

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

In the Matter of )
Horizon Telecom, Inc. ) File No. EB-07-TC-4006
Apparent Liability for Forfeiture ) NAL/Acct. No. 200832170013
) FRN: 0009704925
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 29, 2008

Released: February 29, 2008

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"),<sup>1</sup> we find that Horizon Telecom, Inc. ("Horizon" or "Company") apparently willfully or repeatedly violated sections 201(b) and 258 of the Communications Act of 1934, as amended<sup>2</sup> ("Communications Act" or "Act"), and sections 1.717, 64.1120, and 64.1130 of the Commission's rules.<sup>3</sup> As discussed in more detail herein, Horizon has apparently willfully or repeatedly failed to respond on a timely basis to twenty-one (21) informal complaints served on it by the Consumer & Governmental Affairs Bureau ("CGB"). In addition, it apparently changed the preferred carriers of one hundred twenty-five (125) consumers without proper authorization, a practice commonly known as "slamming."<sup>4</sup> Based upon our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture of \$5,084,000 against Horizon for the apparent violations described herein.

2. Horizon's apparent violations are discussed individually in detail below. However, we provide a brief background to the investigation. Horizon is a Las Vegas-based company that provides long distance calling services. The Commission has been monitoring Horizon's activities due to the quantity and nature of informal complaints received by CGB and state public utility commissions and Attorneys General offices. The Enforcement Bureau ("EB") sent Horizon a Letter of Inquiry ("LOI") on June 28, 2007, directing the company to answer a number of inquiries regarding its business

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

<sup>2</sup> 47 U.S.C. §§ 201, 258.

<sup>3</sup> 47 C.F.R. §§ 1.717, 64.1120, and 64.1130.

<sup>4</sup> See para 7, infra.

practices and compliance with various Commission rules.<sup>5</sup> Horizon provided a partial response on July 27, 2007 (“response”)<sup>6</sup> and supplemented its response on September 19, 2007 (“supplemental response”).<sup>7</sup>

## II. DISCUSSION

### A. Failure to Respond to Commission Directive

#### 1. Background

3. CGB’s informal complaint process provides an avenue for consumers to have their complaints and inquiries addressed through informal mediation and resolution by CGB with the carrier. CGB addresses informal complaints against carriers by serving the complaint on the carrier and requiring from the carrier within thirty days a written response discussing the satisfaction of the complaint or the carrier’s refusal or inability to satisfy the complaint. Specifically, pursuant to section 1.717:

The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or its refusal or inability to do so. Where there are clear indications from the carrier’s report or from other communications with the parties that the complaint has been satisfied the Commission may in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier’s response and the Commission’s disposition, it may file a formal complaint in accordance with §1.721 of this part.<sup>8</sup>

4. Pursuant to this process, CGB served on Horizon twenty-one (21) informal complaints.<sup>9</sup> Further, the Commission on March 2, 2007, reminded carriers of the importance of responding to

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<sup>5</sup> Letter from Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Cheyenne Devine, Customer Service Manager, Horizon Telecom, Inc. (June 28, 2007) (“LOI”).

<sup>6</sup> Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Horizon Telecom, Inc., to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (July 27, 2007) (“response”).

<sup>7</sup> Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Horizon Telecom, Inc., to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (September 19, 2007) (“supplemental response”).

<sup>8</sup> 47 C.F.R. §1.717.

<sup>9</sup> See IC#s 07-S0279092 (sent to Horizon 7/6/07, no response received), 07-S0279182 (sent to Horizon 7/26/07, no response received), 07-S0279425 (sent to Horizon 7/13/07, no response received), 07-S001633 (sent to Horizon 6/14/07, no response received), 07-S0277776 (sent to Horizon 6/15/07, no response received), 07-S0278305 (sent to Horizon 6/19/07, no response received), 07-S0279037 (sent to Horizon 7/10/07, no response received), 07-S0279094 (sent to Horizon 7/10/07, no response received), 07-S001697 (sent to Horizon 7/13/07, no response received), 07-S0279981 (sent to Horizon 7/20/07, no response received), 07-S0266292 (sent to Horizon 2/21/07, no response received), 07-S001551 (sent to Horizon 4/11/07, no response received), 07-S001530 (sent to Horizon 3/9/07, response received 6/29/07), 07-S0267711 (sent to Horizon 3/6/07, response received 6/29/07), 07-S0270717 (sent to Horizon 3/30/07, response received 6/29/07), 07-S0270921 (sent to Horizon 3/29/07, response received 6/29/07), 07-S001517 (sent to Horizon 2/2/07, response received 6/29/07), 07-S0263454 (sent to Horizon 2/2/07, response received 6/29/07), 07-S0257121 (sent to Horizon 2/8/07, response received 6/29/07), 07-S0262341 (sent to Horizon 1/26/07, response received 6/29/07), 07-S0266294 (sent to Horizon 2/21/07, response received 6/11/07).

informal complaints, and the seriousness of the penalties for failure to do so.<sup>10</sup> Horizon has failed to respond in a timely manner to these twenty-one informal complaints. To date, Horizon has not responded to twelve of the complaints,<sup>11</sup> and responded at least two months late to the remaining nine complaints.<sup>12</sup>

## 2. Discussion

5. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.<sup>13</sup> Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”<sup>14</sup> Section 218 of the Act specifically authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”<sup>15</sup> Section 403 of the Act grants the Commission “full authority and power at any time to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”<sup>16</sup> Finally, section 1.717 of our rules requires the Commission to forward informal complaints to the appropriate carriers and requires a written response from the carrier within thirty days.<sup>17</sup>

6. We find that Horizon apparently violated section 1.717 of the Commission’s rules by failing to timely respond to the above-referenced twenty-one informal complaints served by CGB. The Commission on March 2, 2007, expressly reminded carriers of their regulatory obligations to respond to

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<sup>10</sup> Public Notice, *Consumer & Governmental Affairs Bureau Reminds Common Carriers of Their Obligation to Timely Respond to Informal Complaints*, DA 07-989 (March 2, 2007).

<sup>11</sup> See IC#s 07-S0279092 (sent to Horizon 7/6/07, no response received), 07-S0279182 (sent to Horizon 7/26/07, no response received), 07-S0279425 (sent to Horizon 7/13/07, no response received), 07-S001633 (sent to Horizon 6/14/07, no response received), 07-S0277776 (sent to Horizon 6/15/07, no response received), 07-S0278305 (sent to Horizon 6/19/07, no response received), 07-S0279037 (sent to Horizon 7/10/07, no response received), 07-S0279094 (sent to Horizon 7/10/07, no response received), 07-S001697 (sent to Horizon 7/13/07, no response received), 07-S0279981 (sent to Horizon 7/20/07, no response received), 07-S0266292 (sent to Horizon 2/21/07, no response received), 07-S001551 (sent to Horizon 4/11/07, no response received).

<sup>12</sup> See IC#s 07-S001530 (sent to Horizon 3/9/07, response received 6/29/07), 07-S0267711 (sent to Horizon 3/6/07, response received 6/29/07), 07-S0270717 (sent to Horizon 3/30/07, response received 6/29/07), 07-S0270921 (sent to Horizon 3/29/07, response received 6/29/07), 07-S001517 (sent to Horizon 2/2/07, response received 6/29/07), 07-S0263454 (sent to Horizon 2/2/07, response received 6/29/07), 07-S0257121 (sent to Horizon 2/8/07, response received 6/29/07), 07-S0262341 (sent to Horizon 1/26/07, response received 6/29/07), 07-S0266294 (sent to Horizon 2/21/07, response received 6/11/07). We note that, although CGB has served other complaints on Horizon that the Company has not responded to in a timely fashion, we exercise our discretion not to assess a forfeiture for those late-filed responses because we only recently made clear our intent to enforce more strictly our response time frame as set forth by section 1.717 of the Commission’s rules, and because those late-filed responses were not filed as far beyond the filing time frame as those for which we do assess a forfeiture. We caution Horizon and other carriers that, as we made clear in our March 2, 2007 Public Notice, we expect timely responses to informal complaints, and we will take a hard look at late-filed responses in subsequent actions.

<sup>13</sup> 47 U.S.C. §§ 154(i), (j), 218, & 403.

<sup>14</sup> 47 U.S.C. § 154(i), (j).

<sup>15</sup> 47 U.S.C. § 218.

<sup>16</sup> 47 U.S.C. § 403; *see also* 47 U.S.C. § 154(i), (j).

<sup>17</sup> 47 C.F.R. § 1.717.

informal complaints in a timely fashion, and the seriousness of the penalties for failure to do so.<sup>18</sup> Nevertheless, Horizon has not timely responded to the informal complaints referenced herein. Of the twenty-one complaints at issue, Horizon failed to respond to twelve. Moreover, Horizon's responses to the nine remaining complaints were filed not only beyond thirty days of service, the time frame in which Horizon was given to respond in all of these informal responses, but also beyond that March 2007 Public Notice. We conclude that Horizon apparently willfully or repeatedly violated a Commission rule by failing to timely provide a written response in response to twenty-one informal complaints. Accordingly, a proposed forfeiture is warranted against Horizon for this apparent willful or repeated violation.

## B. Slamming Violations

### 1. Background

7. Section 258 of the Act prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service ("preferred carrier").<sup>19</sup> 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 procedures as the Commission shall prescribe."<sup>20</sup> In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258.<sup>21</sup> In the *Section 258 Order*, the Commission adopted aggressive rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes.

8. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>22</sup> Section 64.1120 of the Commission's rules prescribes that no carrier "shall submit a change on the behalf of a subscriber . . . prior to obtaining: (i) Authorization from the subscriber, and (ii) Verification of that authorization in accordance with the procedures

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<sup>18</sup> *Consumer & Governmental Affairs Bureau Reminds Common Carriers of Their Obligation to Timely Respond to Informal Complaints*, Public Notice, DA 07-989 (March 2, 2007).

<sup>19</sup> 47 U.S.C. § 258(a).

<sup>20</sup> 47 U.S.C. § 258.

<sup>21</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>22</sup> *See* 47 C.F.R. § 64.1120.

prescribed in this section.”<sup>23</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>24</sup>

9. Of particular relevance here is section 64.1130 which details the requirements for the letter of agency (“LOA”) form and content for written or electronically signed authorizations.<sup>25</sup> Section 64.1130(b) requires that the LOA “be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of [section 64.1130] having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.”<sup>26</sup> The rule further mandates that the LOA “shall not be combined on the same document, screen, or webpage with inducements of any kind.”<sup>27</sup> The rule details the basic requirements for the LOA, including the size and readability of type, and certain minimum content requirements.<sup>28</sup>

#### a. Discussion

10. Each of the one hundred twenty-five (125) consumers who filed complaints that form the basis of this NAL maintain that they did not authorize Horizon to change their preferred carriers, but that Horizon nevertheless changed their preferred carriers to Horizon.<sup>29</sup> Horizon states that authorization was received and confirmed when a letter of agency was signed and processed.<sup>30</sup> We find that Horizon has failed to produce a preponderance of evidence that the complainants authorized a carrier change.<sup>31</sup> Therefore, we find that Horizon’s actions apparently resulted in an unauthorized change in each complainant’s telecommunications service provider.

11. In its response to the LOI, Horizon states that it markets through an “Internet marketing campaign” and telemarketing, and that it terminated both marketing programs prior to its receipt of the LOI.<sup>32</sup> The Company submitted copies of its Internet LOA, and its telemarketing script and verification

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<sup>23</sup> *Id.* § 64.1120(a)(1).

<sup>24</sup> *See* 47 C.F.R. § 64.1120(c). For those carriers that use an independent third party for verification, our rules require that the verification method confirm at least six things: the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. Our rules also require that carriers keep audio records of the verification for a minimum of two years. 47 C.F.R. § 64.1120. Finally, the Commission's rules require that when a carrier “is selling more than one type of telecommunications service ... that carrier must obtain separate authorization from the subscriber for each service sold ... Each authorization must be verified separately from any other authorizations obtained in the same solicitation.” 47 C.F.R. § 21.1120(b).

<sup>25</sup> 47 C.F.R. § 64.1130.

<sup>26</sup> 47 C.F.R. § 64.1130(b).

<sup>27</sup> 47 C.F.R. § 64.1130(c).

<sup>28</sup> *See* 47 C.F.R. §64.1130(e)(1) – (4).

<sup>29</sup> *See* Appendix I.

<sup>30</sup> *See* response at 3,7; supplemental response at 2.

<sup>31</sup> *See* 47 C.F.R. § 64.1150(d).

<sup>32</sup> *See* response at 1- 2.

script. We have reviewed the LOA submitted by Horizon, and find that Horizon's LOA contains an inducement in apparent violation of our rules,<sup>33</sup> despite Horizon's claim that its LOA "ensures that customers are properly solicited...the Letter of Authorization contains no marketing materials."<sup>34</sup> In particular, every LOA provided by Horizon contains not only acceptable authorizing language and disclosures, but also the following inducement: "[a]nd as an added **BONUS, you will receive 2 FREE Roundtrip Airline Tickets Certificate** from Executive Tour and Travel!" (emphasis in original).<sup>35</sup> As noted above, our rules specifically prohibit LOAs from being combined with any inducements on the same "document, screen, or webpage."<sup>36</sup> Further, the LOA appears to lack a means or location for consumers to provide their electronic signature, as required by our rules.<sup>37</sup> Accordingly, any preferred carrier change submitted by Horizon pursuant to the LOA it provided in response to the LOI apparently violates our rules on its face and thus constitutes a slam. We conclude that Horizon apparently willfully or repeatedly violated a Commission rule by submitting carrier change orders without proper authorization in accordance with our rules and section 258 of the Act of every consumer listed in Appendix I. Accordingly, a proposed forfeiture is warranted against Horizon for this apparent willful or repeated violation.

### III. FORFEITURE AMOUNT

12. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>38</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>39</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>40</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>41</sup> The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.<sup>42</sup> "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.<sup>43</sup> To impose such a

<sup>33</sup> See 47 C.F.R. § 64.1130(c).

<sup>34</sup> See supplemental response at 2.

<sup>35</sup> The LOA also includes the following language: "Horizon Telecom, Inc. is not owned or affiliated with Executive Tour and Travel, who is solely responsible for the fulfillment of the 2 free roundtrip airline tickets...TRAVELER IS ENTITLED TO TWO COMPLIMENTARY ROUND TRIP AIRLINE TICKETS, WHEN STAYING AT ONE OF THE PARTIPATING HOTELS OR CONDOS FOR A MINIMUM NUMBER OF NIGHTS AND PAYING STANDARD RATES. TRAVELER IS RESPONSIBLE FOR HOTEL AND AIR DEPARTURE TAXES. AIR, HOTEL, AND CONDO RESERVATIONS MUST BE MADE THROUGH FLY FREE. FOR COMPLETE INFORMATION PLEASE REFER TO THE VACATION GUIDE IN YOU [sic] TRAVEL PACKET OR VISIT WWW.FLYFREEAMERICA.COM/IIG."

<sup>36</sup> See 47 C.F.R. § 64.1130(c).

<sup>37</sup> 47 C.F.R. § 64.1130(b).

<sup>38</sup> 47 U.S.C. § 503(b)(1)(B) and 47 C.F.R. § 1.80(a)(1).

<sup>39</sup> 47 U.S.C. § 312(f)(1).

<sup>40</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>41</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

<sup>42</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>43</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>44</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.<sup>45</sup>

13. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.<sup>46</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “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>47</sup> As provided by the Commission’s rules, the Commission and its staff retain the discretion to issue a higher or lower forfeiture, as permitted by statute.<sup>48</sup>

14. Horizon will have an opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.<sup>49</sup>

#### **A. Proposed Forfeiture for Horizon’s Failures to Respond**

15. Section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement* establish a base forfeiture amount of and \$4,000 for failure to respond to a Commission communication.<sup>50</sup> Horizon’s failure to timely respond to the twenty-one (21) informal complaints served by CGB warrants the base forfeiture amount of \$4,000 for each apparent violation, for a proposed forfeiture of eighty-four thousand dollar (\$84,000).

16. We also direct Horizon to respond to the remaining twelve informal complaints within thirty (30) days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Horizon to further penalties, including potentially higher monetary forfeitures, the revocation of operating authority, and the disqualification of any Horizon principal from the provision of any common carrier services without the prior consent of the Commission.<sup>51</sup>

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<sup>44</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>45</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (“*SBC Forfeiture Order*”).

<sup>46</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

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

<sup>48</sup> See 47 C.F.R. § 1.80(b)(4).

<sup>49</sup> 47 U.S.C. § 503(b)(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>50</sup> 47 C.F.R. § 1.80; *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, 17114 (1997), recon. denied 15 FCC Rcd 303 (1999).

<sup>51</sup> See *CCN, Inc., et al, Order to Show Cause and Opportunity for Hearing*, Order, 13 FCC Rcd 13599 (1998) (revoking carrier’s operating authority based on findings of repeated violations); see also, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

## B. Proposed Forfeiture for Horizon's Slamming Violations

17. The Commission's forfeiture guidelines currently establish a standard forfeiture amount of \$40,000 for violations of our rules and orders regarding unauthorized changes of preferred interexchange carriers.<sup>52</sup> On several occasions, the Commission has sternly 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>53</sup> We therefore find that Horizon is apparently liable for a forfeiture of \$40,000 for each of the one hundred and twenty-five (125) unauthorized preferred carrier changes, for a total forfeiture of five million dollars (\$5,000,000).

## IV. CONCLUSION AND ORDERING CLAUSES

18. We have determined that Horizon Telecom, Inc. has apparently willfully or repeatedly violated sections 201(b) and 258 of the Communications Act of 1934, as amended,<sup>54</sup> and sections 1.717, 64.1120, and 64.1130 of the Commission's rules.<sup>55</sup> Horizon has apparently willfully and repeatedly failed to timely respond to twenty-one (21) informal complaints served on it by CGB and submitted changes of the preferred carriers of one hundred twenty-five (125) consumers without their proper authorization, for a total propose forfeiture of \$5,084,000 dollars.

19. 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 Horizon Telecom, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of \$5,084,000 for willful or repeated violations of sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201 and 258, and sections 1.717, 64.1120, and 64.1130 of the Commission's rules and orders as described above.<sup>56</sup>

20. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Horizon Telecom, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau –Telecommunications Consumers Division, and must include the NAL/Acct. No. referenced in the caption.

21. 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 ("GAAP"); 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 submitted.

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<sup>52</sup> See 47 C.F.R. § 1.80(b)(4).

<sup>53</sup> *Brittan Communications International Corp.*, 15 FCC Rcd 4852 (2000); *Amer-I-Net Services Corp.*, 15 FCC Rcd 3118 (2000); *All American Telephone Company, Inc.*, 13 FCC Rcd 15040 (1998).

<sup>54</sup> 47 U.S.C. §§ 201, 222.

<sup>55</sup> 47 C.F.R. §§ 1.717, 64.1120, and 64.1130.

<sup>56</sup> See 47 C.F.R. §§ 64.1120; see also *1998 Second Report and Order*, 14 FCC Rcd at 1508; *1997 FNPRM & Order on Reconsideration*, 12 FCC Rcd at 10,674.



22. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.<sup>57</sup> Payment of the forfeiture must be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

23. IT IS FURTHER ORDERED that copies of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Horizon Telecom, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>57</sup> 47 U.S.C. § 504(a).

## Appendix I

1. IC# 07-S0277769	Matthew Scott	573-635-5808
2. IC# 07-S0277775	CJ Conte	304-598-7037
3. IC# 07-S0277887	Matthew Browning	660-882-9217
4. IC# 07-S0278231	Mary Weaver	816-525-4807
5. IC# 07-S0278566	Barbara Henning	215-799-0224
6. IC# 07-S0279040	James Major	610-670-1067
7. IC# 07-S001622	Manuel Sedan	724-465-2959
8. IC# 07-S001626	Claretha Young	314-524-7212
9. IC# 07-S001656	Rick Baldwin	816-792-8623
10. IC# 07-S001665	Tom Hand	816-525-6783
11. IC# 07-S001690	Courtney Szpara	262-375-0731
12. IC# 07-S001696	Todd Shaffer	816-795-7122
13. IC# 07-S001703	Kevin Tresenriter	816-415-8638
14. IC# 07-S001719	Michael Poindexter	816-537-7520
15. IC# 07-S001735	Kathleen Flanders	573-873-8071
16. IC# 07-S0277286	Nichola McCasland	573-431-8019
17. IC# 07-S0277702	Paula Geisler	610-326-2646
18. IC# 07-S0277729	David Hamilton	770-233-8364
19. IC# 07-S0277886	Brenda Morton	417-588-2689
20. IC# 07-S028232	Bruce Webster	816-228-9596
21. IC# 07-S0278564	Rick Gillenwater	660-442-3234
22. IC# 07-S0278569	Gary Moege	660-429-1618
23. IC# 07-S0278618	Debbie Ehling	816-792-2019
24. IC# 07-S0273144	Remi Freeman	215-321-2323
25. IC# 07-S0273206	Kim Ramirez	573-364-4624
26. IC# 07-S0273689	Kristin Rose	816-792-9775
27. IC# 07-S0274239	Shannon Hartman	804-639-1094
28. IC# 07-S0274323	Christine Potter	816-478-7465
29. IC# 07-S0274687	Brian Whitley	816-537-5308
30. IC# 07-S0274692	Eve Wells	816-781-5723
31. IC# 07-S0274693	Robert Snyder	816-407-9023
32. IC# 07-S0274695	Beth Hodge	717-417-1152
33. IC# 07-S0276099	Setsuko Meyers	636-329-8298
34. IC# 07-S0276105	Gary Boyd	816-373-3278
35. IC# 07-S0276110	Connie Savage	816-524-3483
36. IC# 07-S02762222	Pamela Fritzsche	314-428-5512
37. IC# 07-S0276777	Darlene Owens-Howard	404-696-2996
38. IC# 07-S0277042	Bryan Cessna	816-792-8473
39. IC# 07-S0277104	Thomas Mullen	757-479-5178
40. IC# 07-S0277106	Ron Schach	816-792-0860
41. IC# 07-S0277107	Ralph and Sonni Cooper	505-466-6661
42. IC# 07-S0277109	Charles Curtis	417-624-7451
43. IC# 07-S0277285	Michael Blechle	573-243-0767
44. IC# 07-S0277434	Heidi and Chris Hehner	314-427-0427
45. IC# 07-S0277528	Anthony Warner	816-229-9565
46. IC# 07-S0277534	Craig Nichols	573-659-8223
47. IC# 07-S0277665	Terry Roberts	814-336-3373
48. IC# 07-S0277669	Joshua Maddux	816-524-8754
49. IC# 07-S0277671	Gwendolyn and Jeffrey Finley	417-624-7776
50. IC# 07-S0277705	Thomas Stegeman	573-761-4886

51. IC# 07-S001517	Nancy Khashan	770-271-7399
52. IC# 07-S001530	John Monroe	724-783-7540
53. IC# 07-S001566	Timothy Potinga	412-833-5817
54. IC# 07-S001594	Edward Boles	816-246-4691
55. IC# 07-S001577	Jessica and Joshua Layman	417-859-0023
56. IC# 07-S001581	Duane Peter	816-792-1498
57. IC# 07-S001582	Rebecca Smith	816-833-3243
58. IC# 07-S001590	Jennifer Lay	816-224-8493
59. IC# 07-S001593	Colleen Baber	434-977-8930
60. IC# 07-S001571	Angeline Harkins	816-836-5351
61. IC# 07-S001596	John Granger	816-224-0079
62. IC# 07-S001607	Douglas Merrifield	417-889-6708
63. IC# 07-S001609	Ilona Bukhshtaber	314-863-3665
64. IC# 07-S001615	Teressa Hill	816-478-0468
65. IC# 07-S001617	William Jordan	314-647-6009
66. IC# 07-S001627	Diane Logsdon	816-537-5859
67. IC# 07-S001628	Mary Corley	573-635-9405
68. IC# 07-S001631	Megan and John Baldrige	660-886-9454
69. IC# 07-S001667	Robert Glauz	816-524-5596
70. IC# 07-S001675	Marilyn Kliethermes	573-636-5334
71. IC# 07-S001683	Gary Ford	816-781-4079
72. IC# 07-S001699	Brad Dye	816-229-1094
73. IC# 07-S001702	Albert Monteil	816-795-0120
74. IC# 07-S0261996	Andrea Kartchner	570-784-4737
75. IC# 07-S0262333	Lloyd Wisley	804-378-2849
76. IC# 07-S0262341	Anne Widmer	314-846-9841
77. IC# 07-S0263454	Natasha Ewing	770-469-7294
78. IC# 07-S0265312	Jerome Blomberg	920-892-4941
79. IC# 07-S0278620	Gloria Lee	314-428-1999
80. IC# 07-S0279426	James Sumner	660-827-4598
81. IC# 07-S0279432	Chet Boisen	816-532-6284
82. IC# 07-S0279693	Alma Wright	770-860-9413
83. IC# 07-S0279695	Doug Schell	816-836-0019
84. IC# 07-S0279984	Carolyn Brewer	417-358-5316
85. IC# 07-S0280087	Lillie Monford	770-457-9041
86. IC# 07-S0280531	Jacqueline Whiston	816-734-8877
87. IC# 07-S0280647	Glenda Moon	770-429-1808
88. IC# 07-S0280650	Mary Struttman	636-928-8467
89. IC# 07-B0275549	Jessee Biretz	717-540-0899
90. IC# 07-W13001949	Peter Nicastro	314-890-0672
91. IC# 07-W12994120	Edwin Borja	816-833-3722
92. IC# 07-W12982353	Stacey Price Brown	404-362-1211
93. IC# 07-W12937616	Nelson Bencomo	201-854-8283
94. IC# 07-W12896682	Saralyn Dicken	816-413-8251
95. IC# 07-I0270733	Dennis McMullen	775-626-0360
96. IC# 07-I0270252	John Conaty	804-214-9508
97. IC# 07-W12860834	Hanan Shaban	732-239-2006
98. IC# 07-I0266416	Barbara Post	610-384-1712
99. IC# 07-W12713387	Brian Emig	717-854-6325
100. IC# 07-F0265081	Beth Moury	412-672-4694
101. IC# 07-W12701686	Yolanda Ackerman	440-953-8531
102. IC# 07-W12654814	Christopher Nehoda	440-237-2203

103. IC# 07-F0261477	Gale Meidinger	717-732-3709
104. IC# 07-W12501443	Chris Charnas	407-862-2348
105. IC# 07-R335462	Patricia Blanco	305-828-8930
106. IC# 07-W13012330	Michael McMillan	573-243-0511
107. IC# 07-W12681465	Joshua Porter	614-899-2336
108. IC# 07-B0266043	Paula Daniels	321-632-9784
109. IC# 07-W12946489	Linda Finnessey	314-837-6839
110. IC# 07-W12904820	Tonia Budzina	440-988-5624
111. IC# 07-I0271243	Brenda Fisher	703-237-3610
112. IC# 07-I0266415	Heidi Tabor	609-884-3367
113. IC# 07-W12706455	Kathleen Marsh	269-683-3945
114. IC# 07-W12966032	Kevin Eckhoff	816-373-7012
115. IC# 07-W12700756	Ralph Landis	610-264-1307
116. IC# 07-W12691072	Margaret Calafut	570-282-6229
117. IC# 07-W12680651	Carlos Frias	732-389-3579
118. IC# 07-W13042260	Patricia Whitacre	417-532-4626
119. IC# 07-W12979181	Angela Klumb	920-662-1646
120. IC# 07-W12759157	Beverly Egan	410-252-6507
121. IC# 07-R296949	Charles Underdown	757-853-3982
122. IC# 07-W12659334	Max Ervin	413-736-3949
123. IC# 07-W12658145	Mickey Hutton	540-778-1186
124. IC# 07-W12729028	Gavril Costea	770-945-5576
125. IC# 07-W12692054	Yi-Tsuei Sheu	410-744-2346