

FCC Proposes to Penalize Telecom Carrier for "Slamming" Violations

Legal Alert
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Garvey Schubert Barer Legal Update, May 17, 2010.

The FCC has issued a Notice of Apparent Liability for Forfeiture (NAL) against a common carrier, Silv Communications Inc., for violation of various provisions of the Communications Act of 1934, as amended, and the FCC's rules related to "slamming." See *In the Matter of Silv Communication Inc. Apparent Liability for Forfeiture*, File No. EB-09-TC-433, NAL/Acct No. 201032170002, Notice of Apparent Liability (rel. May 12, 2010).

At issue before the FCC was whether Silv (a) changed the preferred carrier of 25 consumers without the proper authorization, in violation of section 258 of the Communications Act and the FCC rules, and (b) engaged in unjust and unreasonable marketing practices in violation of section 201(b) of the Communications Act. The FCC found that Silv, through its telemarketing agents and with the goal of ultimately changing the consumers' preferred carriers, misrepresented to consumers that they were changing to another plan offered by their current carrier or that the telemarketer was merely verifying information regarding their current account. The FCC concluded that these misrepresentations constitute "unjust and unreasonable" practices in violation of section 201(b) of the Communications Act.

The FCC also found that Silv, through its telemarketing agents, apparently willfully or repeatedly violated section 258 of the Communications Act and the FCC's "slamming" rules for, among other things, failing to confirm through third-party verification that the consumers wanted to switch carriers. It concluded that Silv violated the FCC's rules by submitting carrier change orders without proper consumer authorization.

In light of these violations, the FCC proposed a forfeiture of \$1,480,000, which reflects additional penalties for Silv's "egregious" conduct. Silv will have an opportunity to submit further evidence and arguments in response to the NAL to demonstrate that no forfeiture should be imposed or that some lesser amount should be assessed.