

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

In the Matter of
US Notary, Inc.
Apparent Liability for Forfeiture
File No. EB-00-TC-011
NAL/Acct. No. X3217-006

FORFEITURE ORDER

Adopted: October 3, 2001

Released: October 12, 2001

By the Commission: Commissioner Abernathy issuing a statement.

I. INTRODUCTION

1. In this order, we issue a monetary forfeiture in the amount of \$90,000 against US Notary, Inc. (US Notary) for willfully or repeatedly violating Section 227(b)(1)(C) of the Communications Act of 1934, as amended (the Act), and the Commission's related rules and orders.

II. BACKGROUND

2. On July 12, 1999, in response to several consumer letters indicating that US Notary had faxed unsolicited advertisements, the Commission staff issued a citation to US Notary, pursuant to section 503(b) of the Act. Specifically, the staff cited US Notary for allegedly using a telephone facsimile machine, computer, or other device to send unsolicited advertisements to a telephone facsimile machine in violation of section 227 of the Act and the Commission's rules and orders.

1 See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 7 FCC Rcd 8752, 8779 ¶ 54 (1992) (TCPA Report and Order) (stating that Section 227 of the Act prohibits the use of telephone facsimile machines to send unsolicited advertisements); see also 47 U.S.C. § 503(b)(5) (authorizing the Commission to determine forfeiture liability subsequent to issuing a citation to a non-regulatee for violations of the Act or of the Commission's rules and orders).

advertisements after receiving the citation.<sup>2</sup> On August 1, 2000, the Commission issued a Notice of Apparent Liability (NAL) against US Notary that proposed a forfeiture amount of \$90,000 for 20 apparent violations. The NAL was based on unsolicited advertisements that US Notary had apparently sent since July 17, 1999, the day US Notary received the staff's citation.<sup>3</sup> US Notary filed its response to the NAL on November 3, 2000.

### III. DISCUSSION

3. In its response to the NAL, US Notary argues that it should not be found liable for violations of the TCPA. It argues specifically that: 1) another company doing business with complainant Arrick Robotics may have given the Arrick Robotics facsimile number to US Notary's advertising department; 2) the fax sent to complainant William Pratt does not have a header and US Notary is unable to track it; 3) US Notary had an established, ongoing business relationship with complainant Joe Shields' employer, Lockheed Martin, and had provided training to other NASA employees; 4) the fax sent to the Texas Attorney General's office (another complainant) was either requested by another division of the Attorney General's office, or, alternatively, the Texas Secretary of State's office, which had reviewed US Notary's advertising in the past and may have forwarded the flyer to the office of the Attorney General; 5) the Lone Star Report (another complainant) wanted US Notary to advertise in its publication and had requested that US Notary fax an ad for purposes of determining what it would cost to run the advertisement in the Lone Star Report; and 6) US Notary's questions regarding applicability of state and federal laws had gone unanswered by the Commission staff.<sup>4</sup> US Notary further stated that it intended to cease business by January 1, 2001.<sup>5</sup> As discussed below, we reject each of US Notary's arguments.

4. The Arrick Robotics Complaint: Roger Arrick, in his Requests for Commission Action, states that he received three unsolicited advertisements by fax from US Notary in December 1999, March 2000, and on April 28, 2000. In its response, US Notary indicates that it is not certain why Arrick Robotics received these faxes, but suggests that perhaps another company with whom Mr. Arrick does business had given his fax number to US Notary's advertising department.<sup>6</sup> US Notary requests that the Commission refrain from imposing a forfeiture for these apparent violations. We are not convinced by US Notary's argument. The Commission has previously stated that by merely publishing or distributing its facsimile number, the owner of the facsimile machine has not given prior express permission or invitation to receive advertisements.<sup>7</sup> The Commission also indicated that given the wide variety of circumstances in which telephone facsimile numbers might be distributed (*i.e.*, business cards, advertisements, directory listings, trade journals, or association membership), it would treat the issue of consent to receive fax advertisements on a case-by-case basis.<sup>8</sup> We do not believe that obtaining a third party's fax number from a business associate establishes a business relationship with the third party, nor does it demonstrate prior express permission or invitation from the third party to receive facsimile advertisements.<sup>9</sup> US Notary's speculation as to how it obtained Arrick Robotics' facsimile number

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<sup>2</sup> See *US Notary, Inc., Notice of Apparent Liability for Forfeiture*, 15 FCC Rcd 16999, 17000 ¶ 3 (2000) ("*US Notary NAL*").

<sup>3</sup> *Id.* at 17001 ¶ 3.

<sup>4</sup> US Notary Response to the NAL ("*Response*").

<sup>5</sup> *Response* at 4.

<sup>6</sup> *Response* at 2.

<sup>7</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum Opinion and Order*, 10 FCC Rcd 12391, 12408 ¶ 37 (1995) ("*TCPA Memorandum Opinion and Order*").

<sup>8</sup> *Id.* at 12408-09 ¶ 37.

<sup>9</sup> See 47 U.S.C. § 227(a)(4); see also 47 C.F.R. § 64.1200(f)(4)-(5).

confirms Mr. Arrick's statement that US Notary did not have either prior express permission to send the fax or an established business relationship with Mr. Arrick or Arrick Robotics.<sup>10</sup> We therefore reject US Notary's arguments with respect to the Arrick Robotics Complaint and impose a forfeiture for these violations.

5. The William Pratt Complaint: In his Request for Commission Action, William Pratt states that he received one unsolicited facsimile advertisement from US Notary. US Notary argues that it is impossible to track the letter sent to Mr. Pratt because the "faxes no longer have a header."<sup>11</sup> As described in the *NAL*, however, Mr. Pratt stated that the facsimile did not have a header when received.<sup>12</sup> The TCPA makes it unlawful for any person to send any message via a telephone facsimile machine "unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual."<sup>13</sup> On the facts presented, we find that the fax advertisement sent to Mr. Pratt did not include a header. While the failure to include this information on the fax in no way excuses US Notary from the prohibition on sending unsolicited fax advertisements, it does confirm another potential violation of the TCPA. Moreover, US Notary has offered no evidence to rebut the fact that the advertisement was for US Notary's services. We reject US Notary's arguments as to the William Pratt Complaint and impose a forfeiture for faxing the unsolicited advertisement.<sup>14</sup>

6. The Joe Shields Complaint: In his Requests for Commission Action, Joe Shields, Engineering Specialist, Lockheed Martin/Johnson Space Center, states that US Notary used a telephone facsimile machine to send 12 unsolicited advertisements to Johnson Space Center fax machines in October and December 1999, and again in February, March, and May 2000.<sup>15</sup> According to Mr. Shields, US Notary sent advertisements to several different facsimile machines at the Johnson Space Center in Houston, Texas. US Notary argues, however, that it has an ongoing relationship with Mr. Shields's employer at the Johnson Space Center, Lockheed Martin, and further argues that it also has an ongoing relationship with NASA. In its response, US Notary provides the names of seven students from Lockheed Martin and six students from NASA who were trained by US Notary and the dates they attended US Notary seminars.<sup>16</sup> As a result of having trained those students, US Notary claims that it has an established relationship with the students' employers, Lockheed Martin and NASA.<sup>17</sup>

7. The Enforcement Bureau (Bureau) staff was able to contact five of the NASA students and five of the Lockheed Martin students trained by US Notary. Eight of the students said that they had not contacted US Notary prior to receiving information about the seminar. Seven of the students recall that they registered for the training as the result of their office having received an unsolicited fax regarding the

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<sup>10</sup> See Declaration of Roger Arrick, owner of Arrick Robotics.

<sup>11</sup> Response at 3.

<sup>12</sup> US Notary *NAL*, 15 FCC Rcd at 17001 ¶ 6.

<sup>13</sup> 47 U.S.C. § 227(d)(1)(B). Although the advertisement received by Mr. Pratt did not include a header that contained the information required by this section of the Act, the advertisement offered notary training in April 2000 by US Notary at four Texas locations. See Declaration of William Pratt.

<sup>14</sup> We did not propose a forfeiture based on the failure to include the fax header and do not impose one here.

<sup>15</sup> In an amendment dated June 25, 2001, Mr. Shields modified his declaration to correctly state his fax number at the Johnson Space Center.

<sup>16</sup> Response at 1.

<sup>17</sup> The Commission's rules define an established business relationship as a relationship created as a result of "voluntary two-way communication" between the parties. 47 C.F.R. § 64.1200(f)(4).

training. The others did not recall how they learned about the training. None of the NASA students contacted were located in Texas. One of the Lockheed Martin students was located in Dallas, Texas. The office that received the faxes that are the subject of this complaint is located several hundred miles away in Houston, Texas. Based on this information, we find that US Notary has not shown that it has an established relationship with Lockheed Martin or NASA. It has not provided any documentation demonstrating that anyone at the Johnson Space Center had given their prior express invitation or permission to receive the advertisements. Our investigation does not support US Notary's argument that it had an ongoing business relationship with NASA or Lockheed Martin. The mere fact that US Notary provided notary training to some employees of Lockheed Martin and NASA does not by itself establish a business relationship with the students' employers. Each student who recalled how they learned of the training stated they were informed about the training by an unsolicited fax advertisement. Hence, it appears that any relationships US Notary had with these parties were initiated by unlawful fax advertising. We therefore find that US Notary has failed to substantiate its claim of a prior established business relationship with NASA or Lockheed Martin. Finally, US Notary also states in its response that none of the faxes display in the header or footer the number of the receiving fax machine. The TCPA does not require fax machines to indicate the number of the receiving facsimile machine. It does, however, require the telephone number of the sending machine.<sup>18</sup> Consequently, we must reject US Notary's arguments regarding the Joe Shields Complaint and impose a forfeiture for faxing the unsolicited advertisements.

8. The Lone Star Report Complaint: US Notary contends that it transmitted a copy of its flyer to the Lone Star Report to obtain a quote for the cost of an advertisement.<sup>19</sup> US Notary indicates that the Lone Star Report solicited its advertising business.<sup>20</sup> US Notary has not, however, provided any evidence in the way of affidavits or documentation to support its claim. In the absence of such documentation, we reject US Notary's claim.

9. The Texas Attorney General Complaint: We also reject US Notary's arguments with respect to the faxes received by the Texas Attorney General's Office. In his Request for Commission Action, C. Brad Schuelke, Assistant Attorney General, Texas Attorney General's Office, states that he forwarded to the Commission two unsolicited advertisements that were faxed to the Texas Attorney General's Office together with a fax received by Texas State government employee, Bernice Tesmer, who stated that she received one unsolicited advertisement by fax from US Notary. US Notary argues that because it has conducted training for other government agencies, it is not unusual for the company to fax its seminar schedule to government agencies at their request. US Notary did not indicate that it has provided training for anyone at the Texas Attorney General's office. US Notary further argues that the Office of the Attorney General may have requested a list of seminar dates and that perhaps another division in the Attorney General's Office requested the information, but that someone else received the fax. Finally, US Notary argues that the Texas Secretary of State's office, which had reviewed US Notary's advertising in the past, may have forwarded the seminar schedule to the Attorney General's Office.<sup>21</sup> Regardless of its speculation, US Notary has failed to provide us with any evidence indicating the existence of a business relationship with the Texas Attorney General's Office. Given the absence of such evidence, or any evidence that the Texas Attorney General's Office had given US Notary prior express permission or invitation to send facsimile advertisements, we reject US Notary's argument as to the Texas Attorney General complaint.

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<sup>18</sup> See ¶ 5, *supra*.

<sup>19</sup> See Request for Commission Action from David Guenthrer, The Lone Star Report (via the Texas Attorney General's Office) stating that The Lone Star Report received one unsolicited advertisement by fax from US Notary.

<sup>20</sup> *Response* at 3.

<sup>21</sup> *Response* at 3.

10. The Applicability of State and Federal Statutes: US Notary argues that questions it posed to the Commission staff regarding the applicability of State and Federal statutes allegedly went unanswered, and that it believed its advertisements sent to facsimile machines in Texas were permitted under Texas law. Specifically, US Notary included in its *Response* a copy of a letter it purportedly sent to Mr. (Glenn) Reynolds on August 13, 1999, asking, among other things, whether the TCPA prohibition against sending unsolicited faxes “trumped” laws enacted in California and New York which appeared to permit the sending of unsolicited faxes to other fax machine within the same state.<sup>22</sup> US Notary also states that after consulting with its counsel, it determined that there should not be a problem faxing to customers in Texas because it believed Texas law allows unsolicited facsimile advertising.<sup>23</sup> As stated in the NAL,<sup>24</sup> Commission staff met with the owner of US Notary on August 3, 1999, and (1) specifically advised him that it is unlawful to send unsolicited advertisements to telephone facsimile machines, as set out in the TCPA and the Commission’s rules and orders,<sup>25</sup> and (2) provided him with a copy of the TCPA. At least from the time US Notary received our citation, it had actual notice of the TCPA’s prohibition against unsolicited fax advertising. The fact that the company had questions regarding the precise scope of the prohibition does not excuse its failure to comply with the law. Moreover, the applicability of state law is not relevant to questions of compliance with federal law here. Regardless of what state law does or does not require, US Notary had an independent obligation to comply with the TCPA and the Commission’s associated rules.

11. US Notary’s Claim That It Would Cease Operations: In its response to the NAL, US Notary stated, apparently as part of its argument that we should reduce or rescind the proposed forfeiture, that its owner had decided to close the company and cease business by January 1, 2001.<sup>26</sup> On May 30, 2001, Bureau staff contacted the toll-free telephone number listed on the advertisements that were the subject of the *US Notary NAL*. A recorded message on the original US Notary toll-free number referred Commission staff to a new toll-free number, which was answered as “Notary Services.” When asked if this was the number for US Notary, Bureau staff was told by the telephone operator that they disseminated information and handled registration for US Notary. In response to a request for information on notary training seminars, Bureau staff received, on May 31, 2001, a fax advertisement for notary training.<sup>27</sup> Based upon the staff inquiries, it is apparent that US Notary has not ceased operations and is continuing to offer notary training. We therefore cannot accept US Notary’s claim to have ceased operations and we decline to reduce or rescind the proposed forfeiture on this basis. Moreover, even if US Notary had ceased operations, it would still be liable for TCPA violations committed prior to its

<sup>22</sup> US Notary also asked: 1) whether the California and New York laws were valid; 2) how to determine when a business relationship ends; 3) what the liability is for faxing at the request of one employee if the fax is received by another individual in the company; 4) how long a business relationship must exist before faxing can commence; 5) how long after service is rendered is a business allowed to continue faxing ads for its services; and 6) if one branch of a company uses its service, can US Notary contact other branches of the company for the same services. See the copy of US Notary’s letter to Mr. Reynolds that is attached to its *Response* at Exhibit A. We note that US Notary’s obligation to comply with federal law was not suspended simply because it sent these inquiries to our staff.

<sup>23</sup> *Response* at 2.

<sup>24</sup> *US Notary NAL*, 15 FCC Rcd at 17000 ¶ 2.

<sup>25</sup> See 47 U.S.C. § 227; 47 C.F.R. § 64.1200(a)(3). See also 47 U.S.C. § 227(e) (allowing states to impose more restrictive intrastate requirements on the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements.)

<sup>26</sup> *Response* at 4.

<sup>27</sup> According to Dun & Bradstreet Information Report, US Notary, Inc. continues to be headquartered at 1033 Vista Sierra Drive, El Cajon, California, as a provider of schooling or educational services, specializing in educational services on notary law. See Dun & Bradstreet Business Information Report, May 9, 2001. Commission staff also searched the California Secretary of State Business Service Center website, which listed US Notary as an active corporation. See California Secretary of State Business Service Center Corporation Report, June 10, 2001.

ceasing operation.

#### IV. CONCLUSION

12. After reviewing the information filed by US Notary in its Response, we find that US Notary has failed to identify facts or circumstances to persuade us that there is any basis for reducing or rescinding the forfeiture proposed in the *US Notary NAL*. We therefore impose a \$90,000 forfeiture penalty.

#### V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b)(5) of the Act, as amended, 47 U.S.C. § 503(b)(5), and section 1.80 of the Commission's Rules, 47 C.F.R. § 1.80, that US Notary, Inc., IS LIABLE FOR A MONETARY FORFEITURE in the amount \$90,000 for willful or repeated violations of section 227(b)(1)(C) of the Act, 47 U.S.C. § 227(b)(1)(C), sections 64.1200(a)(3) and 64.1200(f)(5) of the Commission's Rules, 47 C.F.R. §§ 64.1200(a)(3), 64.1200(f)(5), and the related orders.

14. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's Rules within 30 days of the release of this Order.<sup>28</sup> If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.<sup>29</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Bruce Johnson, Owner, US Notary, Inc., 1033 Vista Sierra Dr., El Cajon, California 92019.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>28</sup> 47 C.F.R. § 1.80(f)(4).

<sup>29</sup> 47 U.S.C. § 504(a).

## SEPARATE STATEMENT OF COMMISSIONER KATHLEEN ABERNATHY

### *In re: US Notary, Inc. Apparent Liability for Forfeiture, Forfeiture Order*

I support today's Forfeiture Order holding US Notary monetarily liable for distributing unsolicited faxes. However, I write separately to emphasize the continued importance of vigorously enforcing this and other statutory mandates.

The fundamental duty of the FCC is to implement statutes promulgated by Congress. In 1992, Congress recognized the need to provide relief to consumers plagued by unsolicited fax advertising by enacting the Telephone Consumer Protection Act.<sup>1</sup> Unfortunately, the Commission did not bring its first enforcement action under the TCPA's ban on unsolicited faxes for 7 years.<sup>2</sup>

I am heartened that in recent years the FCC has begun to enforce its rules more regularly. Today, by imposing a \$90,000 forfeiture on US Notary, we further demonstrate that eliminating unsolicited faxes is a priority of this Commission. I also want to take this opportunity to encourage consumers to complain to the offending companies and the Commission after receiving unsolicited faxes.

For the sake of consumers and the entities we regulate, it is imperative that we enforce our rules vigorously and dependably. Otherwise, we simultaneously ignore our statutory duty to uphold the public interest and leave a cloud of doubt over how seriously this Commission takes its rules.

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<sup>1</sup> Pub. L. 102-556, Title IV, § 402, 106 Stat. 4194 (1992) (codified at 47 U.S.C. § 227(b)(1)(c)).

<sup>2</sup> See *Get-Aways, Inc.*, File No. ENF-99-TC-001, Notice of Apparent Liability, 15 FCC Rcd 1805 (1999).