

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

In the Matter of the Application of

GTE MEDIA VENTURES, INC. File No. W-P-C-7133

for authority pursuant to Section 214 of the Communications Act, as amended, to own, operate, and maintain facilities necessary to provide cable television service in Cerritos, California pursuant to Part 63 of the Commission's rules

ORDER AND AUTHORIZATION

Adopted: December 6, 1995; Released: December 6, 1995

By the Deputy Chief, Network Services Division, Common Carrier Bureau:

1. GTE Media Ventures, Incorporated ("Applicant") filed two applications with the Commission on November 22, 1995 pursuant to Section 214(a) of the Communications Act of 1934 ("the Act"), 47 U.S.C. § 214(a). One seeks special temporary authority to own, operate, and maintain facilities necessary to provide cable television service in Cerritos, California pursuant to Section 63.04 of the Commission's rules, 47 C.F.R. § 63.04, until its application for permanent Section 214 authorization is approved. The other seeks permanent Section 214 authority to own, operate, and maintain facilities necessary to provide cable television service in Cerritos, California pursuant to Section 63.01 of the Commission's rules, 47 C.F.R. § 63.01. Applicant states that it is a wholly-owned subsidiary of GTE Corporation. Applicant further states that the facilities that are the subject of its Section 214 application are wholly separate from GTE California, Inc.'s common carrier telephony facilities.

2. Applicant represents that, if it is granted permanent Section 214 authority by the Commission, ownership of the cable television system facilities currently owned by GTE California, Inc. will be transferred to Applicant and Applicant will operate the facilities subject to Title VI of the Act and Part 76 of the Commission's rules. Applicant further represents that it has received approval from the Cerritos City Council for this transfer and interim franchise authority in accordance with 47 U.S.C. § 541(b). Applicant seeks expedited treatment of its Section 214 application, and a grant of special temporary authority so that the transfer described above can be effectuated on or before December 15, 1995. Applicant seeks to initiate service under a grant of special temporary authority on or before December 15, 1995. Applicant maintains that special temporary authority is warranted in order to avoid any disruption in cable television programming services to subscribers in Cerritos following the transfer of GTE California, Inc.'s facilities to Applicant, but prior to final disposition by the Commission of its Section 214 application.

3. In view of the public interest that would be served, IT IS **HEREBY ORDERED**, pursuant to Section 63.04 of the Commission's rules, 47 C.F.R. § 63.04, that Applicant IS **GRANTED** special temporary authority to own, operate, and maintain facilities necessary to provide cable television service in Cerritos, California. We agree with GTE that granting special temporary authority in this instance will help ensure that there is no disruption in cable television programming services to GTE's subscribers in Cerritos, California.

4. The grant of special temporary authority contained herein IS **SUBJECT TO THE CONDITION** that GTE California, Inc. file with the Commission by January 1, 1996: (1) a motion to withdraw the Section 214 application, Application File No. W-P-C-7097, that was filed with the Commission on July 28, 1995; and (2) an application for special permission to withdraw the tariff filings, Transmittal Nos. 873, 874, 893, 909, and 918, that are the subject of the tariff investigation in CC Docket No. 94-81. The grant of special temporary authority contained herein **SHALL EXPIRE** upon final disposition by the Commission of Applicant's Section 214 application in Application File No. W-P-C-7133. In no event shall this temporary authorization remain in effect for a period of more than six months from the release date of this Order. The temporary authorization contained herein is given without prejudice to any Commission action that may be taken with respect to any future request of this nature or to final action by the Commission on Application File No. W-P-C-7133.

FEDERAL COMMUNICATIONS COMMISSION

John S. Morabito
Deputy Chief, Network Services Division
Common Carrier Bureau

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

In the Matter of

Matrix Telecom, Inc. File No. ENF-96-02
NAL/Acct. No. 616EF002

Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 4, 1995 Released: December 6, 1995

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Matrix Telecom, Inc. ("Matrix").¹ For the reasons discussed below, we find that Matrix willfully violated Commission rules and orders² by changing the primary interexchange carrier ("PIC") designated by Mr. Justo Benitez ("Benitez") of Houston, Texas, without Benitez's authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that Matrix is apparently liable for a forfeiture in the amount of forty thousand dollars (\$40,000).

II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,³ the Commission set forth rules and procedures for implementing equal access⁴ and customer presubscription⁵ to an interexchange carrier

("IXC").⁶ The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.⁷ After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission later modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."⁸ In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes.⁹ Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, returnable postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.¹⁰ Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.¹¹ The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.¹² The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written in clear and unambiguous language.¹³ The rules prohibit

¹ Matrix Telecom, Inc. is located in Fort Worth, Texas.

² 47 C.F.R. § 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order*); *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (*Waiver Order*).

³ See *supra* proceedings cited at note 2.

⁴ Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*Modification of Final Judgment* or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing "1" only." *Allocation Order*, 101 FCC 2d at 911.

⁵ Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials "1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). *Id.* at 911.

⁶ Pursuant to the *MFJ*, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. *Id.*

⁷ An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929.

⁸ *Waiver Order*, 101 FCC 2d at 942.

⁹ Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038-39 (1992) (*PIC Change Order*).

¹⁰ See 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

¹¹ Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995) (*LOA Order*).

¹² See *LOA Order*, 10 FCC Rcd at 9574-75. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. *Id.* at 9573.

¹³ See *id.* at 9564-65.

all "negative option" LOAs¹⁴ and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.¹⁵

III. THE BENITEZ COMPLAINT

4. On February 7, 1995, Benitez filed a written complaint with the Commission alleging that Matrix had converted his prescribed long distance service provider from AT&T Corporation ("AT&T") to Sprint Communications Company ("Sprint"), the underlying carrier for Matrix, without his authorization.¹⁶ Benitez discovered that his long distance service had been switched to Matrix when he received his December 1994 telephone bill from Southwestern Bell Telephone Company ("Southwestern Bell"), the local exchange carrier serving Houston, Texas. Benitez immediately notified Southwestern Bell that he had not requested a change and was issued a credit from Southwestern Bell for the cost of the unauthorized change. In January 1995, Southwestern Bell notified Benitez that it was rebilling him for the change charge because it had received a form from Matrix containing authorization from Benitez to make the switch from AT&T to Matrix. Southwestern Bell apparently forwarded Benitez a copy of the authorization form purporting to bear his signature. Benitez states that the signature on the form is not his.¹⁷

5. The Common Carrier Bureau's Informal Complaints and Public Inquiries Branch ("Informal Complaints Branch") sent a letter to Matrix directing it to provide specific information regarding the conversion of Benitez's telephone service.¹⁸ The information that Matrix provided in response to the staff's inquiry indicates that Matrix had requested Southwestern Bell to switch Benitez's service from AT&T to Matrix on the basis of a form captioned "Complete for U-Win Orders Only" that was purportedly signed by Benitez.¹⁹ In its response to the staff's inquiry, Matrix concedes that one of its sales agents had forged Benitez's name on the form. Matrix further states that it has since terminated the sales agent's employment and has refunded Benitez in full for all long distance service charges assessed by Matrix.

IV. DISCUSSION

6. We have carefully evaluated the information submitted in connection with Benitez's informal complaint and conclude that Matrix is apparently liable for forfeiture for willful violation of the Commission's rules and PIC change requirements. We find Matrix's apparent actions particularly egregious. It appears that on or about December 8, 1994, Matrix submitted a PIC change request to Southwestern Bell based on an admittedly forged LOA resulting in the conversion of Benitez's telephone service from AT&T to Matrix. The statements and information provided by

Benitez and Matrix leave no doubt that the LOA was not executed by the complainant and that Matrix lacked the requisite authorization to request a PIC change to Benitez's long distance service. Under these circumstances, we conclude that Matrix's apparent actions were in willful violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

7. As a general matter, the unauthorized conversion of a customer's presubscribed long distance carrier continues to be a wide-spread problem in the industry.²⁰ We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs that turn out to be falsified or forged to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law to date has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to consumer complaints alleging slamming rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules and orders, we intend to scrutinize carefully consumer complaints and to take prompt enforcement action, including the imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized. If carriers intend to rely on a LOA to request a PIC change, they have the responsibility to make sure it is valid.

8. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$100,000) for each violation or each day of a continuing violation up to a statutory maximum of one million dollars (\$1,000,000) for a single act or failure to act.²¹ In exercising such authority, the Commission is required to take into account "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."²² For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of Benitez's telephone line as a single violation. After weighing the circumstances surrounding the violation, we find that Matrix is apparently liable for a forfeiture of forty thousand dollars (\$40,000) for the unauthorized conversion of the Benitez line. Matrix will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²³ In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable,

¹⁴ See *id.* at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

¹⁵ See *id.* at 9581.

¹⁶ Justo Benitez, Informal Complaint No. IC-95-08248.

¹⁷ *Id.*

¹⁸ Notice of Informal Complaint, May 24, 1995. We also note that the Common Carrier Bureau has admonished Matrix for its LOA practices in the past. See Letter, 8 FCC Rcd 5512

(Com.Car. Bur. August 16, 1993).

¹⁹ Matrix Response to Informal Complaint No. IC-95-08248, July 5, 1995.

²⁰ From June of 1994 to June of 1995, of the 28,773 informal complaints filed, 7,960 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

²¹ 47 U.S.C. § 503(b)(2)(B).

²² *Id.* § 503(b)(2)(D).

²³ See *id.* § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.²⁴ We will give full consideration to any financial information provided by Matrix before assessing a final forfeiture amount.

V. CONCLUSIONS AND ORDERING CLAUSES

9. We have carefully reviewed the information submitted in connection with Justo Benitez's informal complaint and conclude that on or about December 8, 1994, Matrix apparently converted or caused a local exchange carrier to convert Benitez's telephone line without Benitez's authorization through the use of a LOA that Matrix concedes was forged by one of its sales agents. We further conclude that Matrix thereby willfully violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of forty thousand dollars (\$40,000).

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Matrix Telecom, Inc. IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of forty thousand dollars (\$40,000) for its willful violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; *PIC Change Order*, 7FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (1985).

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Matrix Telecom, Inc. SHALL PAY the full amount of the proposed forfeiture²⁵ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

12. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Scott Crist, President, Matrix Telecom, Inc., 9003 Airport Freeway, Suite 340, Fort Worth, Texas, 76180.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

²⁴ PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$5,000 and \$3,000 assessed against two jointly owned and operated paging companies were not excessive because the total forfeiture amount (\$8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$395,469); see also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992)

(\$6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

²⁵ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Matrix Telecom, Inc.'s check or money order to "NAL/Acct. No. 616EF002." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.