-98-14534 (June 3, 1998) (Barney Complaint); Karen Jones, Informal Complaint No. IC-98-14380 (June 4, 1998) (Jones Complaint); Virginia and Russell Kostige, Informal Complaint No. 98-14385 (June 2, 1998) (Kostige Complaint); Diane Loosbrock, Informal Complaint No. 98-16616 (June 25, 1998) (Loosbrock Complaint); Genene Brewer; Informal Complaint No. 98-16608 (June 24, 1998) (Brewer Complaint).

<sup>85</sup> The LEC responses to the Consumer Protection Branch's request for information confirm that PIC changes were made for each of the remaining consumers. The PIC changes for each of the complainants are as follows: Arthur Riehl: Ameritech reported that a PIC change occurred on March 3, 1998. *See* Ameritech Response to Notice of Informal Complaint No. IC-98-14493 (filed July 7, 1998); Robert Trumbauer: Bell Atlantic reported that a PIC change occurred on February 3, 1998. *See* Bell Atlantic Response to Notice of Specialized Informal Complaint No. IC-98-16585 (filed November 25, 1998); Catherine Yerly: PacBell reported that a PIC change occurred on March 3, 1998. *See* PacBell Response to Notice of Informal Complaint No. IC-98-14381 (filed July 8, 1998); Connie Sapp: GTE reported that a PIC change occurred on February 24, 1998. *See* GTE Response to Specialized Notice of Informal Complaint No. IC-98-16599 (filed July 31, 1998); Gerald Holliday, Bell Atlantic reported that a PIC change occurred on February 21, 1998. *See* Bell Atlantic Response to Specialized Notice of Informal Complaint No. 98-16589 (filed August 7, 1998); Claire Hart: Bell Atlantic reported that a PIC change occurred on February 17, 1998. *See* Bell Atlantic Response to Specialized Notice of Informal Complaint No. IC-98-16574 (filed August 11, 1998); David Pearson: Bell Atlantic reported that a PIC change occurred on February 21, 1998. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-14388 (filed September 15, 1998); Mary Collins: PacBell reported that a PIC change occurred on March 3, 1998. *See* PacBell Response to Specialized Notice of Informal Complaint No. IC-98-16610 (filed July 31, 1998); Paul James Dimitriu: PacBell

the complainant discovered that his or her long distance service had been changed to LDDI after reviewing a telephone bill or receiving a phone solicitation from another long distance company and then contacting their local exchange carrier. The consumers noticed, furthermore, that unexplained and unauthorized charges appeared on the telephone bills submitted by LDDI.

20. LDDI's responses to the Commission's Notices<sup>86</sup> forwarding these complaints are

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reported that a PIC change occurred on March 3, 1998. *See* PacBell Response to Specialized Notice of Informal Complaint No. IC-98-16611 (filed July 31, 1998); Erwin Ross: Bell Atlantic reported that a PIC change occurred on February 2, 1998. *See* Bell Atlantic Response to Notice of Informal Complaint No. IC-98-14557 (filed July 14, 1998); Joseph Volanto: GTE reported that a PIC change occurred in March of, 1998. *See* GTE Response to Notice of Informal Complaint No. IC-98-14537 (filed July 20, 1998); Gregory Fisher: Ameritech reported that a PIC change occurred on February 25, 1998. *See* Ameritech Response to Notice of Informal Complaint No. IC-98-16604 (filed July 31, 1998); Elizabeth Alderson: GTE reported that a PIC change occurred on February 2, 1998. *See* GTE Response to Specialized Notice of Informal Complaint No. IC-98-16598 (filed November 24, 1998); Irene Baran: Bell Atlantic reported that a PIC change occurred on February 21, 1998. *See* Bell Atlantic Response to Specialized Notice of Informal Complaint No. IC-98-16576 (filed July 28, 1998); Gary Barney: US WEST reported that a PIC change occurred on February 20, 1998. *See* US WEST Response to Notice of Informal Complaint No. IC-98-14534 (filed August 27, 1998); Karen Jones: BellSouth reported that a PIC change occurred on February, 27, 1998. *See* BellSouth Response to Notice of Informal Complaint No. IC-98-14380 (filed December 10, 1998); Virginia and Russell Kostige: BellSouth reported that a PIC change occurred on February 20, 1998. *See* Response to Notice of Informal Complaint No. 98-14385 (filed July 20, 1998); Diane Loosbrock: Ameritech reported that a PIC change occurred on February 23, 1998. *See* Ameritech Response to Specialized Notice of Informal Complaint No. 98-16616 (filed July 31, 1998); Genene Brewer: Ameritech reported that a PIC change occurred on February 20, 1998. *See* Ameritech Response to Specialized Notice of Informal Complaint No. 98-16608 (filed July 31, 1998).

<sup>86</sup> Riehl Complaint, Notice of Informal Complaint No. IC-98-14493 (June 24, 1998), Second Notice (August 24, 1998); Trumbauer Complaint, Specialized Notice of Informal Complaint No. IC-98-16585 (July 24, 1998), Second Notice (August 24, 1998); Yerly Complaint, Notice of Informal Complaint No. 14381 (June 24, 1998), Second Notice (August 24, 1998); Sapp Complaint, Specialized Notice of Informal Complaint No. IC-98-16599 (July 24, 1998), Second Notice (August 24, 1998); Holliday Complaint, Specialized Notice of Informal Complaint No. 98-16589 (July 24, 1998), Second Notice (August 24, 1998); Hart Complaint, Specialized Notice of Informal Complaint No. IC-98-16574 (July 28, 1998), Second Notice (August 24, 1998); Pearson Complaint, Notice of Informal Complaint No. IC-98-14388 (June 24, 1998), Second Notice (August 24, 1998); Collins Complaint, Specialized Notice of Informal Complaint No. IC-98-16610 (July 27, 1998), Second Notice (August 24, 1998); Dimitriu Complaint, Specialized Notice of Informal Complaint No. IC-98-16611 (July 27, 1998), Second Notice (August 24, 1998); Ross Complaint, Notice of Informal Complaint No. IC-98-14557 (June 24, 1998), Second Notice (August 24, 1998); Volanto Complaint, Notice of Informal Complaint No. IC-98-14537 (June 24, 1998), Second Notice (August 24, 1998); Fisher Complaint, Specialized Notice of Informal Complaint No. IC-98-16604 (July 24, 1998), Second Notice (August 24, 1998); Alderson Complaint, Notice of Informal Complaint No. IC-98-16598 (July 24, 1998), Second Notice (August 24, 1998); Baran Complaint, Notice of Informal Complaint No. IC-98-16576 (July 24, 1998), Second Notice (August 24, 1998); Barney Complaint, Notice of Informal Complaint No. IC-98-14534 (June 24, 1998), Second Notice (August 24, 1998); Jones Complaint, Notice of Informal Complaint No. IC-98-14380 (July 24, 1998), Second Notice (August 24, 1998); Kostige Complaint, Notice of Informal Complaint No. IC-98-14385 (June 24, 1998); Second Notice (August 24, 1998); Loosbrock Complaint,

similar to those submitted in the matters detailed above. In seven cases, LDDI files brief letters relating basic information about the charges it had assessed the complainants following the unauthorized PIC changes and cramming incidents.<sup>87</sup> In response to the Commission's further attempt to obtain information from LDDI regarding its PIC-change and billing practices regarding twelve of the complaints listed herein, LDDI argued that it is not required to obtain any authorization or verification from a consumer to change the consumer's PIC or to impose unexplained charges on the consumer's bill if the consumer initiated the transaction with LDDI through the use of a customer-initiated call.<sup>88</sup> In support, LDDI cites the Commission's *In-Bound Stay Order*, 11 FCC Rcd at 856. In response to a Second Notice, in which the Commission requested that LDDI provide it with more specific and detailed information regarding all of the complaints listed herein, LDDI contends that one of LDDI's marketing partners provided it with the complainants' accounts.<sup>89</sup> LDDI notes, however, that this marketing partner, Friends to

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Specialized Notice of Informal Complaint No. 98-16616 (July 24, 1998), Second Notice (August 24, 1998); Brewer Complaint, Specialized Notice of Informal Complaint No. 98-16608 (July 24, 1998), Second Notice (August 24, 1998).

<sup>87</sup> Riehl Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14493 (July 9, 1998); Yerly Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14381 (July 9, 1998); Pearson Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14388 (July 9, 1998); Ross Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14557 (July 9, 1998); Kostige Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14385 (July 9, 1998); Volanto Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14537 (July 9, 1998); Barney Complaint, LDDI Response to Notice of Informal Complaint No. IC-98-14534 (July 9, 1998).

<sup>88</sup> The responses at issue are: Trumbauer Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16585 (August 3, 1998); Sapp Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16599 (August 3, 1998); Holliday Complaint, LDDI Response to Specialized Notice of Informal Complaint No. 98-16589 (August 3, 1998); Hart Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16574 (August 3, 1998); Collins Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16610 (August 3, 1998); Dimitriu Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16611 (August 3, 1998); Alderson Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16598 (August 3, 1998); Baran Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-16576 (August 3, 1998); Jones Complaint, LDDI Response to Specialized Notice of Informal Complaint No. IC-98-14380 (August 3, 1998); Fisher Complaint, LDDI Response to Specialized Notice of Informal Complaint No. 98-16604 (August 3, 1998); Loosbrock Complaint, LDDI Response to Specialized Notice of Informal Complaint No. 98-16616 (August 3, 1998); and Brewer Complaint, LDDI Response to Specialized Notice of Informal Complaint No. 98-16608 (August 3, 1998).

<sup>89</sup> Riehl Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14493 (September 1, 1998); Trumbauer Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14549 (September 1, 1998); Yerly Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14381 (September 1, 1998); Sapp Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16599 (September 1, 1998); Holliday Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16589 (September 1, 1998); Hart Complaint, LDDI Response to Second Notice of Informal Complaint IC-98-



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Friends, filed for federal bankruptcy protection, making LDDI unable to retrieve any information referred to in its prior correspondence. LDDI provides no explanation for whether the "information received from [its own] marketing partners" included appropriate consumer authorization, nor does LDDI provide any information regarding whether LDDI's own marketing partners obtained the complainants' authorization to allow LDDI to bill for "membership charges" or "other charges" as were detailed on complainants' telephone bills.

### III. DISCUSSION

#### A. Violations Evidenced in the Complaints

21. The consumer complaints described above and LDDI's inadequate responses thereto establish a disturbing pattern of apparent callous disregard for the requirements of the Communications Act and the Commission's rules and orders.<sup>90</sup> LDDI has provided no evidence that any of the complainants requested a PIC change or requested any of the services for which they were billed by LDDI. As explained below, LDDI's business practices evidence apparent willful or repeated violations of sections 201(b) and 258 of the Act, as well as Commission rules and orders pertaining to PIC changes.<sup>91</sup>

##### 1. Commission Rules and Orders Concerning Slamming; Section 258 of the Communications Act

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16574 (September 1, 1998); Pearson Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14388 (September 1, 1998); Collins Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16610 (September 1, 1998); Dimitriu Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16611 (September 1, 1998); Ross Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14557 (September 1, 1998); Volanto Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14537 (August 24, 1998); Fisher Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16604 (September 1, 1998); Alderson Complaint, LDDI Response to Second Notice of Informal Complaint (September 1, 1998); Baran Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16576 (September 1, 1998); Barney Complaint, LDDI Response to Second Notice of Informal Complaint (September 1, 1998); Jones Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-14380 (September 1, 1998); Kostige Complaint, LDDI Response to Second Notice of Informal Complaint, IC-98-14385 (September 1, 1998); Loosbrock Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16616 (September 1, 1998); Brewer Complaint, LDDI Response to Second Notice of Informal Complaint No. IC-98-16608 (September 1, 1998).

<sup>90</sup> See 47 C.F.R. § 64.1150; *PIC Change Order*, 7 FCC Rcd at 1045.

<sup>91</sup> See 47 U.S.C. §§ 201(b), 258(b), 47 C.F.R. § 64.1150; *LOA Order*, 10 FCC Rcd 9560; *PIC Change Order*, 7 FCC Rcd at 1045.

22. In its *Allocation Order* and subsequent *Reconsideration Order*,<sup>92</sup> the Commission set forth rules and procedures for implementing equal access<sup>93</sup> and customer presubscription<sup>94</sup> to an IXC.<sup>95</sup> An essential aspect of the Commission's presubscription process is ensuring that carriers obtain the requisite authority prior to changing a customer's long-distance carrier. To that end, the Commission's rules and orders require that IXCs either obtain a signed letter of agency (LOA)<sup>96</sup> or, in the case of telemarketing solicitations, follow one of the telemarketing verification procedures before submitting PIC-changes to LECs on behalf of consumers.<sup>97</sup> Section 258 of the Act, adopted in 1996, affirms and expands the Commission's authority to deter, punish, and ultimately, eliminate slamming by making it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."<sup>98</sup>

23. Despite the requirements of the Commission's presubscription orders and rules, it appears that LDDI failed to obtain customers' authorization prior to changing their long-distance

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<sup>92</sup> See *supra* proceedings cited at note 3.

<sup>93</sup> Equal access for interexchange carriers (IXCs) is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), *vacated* (1998) (*Modification of Final Judgment* or "*MFJ*"). Equal access allows end users to access facilities of a designated IXC by dialing <1' only. *Allocation Order*, 101 FCC 2d at 911.

<sup>94</sup> Presubscription is the process by which each customer selects one primary interexchange carrier from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials "1," the customer accesses only the primary IXC's services. An end user can also access other IXCs by dialing either a five or seven-digit access code. *Id.* at 911; *Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, 9 FCC Rcd 2068, 2076-77 (1994).

<sup>95</sup> Pursuant to the *MFJ*, the Bell Operating Companies were ordered to provide equal access to their customers, where technically feasible, by September 1986. *Allocation Order*, 101 FCC Rcd at 911.

<sup>96</sup> An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929

<sup>97</sup> Pursuant to these procedures, IXCs must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; (3) utilize an independent third party to verify the subscriber's order; or (4) send an information package, including a prepaid, return postcard, within three days of the subscriber's request for a PIC change, and wait 14 days before submitting the subscriber's order to the LEC, so that the subscriber has sufficient time to return the postcard denying, cancelling or confirming the change order.

<sup>98</sup> 47 U.S.C. § 258.

carriers. LDDI is correct in asserting that the Commission's telemarketing *verification* requirements have been stayed with respect to consumer-initiated calls to IXCs.<sup>99</sup> This stay applies to the *verification* rules only; it does not apply to the requirement of the Act and the Commission's rules and orders that the PIC-change request actually be *authorized* by the consumer. Thus, LDDI's reliance on the Commission's *In-Bound Stay Order* is misplaced. When a customer initiates a call to an IXC and authorizes a switch in service, the IXC does not need to verify the consumer's authorization through one of the four telemarketing verification requirements. This does not relieve the carrier of the obligation to obtain appropriate authorization to switch service in the first instance. Authorization by its plain, common sense meaning connotes a knowing and affirmative assent to a request for action. More specifically, authorization is the giving of permission or authority to act.<sup>100</sup> The mere initiation of a call does not constitute authorization for an IXC to submit a PIC-change request. For example, Ms. Cox states that several months prior to being switched to LDDI she placed a call to the Psychic Friends Network but was placed on hold and hung up before speaking to anyone or hearing any recorded message. Although Ms. Cox called to use the Psychic Friends service, LDDI apparently used information obtained from its marketing partner to change Ms. Cox's long distance service. Even were the consumers calling the psychic hotline to change their PIC, the consumer-initiated call would not be *per se* authorization; the IXC would still need to obtain the consumer's express permission to initiate a PIC-change. Here, those consumers who made calls to the Psychic Friends Network never intended to change their long distance service. Under LDDI's reading of the Act and our rules and orders, anyone, even a visitor to a household, could place a call to the Psychic Friends Network, either intentionally or inadvertently, and have their PIC switched to LDDI. The mere call cannot constitute explicit authorization for LDDI to submit a PIC-change request. As a LDDI consumer representative apparently explained to Ms. Morey, the names and numbers of callers to the Psychic Friends hotline were forwarded to LDDI to provide long distance service. In its responses to the Commission's Notices, LDDI provides no evidence of any consumer explicitly authorizing a change to his or her PIC.

24. In sum, the statements and other information provided by the complainants, and the limited responses by LDDI, represent compelling evidence that LDDI willfully or repeatedly apparently submitted PIC-change orders for complainants' long-distance service without their

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<sup>99</sup> *In-Bound Stay Order*, 11 FCC Rcd at 856. As stated in the Order, the Commission was "persuaded that temporarily staying the PIC verification requirements as they pertain to consumer-initiated calls will allow the Commission to develop a complete record upon which we can conduct a meaningful cost-benefit analysis and make a more informed decision." 11 FCC Rcd at 856. [We note that, with the release of (slamming order cite) today, the In-Bound stay has been lifted. As of today, no distinction exists between inbound and outbound telemarketing calls for PIC changes. All telemarketing calls must be verified in accordance with the Commission's rules.]

<sup>100</sup> See *The American Heritage Dictionary of the English Language*, Third Edition (1994); *Webster's New World Dictionary*, Second College Edition (1980).

authorization. By failing to provide any evidence or information to counter the complainants' claims that they did not give LDDI authorization to submit a PIC-change request on their behalf, we conclude that LDDI has apparently violated section 258 of the Act and the Commission's rules and orders governing PIC changes.<sup>101</sup>

## 2. Section 201(b) of the Communications Act

25. We further conclude that LDDI's imposition of unauthorized charges on consumers' telephone bills is a practice which is unjust and unreasonable within the meaning of section 201(b) of the Act. In its responses, LDDI provides no clear explanation as to the manner by which consumers authorized their membership into the Psychic Friends or Friends to Friends Network. The flyer LDDI allegedly included in the consumers' bills with their first membership billing describes Friends to Friends as a "total telephone communications program." The consumers' bills from LDDI also contain a message stating that "as a Charter member you are entitled to many other exciting benefits in addition to your discount long distance service." Clearly, membership in the Friends to Friends Network entails utilizing LDDI long distance service. The other benefits of membership are not explained. Based on the facts before us, we assume that the same call that allegedly "authorized" the consumers' PIC change also, therefore, allegedly authorized the membership into the Friends to Friends Network. Contrary to the Commission's request that LDDI specify the charges included its bills, LDDI provides no explanation regarding the category "other charges" included on LDDI's bills.

26. We find that the practice of cramming is unreasonable because, in a manner similar to slamming, consumers are paying for services they did not authorize, and in this instance, are unclear and perhaps non-existent. In the instant case, LDDI, in placing the charges on the consumers' bills, acted unreasonably because it deprived consumers of the ability to decide whether they would purchase a service.<sup>102</sup> Here, fifteen consumers allegedly placed calls to the

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<sup>101</sup> See 47 U.S.C. § 258; 47 C.F.R. § 64.1150; 1997 FNPRM & Order on Reconsideration, 12 FCC Rcd 10674 (1997); LOA Order, 10 FCC Rcd 9560 (1995), stayed in part, In-bound Stay Order, 11 FCC Rcd 856 (1995); (PIC Change Order), 7 FCC Rcd 1038 (1992), recon. denied, 8 FCC Rcd 3215 (1993); Allocation Order, 101 FCC 2d 911 (1985), Waiver Order, 101 FCC 2d 935 (Com. Car. Bur. 1985), recon. (of both Allocation Order and Waiver Order) denied, 102 FCC 2d 503 (1985) (Reconsideration Order).

<sup>102</sup> The Commission has noted on many occasions that consumers should have the benefit of information before making decisions regarding their telecommunications services. See *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998) (finding that information disclosure rules for Operator Service Providers are "not only pro-consumer, but also pro-competitive in furthering marketplace decisions based on options available to an informed consumer"); see also, *Final Report of the Federal Communications Commission, pursuant to the Telephone Operator Consumer Services Improvement Act of 1990*, November 13, 1992 (Final TOCSIA Report) at 2 (finding that informed consumer choice "is the best means of ensuring that the rates consumers pay for interstate operator service is just and reasonable").

Psychic Friends Network, not directly to LDDI.<sup>103</sup> The evidence before us illustrates that LDDI fraudulently billed consumers for services they did not request. It appears, in fact, that LDDI did not even attempt to communicate with consumers regarding the services. LDDI reasonably should have realized that encouraging calls to the Psychic Friends Network obscured the true nature of its services." The consumers who stated that they placed a call to the Psychic Friends Network apparently wanted to find out about that entity's psychic service, not become a member of a "total telecommunications program" which included a change in their preferred interexchange carrier, membership fees, and the assessment of the category of "other charges" on the consumers' bills. In fact, the "program" suggests a deliberate effort by LDDI to bill consumers for services they did not order. Finally, LDDI provides no explanation for how other consumers such as Sharon Morey or Joseph Volanto received charges on their bills.<sup>104</sup> These consumers made no calls to Psychic Friends or Friends to Friends Network, and state they had no contact with LDDI.<sup>105</sup> They did receive, however, telephone bills with charges for "membership charges," "other charges," and long distance service provided by LDDI.

27. In view of the foregoing discussion, it appears that LDDI willfully or repeatedly imposed charges on consumers' bills for services that the consumers did not request nor authorize. Further, LDDI apparently misled consumers, through its relationship with Psychic Friends and Friends to Friends Network, into changing long distance service, becoming members in a psychic network, and incurring other fee based services. LDDI's responses include the statement that "Friends to Friends have since filed for Chapter 11 making us unable to retrieve any information that was referred to in our prior correspondence."<sup>106</sup> Notwithstanding LDDI's ability to review its own billing records, we remind LDDI that the actions of its marketing partners do not relieve it of its independent obligation to ensure compliance with the Act or our rules, nor do they otherwise mitigate LDDI's role in the apparent violation of section 201(b). The Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of the carrier itself.<sup>107</sup> As described above, LDDI's limited responses to the consumer complaints do nothing to dispel our conclusion that LDDI's cramming practices were unjust and unreasonable under section 201(b) of the Act. Accordingly, we find that LDDI's cramming practices

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<sup>103</sup> Other consumers contend that they either called a different psychic hotline prior to the cramming and slamming incidents, or never made calls to Psychic Friends Hotline. *See, e.g.*, Jones Complaint, Hart Complaint, Volanto Complaint.

<sup>104</sup> *See* Morey Complaint, Declaration and Supplemental Declaration; Volanto Complaint, Declaration, and Supplemental Declaration.

<sup>105</sup> *Id.*

<sup>106</sup> *See* LDDI Response to Second Notice, *e.g.* Cox Complaint, *et. al.*

<sup>107</sup> *See* 47 U.S.C. § 217; *also see Excel Telecommunications Incorporated*, 11 FCC Rcd 19765 (1997).

demonstrate apparent willful or repeated violations of section 201(b).

## B. Forfeiture Amount

28. LDDI's apparent use of misrepresentations to effect changes in the long-distance service of the twenty-five consumers described in this NAL, and the imposition of unauthorized charges on those consumers' telephone bills, persuade us that a significant forfeiture is warranted against LDDI for willful or repeated violations of sections 201(b) and 258 of the Act and the Commission's rules and orders regarding slamming.<sup>108</sup> Section 503(b) of the Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>109</sup> In exercising such authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>110</sup> The Commission's forfeiture guidelines currently establish a forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.<sup>111</sup>

29. Although the forfeiture guidelines do not establish a forfeiture amount for unjust or unreasonable practices, such as the imposition of unauthorized charges on the consumers' telephone bills, the guidelines do state that, ". . . any omission of a specific rule violation from the . . . [forfeiture guidelines]. . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant."<sup>112</sup> The Commission retains the discretion, moreover, to depart from the guidelines and issue forfeitures on a case-by-case basis, under its general

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<sup>108</sup> See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending).

<sup>109</sup> 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80. The Commission recently amended its rules by adding a new subsection to its monetary forfeiture provisions that incorporates the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, Sec. 31001, 110 Stat. 1321), enacted on April 26, 1996. See *Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 1038 (1997).

<sup>110</sup> See 47 U.S.C. § 503(b)(2)(D).

<sup>111</sup> See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (petitions for reconsideration pending) (*Forfeiture Policy Statement*). These policies and guidelines include "upward adjustment criteria" that warrant a higher forfeiture amount based on our evaluation of the particular actions and circumstances of the violator.

<sup>112</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

forfeiture authority contained in section 503 of the Act.<sup>113</sup> We believe that the practice of cramming by common carriers is an activity which seeks to capitalize on consumers' current confusion over the myriad of choices they have in the increasingly competitive telecommunications marketplace and the complexity of most telecommunications billing. A carrier that participates in cramming misleads the consumer, in a manner similar to slamming, into paying for services that they did not authorize. A consumer who has been slammed still has access to interexchange service but is unable to utilize the service of his or her PIC and must now use the service provided by the slamming carrier. Cramming, however, further misleads consumers into paying for services they never requested and, in this case, never received. Because of the nature of the services the consumer has neither authorized nor requested, he or she has most likely received no benefit from them. The imposition of charges on a consumer's telephone billing account without consumers' authorization, much less their knowledge, for uncertain services is sufficiently misleading and serious to deem it worthy of a forfeiture amount equal to that of slamming.

30. Applying the criteria outlined in the Commission forfeiture guidelines, and based upon the facts before us, we conclude that the unauthorized conversion of the prescribed carrier of Cox, Kelly, Spreine, Morey, Hoffman, Rhone, Riehl, Trumbauer, Yerly, Sapp, Holiday, Hart, Pearson, Collins, Dimitriu, Erwin, Volanto, the Fishers, Baran, Jones, Alderson, the Kostiges, Loosbrock, Barney, and Brewer constitute 25 separate violations. We propose to assess a forfeiture of \$40,000 for each of the PIC-change violations. The imposition of unauthorized charges to each of the complainant's telephone billing accounts constitutes an additional 25 separate violations. We propose to assess a \$40,000 forfeiture amount for each of cramming violations. In the instant case, the evidence before us indicates that despite our previous warnings to IXCs that have engaged in slamming, and the Commission's statements to all carriers regarding cramming, LDDI willfully and repeatedly engaged in this fraudulent conduct as part of a plan to intentionally slam and cram consumers. Moreover, as we have addressed in earlier NALs, we find that the level of slamming complaints received by the Commission has continued to grow, unabated by our previous enforcement actions. We are also concerned with the rise in the number of cramming complaints received by the Commission as some carriers attempt to capitalize on consumer confusion over charges on telephone bills.<sup>114</sup> Accordingly, this NAL is further notice to all carriers that the Commission will not tolerate these types of violations and practices. Carriers must take steps necessary to obtain consumers' authorization for the imposition of charges on their telephone bills and ensure that PIC-change requests are processed in accord with the Act, our rules, and orders.

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<sup>113</sup> *Id.*

<sup>114</sup> *See In the Matter of Truth-in-Billing and Billing Format*, 13 FCC Rcd 18176 (1998) (*Truth-in-Billing NPRM*).

## VI. CONCLUSIONS AND ORDERING CLAUSES

31. We have determined that LDDI apparently violated sections 258 and 201(b) of the Communications Act and the Commission's PIC-change rules and orders by converting the PICs and imposing unauthorized charges on the telephone accounts of the twenty-five consumers identified above, on the dates and in the manner described herein. We have further determined that LDDI is apparently liable for forfeitures in the amount of forty thousand dollars (\$40,000) for each of these two violations committed against each of the twenty-five consumers resulting in a total forfeiture amount of two million dollars (\$2,000,000).

32. Accordingly, IT IS ORDERED, pursuant to section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that LDDI Telephone, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of two million dollars (\$2,000,000.00) for willful or repeated violations of sections 258 and 201(b) of the Act<sup>115</sup> and the Commission's PIC-change rules and orders as described in the paragraphs above.<sup>116</sup>

33. IT IS FURTHER ORDERED, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, Long Distance Direct, Inc. SHALL PAY the full amount of the proposed forfeiture<sup>117</sup> OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

34. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that Long Distance Direct, Inc. SHALL FILE with the Commission, within thirty (30) days of the date of this NAL, a compliance plan detailing the

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<sup>115</sup> 47 U.S.C. §§ 201(b); 258.

<sup>116</sup> See 47 C.F.R. § 64.1150; 1997 FNPRM & Order on Recon., 12 FCC Rcd 10674; LOA Order, 10 FCC Rcd 9560; PIC Change Order, 7 FCC Rcd 1038; Allocation Order, 101 FCC 2d 911; Waiver Order, 101 FCC 2d 935.

<sup>117</sup> The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Long Distance Direct, Inc.'s check or money order to "NAL/Acct. No. 916EF0003." Such remittances must be mailed to Forfeiture Collection section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.



actions it will take and the procedures it will establish to ensure compliance with section 258 of the Act and the Commission's rules and orders relating to PIC changes. The compliance plan shall detail further the actions Long Distance Direct Incorporated will take and procedures it will establish to ensure compliance with section 201(b) of the Act relating to the imposition of unauthorized charges on consumers' telephone bills. The compliance plan shall set forth procedures designed to enable LDDI to promptly identify and address consumer inquiries and concerns about its PIC-change and billing practices.

35. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Steven L. Lampert, President and Chairman, Long Distance Direct, Incorporated, Suite 1430, 1 Blue Hill Plaza, Pearl River, New York 10965.

**FEDERAL COMMUNICATIONS COMMISSION**

Magalie Roman Salas  
Secretary