

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

In the Matter of

NEW YORK  
TELEPHONE  
COMPANY

File No. ENF-88-13

Apparent Liability for Forfeiture

**NOTICES OF APPARENT LIABILITY**

Adopted October 18, 1988; Released October 20, 1988

By the Chief, Common Carrier Bureau:

1. Carl Oppedahl, a communications consultant, in his own right and on behalf of a number of his clients has filed a series of complaints with the Commission.<sup>1</sup> The complainant describes certain practices of New York Telephone Company (NYT) which, based on a review of the complete record, are not denied by NYT. Complainant requests a finding that such practices are contrary to the Commission's policies and orders in preemption of state regulation of inside wiring. *Detariffing the Installation and Maintenance of Inside Wiring*, Docket No. 79-105, 51 Fed. Reg. 8498 (1986) (hereinafter *Second Report and Order*), *recon. denied in pertinent part*, 1 FCC Rcd 1190 (1986) (hereinafter *Inside Wiring Reconsideration Order*), *further recon.* 3 FCC Rcd 1719 (1988) (*Second Reconsideration Order*), *appeal docketed sub nom.* NARUC v. FCC, No. 86-1678 (D.C. Cir. Dec. 11, 1986). Specifically, complainant asserts that NYT's practices of not allowing its customers to remove, replace, or rearrange inside wiring previously installed by the Company, and disabling or removing Company-installed wiring whenever the customer elects to have a network interface installed directly contravenes the Commission's *Second Report and Order* and *Inside Wiring Reconsideration Order*.

**BACKGROUND**

2. In the *Second Report and Order*, the Commission preemptively detariffed the installation of simple inside wiring and the maintenance of all inside wiring effective January 1, 1987, and thereafter local telephone companies were no longer permitted to tariff rates for these services. The major objective of the detariffing order was to have the full costs of installing and maintaining inside wiring borne by the customers who cause these costs to be incurred. *Second Report and Order* at para. 2. The decision was additionally intended to increase competition, to promote new entry into the market, to produce cost savings that would be passed on to consumers and to create a competitive telecommunications market.<sup>2</sup>

3. In the *Inside Wiring Reconsideration Order*, the Commission affirmed its earlier preemptive action but eliminated the requirement of mandatory relinquishment of all claims to ownership of inside wiring. However, in so doing, it prohibited carriers from using claims of owner-

ship of inside wiring as a basis for restricting the removal, replacement, rearrangement or maintenance of inside wiring that had been installed or maintained under tariff. *Inside Wiring Reconsideration Order* at paras. 34-35, 43. Significantly, the Commission further found that "[r]atepayer rights would also be abridged if telephone companies were to receive additional compensation for such wiring after it has been expensed or fully amortized. Therefore, we will preclude the telephone companies from requiring that such wiring be *purchased* and from imposing a charge for the use of such wiring." *Id.* at para. 35. (Emphasis added.)

4. However, the Commission recognized that there were unique considerations in the State of New York associated solely with the preemptive aspects of the detariffing of inside wiring maintenance that would subject New York consumers to abrupt increased adjustments in local service rates. To afford the state sufficient time to address these concerns, it deferred New York's effective date for the preemptive detariffing of inside wiring *maintenance* services until January 1, 1990.<sup>3</sup>

5. NYT's stated general policy is that "customers must be informed that installation of inside wire by the Telephone Company is optional."<sup>4</sup> However, NYT's actual policies and practices drastically curtail customers' rights to install their own additional inside wiring or to modify and rearrange company-installed inside wiring. For instance, in response to the complaints in this proceeding, NYT states that: "... customers of New York Telephone may not remove, replace, or rearrange Company-installed inside wiring."<sup>5</sup> In the same letter, NYT further maintains that,

Under PSC Tariff No. 900, B.4.a, customers of New York Telephone must pay the Company maintenance and monthly charges for inside wire installed by the Company. The charges will apply unless the Company removes the wire or the customer purchases it. These are the terms and conditions under which the Company charges for inside wire maintenance in New York State. (Emphasis added.)<sup>6</sup>

In subsequent correspondence, NYT again states:

... Mr. Oppedahl is of the opinion that FCC Docket No. 79-105 requires New York Telephone to discontinue our practice of removing and disabling our inside wire when the Company installs a network interface because the customer wants to provide his own inside wire. In situations of this kind, customers no longer wish to use our wiring, so we disable it and cease billing all wire-related charges.<sup>7</sup>

6. In an April 12, 1987 letter to the Commission, complainant alleges he asked NYT to acknowledge that a New York Telephone customer "may remove, rearrange, and replace the inside wiring . . . based on paragraph 35 of the [Inside Wiring Reconsideration] Order. NYT today told me . . . that its position is unchanged. If [the customer] is unsatisfied with the present location of the NYT-installed inside wiring, they say it may only be removed by NYT technicians. [The Customer] may not remove, replace or rearrange the NYT-installed wiring . . .

New York Telephone says the only other circumstance under which [the customer] may remove, replace or rearrange the inside wiring is if he purchases it."<sup>8</sup>

7. NYT tariffs, NYT training and operations manuals and other NYT documents submitted in the present proceeding verify that it is NYT's policy as well as practice to remove and/or disable company-installed wiring whenever its customers choose to install their own wiring or request the installation of a network interface.<sup>9</sup> Under these circumstances, NYT's customers have a limited option of either requesting that a NYT service technician remove the wiring or purchasing it outright from NYT.

#### DISCUSSION

8. As of January 1, 1987, NYT was explicitly precluded from inhibiting their customers' ability to obtain inside wiring installation and maintenance from sources of their own choosing. As stated previously, the *Inside Wiring Reconsideration Order* unequivocally instructs carriers not to interfere with the customer's right to remove, replace or rearrange any "inside wiring that has ever been installed or maintained under tariff," from requiring that such wiring be "purchased" and "from imposing a charge for the use of such wiring." *Inside Wiring Reconsideration Order* at para. 35. These requirements (1) directly conflict with NYT's requirement that its customers purchase inside wire in order to avoid maintenance charges and, (2) inhibit removal, replacement or rearrangement of such wiring.

9. It is apparently NYT's view that when the Commission deferred detariffing of inside wiring maintenance charges in New York, it simultaneously exempted NYT from complying with the deregulation program in the interim.<sup>10</sup> This is without basis in the record of these proceedings. Moreover, there is nothing, express or implied, in the language of the *Inside Wiring Reconsideration Order* that could even remotely lead to this conclusion. What the Commission chose to defer until January 1, 1990 is merely the means by which the price for inside wiring maintenance is determined. In other words, until that date, the price of maintenance service will continue to be set by state tariff. The Commission granted the deferment not to protect NYT's interests but to shelter its customers from increased rates. NYT's position would result only in a benefit to NYT, would cause needless delays in passing on cost savings to the public and is contrary to the intent and specific ordering paragraphs of our *Inside Wiring Reconsideration Order*. It is clear that NYT is in violation of outstanding Commission orders regarding the deregulation of inside wire. Therefore, imposition of forfeitures is warranted to ensure that NYT's practices are immediately terminated and that NYT fully complies with the underlying policies of the Commission in connection with the detariffing of inside wiring.

#### COMPUTATION OF THE FINE

10. Under Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), the Commission is empowered to impose a forfeiture against a person or corporation who has been repeatedly deemed to fail to comply with any order issued by the Commission under the Act. The record indicates that NYT's tariff regulations, which expressly require the disabling or removal of Company-provided premises wiring, have antedated and not been

changed since the effective date of the deregulation program. From this fact, as well as current NYT policy and operation manuals, we can reasonably conclude that NYT has repeatedly and continuously violated Commission policy and orders. Based on the repeated occasions on which these contrary policies of NYT have been interposed, the amount of the fine the Bureau is proposing is based on our assessment of the totality of the circumstances and a variety of factors which we have weighed to determine what a reasonable fine is in this case. Although each day that a violation continues is considered a separate offense subject to a 2,000 forfeiture and higher forfeitures could be assessed, we are restricted by Section 503(b)(2)(A) to a maximum forfeiture of 20,000 for each violation if the violator is a common carrier. The Bureau finds a reasonable basis to order a 4,000 forfeiture for NYT's policy of not permitting the customer to remove or rearrange inside wiring and for disabling inside wire when the customer chooses to install wiring. Further, it is appropriate to assess a 4,000 forfeiture for the separate offense of coercing its customers to purchase company-inside wiring.

#### ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Rules, 47 C.F.R. § 0.291, that New York Telephone Company SHALL BRING ITSELF INTO COMPLIANCE with Commission Orders regarding the Detariffing of Installation and Maintenance of Inside Wiring within 30 days of the release of this Order or fully justify why its actions comply with Commission orders.

12. IT FURTHER IS ORDERED, that New York Telephone Company is APPARENTLY LIABLE FOR A FORFEITURE of 4,000 for each separate discrete violation of the Commission's Orders concerning the deregulation of inside wiring or a total sum of 8,000.

13. IT IS FURTHER ORDERED, that New York Telephone Company shall, within thirty days of the release date of this notice, PAY THE FULL AMOUNT OF THE FORFEITURE OR FILE A RESPONSE showing why the forfeiture should not be imposed or why the proposed forfeiture should be reduced.<sup>11</sup> If the forfeiture is not paid, the response should include supporting evidence sufficient to rebut in full, the tentative conclusions described in this notice.

#### FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock  
Chief, Common Carrier Bureau

#### FOOTNOTES

<sup>1</sup> File Nos. IC-87-01896, IC-87-04357, IC-88-01023, IC-88-01733, IC-88-02734, IC-88-04079.

<sup>2</sup> The Commission was motivated by similar goals when it deregulated the provision of customer premises equipment (CPE), including the "plain old telephone." Consumers now enjoy a full array of CPE at affordable prices from competing vendors. With the deregulation of inside wiring, many of these

same benefits can extend to the wiring that connects a telephone to the telephone network. See *Inside Wiring Reconsideration Order, supra*, paras. 6-7.

<sup>3</sup> The record in the *Inside Wiring Reconsideration Order* did not establish the need to defer implementation of inside wiring maintenance services for other jurisdictions and, thus, the Commission denied waiver requests seeking such relief. *Id.* at para. 39.

<sup>4</sup> NYNEX Residence Service Center Bulletin, January 1987, "Wire Optionality Job Aid".

<sup>5</sup> Letter from Edward C. Small to Martin Mim Mack (June 16, 1988), File No. IC-88-04079.

<sup>6</sup> *Id.*

<sup>7</sup> Letter from Edward C. Small to Martin Mim Mack (December 30, 1987), File No. IC-88-01023.

<sup>8</sup> Letter from Carl Oppedahl to Commission (April 12, 1988), File No. IC-88-04079.

<sup>9</sup> See, e.g., NYT Tariffs No. 900 B.2.c(1) and No. 900 C.2.b(3); see also "Home Wiring Options" at 6 (NYT's written guidelines and instructions to its customers).

<sup>10</sup> See, e.g., letter dated June 16, 1988 from NYT representative, Edward C. Small.

<sup>11</sup> Such a forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. The check or mail order should be mailed to the Fee Collection Section, Finance Branch, Federal Communications Commission, Box 19032, Washington, D.C. 20036, or delivered to the Fee Collection Section, Room 209, 1919 M Street, N.W., Washington, D.C.