

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

In the Matter of	)	File No.: EB-TCD-12-00000627
	)	
Technical Communication Network, LLC	)	NAL/Acct. No.: 201332170009
	)	
Apparent Liability for Forfeiture	)	FRN: 0018042812

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: February 7, 2013**

**Released: February 7, 2013**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Technical Communication Network, LLC (TCN)<sup>1</sup> apparently violated an Enforcement Bureau (Bureau) order to produce certain information and documents in response to a Bureau Letter of Inquiry (LOI) relating to an investigation into possible violations of the Communications Act of 1934, as amended (Communications Act or Act).<sup>2</sup> Based on our review of the facts and circumstances before us, we find that TCN is apparently liable for a forfeiture of \$25,000. Furthermore, we direct TCN to submit, not later than ten (10) calendar days from the release of this NAL, full and complete responses to the Bureau's LOI.

**II. BACKGROUND**

2. The Bureau initiated an investigation of TCN to determine whether it had violated the Communications Act in connection with the marketing of its prepaid calling cards. As part of the investigation, on February 8, 2012, the Bureau sent TCN the LOI, which ordered TCN to provide certain information and documents.<sup>3</sup> The Bureau directed TCN to respond within thirty (30) calendar days from the date of the LOI. After the Bureau granted an extension of time to respond to the LOI, TCN submitted a response on April 12, 2012. Upon review of the response, the Bureau advised TCN that it did not consider the response fully responsive to the LOI, and identified the information and documents missing from the response.<sup>4</sup> In addition, TCN did not provide a sworn statement attesting to the truth and

<sup>1</sup> According to our records and publicly available information, Technical Communication Network, LLC is located at 535 Lexington Avenue, Clifton, NJ 07011. The Company's Chief Executive Officer is Ramia Ainchayba.

<sup>2</sup> 47 U.S.C. §§ 4(i), 4(j), 218, 403.

<sup>3</sup> See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to TCN, Attention: Ramia Ainchayba (Feb. 8, 2012) (on file in EB-TCD-12-00000627) (LOI).

<sup>4</sup> See E-mail from Erica McMahon, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Ramia Ainchayba (May 7, 2012) (noting that TCN did not provide, among other documents and information requested, any copies of its prepaid calling cards and marketing posters).

accuracy of its answers. TCN failed to respond to several subsequent emails and to a letter sent via certified mail with a return receipt requested<sup>5</sup> and did not provide any further information or documents.<sup>6</sup>

### III. DISCUSSION

#### A. Apparent Violation

3. Under Section 503(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any of the provisions of the Act, or any rule or order issued by the Commission under the Act, shall be liable for a forfeiture penalty.<sup>7</sup> In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and send such notice to the last known address of the person against whom the notice has been issued, and such person must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>8</sup>

4. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers such as TCN to provide the information and documents sought by the Bureau's LOI. 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."<sup>9</sup> Section 218 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>10</sup> Section 403 states: "The Commission shall have the same powers and authority to proceed with any inquiry . . . including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had."<sup>11</sup>

5. The LOI the Bureau directed to TCN served as a legal order of the Commission to produce the requested documents and information. TCN received the LOI and the follow-up letter, as evidenced by the return receipts provided. TCN's failure to provide the documents and information sought, including the requisite sworn statement—especially after requesting and receiving an extension to provide the information—within the time and manner specified constitutes a violation of a Commission order.

#### B. Proposed Forfeiture Amount

6. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of

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<sup>5</sup> See Letter from Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to TCN, Attention: Ramia Ainchayba (Sept. 6, 2012) (on file in EB-TCD-12-00000627). The letter stated, "[t]he LOI the Bureau directed to TCN served as a legal order of the Commission to produce the requested information and documents. TCN's failure to provide the requested information and documents sought within the time and manner specified will be considered a violation of a Commission order and could result in a Notice of Apparent Liability."

<sup>6</sup> The Clifton, NJ post office stamped the return receipt card September 13, 2012.

<sup>7</sup> 47 U.S.C. § 503(b); *see also* 47 C.F.R. § 1.80(a).

<sup>8</sup> 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

<sup>9</sup> 47 U.S.C. § 154(i).

<sup>10</sup> *Id.* § 218.

<sup>11</sup> *Id.* § 403.

\$1,500,000 for a single act or failure to act.<sup>12</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in Section 503(b)(2)(E) 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>13</sup> Our forfeiture guidelines set forth the base amount for certain kinds of violations, and identify criteria, consistent with the Section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward. For example, we may adjust a penalty upward for “[e]gregious misconduct,” or where the subject of an enforcement action has engaged in an “[i]ntentional violation” or a “[r]epeated or continuous violation.”<sup>14</sup>

7. Pursuant to Section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement*, the base forfeiture amount for failure to respond to Commission communications is \$4,000.<sup>15</sup> Using our discretion to adjust the base forfeiture as circumstances warrant, however, we have imposed penalties that are many times higher for failing to respond properly to LOIs. For example, we have recently imposed a forfeiture of \$25,000 for completely failing to respond to an LOI,<sup>16</sup> and for failing to respond fully to an LOI,<sup>17</sup> and have proposed a forfeiture of \$100,000 for failing to certify to the accuracy of an LOI.<sup>18</sup> We have imposed these penalties for lack of full responsiveness to LOIs because “[m]isconduct of this type exhibits contempt for the Commission’s authority, and threatens to compromise the Commission’s ability to adequately investigate violations of its rules.”<sup>19</sup>

8. We find that TCN’s apparent failure to fully respond to the Bureau’s LOI in the circumstances presented here warrants a forfeiture of \$25,000 because its misconduct appears egregious, intentional, and continuous.<sup>20</sup> TCN’s response to the LOI was insufficient. After receiving a follow-up letter from Bureau staff reiterating the need for complete and accurate responses, and warning it of the consequences of failing to do so, TCN has still not fully responded to the LOI or provided a sworn statement verifying the truth and accuracy of its responses. Such apparent disregard for the Commission’s authority and investigatory process appears egregious, intentional, and continuous, and therefore supports an adjustment upward from the base forfeiture.

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<sup>12</sup> 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (inflation adjustment to \$150,000/\$1,500,000).

<sup>13</sup> 47 U.S.C. § 503(b)(2)(E); *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 (1997) (*Forfeiture Policy Statement*), *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(8).

<sup>14</sup> 47 C.F.R. § 1.80(b)(8) note.

<sup>15</sup> 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114, Appendix A, Section I.

<sup>16</sup> *Net One International, Net One, LLC, Farrahotel International, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. Dec. 9, 2011) (proposing \$25,000 penalty for failure to respond to LOI).

<sup>17</sup> *See, e.g., Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. Apr. 12, 2012) (proposing \$25,000 penalty for failure to respond fully to LOI); *Fox Television Stations*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (2010) (same) (*Fox NAL*).

<sup>18</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (imposing \$100,000 penalty for failing to submit a sworn written response).

<sup>19</sup> *Fox NAL*, 25 FCC Rcd at 7081.

<sup>20</sup> 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, 17116, Appendix A, Section II.

9. We also direct TCN to respond fully to the LOI within ten (10) calendar days of the date of this NAL. Failure to do so may constitute an additional, continuing violation subjecting TCN to future enforcement action, proposing substantially greater forfeitures and revocation of TCN's operating authority.<sup>21</sup> Consistent with our past precedent, other parties that engage in activities subject to the Communications Act and our rules are on notice that failure to respond properly to Bureau LOIs constitutes violations of Commission orders and are subject to enforcement action.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Technical Communication Network, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE AND ORDER** in the amount of \$25,000 for willfully violating an Enforcement Bureau directive to respond to a letter of inquiry.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,<sup>22</sup> within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Technical Communication Network, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that Technical Communication Network, LLC **SHALL FULLY RESPOND**, not later than ten (10) calendar days from the release date of this NAL, to the Bureau's Letter of Inquiry dated February 8, 2012, in accordance with the delivery instructions set forth therein.

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Technical Communication Network, LLC shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>23</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure

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<sup>21</sup> See *1<sup>st</sup> Source Information Specialists, Inc., d/b/a Locatocell.com*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8193, 8196-97, para. 13 (2006), *affirmed*, *1<sup>st</sup> Source Information Specialists, Inc., d/b/a Locatocell.com*, Forfeiture Order, 22 FCC Rcd 431 (2007).

<sup>22</sup> 47 C.F.R. § 1.80.

<sup>23</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, DC 20554.<sup>24</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

14. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See [www.fcc.gov/osec/guidelines.html](http://www.fcc.gov/osec/guidelines.html) for further instructions on FCC filing addresses.

15. The Commission will not consider reducing or canceling a proposed forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>24</sup> See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by Certified Mail Return Receipt Requested and First Class mail to Technical Communication Network, LLC c/o Ramia Ainchayba, 535 Lexington Avenue, Clifton, NJ 07011.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau