

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

In the Matter of)	
)	
DIGITAL TELEPORT, INC.)	
OCN# 7102)	File No. EB-01-IH-0017f
)	NAL/Acct. No. 200132080037
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 20, 2001

Released: April 24, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Digital Teleport, Inc. (“Digital Teleport”) has apparently violated 47 C.F.R. § 52.15(f) by willfully failing to report its number utilization and forecast data. Based upon our review of the facts and circumstances in this case, we conclude that Digital Teleport is apparently liable for a forfeiture in the amount of \$6,000.

II. BACKGROUND

2. Section 251(e) of the Communications Act of 1934, as amended (the “Act”), grants the Commission plenary jurisdiction over the North American Numbering Plan (“NANP”) and related telephone numbering issues in the United States. The Commission has identified two primary goals related to this statutory mandate: to ensure that the limited numbering resources of the NANP are used efficiently for the benefit of both consumers and carriers; and to ensure that all carriers have the numbering resources necessary to compete in the rapidly growing telecommunications marketplace.¹ The Commission recently adopted administrative and technical measures that facilitate the monitoring of numbering resource usage within the NANP and promote more efficient use of numbering resources, including new mandatory

¹ *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 15 FCC Rcd 7574 (2000)(“*NRO Order*”); *recon. and clarification in part*, Second Report and Order, Order on Reconsideration in CC Docket 96-98 and CC Docket 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket 99-200, FCC 00-429 (Dec. 29, 2000).

utilization and forecast data reporting requirements.² Monitoring individual carriers' use of numbering resources encourages efficiency and forestalls premature exhaustion of numbering resources. Thus, section 52.15(f) of the Commission's rules requires U.S. carriers receiving numbering resources from the North American Numbering Plan Administrator ("NANPA"), a Pooling Administrator, or another telecommunications carrier, to report semiannually on their actual and forecast number usage.³ These data are to be reported on FCC Form 502, the North American Numbering Plan Numbering Resource Utilization/Forecast ("NRUF") Report.

3. The staff of the Common Carrier Bureau determined that Digital Teleport apparently did not file the mandatory NRUF report due on September 15, 2000. On January 29, 2001, the Enforcement Bureau sent a letter to Digital Teleport, which explained that Digital Teleport might be subject to enforcement action if it had failed to comply with the mandatory reporting requirements of section 52.15(f). In addition, our letter cautioned Digital Teleport that the NANPA would withhold numbering resources as a sanction for failure or refusal to comply with the mandatory reporting requirements.⁴

4. Our letter gave Digital Teleport the opportunity to provide proof of filing of the NRUF report due on September 15, 2000, and reminded Digital Teleport that its next NRUF report was due on February 1, 2001. Digital Teleport did not respond to our letter.⁵

III. DISCUSSION

5. 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.⁶ We conclude that Digital Teleport failed to file the NRUF report due on September 15, 2000. Thus, Digital Teleport is apparently liable for forfeiture for the willful violation of section 52.15 of the Commission's rules, which requires U.S. carriers to report on their actual and forecast number usage.⁷ The Commission has held that

² *Id.*

³ The NRUF reports are due on or before February 1 and on or before August 1 of each year. *See* 47 C.F.R. § 52.15(f)(6). However, we note that the deadline for filing reports due August 1, 2000 was extended to September 15, 2000. *Numbering Resource Optimization*, CC Docket No. 99-200, FCC 00-280 (Jul. 31, 2000).

⁴ 47 C.F.R. § 52.25(g)(3)(iv). *See NRO Order*, 15 FCC Rcd at 7609-10.

⁵ The Enforcement Bureau mailed the January 29, 2001 letter to Digital Teleport by certified mail, return receipt requested. The return receipt reflects that Digital Teleport received the Bureau's letter on February 5, 2001.

⁶ 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 of its rules to make inflation adjustments in 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).

⁷ Carriers are required to file NRUF reports by separate legal entity for each Operating Company Number ("OCN"). *See* 47 C.F.R. § 52.15(f)(3)(ii). Our January 29, 2001 letter referenced one OCN for which Digital Teleport apparently had not filed an NRUF report due September 15, 2000.

an act or omission is “willful” if the violator knew it was taking the action in question, whether or not there is any intent to violate the rule.⁸ Based upon the record before us, it appears that Digital Teleport’s failure to comply with the reporting requirements was willful.

6. In assessing a forfeiture, Section 503(b)(2)(D) of the Act⁹ and section 1.80(b)(4)¹⁰ of the Commission’s rules require 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 other such matters as justice may require. The Commission’s *Forfeiture Guidelines* establish a base amount of \$3,000 for failure to file required forms or information.¹¹ The *Guidelines* also provide that we may issue a higher or lower forfeiture, as permitted by statute.¹² Based upon the information before us, and taking into consideration the factors expressed in Section 503(b)(2)(D) of the Act, we find that a forfeiture that is higher than the base amount is warranted in this case.

7. The Commission has emphasized that consistent, accurate and complete reporting of number utilization and forecast data is critical to promoting efficiency and avoiding premature exhaustion of numbering resources.¹³ The potential harm to the integrity and objectives of the Commission’s numbering administration and optimization strategies caused by non-compliance with the section 52.15(f) reporting requirements increases as a non-compliant carrier’s inventory of numbering resources increases. We therefore find that it is appropriate to take into account the amount of Digital Teleport’s unreported numbering resources in determining the forfeiture amount. Numbering resources are assigned either in blocks of 10,000 numbers referred to as central office codes or NXX codes, or in blocks of 1,000 numbers. Digital Teleport has been assigned 17 NXX codes. Under these circumstances, we find that an upward adjustment of the base forfeiture is appropriate for Digital Teleport’s failure to file the required NRUF report, and we thus impose a forfeiture in the amount of \$6,000, which represents double the base forfeiture for failure to file required report.

8. Our January 29, 2001 letter reminded Digital Teleport that its next semiannual NRUF report was due on February 1, 2001. It appears that Digital Teleport may not have filed this report. Failure to file the February NRUF report, as required by section 52.15(f), would constitute a separate violation of the Commission’s rules. We warn Digital Teleport that failure to file the February report or future reports could form the basis for additional notices of apparent liability. Moreover, if Digital Teleport fails to comply with the NRUF reporting requirements in the future, the Common Carrier Bureau may deem that its numbering resources are unused, and thus begin reclamation of those numbering resources.¹⁴ In addition, the Commission may consider proceedings to revoke the section 214 authorizations and Title

⁸ *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999)(“*Forfeiture Guidelines*”)(codified at 47 C.F.R. § 1.80(b)(4) Note).

¹² *Id.*

¹³ *NRO Order at 7593*.

¹⁴ *See NRO Order at 7678-7683*.

III licenses of carriers that persist in their non-compliance with section 52.15(f).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 1.80, Digital Teleport, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for violating the Commission's rules that require U.S. carriers to report actual and forecast number usage.

10. IT IS FURTHER ORDERED THAT, pursuant to 47 C.F.R. § 1.80, within thirty days of this NOTICE OF APPARENT LIABILITY, Digital Teleport, 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.

15. Commission records indicate that Digital Teleport, Inc. apparently has not designated an agent for service of Commission decisions, as required by 47 C.F.R. § 1.47(h). Accordingly, IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be posted in

the Office of the Secretary.¹⁵ In addition, a copy will be sent by Certified Mail/Return Receipt Requested, to Digital Teleport Inc., 8112 Maryland Ave., 4th Floor, St. Louis, MO 63105.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ See 47 C.F.R. § 1.47(h).