

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

In the Matter of	)	
	)	
Arbros Communications, Inc.	)	
	)	File No. EB-02-TC-038
	)	
Apparent Liability for Forfeiture	)	NAL/Acct. No. 200332170001
	)	FRN: 0003793205
	)	
	)	

**FORFEITURE ORDER**

**Adopted: February 9, 2004**

**Released: February 10, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of fifty thousand dollars (\$50,000) against Arbros Communications, Inc. (“Arbros”) for violating section 214(a) of the Communications Act of 1934, as amended (the “Act”)<sup>1</sup> and sections 63.61, 63.71, and 63.505 of the Commission’s rules<sup>2</sup> by discontinuing its domestic interstate access service in California, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and Washington, D.C., as well as all of its interstate long distance service, before receiving authorization to do so from the Commission.

**II. BACKGROUND**

2. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability previously issued by the Bureau and need not be reiterated at length.<sup>3</sup> In the fall of 2001, Arbros decided to exit its telecommunications resale business, informed its upstream providers of its intent to do so, and did not pay amounts billed by these providers.<sup>4</sup> At least one of these providers therefore discontinued service to Arbros.<sup>5</sup> Arbros filed an application for discontinuance with the Commission on March 1, 2002, stating that between February 12 and February 14, 2002, it had sent notices to its customers of its intent to terminate service on March 4. In response to complaints from consumers who received the notice, Arbros filed a supplemental application with a revised notice stating that Arbros

<sup>1</sup> 47 U.S.C. § 214(a).

<sup>2</sup> 47 C.F.R. §§ 63.61, 63.71, 63.505.

<sup>3</sup> *Arbros Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 3251 (2003) (“NAL”).

<sup>4</sup> Letter from E. Ashton Johnston, counsel for Arbros, to Peter G. Wolfe, FCC (Sept. 5, 2002).

<sup>5</sup> Letters from upstream providers to Peter G. Wolfe, FCC (Aug. 7 and 20, 2002).

intended to discontinue service on March 16, 2002,<sup>6</sup> and in fact did terminate service during the third week of March, 2002, without Commission authorization. This discontinuance occurred too early to permit automatic Commission authorization in 31 days as provided under Section 63.71 of the Commission's regulations.<sup>7</sup> As a result, long distance service to some customers was cut off prematurely and they were injured thereby.<sup>8</sup>

3. On March 6, 2003, we issued a Notice of Apparent Liability ("NAL") for Forfeiture in the amount of fifty thousand dollars (\$50,000).<sup>9</sup> Arbros filed a response on April 15, 2003, enclosing financial documents in support of its claim that it was unable to pay the proposed forfeiture.<sup>10</sup> Arbros did not make any arguments regarding the merits of the matters discussed in the NAL, other than to say that it stood by its prior responses to Bureau inquiries. Because Arbros' financial data was incomplete, and publicly available information raised questions about Arbros' financial condition, the Enforcement Bureau sent letters to Arbros on July 15 and October 2, 2003, requesting additional information in support of Arbros's claim that it was unable to pay the forfeiture.<sup>11</sup> Arbros responded that it had not prepared the requested documents and that it would not likely be able to do so at this time.<sup>12</sup>

### III. DISCUSSION

4. In its response, Arbros presents data in support of its claim that it is unable to pay the proposed forfeiture. 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.<sup>13</sup> In most cases, the Commission has looked to gross revenue as the best indicator of a carrier's ability to pay a forfeiture.<sup>14</sup> Arbros' response does not contain sufficient information for any of the three categories described above. Accordingly, we have considered other sources of information concerning Arbros' financial condition.

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<sup>6</sup> *Comments Invited on Arbros Communications, Inc. and its Subsidiaries Joint Application to Discontinue Domestic Telecommunications Services*, Public Notice, DA 02-571 (rel. Mar. 7, 2002).

<sup>7</sup> 47 C.F.R. § 63.71.

<sup>8</sup> Declaration of Karl Fischer on behalf of Traffic Planning and Design (Sept. 4, 2002); Declaration of Charles Tassin on behalf of Career Transition Center (Aug. 29, 2002); Declaration of Jim Smith on behalf of Conard-Pyles Company (Aug. 28, 2002); Declaration of Don Schindhelm on behalf of Applied Information Technologies (Sept. 4, 2002); Declaration of Rob Edwards on behalf of Royall & Company (Aug. 27, 2002).

<sup>9</sup> *Arbros Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 3251 (2003).

<sup>10</sup> Response to Notice of Apparent Liability for Forfeiture (Apr. 15, 2003). Arbros requested confidential treatment of its response. Although we are not ruling at this time on whether the information meets the requirements for confidential treatment, we will nonetheless treat such information confidentially.

<sup>11</sup> Letter of Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Lawrence Li, Arbros (July 15, 2003); Letter of Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Lawrence Li, Arbros (Oct. 2, 2003).

<sup>12</sup> Response to Notice of Apparent Liability for Forfeiture, Request for Additional Information-Dated 7/15/03 (Aug. 28, 2003); Letter from Lawrence Li, Arbros, to FCC, Enforcement Bureau, Telecommunications Consumers' Division (Oct. 9, 2003).

<sup>13</sup> See, e.g., *Callais Cablevision, Inc. Grand Isle, Louisiana*, 16 FCC Rcd 1359 (2001).

<sup>14</sup> See *Vista Group International, Inc.*, 16 FCC Rcd 8289, 8295 (2001); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) ("*PJB*"); *David L. Hollingsworth d/b/a Worland Services*, 7 FCC Rcd 6640, 6641 (Com. Car. Bur., 1992) ("*Worland*").

5. During our investigation, we reviewed publicly available information showing that, shortly after it discontinued service, Arbros created a holding company, Arcomm Holding Company (“Arcomm”), and transferred to Arcomm its subsidiary companies, including companies that provided local exchange telecommunications services in a number of relevant states.<sup>15</sup> Based on this information and the limited information Arbros submitted concerning its assets, it appears that Arcomm or its subsidiaries may now hold substantial assets previously held by Arbros. Because the information Arbros submitted was insufficient to determine the extent of Arbros’s control over or access to these assets or to other assets previously held by Arbros, we sought more information from Arbros, including the 2002 tax returns of Arbros and Arcomm.<sup>16</sup> Arbros, however, did not provide the documents or information we requested. In light of Arbros’s failure to provide adequate information to justify a reduced forfeiture, and significant questions concerning Arbros’s access to assets held by related entities or other assets previously controlled by Arbros, we decline to reduce the proposed forfeiture amount. We conclude that the proposed forfeiture, \$50,000, is reasonable based on all the evidence in the record, including the most recent gross revenue information Arbros submitted.<sup>17</sup>

#### IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>18</sup> Section 1.80(f)(4) of the Commission’s rules,<sup>19</sup> and authority delegated by Sections 0.111 and 0.311 of the Commission’s rules,<sup>20</sup> Arbros Communications, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of fifty thousand dollars (\$50,000) for willfully or repeatedly violating Section 214 of the Act and Sections 63.61, 63.71, and 63.505 of the Commission’s rules by discontinuing its domestic interstate access service in California, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Virginia, and Washington, D.C., as well as all of its interstate long distance service, before receiving authorization to do so from the Commission.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this 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 Section 504(a) of the Act.<sup>21</sup> Payment may be made 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 NAL/Acct. No. 200332170001. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>22</sup>

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<sup>15</sup> Notification of Transfer of Control- Comm South Companies, Inc. and Arbros Communications, Inc. to Arcomm Holding Company, Tennessee Regulatory Authority Docket No. 02-01200, October 30, 2002.

<sup>16</sup> Letter of Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Lawrence Li, Arbros (July 15, 2003); Letter of Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Lawrence Li, Arbros (Oct. 2, 2003).

<sup>17</sup> The \$50,000 amount is within the range of percentage of gross revenues that the Commission has found reasonable in other cases. *See PJB*, 7 FCC Rcd at 2089 (1992); *Worland*, 7 FCC Rcd at 6641 (1992).

<sup>18</sup> 47 U.S.C. § 503(b).

<sup>19</sup> 47 U.S.C. § 1.80(f)(4).

<sup>20</sup> 47 C.F.R. §§ 0.111, 0.311.

<sup>21</sup> 47 U.S.C. § 504(a).

<sup>22</sup> *See* 47 C.F.R. § 1.1914.

8. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested to Lawrence Li, P.O. Box 0059, Beltsville, Maryland 20704-0059.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau