

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

In the Matter of	)	
	)	
World Communications	)	
Satellite Systems, Inc.	)	File No. EB-03-TC-038
	)	
	)	NAL/Acct. No. 200332170006
Apparent Liability for Forfeiture	)	FRN: 0009553652
	)	
	)	

**FORFEITURE ORDER**

**Adopted: February 17, 2004**

**Released: February 18, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) against World Communications Satellite Systems, Inc. (“WCSS”) for violating a Commission order by failing to respond to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents.

**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. On July 15, 2003, the Bureau sent a letter of inquiry to WCSS concerning allegations that WCSS may have engaged in the unauthorized conversion of a consumer’s telephone service.<sup>1</sup> After obtaining extensions of time,<sup>2</sup> and after submitting a request to the Commission under the Freedom of Information Act (“FOIA”) to which the staff responded,<sup>3</sup> WCSS filed a response on August 27, 2003.<sup>4</sup> WCSS did not provide any of the information or documents required in the Letter of Inquiry, but instead argued that the Commission did not have jurisdiction to require the information and that the Bureau’s failure to respond more fully to the

<sup>1</sup> Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to World Communications Satellite Systems, Inc. (July 15, 2003) (“Letter of Inquiry”).

<sup>2</sup> E-Mail from Colleen Heitkamp to Loubna W. Haddad, counsel for WCSS (August 5, 2003); E-Mail from Colleen Heitkamp to Loubna W. Haddad (August 20, 2003).

<sup>3</sup> Letter from Loubna W. Haddad to Managing Director, FCC (July 28, 2003); Letter from Colleen Heitkamp to Loubna W. Haddad (August 14, 2003).

<sup>4</sup> Letter from Charles H. Helein, counsel for WCSS, to Colleen Heitkamp (August 27, 2003).

FOIA request was unduly prejudicial.<sup>5</sup> On September 9, 2003, the Chief, Enforcement Bureau, issued a Notice of Apparent Liability for Forfeiture in the amount of ten thousand dollars (\$10,000)<sup>6</sup> for apparently violating our directive to provide specified information and documents. WCSS filed a response to the NAL on October 9, 2003.<sup>7</sup>

### III. DISCUSSION

3. In its Response, WCSS argues that (1) it responded appropriately to the Letter of Inquiry by objecting to it on jurisdictional grounds, which it claims it may do under the Federal Rules of Civil Procedure; (2) the Commission has permitted large carriers such as SBC Communications to make a good faith challenge to a Letter of Inquiry and should permit WCSS to do the same; (3) the Bureau erroneously applied *res judicata* to reject WCSS's objections to the Letter of Inquiry; (4) WCSS was not required to respond to the Letter of Inquiry because the Bureau was bound by state adjudications concerning the same conduct; (5) the Bureau's failure to provide documents in response to WCSS's Freedom of Information Act (FOIA) request justified WCSS's refusal to provide the requested information; (6) there was no repeated violation because there was only one request for information; (7) the Bureau failed to consider "the nature, circumstances, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of offenses, ability to pay, and such other matters as justice may require;" and (8) there was no willful or egregious violation because WCSS only took action to defend itself.

4. We find that these arguments are without merit, and the proposed forfeiture is warranted. WCSS claims, citing the Commission's decision in *SBC Communications, Inc.*,<sup>8</sup> that the Commission's investigative authority follows the Federal Rules of Civil Procedure, which permits parties to object to discovery requests.<sup>9</sup> WCSS's reliance on *SBC Communications, Inc.*, however, is misplaced. In that case, the Commission found that Sections 4(i) and 4(j), among others, of the Communications Act<sup>10</sup> provided authority for the Commission's requirement that responses to Commission inquiries be supported by a sworn statement.<sup>11</sup> In the course of its discussion, the Commission noted that both the Commission's procedural rules for formal complaints and the Federal Rules of Civil Procedure require sworn statements.<sup>12</sup> At no point in the discussion did the Commission state that an investigative inquiry must adhere to the Federal Rules of Civil Procedure. The Commission has never concluded that its broad investigatory authority is limited or circumscribed by the Federal Rules of Civil Procedure, and we decline to do so here.

5. Further, WCSS argues that the Commission indicated in *SBC Communications, Inc.* that SBC could have raised a good faith challenge to the order in question, and that the Bureau's purportedly different treatment of WCSS shows that it favors large over small companies.<sup>13</sup> Again, WCSS's reliance

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<sup>5</sup> *Id.*

<sup>6</sup> *World Communications Satellite Systems, Inc., Notice of Apparent Liability for Forfeiture*, 18 FCC Rcd 18545 (Enf. Bur. 2003) ("NAL").

<sup>7</sup> *World Communications Satellite Systems's Statement Seeking Cancellation of Proposed Forfeiture*, filed Oct. 9, 2003 ("Response").

<sup>8</sup> *SBC Communications, Inc., Forfeiture Order*, 17 FCC Rcd 7589, 7594 (2002).

<sup>9</sup> Response at 5.

<sup>10</sup> 47 U.S.C. §§ 154(i), 154(j).

<sup>11</sup> *SBC Communications, Inc.*, 17 FCC Rcd at 7593-94.

<sup>12</sup> *Id.* at 7594.

<sup>13</sup> Response at 6-7.

on *SBC Communications, Inc.* is misplaced. In that case, the Commission said that SBC could have raised a good faith challenge by seeking a stay of the Commission's order. SBC failed to do so, and the Commission ultimately imposed a \$100,000 forfeiture on SBC.<sup>14</sup> A stay, of course, must be sought in advance of the action sought to be stayed. WCSS did not seek a stay in advance of the date for filing the response, but did seek various extensions, several of which the Bureau granted. When the due date of the response arrived, WCSS refused to supply the information requested. Thus, a forfeiture is plainly warranted here and is not inconsistent with *SBC Communications, Inc.*<sup>15</sup>

6. Next, we reject WCSS's contention that the Bureau relied on the principles of *res judicata* in determining that there was a violation. The Bureau appropriately relied on past precedent in determining that WCSS's arguments objecting to the Commission's Letter of Inquiry were unpersuasive, and in concluding that WCSS acted egregiously in making these arguments to avoid responding to the Letter of Inquiry, in view of WCSS's apparent knowledge of such precedent.<sup>16</sup> Contrary to WCSS's contention, the Bureau did not bind WCSS with decisions rendered in other matters.

7. We also reject WCSS's contention that *res judicata* principles require that adjudications by state agencies of complaints that were used in this enforcement investigation be considered binding on the Commission.<sup>17</sup> As we explained in the NAL, the Commission rejected this same argument in the *WebNet* Order. In *WebNet*, the Commission stated that "whether the adjudication happens on a state or federal level, the adjudication of slamming complaints does not shield a carrier from separate liability for separate enforcement actions based on those same complaints."<sup>18</sup> We see no reason to depart from that analysis here.

8. WCSS's argument regarding its FOIA request is also misguided. WCSS argues that it was entitled to production of investigative records prior to responding to the Letter of Inquiry. Apparently, WCSS suspects that the Bureau had improper motives in instituting this investigation. WCSS's FOIA-related arguments for refusing to respond to the Letter of Inquiry are unpersuasive. In responding to a Letter of Inquiry, WCSS must provide documents and information within its control, and, therefore, documents that it requests from the Commission under FOIA are irrelevant to its obligation to respond to the Letter of Inquiry. If WCSS were concerned about getting access to certain documents in order adequately to respond to a slamming NAL, we note that WCSS could obtain access to documents used by the Commission in making its findings once an NAL issued against WCSS for slamming.<sup>19</sup> WCSS could, therefore, have access to all documents necessary to respond to the slamming NAL. In any event, the Bureau properly refused to provide certain documents based on FOIA exemption 7(A), 5 U.S.C. § 552(b)(7)(A), which authorizes the withholding of investigative records or information compiled for law enforcement purposes if their production would interfere with enforcement proceedings.

9. We also reject WCSS's contention that its conduct here was not "willful" or "repeated." As the Bureau stated in the NAL, Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to

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<sup>14</sup> *SBC Communications, Inc.*, 17 FCC Rcd at 7597, 7600.

<sup>15</sup> Further, we note that the relative forfeiture amounts imposed on SBC and WCSS do not support WCSS's contention that we favor large companies over small companies.

<sup>16</sup> WCSS's counsel in this matter also represented *WebNet*, the subject of the prior precedent the Bureau relied on as persuasive in the NAL. It should be noted that, contrary to WCSS's contention, the *WebNet* decision was a Commission and not a Bureau decision. *WebNet Communications, Inc.*, 18 FCC Rcd 6870 (2003) (*WebNet*).

<sup>17</sup> Response at 9.

<sup>18</sup> 18 FCC Rcd at 6873-74.

<sup>19</sup> *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, File No. EB-03-TC-177 (rel. Jan. 15, 2004).

forfeitures assessed under Section 503 (b) of the Act, provides that the “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....”<sup>20</sup> WCSS consciously refused to provide information requested in the Letter of Inquiry. Accordingly, WCSS’s violation of a Bureau order was willful.

10. Similarly, as the Bureau stated in the NAL, Section 312(f)(2) of the Act provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). WCSS continuously failed to respond to the Letter of Inquiry from August 27, 2003 to September 15, 2003. Therefore, WCSS’s violation was repeated within the meaning of section 312(f)(2).

11. Finally, we reject WCSS’s contention that we did not consider the nature, circumstances, extent, gravity, and culpability of the violator. As stated above, we considered these factors and concluded that WCSS’s violation was apparently egregious, because WCSS knew or should have known that the Commission had previously rejected arguments virtually identical to those WCSS raised.<sup>21</sup> With respect to its ability to pay, the NAL made clear that the Commission would not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless WCSS were to submit: (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 WCSS’s current financial status. WCSS has not submitted such documentation and, therefore, cannot persuasively claim that it does not have the ability to pay the forfeiture.

#### **IV. ORDERING CLAUSES**

12. ACCORDINGLY, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>22</sup> Section 1.80(f)(4) of the Commission’s rules,<sup>23</sup> and authority delegated by Sections 0.111 and 0.311 of the Commission’s rules,<sup>24</sup> that World Communications Satellite Systems, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of ten thousand dollars (\$10,000) for violating a Commission order by failing to respond to a directive of the Enforcement Bureau to provide certain information and documents.

13. 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>25</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. 200332170006. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Group, 445

<sup>20</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

<sup>21</sup> We note that, based on all the circumstances in this case, we elected to impose a forfeiture far lower than the maximum possible amount, as described in the NAL.

<sup>22</sup> 47 U.S.C. § 503(b).

<sup>23</sup> 47 U.S.C. § 1.80(f)(4).

<sup>24</sup> 47 C.F.R. §§ 0.111, 0.311.

<sup>25</sup> 47 U.S.C. § 504(a).

12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>26</sup>

14. IT IS FURTHER ORDERED that a copy of this Order shall be sent by Certified Mail, Return Receipt Requested to The Helein Law Group, 81800 Greensboro Drive, Suite 700, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>26</sup> See 47 C.F.R. § 1.1914.