

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

In the Matter of)
Cardinal Broadband, LLC,) File No.: EB-07-SE-310
aka Sovereign Telecommunications,) NAL/Acct. No.: 200832100070
a wholly owned subsidiary of Cardinal)
Communications, Inc.) FRN: 0018035063

FORFEITURE ORDER

Adopted: July 13, 2012

Released: July 13, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Cardinal Broadband, LLC, aka Sovereign Telecommunications, a wholly-owned subsidiary of Cardinal Communications, Inc., for its willful and repeated violation of Section 9.5(b) of the Federal Communication Commission's rules (Rules). The noted violation involves Cardinal's failure to provide E911 service (for more than two months) in connection with its Voice over Internet Protocol (VoIP) offering. This Forfeiture Order furthers the Commission's longstanding and continuing commitment to promoting E911 service to help ensure the safety and welfare of all Americans.

II. BACKGROUND

2. On August 15, 2008, the Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) issued a Notice of Apparent Liability for Forfeiture to Cardinal in the amount of \$25,000 for its apparent violation of Section 9.5 of Rules by failing to provide E911 service. The Bureau's investigation into this matter was initiated by a complaint that Cardinal, an interconnected

1 Cardinal Broadband, LLC (Cardinal) was formed in 2005 as a Colorado limited liability company. On October 1, 2010, pursuant to an acquisition by Roomlinx, Inc. of Cardinal's parent, Roomlinx, Inc. became the sole member of Cardinal. See Roomlinx, Inc., Annual Report (Form 10-K), at 50 (Mar. 30, 2012).

2 47 C.F.R. § 9.5(b).

3 In the Matter of E911 Enabled Services; E911 Requirements for IP-Enabled Service Providers, WC Docket No. 04-36, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10246, para. 5 (2005).

4 Cardinal Broadband, LLC, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 12224 (Enf. Bur. 2008) (VoIP E911 NAL). In a matter closely related to the VoIP E911 NAL, the Bureau issued a Notice of Apparent Liability for Forfeiture to Cardinal in the amount of \$25,000 for its apparent violation of Section 1.17(a)(2) of the Rules by providing incorrect material factual information to the Commission without a reasonable basis for believing that the information was correct and accurate. Cardinal Broadband, LLC, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233 (Enf. Bur. 2008) (Section 1.17 NAL). In a companion decision issued concurrently with this Forfeiture Order, we affirm the Section 1.17 NAL.

VoIP service provider, was not providing E911 service to residents of a condominium complex called Millstone in Golden, Colorado. Specifically, the complaint alleged that residents of the condominium complex could not make E911 calls and could not reach their local police department. In the *VoIP E911 NAL*, the Bureau determined that Cardinal was subject to the requirements of Section 9.5 as a provider of interconnected VoIP services and that Cardinal failed to provide compliant E911 service.⁵

3. Cardinal submitted a single response to both the *VoIP E911 NAL* and the *Section 1.17 NAL*.⁶ In this Consolidated NAL Response, Cardinal disputes the finding in the *VoIP E911 NAL* that it is an interconnected VoIP service provider.⁷ Cardinal also contends that the failure to provide compliant E911 service was the fault of Prime Time Communications, the third party whose VoIP service Cardinal was reselling at the Millstone condominium complex.⁸ Cardinal further asserts that no violation occurred during the one year period prior to the issuance of the *VoIP E911 NAL* and that its actions were neither “willful” nor “repeated.”⁹ Finally, Cardinal requests cancellation or reduction of the proposed forfeiture on the ground that payment would pose a financial hardship.¹⁰

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (the Act),¹¹ Section 1.80 of the Rules,¹² and the *Forfeiture Policy Statement*.¹³ In examining Cardinal’s Consolidated NAL Response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.¹⁴ As discussed below, we have considered Cardinal’s response in light of these statutory factors and find that neither cancellation nor reduction of the forfeiture is warranted.

A. Failure to provide interconnected VoIP service

5. Section 9.5(b)(1) of the Rules states, in relevant part, that “[i]nterconnected VoIP service providers must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section.”¹⁵ As set forth in the *VoIP E911 NAL*, the Bureau determined that

⁵ *VoIP E911 NAL*, 23 FCC Rcd at 12227-12228, paras. 9, 12.

⁶ See Letter from Ed Garneu, Manager, Cardinal Broadband, LLC, to Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 10, 2008) (Consolidated NAL Response) at 1-2.

⁷ Consolidated NAL Response at 2.

⁸ *Id.* at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 C.F.R. § 9.5(b)(1); *IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10266, para. 37 (2005) (*VoIP 911 Order*), *aff’d sub nom. Nuvio v. FCC*, 473 F.3d 302 (D.C. Cir. 2006). See also, 47 C.F.R. § 9.5(a) (making the E911 service requirements “applicable to providers of interconnected VoIP services”). An interconnected VoIP service is (continued ...)

Cardinal was subject to the requirements of Section 9.5 “as a provider of interconnected VoIP services”¹⁶ and that Cardinal failed to provide compliant E911 service.¹⁷

6. In its Consolidated NAL Response, Cardinal again argues that the service it provides does not meet the definition of “interconnected VoIP service.”¹⁸ The Bureau previously considered and properly rejected this argument in the *VoIP E911 NAL*.¹⁹ As the Bureau noted, the “Commission made no distinction between providers who own and operate their own facilities, services, or networks, and those who outsource some or all of those functions to others.”²⁰ Cardinal presents no additional arguments and no new evidence that would alter our conclusion that, as a reseller of VoIP service, Cardinal was a provider of interconnected VoIP within the meaning of Section 9.5 of the Rules and therefore was obligated to provide fully compliant E911 service.

7. We also find unpersuasive Cardinal’s argument that no forfeiture should be imposed for its violation of Section 9.5(b) because the failure to provide E911 service to the Millstone condominium community was the fault of Prime Time Communications, the third party whose interconnected VoIP service Cardinal resold.²¹ In this instance, Cardinal has acknowledged that it resells interconnected VoIP service at the Millstone condominium community.²² As a consequence, Cardinal was a provider of interconnected VoIP service and was responsible for its compliance with Section 9.5.²³ Moreover, the Commission has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees, independent contractors, or agents have resulted in violations.”²⁴

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a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet Protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. See 47 C.F.R. § 9.3; see also *VoIP 911 Order*, 20 FCC Rcd at 10257-10258, para. 24.

¹⁶ *VoIP E911 NAL*, 23 FCC Rcd at 12227, para. 9.

¹⁷ *Id.* at 12228, para. 12.

¹⁸ Consolidated NAL Response at 2.

¹⁹ *VoIP E911 NAL*, 23 FCC Rcd at 12226-12228, paras. 8-12. In response to the Bureau’s inquiries, Cardinal argued that it “do[es] not provide interconnected VoIP service,” but has acknowledged that it resells interconnected VoIP service. See Letter from Edward A. Garneau, Chief Executive Officer, Cardinal Communications, Inc., and Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 9, 2007) at 3. In the *VoIP E911 NAL*, the Bureau stated that it was not clear from the information provided by Cardinal whether the company was a “reseller” or primary provider of interconnected VoIP service. See *VoIP E911 NAL*, 23 FCC Rcd at 12227, para. 9. The Bureau concluded, however, that “[w]e do not need to decide this issue ... because even assuming that Cardinal resells interconnected VoIP service, it is nevertheless subject to the requirements in section 9.5 of the Commission’s rules as a provider of interconnected VoIP services.” *Id.*

²⁰ *VoIP E911 NAL*, 23 FCC Rcd at 12227, para. 9.

²¹ Consolidated NAL Response at 2.

²² See Letter from Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 7, 2008) (January 7 Response) at 4.

²³ See *VoIP E911 NAL*, 23 FCC Rcd at 12227, para. 9.

²⁴ See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002) (concluding that an antenna structure owner was responsible for the willful acts and omissions of its contractor when the contractor failed to monitor obstruction lights to ensure compliance with the Commission’s Rules); *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244, para. 21 (continued ...)

8. In addition, we reject Cardinal's claim that its violation of Section 9.5(b) was not "willful" because Cardinal "tried to immediately remedy the situation once made aware of it."²⁵ Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act"²⁶ Cardinal's subsequent remedial measures, while laudable, are irrelevant to whether its actions were "willful" within the meaning of Section 312(f)(1) of the Act.²⁷

9. We similarly reject Cardinal's assertion that its violation of Section 9.5(b) of the Rules was not "repeated."²⁸ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."²⁹ As noted below, the record before us establishes that Cardinal's violation of Section 9.5(b) spanned multiple days (more than two months), continuing until as late as October 23, 2007.³⁰

B. Proposed forfeiture consistent with Section 503(b)(6)

10. In its Consolidated NAL Response, Cardinal also argues for the first time that E911 service at the Millstone condominium "was fixed in early August of 2007[,] two months earlier than Cardinal indicated in its prior sworn statements."³¹ On this basis, Cardinal claims that it is "not aware of a violation that occurred during the [one] year prior to issuance of this NAL[.]"³² While Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than one year prior to the issuance of a notice of apparent liability for forfeiture,³³ we do not find Cardinal's latest claim to be credible or reliable; it is exceedingly general (referring only to "early August of 2007"), is unsupported by any documentary evidence, and contradicts detailed, sworn information Cardinal provided to the Bureau during the course of the investigation.

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(1984) (determining that Commission licensee could not escape forfeiture liability where actions by its legal counsel resulted in Commission violations).

²⁵ Consolidated NAL Response at 2.

²⁶ 47 U.S.C. § 312(f)(1). See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

²⁷ The Commission has repeatedly held that post-violation corrective measures are not sufficient to avoid liability. See, e.g., *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71, para. 14 (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, para. 13 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, para. 8 (2000).

²⁸ Consolidated NAL Response at 2.

²⁹ 47 U.S.C. § 312(f)(2). See *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362, para. 9 (2001); *Southern California*, 6 FCC Rcd at 4388, para. 5.

³⁰ January 7 Response at 4. Even assuming, however, that fully compliant E911 service was provided to the Millstone condominium community at an earlier date (i.e., on August 15, 2007), see *infra* paras. 10-11, Cardinal has acknowledged that multiple customers at the Millstone condominium property experienced E911 service problems. *Id.* (stating that the service offered at the Millstone condominium community included "30 telephone numbers servicing 28 customers"). Cardinal therefore would have repeatedly violated the rule as to multiple customers.

³¹ Consolidated NAL Response at 2

³² *Id.*

³³ 47 U.S.C. § 503(b)(6).

11. Specifically, Cardinal had previously declared under penalty of perjury that it switched its VoIP service provider from Prime Time Communications to Simple Signal in July 2007, that Simple Signal “began” servicing customers at the Millstone condominium community on August 15, 2007,³⁴ and that *all* VoIP customers at the Millstone condominium were provided E911-compliant service “by or before October 23, 2007.”³⁵ In the absence of any documentary evidence to counter Cardinal’s initial report, or even an explanation of the conflicting claims on when compliant E911 service commenced, we have no basis on which to conclude that Cardinal’s earlier sworn statements are inaccurate or that Cardinal provided fully compliant E911 service prior to August 15, 2007. Regardless of whether Cardinal’s violation of Section 9.5(b) ended on August 15, 2007 or October 23, 2007, the *VoIP E911 NAL* was issued within the one year statute of limitations in accordance with the requirements of Section 503(b)(6) of the Act.

C. Lack of a basis for reduction of the proposed forfeiture

12. Finally, Cardinal asserts that payment of the proposed forfeiture would pose a financial hardship.³⁶ The Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.³⁷ In addition, and as detailed in the instructions provided in the *VoIP E911 NAL*, “[c]laims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three year period.”³⁸ Cardinal only submitted financial statements covering the eight-month period, January through August 2008. Moreover, Cardinal’s revenues, as reflected in the limited financial statements it did submit, would not warrant a reduction of the forfeiture amount.³⁹

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴⁰ and Sections 0.111, 0.311, and 1.80 of the Rules,⁴¹ Cardinal Broadband, LLC **IS LIABLE FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for failing to provide compliant E911 service in willful and repeated violation of Section 9.5(b) of the Rules.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release date of this Forfeiture Order.⁴² If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for

³⁴ January 7 Response at 4.

³⁵ *Id.*

³⁶ Consolidated NAL Response at 3.

³⁷ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089, para. 8 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

³⁸ See *VoIP E911 NAL*, 23 FCC Rcd at 12232, para. 24.

³⁹ Based on established precedent, the \$25,000 forfeiture proposed in the *VoIP E911 NAL* is not excessive in comparison to Cardinal’s reported gross revenues. See *supra* note 37.

⁴⁰ 47 U.S.C. § 503(b).

⁴¹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴² *Id.* § 1.80.

enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁴³ Cardinal shall send electronic notification of payment to Josh Zeldis at Josh.Zeldis@fcc.gov and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

15. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁴ 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 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.

16. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁵ 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.

17. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail return receipt requested to Jon Bartlett, President, Cardinal Broadband, LLC, 2150 West 6th Avenue, Suite H, Broomfield, CO 80020 and to Michael Wasik, Chairman and CEO, Roomlinx, Inc., 2150 West 6th Avenue, Suite H, Broomfield, CO 80020.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁴³ 47 U.S.C. § 504(a).

⁴⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁵ See 47 C.F.R. § 1.1914.