

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

In the Matter of) File No. EB –00-IH-0054
)
North American Telephone Network, LLC) NAL/Acct. No. x32080026

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 2, 2000

Released: August 4, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that North American Telephone Network, LLC ("NATN") has apparently violated section 254(d) of the Communications Act of 1934, as amended (the "Act"), and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute to universal service support programs.¹ Based on our review of the facts and circumstances in this case, we conclude that NATN is apparently liable for a forfeiture in the amount of fifty-five thousand dollars (\$55,000).

II. BACKGROUND

2. In 1996, Congress amended the Act to require that:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.²

In implementing section 254, the Commission authorized the Universal Service Administrative Company ("USAC") to administer universal service support mechanisms and to perform billing and collection functions.³ As to these matters, the Commission directed USAC to distribute, receive and process the Universal Service Worksheet (now the Telecommunications Reporting Worksheet) ("Worksheet"), which is used to report certain categories of revenue for the purpose of calculating a carrier's universal service contribution, and to adjust carriers' contributions in accordance with factors established by the Commission.⁴ In addition, the Commission gave

¹ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

² 47 U.S.C. § 254(d).

³ See Amendment of Parts 54 and 69 – Changes to Board of NECA, Inc., 12 FCC Rcd 18400, 18415 (1997) ("NECA Changes Order"); 47 C.F.R. § 54.702(b).

⁴ See NECA Changes Order, 12 FCC Rcd at 18424-25; 47 C.F.R. §§ 54.709(a)(1-3), 54.711(a).

USAC the authority to bill carriers monthly, starting in February 1998, for their contributions.⁵ To foster compliance with universal service requirements, the Commission's rules provide that a carrier's failure "to submit the required . . . contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law."⁶

3. Based upon information in NATN's first Worksheet, USAC began sending invoices to NATN in July 1998.⁷ In 1998, NATN made two payments, totaling approximately \$186,000. Between November 1998 and February 2000, NATN made no universal service payments.

4. By letter dated February 16, 2000, the Enforcement Bureau advised NATN that the Commission was considering possible enforcement action against it because USAC's records reflected that NATN owed nearly \$800,000 as of USAC's December 17, 1999, invoice.⁸ In response to the Bureau's letter, NATN's accounting manager, Kay Shihata, advised by letter dated March 8, 2000, that NATN had made a payment of \$100,000 on March 1, 2000.⁹ Ms. Shihata further advised that NATN was working with USAC "to set up a reasonable payment plan and to address any incorrect information." Subsequently, on April 11, 2000, May 18, 2000, and June 20, 2000, NATN made additional payments of \$30,000 each. However, there is no information before us indicating that NATN has committed itself to any plan that will result in full payment of the amount it owes, or that it has demonstrated that the amount it owes is incorrect. As of July 1, 2000, including late payment and filing penalties, the amount NATN owes exceeds \$800,000.

III. DISCUSSION

5. We conclude that NATN is apparently liable for forfeiture for willful and repeated violations of section 254 of the Act and the Commission's rules governing universal service contributions. As noted above, section 254(d) of the Act and sections 54.706 and 54.709 of the Commission's rules require that interstate telecommunications carriers make universal service contributions in the amount calculated by USAC.¹⁰ The record before us reflects that although NATN made two universal service payments in 1998, it made no payments between November 1998 and February 2000. Moreover, during this period, NATN apparently received, but ignored, USAC's invoices, and consistently failed to respond to USAC's repeated contacts. Only in response to our letter dated February 16, 2000, did NATN make a payment and initiate contact with USAC in order to establish a framework for eliminating its debt. Given this record, we find that NATN's failure to make the required contributions is both willful and repeated. The term

⁵ See Amendment of Part 54 – Universal Service, 12 FCC Rcd 22423, 22425 (1997); 47 C.F.R. §§ 54.709(a)(4), 54.709(d).

⁶ 47 C.F.R. § 54.713.

⁷ NATN's Chief Financial Officer, Ron Levitt, certified that the Worksheet was accurate.

⁸ Letter from David H. Solomon, Chief, Enforcement Bureau, to North American Telephone Network dated February 16, 2000.

⁹ Letter from Kay P. Shihata, CPA, Accounting Manager, to James W. Shook, Investigations and Hearings Division, Enforcement Bureau dated March 8, 2000.

¹⁰ 47 U.S.C. 254(d); 47 C.F.R. §§ 54.706, 54.709.

“willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules,¹¹ and “repeated” means more than once.¹²

6. Section 503(b)(1)(B) of the Act provides that any person who willfully or repeatedly fails to comply with the Act or the Commission’s rules shall be liable for a forfeiture penalty.¹³ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,100,000 for a single act or failure to act.¹⁴ In assessing a forfeiture, we take into account the statutory factors set forth in section 503(b)(2)(D) of the Act, which include 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.¹⁵

7. In determining the proposed forfeiture in this case, we note that NATN failed to make any of the required payments in response to invoices sent by USAC from November 1998 through January 2000. Consequently, the amount NATN now owes in universal service contributions exceeds \$800,000. Further, prior to the receipt of the Enforcement Bureau’s February 16, 2000, letter, NATN apparently ignored USAC’s collection efforts and made no commitment to pay the money it owed.

8. Although NATN’s delinquencies continued for approximately 15 months, we limit the scope of this NAL to NATN’s apparent failures to make the contributions assessed in USAC invoices for December 1999 and January 2000. Previously, the Commission sanctioned carriers for failure to make the required universal service contributions for only one month of a continuing violation. Recently, however, the Commission sanctioned three carriers for two months of a continuing violation, and we believe NATN’s apparent violation warrants similar treatment.¹⁶

9. Taking into account the factors listed in section 503(b)(2)(D) of the Act,¹⁷ as well as Commission precedent,¹⁸ we find NATN apparently liable for a forfeiture of \$55,000. This forfeiture consists of two components. First, we have assessed a base figure of \$40,000 as a

¹¹ See Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

¹² See Hale Broadcasting Corp., 79 FCC 2d 169, 171 (1980).

¹³ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

¹⁴ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2).

¹⁵ 47 U.S.C. § 503(b)(2)(D). See also The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“Forfeiture Guidelines”).

¹⁶ See America’s Tele-Network Corp., FCC 00-276, released August 1, 2000 (Notice of Apparent Liability); Matrix Telecom, Inc., FCC 00-262, released July 27, 2000 (Notice of Apparent Liability); Intellicall Operator Services, FCC 00-261, released July 27, 2000 (Notice of Apparent Liability).

¹⁷ 47 U.S.C. § 503(b)(2)(D).

¹⁸ See cases cited note 16, *supra*. See also ConQuest Operator Services Corp., 14 FCC Rcd 12518 (1999) (“ConQuest”).

general fixed penalty of \$20,000 for each of the two violations at issue.¹⁹ As the Commission noted in ConQuest, it is necessary to set a base figure designed to deter delinquencies regardless of their amount.²⁰ Second, consistent with notices of apparent liability recently issued by the Commission, we have added to the base amount of \$40,000 an amount equal to approximately one-half of the unpaid universal service contributions for the months of December 1999 and January 2000, or \$15,000.²¹ The Commission has imposed this component of the forfeiture to illustrate that a delinquent carrier's culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contributions it fails to make.²²

10. Although NATN's failure to make payments in other months represents independent violations of the Act and the Commission's rules, we are not imposing any sanction for these apparent violations at this time. Nevertheless, we note that these violations could form the basis for additional notices of apparent liability.²³ If NATN continues to violate the Commission's universal service rules, such violations could result in future notices of apparent liability proposing substantially greater forfeitures, or could result in issuance of a show cause order to revoke NATN's operating authority.²⁴

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,²⁵ and sections 0.111, 0.311 and 1.80 of the Commission's Rules,²⁶ North American Telephone Network is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of fifty-five thousand dollars (\$55,000) for violating the Act and the Commission's rules requiring regular contributions for universal service.

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,²⁷ within thirty days of this NOTICE OF APPARENT LIABILITY, North American Telephone Network SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar

¹⁹ See ConQuest, 14 FCC Rcd at 12527. (The Commission determined that \$20,000 should be the general penalty for failure to pay the assessed universal service contribution in a timely manner).

²⁰ See id.

²¹ See cases cited in note 16, *supra*.

²² See ConQuest, 14 FCC Rcd at 12527 at ¶ 19.

²³ ConQuest Forfeiture Order, 14 FCC Rcd at 12527.

²⁴ See CCN, Inc. et al., 12 FCC Rcd 8547 (1997) (the "Fletcher Companies").

²⁵ 47 U.S.C. § 503(b).

²⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

²⁷ 47 C.F.R. § 1.80.

instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

14. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 445 12th Street, S.W., Washington, D.C. 20554 and **MUST INCLUDE THE NAL/Acct. No.** referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent 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 respondent’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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.²⁸

17. **IT IS FURTHER ORDERED THAT** a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to North American Telephone Network, LLC, 4151 Ashford Dunwoody Road, #675, Atlanta, Georgia 30319, attention: Kay P. Shihata, CPA, Accounting Manager.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁸ See 47 C.F.R. § 1.1914.