

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

In the Matter of) File No. EB 00-IH-0054
) TRS Company Code: 815576
North American Telephone Network, LLC) NAL/Acct. No. x32080026

FORFEITURE ORDER

Adopted: February 28, 2001

Released: March 2, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we find that North American Telephone Network, LLC (“NATN”) has violated 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706 by willfully and repeatedly failing to make required contributions to universal service support programs. Based on our review of the facts and circumstances of this case and after considering NATN’s response to our *Notice of Apparent Liability* (“NAL”) in this matter,¹ we conclude that NATN is liable for a forfeiture in the amount of fifty-five thousand dollars (\$55,000), the amount proposed in the NAL.

II. BACKGROUND

2. In the NAL, we briefly described the universal service program, including the mechanisms established by the Commission in response to Congress’ 1996 amendments to the Communications Act (the “Act”) creating the universal service program. In particular, Section 254(d) of the Act requires that:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.²

In implementing that section, the Commission authorized the Universal Service Administrative Company (“USAC”) to administer universal service support mechanisms and to perform billing and collection functions.³ The Commission gave USAC the authority to bill carriers monthly, starting in February 1998, for their contributions.⁴

¹ *North American Telephone Network, LLC*, 15 FCC Rcd 14022 (Enf. Bureau 2000) (“NAL”).

² 47 U.S.C. § 254(d).

³ *See Amendment of Parts 54 and 69 – Changes to Board of NECA, Inc.*, 12 FCC Rcd 18400, 18415 (1997) (“NECA Changes Order”); 47 C.F.R. § 54.702(b).

⁴ *See Amendment of Part 54 – Universal Service*, 12 FCC Rcd 22423, 22425 (1997); 47 C.F.R. § 54.709(a)(4-5).

3. In accordance with its authority, USAC began billing NATN in 1998. Notwithstanding its receipt of monthly bills and despite repeated contacts from USAC, NATN had paid less than 20 percent of the amount billed by USAC through January 2000.⁵ In February 2000, the Enforcement Bureau sent a letter to NATN explaining that it was potentially the subject of an enforcement action.⁶ On March 1, 2000, NATN made a payment of \$100,000. In its response to the Bureau's letter, NATN noted that it recently had made this payment and stated that it was working with USAC "to set up a reasonable payment plan and to address any incorrect information."⁷ Although NATN subsequently made three additional payments of \$30,000 each in April, May and June 2000, it did not establish a payment plan designed to eliminate its arrearage. Accounting for the referenced payments, USAC's records indicated that NATN still owed more than \$800,000 as of July 2000.

4. We concluded in the *NAL* that NATN had apparently violated the Act and our rules by willfully and repeatedly failing to pay universal service contributions. We further concluded that NATN's apparent violations warranted a forfeiture.⁸

5. In its response to the *NAL*, NATN contends that it is not liable for a forfeiture because the universal service contributions it made in the year 2000 exceeded the invoiced amounts for December 1999 and January 2000. NATN further states that its revenues decreased by approximately two-thirds following the sale of its customer base in September 1999, and it requests that the Bureau recalculate its universal service liability based on actual revenues collected during the relevant time periods. NATN also states that it was unable to meet its universal service obligations because it had not collected universal service fees from its customers and its level of uncollectible revenues rose. Finally, although NATN asserts that USAC incorrectly calculated NATN's universal service obligations, it did not attempt to show that the cited invoices were calculated other than in accordance with the Commission's rules and the applicable contribution factors.

III. DISCUSSION

6. Section 503(b)(1)(B) of the Act provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.⁹ If

⁵ NATN paid approximately \$186,000 in universal service contributions in 1998 but nothing further until March 2000. According to USAC, NATN's total liability through January 2000 exceeded \$1.1 million.

⁶ Letter from David H. Solomon, Chief, Enforcement Bureau, to North American Telephone Network dated February 16, 2000 ("February 2000 letter").

⁷ Letter from Kay P. Shihata, CPA, Accounting Manager, North American Telephone Network to James W. Shook, Investigations and Hearings Division, Enforcement Bureau, dated March 8, 2000.

⁸ See *America's Tele-Network Corp.*, 15 FCC Rcd 20903 (2000) (Notice of Apparent Liability); *Intellicall Operator Services*, 15 FCC Rcd 13539 (2000) (Notice of Apparent Liability); *Matrix Telecom, Inc.*, 15 FCC Rcd 13544 (2000) (Notice of Apparent Liability).

⁹ 47 U.S.C. § 503(b)(1)(B). See also 47 C.F.R. § 1.80(a)(2). Recently, the Commission amended section 1.80(b) of its rules to increase the maximum penalties that may be imposed. For a common carrier, the forfeiture limit for each violation is now \$120,000, with a maximum potential forfeiture of \$1,200,000 for a continuing violation involving a single act or failure to act. See *Amendment of Section 1.80(b) of the Commission's Rules*, 15 FCC Rcd 18221 (2000).

the violator is a common carrier, 47 U.S.C. § 503(b)(2)(B) authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,100,000 for a single act or failure to act.¹⁰ In assessing a forfeiture, we are required by 47 U.S.C. § 503(b)(2)(D) to consider 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.¹¹

7. The *NAL* proposed a forfeiture of \$55,000, based on two components. The first component consisted of a base figure of \$40,000 as a general penalty of \$20,000 each for the two violations at issue. The second component, which we added to the base amount of \$40,000, was an amount equal to approximately one-half of the contributions due for the months of December 1999 and January 2000, or \$15,000. After carefully considering the record and NATN's arguments, we conclude that NATN is liable for the full amount of the forfeiture as proposed. As discussed below, the record reveals that NATN has willfully and repeatedly failed to make the required contributions, and there is nothing before us suggesting that the invoiced amounts are incorrect. Further, we find nothing that warrants a downward adjustment to the forfeiture.

8. Prior to its receipt of our February 2000 letter, NATN had paid less than 20 percent of the total amount billed by USAC during the preceding 24 months. NATN's repeated failures to pay the invoiced amounts occurred despite numerous requests from USAC for payment and despite NATN's sale of its LEC-billed customer base in September 1999. In this regard, although NATN's income declined, the company did not explain why it ignored USAC prior to that sale, nor does it explain why none of the sale proceeds were applied to its universal service obligations. After receiving our February 2000 letter, NATN contributed another \$190,000, which USAC credited to the oldest outstanding invoices.¹² Consequently, at the time of the *NAL*, NATN had failed to pay the December 1999 and January 2000 invoices. Those invoices remain unpaid, and NATN's current liability for universal service contributions exceeds hundreds of thousands of dollars. In the meantime, NATN has made no payments to USAC between June 2000 and February 2001 and has not yet unequivocally committed to pay off its arrearage.¹³ We have considered NATN's other arguments regarding its difficulties in meeting its universal service obligations, and we conclude that they do not mitigate its failures to pay the cited invoices, nor do they provide a basis for reducing or eliminating the forfeiture. The

¹⁰ See also 47 C.F.R. § 1.80(b)(2).

¹¹ See also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹² See *Intellicall Operator Services*, 15 FCC Rcd 21771, 21772-73 (2000) (Forfeiture Order). As discussed therein, USAC's practice, prior to May 2000, was to credit payments made towards the oldest outstanding invoice unless the carrier requested different treatment. Because NATN had not requested that its payments be applied to any particular invoice, USAC credited payments made in March and April 2000 to invoices issued in 1998. Moreover, beginning in May 2000, USAC uniformly credits payments to the oldest outstanding invoice. See *Intellicall Forfeiture Order*, 15 FCC Rcd at 21772 n. 8. Thus, USAC credited NATN's payments in May and June 2000 to 1998 invoices.

¹³ By letter from Barry P. Miller, Esquire to Scott Barasch at USAC, dated January 10, 2001, NATN proposed to pay off its indebtedness, as recalculated by it, in 36 monthly installments. Subsequently, NATN advised that it made a payment equal to its January 2001 contribution as billed by USAC on February 22, 2001.

Commission's rules and policies currently require carriers to pay universal service based on their prior year revenues,¹⁴ and the Commission recently declined a carrier's petition for forbearance from those rules.¹⁵ There is no basis for treating NATN differently. Finally, although NATN's recent contacts with USAC and apparent resumption of payments may bode well for the future, they are not equivalent to the "significant efforts" cited by the Commission in the Notices of Apparent Liability issued to *Intellicall* and *Matrix*, which supported the downward adjustments made to the proposed forfeitures. In both instances, the carriers submitted plans to eliminate their universal service debts to USAC and commenced paying down their arrearages *prior to* issuance of their respective Notices of Apparent Liability.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b) and 47 C.F.R. § 1.80(f)(4), North American Telephone Network, LLC is LIABLE FOR A FORFEITURE in the amount of fifty-five thousand dollars (\$55,000) for willfully and repeatedly violating 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706.

10. Payment of the forfeiture shall be made in the manner provided for in 47 C.F.R. § 1.80 within thirty days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to 47 U.S.C. § 504(a). North American Telephone Network, LLC may pay the forfeiture by mailing a check or money order, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

11. IT IS FURTHER ORDERED THAT a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to North American Telephone Network, LLC in care of Timothy J. Cooney, Esq., Wilkinson, Barker, Knauer, LLP, 2300 N Street, N.W., Washington,

¹⁴ 47 C.F.R. § 54.711, provides that "[c]ontributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet." That worksheet (and its predecessor, the Universal Service Worksheet) requires carriers to report revenue for the prior year. USAC then calculates the carrier's contribution based on that reported revenue. See *NECA Changes Order*, 12 FCC Rcd at 18424, 18442, 18501-02; *1998 Biennial Regulatory Review – Parts 1, 52, 54 and 64*, 14 FCC Rcd 16602 (1999). See also *Federal – State Joint Board on Universal Service (Petitions for Waiver or Reconsideration of Sections 54.706, 54.709 and/or 54.711 of the Commission's Rules)*, 15 FCC Rcd 20769 (1999).

¹⁵ See *Federal – State Joint Board on Universal Service (Petition for Forbearance from Enforcement of Sections 54.709 and 54.711 of the Commission's Rules by Operator Communications, Inc. d/b/a Oncor Communications)*, FCC 01-51, released February 13, 2001 ("*Oncor MO&O*"). Currently, the Commission is considering changes to the universal service contribution methodology for all telecommunications carriers. See *Oncor MO&O*, at ¶ 14, citing *Federal – State Joint Board on Universal Service*, 15 FCC Rcd 19947 (2000) (Further Notice of Proposed Rulemaking and Order).

¹⁶ See 47 C.F.R. § 1.1914.

D.C. 20037, and to North American Telephone Network, 4151 Ashford Dunwoody, #675,
Atlanta, Georgia 30319, attention: Hans Kasper.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau