

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

In the Matter of) File No. EB-00-IH-0241
) TRS Company Code: 811135
Advanced Telecom. Network, Inc.) NAL/Acct. No. 200132080020

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 28, 2001

Released: March 2, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Advanced Telecom. Network, Inc. ("Advanced") has apparently violated 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706 by willfully and repeatedly failing to contribute to universal service support programs. Based on our review of the facts and circumstances in this case, we conclude that Advanced is apparently liable for a forfeiture in the amount of \$46,700.

II. BACKGROUND

2. In 1996, Congress amended the Communications Act of 1934 (the "Act") to require 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.¹

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.² As to these matters, the Commission directed USAC to distribute, receive and process the Universal Service Worksheet (now the Telecommunications Reporting Worksheet) ("Worksheet"), which is used to report certain categories of revenue for the purpose of calculating a carrier's universal service contribution, and to adjust carriers' contributions in accordance with factors established by the Commission.³ In addition, the Commission gave USAC the authority to bill carriers monthly, with the first payment being due in February 1998.⁴

¹ 47 U.S.C. § 254(d).

² 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).

³ See *NECA Changes Order*, 12 FCC Rcd at 18424-25; 47 C.F.R. §§ 54.709(a)(1-3), 54.711(a).

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

To foster compliance with universal service requirements, the Commission's rules provide that a carrier's failure "to submit required . . . contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law."⁵

3. Advanced filed its first Worksheet on September 23, 1997. Based upon information in the Worksheet, USAC sent ATN an invoice dated January 19, 1998, which set forth Advanced's liability to the universal service funds for high cost and low income areas, school and libraries, and rural health care. The amount billed was \$5,935.28. USAC thereafter sent out monthly invoices to Advanced. On April 20, 1998, Advanced submitted a payment of \$11,870.56 covering its required contributions for January and February 1998. Through the rest of 1998 and continuing through September 1999, Advanced made additional payments, which met its obligations only through March 1999. In calendar year 2000, Advanced made but one payment, in August, of \$8,900.78, which USAC credited to the amount billed to Advanced in April 1999. Because of Advanced's chronic tardiness in submitting universal service contributions since March 1998, USAC has repeatedly alerted Advanced that its account was past due.

4. On August 7, 2000, the Enforcement Bureau sent a letter to Advanced, which explained that Advanced was potentially the subject of an enforcement action.⁶ Advanced failed to respond to our letter.⁷ As of February 2001, Advanced owes a balance of approximately \$266,000, which represents required contributions and late payment penalties billed through December 2000.

III. DISCUSSION

5. We conclude that Advanced is apparently liable for forfeiture for willful and repeated violations of 47 U.S.C. § 254 and the Commission's rules governing universal service contributions. Prior to September 1999, Advanced paid some, but not all, of its required universal service contributions. From October 1999 to the present, Advanced has made one payment of less than \$9,000. Consequently, Advanced is more than a year in arrears and its unpaid contribution balance has grown to more than \$260,000. As noted above, 47 U.S.C. § 254(d) and 47 C.F.R. §§ 54.706 and 54.709 require that interstate telecommunications carriers make universal service contributions in the amounts calculated by USAC. Advanced has not done so, and we find that Advanced's failures to make the required contributions are both willful and repeated. The term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules,⁸ and "repeated" means more than once.⁹ Considering the record before us, it appears that Advanced knew of its obligation to contribute to universal service programs on a monthly basis but chose repeatedly not to meet that obligation.

⁵ 47 C.F.R. § 54.713.

⁶ Letter from David H. Solomon, Chief, Enforcement Bureau, to Advanced Telecom. Network, Inc. dated August 7, 2000.

⁷ The Enforcement Bureau mailed the August 7, 2000 letter to Advanced certified mail, return receipt requested. The return receipt reflects that Advanced received the Bureau's letter on August 10, 2000.

⁸ See *Jerry Szoka*, 14 FCC Rcd 9857, 9865 (1999); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ See *Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980).

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.¹⁰ If 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.¹¹ In assessing a forfeiture, 47 U.S.C. § 503(b)(2)(D) requires us 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.¹²

7. Taking into account the statutory factors, as well as Commission precedent, we find Advanced apparently liable for a forfeiture of \$46,700. This forfeiture consists of two components. First, we have assessed a base figure of \$40,000, \$20,000 for each of two apparent violations, i.e., the failures to pay the November and December 2000 invoices.¹³ The Commission established such a base figure in order to deter delinquencies regardless of their amount.¹⁴ Second, consistent with recent Commission actions in this area,¹⁵ we have added an amount that is approximately one half of the unpaid universal service contributions for two representative months. In this case, we have chosen the months of November and December 2000, which results in an addition of \$6,700 to the base figure. This second component of the forfeiture illustrates that a delinquent carrier's culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contributions it fails to make.¹⁶

8. Although Advanced's failures to pay its contributions in months other than November and December 2000 represent separate violations of the Act and our rules, we do not find apparent liability for these apparent violations at this time. Nevertheless, we warn Advanced

¹⁰ 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. Accordingly, 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).

¹¹ *See also* 47 C.F.R. § 1.80(b)(2).

¹² *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) ("*Forfeiture Guidelines*").

¹³ *See ConQuest Operator Services Corp.*, 14 FCC Rcd 12518, 12527 (1999) ("*ConQuest Forfeiture Order*") (The Commission determined that \$20,000 should be the general base amount for failure to pay the assessed universal service contribution in a timely manner).

¹⁴ *See id.*

¹⁵ *See America's Tele-Network Corp.*, 15 FCC Rcd 20903 (2000) (Notice of Apparent Liability), 15 FCC Rcd 24391 (2000) (Forfeiture Order); *Intellicall Operator Services*, 15 FCC Rcd 15359 (2000) (Notice of Apparent Liability), 15 FCC Rcd 21771 (2000) (Forfeiture Order); *Matrix Telecom, Inc.*, 15 FCC Rcd 15344 (2000) (Notice of Apparent Liability), FCC 01-48, released February 20, 2001 (Forfeiture Order). *See also North American Telephone Network, LLC*, 15 FCC Rcd 14022 (Enf. Bureau 2000) (Notice of Apparent Liability).

¹⁶ *See ConQuest Forfeiture Order*, 14 FCC Rcd at 12527.

that these violations could form the basis for additional notices of apparent liability.¹⁷ If Advanced continues to violate our universal service rules, such violations could result in future NALs proposing substantially greater forfeitures, or could result in issuance of a show cause order to revoke Advanced's operating authority.¹⁸

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 1.80, Advanced Telecom. Network, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of forty-six thousand seven hundred dollars (\$46,700) for violating the Act and the Commission's rules requiring regular contributions for universal service.

10. IT IS FURTHER ORDERED THAT, pursuant to 47 C.F.R. § 1.80, within thirty days of this NOTICE OF APPARENT LIABILITY, Advanced Telecom. Network, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by mailing a check or similar instrument, 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.

12. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the file number listed above.

13. The Commission will not consider reducing or canceling a 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 ("GAAP"); 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

¹⁷ *ConQuest Forfeiture Order*, 14 FCC Rcd at 12527.

¹⁸ See *CCN, Inc. et al.*, 12 FCC Rcd 8547 (1997) (the "Fletcher Companies").

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail/Return Receipt Requested, to Phillip Krieger, Advanced Telecom. Network, Inc., 4 Executive Campus, Suite 200, Cherry Hill, New Jersey 08002.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau