

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

In the Matter of)	
)	
Pend Oreille)	File No. EB-03-TC-123
Telephone Company)	NAL/Acct. No. 200432170001
)	FRN: 0007838568
Apparent Liability for Forfeiture)	

ORDER OF FORFEITURE

Adopted: October 13, 2004

Released: October 15, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we assess a forfeiture of \$20,000 against Pend Oreille Telephone Company (“Pend Oreille”) for willful and repeated violations of the Communications Act of 1934, as amended (“the Act”), and the Federal Communications Commission’s (“Commission” or “FCC”) rules and orders. For the reasons set forth below, we find that Pend Oreille willfully and repeatedly violated Section 214(e)(1)(B) of the Act,¹ and Sections 54.405(b) and 54.411(d) of the Commission’s rules,² by willfully and repeatedly failing to publicize the availability of Lifeline and Link-Up services “in a manner reasonably designed to reach those likely to qualify” for the services.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability previously issued by the Enforcement Bureau (“Bureau”) and need not be reiterated at length.³ Pend Oreille is an eligible telecommunications carrier (“ETC”), *i.e.*, a telephone company eligible to receive universal service support under Section 254 of the Act.⁴ Pend Oreille serves the Kalispel Reservation in Usk, Washington. On October 7, 2003, based on concerns raised informally with the Bureau by tribal leaders, the Bureau sent a Letter of Inquiry (“LOI”) to Pend Oreille,⁵ stating that it was investigating

¹47 U.S.C. § 214(e)(1)(B).

²47 C.F.R. §§ 54.405(b), 54.411(d).

³*Pend Oreille Telephone Company*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 9264 (EB rel. May 24, 2004) (*Pend Oreille NAL*).

⁴47 U.S.C. § 254.

⁵*See* Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Pend Oreille Telephone Company (Oct. 7, 2003) (“LOI”).

whether Pend Oreille was satisfying its obligations under Sections 54.405(b) and 54.411(d) of the Commission's rules to publicize the availability of Lifeline and Link-Up services to low-income residents on tribal lands "in a manner reasonably designed to reach those likely to qualify" for those services.⁶ The LOI directed Pend Oreille to describe any action it had taken over the previous year to satisfy Sections 54.405(b) and 54.411(d) and to support its response with pertinent documentation and affidavits. Pend Oreille responded by saying it did not target any particular group for Lifeline and Link-Up advertising and attached a newspaper advertisement and a telephone application insert, neither of which described its Lifeline and Link-Up offerings.

3. Because the record reflected an almost complete failure by Pend Oreille to publicize the availability of Lifeline and Link-Up offerings, we found that Pend Oreille apparently violated Section 214(e)(1)(B) of the Act, and Sections 54.405(b) and 54.411(d) of the Commission's rules, and therefore proposed a forfeiture of \$25,000.⁷ In addition, we admonished Pend Oreille for failing to comply with a Bureau directive to provide certain information and documents.⁸

III. DISCUSSION

4. In its response to the *Pend Oreille NAL*, Pend Oreille argues that no forfeiture should be imposed because: 1) it publicized the availability of Lifeline services in its telephone directory, local newspaper, and telephone application insert; 2) it is able to demonstrate tangible outreach success because 55 percent of the impoverished households on the Kalispel Reservation receive Lifeline discounts; 3) it was working without the benefit of Commission guidelines; and 4) it did not act with bad intent and has a record of complying with Commission rules and the duties of an ETC.⁹ We address Pend Oreille's arguments in turn, and conclude that none of Pend Oreille's arguments warrant cancellation of the proposed forfeiture amount.

5. Pend Oreille argues that its LOI Response indicated that it advertised the availability of Lifeline and Link-Up services to low-income residents on tribal lands via local newspaper ads and in applications for telephone service.¹⁰ We disagree. The newspaper ad and application insert submitted with Pend Oreille's LOI response set forth the company's rates for basic service and describe those services under general headings entitled, for example, "Touch Tone Service," "Toll Blocking," and "Emergency 911 Services."¹¹ One such heading, "Toll Restriction Services" states that toll blocking is offered at no charge "to low-income customers participating in the Lifeline program" and directs interested persons to "contact your local Health and Welfare office."¹² This passing reference in the newspaper ad and application insert, focused on toll blocking capability, provides no information about the nature of Lifeline service (*i.e.*, that Lifeline is a program assisting low income households with monthly telephone bills). Indeed, readers may not even notice the vague reference to Lifeline service, let alone have any incentive to call a Pend Oreille

⁶Based on concerns that low-income residents on tribal lands may not be aware of the benefits of Lifeline and Link-Up, the scope of the investigation was limited to ETCs' efforts to publicize Lifeline and Link-Up to eligible residents on tribal lands.

⁷*Pend Oreille NAL*, 19 FCC Rcd at 9268, ¶ 15.

⁸*Id.* at 9269, ¶ 20.

⁹*Response to Notice of Apparent Liability for Forfeiture*, filed by Lukas, Nace, Guitierrez & Sachs, Counsel to Pend Oreille (June 23, 2004) ("Response").

¹⁰Response at 2.

¹¹*Response to Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Pend Oreille Telephone Company*, filed by Mark R. Martell, Assistant Manager to Pend Oreille Telephone Company (December 9, 2003) ("LOI Response").

¹²LOI Response at Attachment.

customer representative or consult with a social service agency to inquire about Lifeline service. Furthermore, the newspaper ad and application insert make no mention of Pend Oreille's Link-Up service offering. Thus, we conclude that Pend Oreille's claimed outreach efforts via newspaper advertisements and telephone service applications to low-income individuals fail to satisfy its outreach obligations.

6. Pend Oreille also argues that its LOI Response indicated that it advertised the availability of Lifeline and Link-Up services to low-income residents on tribal lands in its telephone directory.¹³ However, Pend Oreille fails to provide, either in its response to the LOI¹⁴ or its response to the *Pend Oreille NAL*,¹⁵ a copy of the relevant directory pages. Further, Pend Oreille fails to describe exactly how its directory advertised or explained the Lifeline or Link-Up programs. To the extent that the directory pages refer to Lifeline and Link-Up in a manner consistent with Pend Oreille's newspaper ads and application inserts discussed above, we would conclude that Pend Oreille's telephone directory did not sufficiently describe the Lifeline or Link-Up programs. Without having the opportunity to review the directory pages or the relevant language from the directory, we are not persuaded that the directory adequately advises consumers of the availability of the Lifeline and Link-Up programs. Moreover, even assuming that Pend Oreille did describe the availability of the Lifeline and Link-Up programs in some fashion in its telephone directory, we are not convinced of the reasonableness of this method of outreach.¹⁶ Based on the forgoing, we conclude that Pend Oreille has not demonstrated that it fulfilled its obligation to reasonably advertise Lifeline and Link-Up through its directory pages.

7. Pend Oreille additionally states that it trained its customer representatives to discuss the Lifeline and Link-Up programs with prospective customers who may inquire as a result of its ads and telephone applications, and that it coordinated with the local health and welfare office to commence service to qualified applicants.¹⁷ As noted above, however, because Pend Oreille's ads and applications fail to provide any description of Pend Oreille's Lifeline and Link-Up offerings, we fail to see why interested potential Lifeline and Link-Up customers would either call Pend Oreille or contact a welfare office to inquire as to these discounted services. This commitment to respond to inquiries is not sufficient to satisfy Pend Oreille's affirmative obligation to publicize the availability of Lifeline and Link-Up services. Further, Pend Oreille fails to provide details or evidence of any of its in-house training or coordination efforts.¹⁸

8. Next, Pend Oreille argues that because 55 percent of the impoverished Kalispel Reservation households receive Lifeline discounts, it can demonstrate "tangible success" from its publication of Lifeline and Link-Up services to low-income consumers on the Kalispel Reservation.¹⁹ We disagree. First, as described above, we find Pend Oreille's outreach so lacking that any such success cannot reasonably be attributed to Pend Oreille's efforts. Further, we note that Pend Oreille's analysis is incomplete. While poverty levels may suggest the number of individuals likely to qualify for the

¹³Response at 2.

¹⁴LOI at 4, question 6 (stating that supporting data should at a minimum include copies of any written material used as advertisements).

¹⁵47 C.F.R. § 1.80(f)(3) (stating that "any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent").

¹⁶ Indeed, in a recent order, the Commission noted that "although advertising Lifeline/Link-Up in carriers' telephone books may be effective in reaching some low-income individuals, it will not be effective for those without established phone service because carriers only distribute telephone books after phone service is established." *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8327, ¶ 46 (2004) (*Lifeline and Link-Up Order*)

¹⁷Response at 7.

¹⁸47 C.F.R. § 1.80(f)(3).

¹⁹Response at 3-4.

discount, eligibility determinations for Lifeline and Link-Up service are based on participation in various means-tested public assistance programs that go beyond poverty levels.²⁰ As a result, we find Pend Oreille's argument unavailing.

9. Pend Oreille further argues that a forfeiture should not be imposed because Pend Oreille was working without the benefit of Commission guidelines for outreach efforts.²¹ We find this argument unpersuasive. While the Commission has not mandated specific types of outreach for publicizing the availability of Lifeline and Link-Up services to low-income residents,²² because reasonable outreach may differ depending on customer location,²³ it has nevertheless provided sufficient guidance for ETCs. In the *Twelfth Report and Order*, the Commission required ETCs to identify communities with the lowest subscribership levels within their service territories and make "appropriate" efforts to reach qualifying individuals within those communities.²⁴ The Commission further stated that, among other things, it expected carriers to take into consideration the cultural and linguistic characteristics of low-income communities within their service territory, as well as the efficacy of particular methods in reaching the greatest number of qualifying low-income individuals within those communities.²⁵ As an example of effective outreach efforts, the Commission commended one carrier for taking a proactive non-traditional means of advertising in its service area by contacting low-income households in person, speaking to individuals in their own language, and explaining the Lifeline and toll blocking options, rather than merely placing ads in regional publications or putting up posters.²⁶ Pend Oreille should have realized, based on this guidance, that its virtually nonexistent outreach efforts, *i.e.*, embedding a vague reference to Lifeline in the local newspaper and in application inserts, were not reasonable methods of reaching qualifying low-income individuals on the Kalispel Reservation.

10. Pend Oreille also argues that a forfeiture should not be imposed because it was not acting with bad intent.²⁷ As we noted in the *Pend Oreille NAL*, and reiterate here, Section 503(b)(1)(B) of the Act gives the Commission authority to assess a forfeiture against a common carrier if the Commission determines that the carrier has willfully or repeatedly failed to comply with the provisions of the Act, or with any rule, regulation or order issued by the Commission.²⁸ For a violation to be willful under Section 503(b), the carrier need not intend to violate the rule. Rather, the carrier need only intend to commit the act or omission in question.²⁹ As a result, we do not consider whether Pend Oreille acted with "bad

²⁰See 47 C.F.R. §§ 54.409, 54.415 which detail various eligibility criteria for Lifeline and Link-Up programs. The Commission recently modified the low-income Lifeline and Link-Up program criteria to include an income-based eligibility criterion and additional means-tested programs. See *Lifeline and Link-Up Order*, 19 FCC Rcd at 8308-14. However, we note that the modifications in the *Lifeline and Link-Up Order* do not apply in the instant proceeding because that decision became effective after the period in question here.

²¹Response at 7.

²²In the *Lifeline and Link-Up Order*, the Commission adopted guidelines for ETCs to follow when publicizing the availability of Lifeline and Link-Up to low-income residents on tribal lands, but these guidelines are not applicable in the instant proceeding. See *id.* at 19 FCC Rcd at 8325-29.

²³See *In the Matter of Federal-State Joint Board on Universal Service*, Twelfth Report and Order, 15 FCC Rcd 12208, 12250, ¶ 79 (2000) (*Twelfth Report and Order*).

²⁴*Id.*

²⁵*Id.*

²⁶*Id.* at 12249-50, ¶ 77.

²⁷Response at 6.

²⁸47 U.S.C. § 503(b)(1)(B).

²⁹See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

intent” in determining whether to impose a forfeiture.

11. Finally, Pend Oreille argues that a forfeiture should not be imposed because it has a record of complying with Commission rules and the duties of an ETC.³⁰ In examining Pend Oreille’s assertion, Section 503(b) of the Act requires that the Commission take into account, among other things, a history of overall compliance in its consideration of downward adjustment of a forfeiture.³¹ We note that the Commission has not in the past taken enforcement action against Pend Oreille for violation of the Commission’s rules or its duties as an ETC. Accordingly, in light of Pend Oreille’s history of overall compliance, we reduce the forfeiture by \$5,000. We do not believe, however, that such compliance warrants cancellation of the forfeiture. Thus, we conclude that Pend Oreille is liable for a forfeiture in the amount of \$20,000.

IV. CONCLUSIONS AND ORDERING CLAUSES

12. After reviewing Pend Oreille’s Response, we find that Pend Oreille willfully and repeatedly failed to publicize the availability of Lifeline and Link-Up services “in a manner reasonably designed to reach those who qualify” for those services. However, as discussed above, Pend Oreille has shown mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty to \$20,000.

13. Accordingly, IT IS ORDERED THAT, pursuant to Sections 4(i) and 503(b) of the Act, 47 U.S.C. §§ 154(i) and 503(b), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4) that Pend Oreille shall forfeit to the United States government the sum of \$20,000 for willfully and repeatedly violating Section 214(e)(1)(B) of the Act, 47 U.S.C. § 214(e)(1)(B), and Sections 54.405(b) and 54.411(d) of the Commission’s rules, 47 C.F.R. §§ 54.405(b), 54.411(d) as discussed in the paragraphs above.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission, no later than 30 days after release of this Order. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and Account Number 1165259.

³⁰Response at 6.

³¹47 U.S.C. §503(b)(2)(D).

15. IT IS FURTHER ORDERED that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Mark R. Martell, Assistant Manager, Pend Oreille Telephone Company, 892 W. Madison Avenue, Glens Ferry, ID 83623.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau