

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

In the Matter of)	File No.: EB-TCD-12-00005015
)	
CallingPost Communications, Inc.)	NAL/Acct. No.: 201432170011
)	
)	FRN: 0023782907

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 11, 2014

Released: July 11, 2014

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against CallingPost Communications, Inc. (CallingPost or Company) for obstruction of an Enforcement Bureau (Bureau) investigation into the Company's compliance with the Communications Act and our rules relating to the practice of making calls using artificial or prerecorded voice messages—"robocalling." Robocalls may be made to consumers' cell phones only if the consumer has consented or during an emergency—all other robocalls to cell phones are illegal. Congress has authorized the Federal Communications Commission to investigate illegal robocalls and, when we find violations, to enforce these consumer protection laws. The Bureau is investigating CallingPost's compliance with robocalling rules, yet the Company has repeatedly failed to answer the Bureau's questions and to produce documents. We will not tolerate attempts by CallingPost or any other company to evade or ignore our lawful inquiries—particularly questions related to compliance with laws that protect consumers from harm.

II. BACKGROUND

2. CallingPost offers robocalling services to various third-party clients. CallingPost's clients pay the Company to make artificial or prerecorded voice calls and automated SMS text messages to telephone numbers of the clients' choosing.¹ The Company boasts that "[s]ince 1995, CallingPost has facilitated the delivery of more than 1 billion messages for thousands of customers throughout the United States, Canada, and Puerto Rico."²

3. On February 8, 2013, the Bureau's Telecommunications Consumers Division (Division) sent a letter of inquiry (LOI)³ to CallingPost to investigate whether the Company had violated federal laws and FCC regulations governing robocalls.⁴ Tracking records show that the LOI was delivered via

¹ See CallingPost Website, Group Management Features, <http://www.callingpost.com/features> (last visited Jul. 8, 2014).

² See CallingPost Website, About Us, <http://www.callingpost.com/about-callingpost> (last visited Jul. 8, 2014). A prominent banner on the top of CallingPost's website proclaims "Over 1 Billion Messages Served . . . And Counting!" See *Id.*

³ Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to CallingPost Communications, Inc. (Feb. 8, 2013) (on file in EB-TCD-12-00005015) (LOI).

⁴ See 47 U.S.C. § 227(b)(1)(A)(i)–(iii); 47 C.F.R. § 64.1200(a)(1)(i)–(iii).

certified mail to CallingPost at 11:08 AM EST on February 19, 2013.⁵ Phil Alexander, president of CallingPost, responded via e-mail on February 25, 2013, acknowledging that he had received the LOI.⁶

4. On February 27, 2013, at the Company's request, the Division granted CallingPost an extension of time in which to respond to the LOI.⁷ CallingPost failed to respond to the LOI by the extended deadline. Division staff called Mr. Alexander and followed up by e-mail to inquire about the status of the Company's response.⁸ On May 1, 2013, Mr. Alexander responded by e-mail, stating that he "feel[s] very badly that I have not been able to respond to [the FCC] but I have been absolutely swamped."⁹ Division staff explained that the Company had an obligation to respond to the LOI and that the Division expected a response by June 1, 2013.¹⁰ On June 1, 2013, Mr. Alexander sent Division staff an e-mail confirming that CallingPost would not be responding by the deadline.¹¹

5. On June 26, 2013, the Division issued a Citation to CallingPost for failure to comply with an FCC order and required the Company to take immediate steps to comply with the LOI by providing the requested information and documents.¹² The Citation warned CallingPost that it is under a continuing obligation to respond to the LOI and that each day the Company fails to respond is a continuing violation, each day of which constitutes a separate violation for which enforcement action may be taken.¹³ The Company was given until July 26, 2013, to respond to the Citation.¹⁴

6. On July 27, 2013, Mr. Alexander responded to the Citation, stating that, among other things, an attorney the Company planned to work with could not help the Company due to a conflict of interest.¹⁵ The Company's Citation Response also asked for an additional thirty days "to speak with [the FCC] again on how we can provide the information . . . and work out a plan to obtain and provide it to

⁵ See United States Postal Service, Proof of Delivery Record for Certified Mail No. 70090080000060695440 (on file in EB-TCD-12-00005015).

⁶ See E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, and William Beckwith, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 25, 2013, 20:42 EDT) (on file in EB-TCD-12-00005015).

⁷ See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Phil Alexander, President, CallingPost Communications, Inc. (Feb. 27, 2013, 17:11 EDT) (on file in EB-TCD-12-00005015).

⁸ See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Phil Alexander, President, CallingPost Communications, Inc. (May 1, 2013, 16:15 EDT) (on file in EB-TCD-12-00005015).

⁹ See E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (May 1, 2013, 20:54 EDT) (on file in EB-TCD-12-00005015).

¹⁰ See E-mail from Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Phil Alexander, President, CallingPost Communications, Inc. (May 21, 2013, 10:28 EDT) (on file in EB-TCD-12-00005015).

¹¹ E-mail from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (June 1, 2013, 23:56EDT) (on file in EB-TCD-12-00005015).

¹² *CallingPost Commc 'ns, Inc.*, Citation - Failure to Comply with an FCC Order, 28 FCC Rcd 9016 (Enf. Bur. 2013) (Citation).

¹³ *Id.* at 9019, para. 8.

¹⁴ *Id.* at 9019, para. 9.

¹⁵ E-mail and Letter Attachment from Phil Alexander, President, CallingPost Communications, Inc., to Kristi Thompson, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jul. 27, 2013, 00:16EDT) (on file in EB-TCD-12-00005015) (Citation Response).

[the Commission].”¹⁶ However, neither Mr. Alexander nor any employee or representative of the Company ever contacted Division staff again following the Citation Response. To date, CallingPost has never answered the Bureau’s questions or produced the documents requested by the LOI.

I. DISCUSSION

A. Failure to Respond to the LOI

7. Section 503(b)(1) of the Communications Act of 1934, as amended (Act), states that any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁷ It is well established that a failure to respond to a letter of inquiry from the Bureau constitutes a violation of a Commission order.¹⁸ The LOI directed CallingPost to provide certain information related to its use of automatic dialing equipment and the Company’s compliance with federal Do-Not-Call regulations. This information is necessary to enable the Bureau to perform its investigatory function. Despite attempts by Division staff to discuss and rectify the matter, CallingPost has not provided any valid explanation for its repeated failures to provide the requested information. Neither the Company’s failure to timely obtain legal counsel nor its president’s excuses relieve it of its obligation to comply with a lawfully issued order of the Commission.¹⁹

8. Moreover, the Citation provided actual notice to CallingPost that its failure to respond to the LOI was an actionable violation of a valid Commission order and gave the Company an opportunity to take corrective action without penalty.²⁰ The Citation also warned CallingPost that if it continued to ignore its obligation to respond, then it could be subject to further legal action, including forfeiture penalties based on both the conduct that led to the Citation and any conduct following it.²¹ Nonetheless, the Company continued to ignore the warnings and provided no answers—merely more excuses. Therefore, in light of well-established Commission precedent, CallingPost’s failure to provide the information and documents required by the Bureau’s LOI constitutes an apparent willful and repeated violation of a Commission order.

B. Proposed Forfeiture Amount

9. Section 503(b)(2)(D) of the Act authorizes the Commission to assess a forfeiture against the Company of up to \$16,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$122,500 for any single continuing violation.²² In determining the appropriate forfeiture

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

¹⁸ 47 U.S.C. § 503(b)(1)(B). *See also* *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318 (2013); *Technical Commc’n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018 (Enf. Bur. 2013); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. 2012) (*Google NAL*); *Net One Int’l, Net One, LLC, Farrahtel Int’l, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (Enf. Bur. 2011) (*Net One NAL*); *SBC Commc’ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002).

¹⁹ *See* 47 U.S.C. § 155(c)(3) (“Any order . . . or action made or taken pursuant to any [] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission”).

²⁰ Citation, 28 FCC Rcd at 9018–19, para. 8.

²¹ *Id.*

²² 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(7). Section 503(b)(2)(D) provides for forfeitures of up to \$10,000 for each violation or each day of a continuing violation, up to a maximum of \$75,000 for a single continuing violation in cases, as here, where the violation does not involve a Commission licensee or common carriers, among others. *See* 47 U.S.C. § 503(b)(2)(D). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(D) to \$16,000 for each

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.”²³ 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.”²⁴

10. 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 \$4,000.²⁵ However, we have issued penalties for the failure to respond that far exceeded the \$4,000 base forfeiture, including cases in which the targets answered some of the LOI questions but failed to answer them completely or to provide all of the required information. For example, in 2012, the Bureau assessed Google, Inc. a forfeiture of \$25,000 for failing to answer all of the Bureau’s questions and failing to produce required documents.²⁶ Similarly, in 2010, the Bureau penalized Fox Television Stations, Inc. \$25,000 for submitting an incomplete response to an LOI.²⁷ In this case, the Company’s actions similarly justify an upward adjustment from base forfeiture.

11. Accordingly, we propose a forfeiture of \$25,000. This forfeiture is appropriate given the extent and willfulness of the continuing violation, and the insufficiency of the Company’s responses to the Bureau’s inquiries.²⁸ CallingPost completely failed to answer any of the Commission’s questions or produce the required documents—even after numerous follow-up telephone calls and e-mails, a formal Citation, and ample time and opportunity to comply with its obligations under the LOI. Moreover, CallingPost’s willful disregard of its obligation to comply continues unabated. As we have noted in previous cases involving a failure to respond to FCC inquiries, “[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.”²⁹

12. We also direct CallingPost to respond fully to the LOI within ten (10) calendar days of the date of this Notice of Apparent Liability for Forfeiture and Order (NAL). Failure to do so may constitute an additional, continuing violation subjecting the Company to future enforcement action. Consistent with our precedent, other parties that engage in activities subject to the Act and the Commission’s rules are on notice that a failure to respond properly to a Bureau letter of inquiry

violation or each day of a continuing violation, up to a maximum of \$112,500 for any single continuing violation. See 47 C.F.R. § 1.80(b). See also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008). In 2013, the Commission increased its maximum statutory forfeitures to reflect further inflation. See *Amendment Of Section 1.80(b) Of The Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases).

²³ 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

²⁴ 47 C.F.R. § 1.80(b)(8) & note.

²⁵ 47 C.F.R. § 1.80; *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, 17114, Appendix A, Section I (1997) *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²⁶ See generally *Google NAL*, 27 FCC Rcd 4012.

²⁷ See *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (Enf. Bur. 2010) (*Fox NAL*).

²⁸ See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8) & note.

²⁹ See *Net One NAL*, 26 FCC Rcd at 16495, para. 7 (quoting *Fox NAL*, 25 FCC Rcd at 7081, para. 15).

constitutes a violation of a Commission order that is subject to enforcement action. Moreover, we notify the Company that Section 409(m) of the Act provides for criminal penalties, including fines and incarceration for up to one year, for any person who “neglect[s] or refuse[s] to . . . answer any lawful inquiry” or produce documents when required by subpoena or other lawful requirement of the FCC.³⁰ Continued neglect or refusal to answer the Bureau’s inquiries may subject the Company and its principals to both fine and imprisonment.

III. ORDERING CLAUSES

13. 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, CallingPost Communications, Inc. 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.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission’s rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, CallingPost Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. **IT IS FURTHER ORDERED** that CallingPost Communications, Inc. **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, 2013, in accordance with the delivery instructions set forth therein.

16. 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. CallingPost Communications, Inc. 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.³¹ 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 the Company should follow based on the form of payment it selects:

- 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.

³⁰ 47 U.S.C. § 409(m).

³¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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, DC 20554.³² If the Company has 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.

16. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th 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 12th 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 12th 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 for further instructions on FCC filing addresses.

17. 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.

18. **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 Phil Alexander, President, CallingPost Communications, Inc., 531 Blackburn Drive, Augusta, GA 30907, and by electronic mail to palexander@callingpost.com.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Acting Chief
Enforcement Bureau

³² See 47 C.F.R. § 1.1914.