

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

In the Matter of	)	
	)	
BigZoo.com Corporation	)	File No. EB-04-IH-0504
	)	
	)	NAL/Acct. No. 200532080020
	)	
Apparent Liability for Forfeiture	)	FRN 0009726001
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted:** December 20, 2004

**Released:** December 21, 2004

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that BigZoo.com Corporation (“BigZoo”) apparently violated a Commission order by willfully and repeatedly failing to respond to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that BigZoo is apparently liable for a monetary forfeiture in the amount of \$20,000.

**II. BACKGROUND**

2. BigZoo offers prepaid long distance phone service. To use its service, customers establish an account online, then dial a local or toll-free access number followed by a personal identification number, and then dial the telephone number associated with the destination they wish to reach.<sup>1</sup>

3. In October 2004, the Universal Service Administrative Company referred BigZoo to the Bureau for action concerning its failure to fully and timely contribute to the Universal Service Fund (“USF”). Thereafter, by letter dated October 15, 2004, the Bureau initiated an investigation into whether the company violated, among other things, section 54.706 of the Commission’s rules, which requires

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<sup>1</sup> [www.bigzoo.com/home/what.asp](http://www.bigzoo.com/home/what.asp)

entities that provide interstate telecommunications to the public to contribute to USF.<sup>2</sup> The Bureau sent the LOI to BigZoo by certified mail/return receipt requested, by email, and by facsimile.<sup>3</sup> The LOI directed BigZoo to provide certain specified documents and information within twenty calendar days of the date of the letter, *i.e.*, by November 4, 2004.

4. On October 25, 2004, Mark Del Bianco, Esq., contacted Bureau staff, represented himself to be counsel for BigZoo, and requested an extension of time to respond to the LOI. Bureau staff granted Mr. Del Bianco an extension until November 11, 2004.<sup>4</sup>

5. On November 9, 2004, Mr. Del Bianco again contacted Bureau staff, and requested an additional extension of time to respond to the LOI. Bureau staff again granted an additional extension until November 19, 2004, stating that “especially because the Bureau has now given BigZoo.com more than one month to reply to the LOI, please be certain that the company’s response is full and complete in all respects when we receive it.”<sup>5</sup>

6. On November 23, 2004, having received no filing or response of any kind from BigZoo, Bureau staff contacted Mr. Del Bianco about the status of the company’s response. Mr. Del Bianco advised Bureau staff that he no longer represented BigZoo.<sup>6</sup>

7. Later that same day, Bureau staff sent a letter to BigZoo, reciting the above history, and reminding BigZoo that its “failure to respond fully to the October 15, 2004 LOI subjects it to potential enforcement action, including forfeitures. Unless we receive a full response to the Bureau’s LOI within seven days of this letter, by December 1, 2004, we will commence such an enforcement action.”<sup>7</sup> The Bureau sent the letter by certified mail/return receipt requested, and by facsimile. Additionally, Bureau staff repeatedly telephoned BigZoo between November 23, 2004, and December 1, 2004, and left voicemail messages each time, but received no response to those messages. To date, the Bureau has not received any response of any kind from BigZoo.

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<sup>2</sup> Letter from Eric J. Bash, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Pantipa Sarai, BigZoo.com Corp. (Oct. 15, 2004) (“LOI”).

<sup>3</sup> According to the certified mail’s return receipts, BigZoo’s Washington, D.C. agent for service, Corporation Service Company, received the LOI on October 20, 2004, and BigZoo’s corporate office, located in Pasadena, CA, received the LOI on October 22, 2004.

<sup>4</sup> Email from Eric J. Bash, Assistant Chief, Investigations & Hearings Division, FCC, to Mark C. Del Bianco, Esq. (Oct. 27, 2004).

<sup>5</sup> Email from Eric J. Bash, Assistant Chief, Investigations & Hearings Division, FCC, to Mark C. Del Bianco, Esq. (Nov. 9, 2004).

<sup>6</sup> Letter from Mark C. Del Bianco to Eric J. Bash, Assistant Chief, Investigations & Hearings Division, FCC (Nov. 23, 2004).

<sup>7</sup> Letter from Hillary S. DeNigro, Deputy Chief, Investigations & Hearings Division, FCC to Pantipa Sarai, BigZoo.com Corp. (Nov. 23, 2004).

### III. DISCUSSION

#### A. Apparent Violation

8. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>8</sup> In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>9</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.<sup>10</sup>

9. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”<sup>11</sup> Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”<sup>12</sup>

10. As indicated above, the Bureau directed BigZoo to provide certain documents and information in order to enable the Commission to perform its enforcement function and evaluate

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<sup>8</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act indicates that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991) (“*Southern California Broadcasting*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” means that the act was committed or omitted more than once. *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

<sup>9</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>10</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”).

<sup>11</sup> 47 U.S.C. § 218.

<sup>12</sup> 47 U.S.C. § 403. Section 403 provides, in part: “The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.” *See also* 47 U.S.C. § 154(i), (j).

allegations that BigZoo violated Commission rules. Commission rules specifically require BigZoo to maintain these documents and produce them upon the Commission's request.<sup>13</sup> BigZoo received the LOI, as evidenced by return of the mail receipt to the Bureau, confirmation of the facsimile transmission, and most importantly, BigZoo's counsel's repeated requests for extensions of time to respond. After its counsel withdrew, Bureau staff sent correspondence to the company directly, by facsimile, email and mail. BigZoo's failure to respond to the Bureau's LOI constitutes a violation of a Commission order.<sup>14</sup>

## B. Forfeiture Amount

11. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.<sup>15</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "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."<sup>16</sup>

12. Section 1.80 of the Commission's rules and the Commission's Forfeiture Policy Statement establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.<sup>17</sup> We find that the lack of a response to a Bureau LOI in the circumstances presented here warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules.<sup>18</sup> The Bureau must act swiftly to investigate potential violations of the Communications Act or the Commission's rules in order to take action within the one year period specified in section 503(b)(6) of the

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<sup>13</sup> 47 C.F.R. § 54.711 in the USF section of our rules requires contributors to "maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet for three years and [to] provide such records and documentation to the Commission or the Administrator upon request."

<sup>14</sup> See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7600, ¶ 28; *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd, 19893, 19898 n. 36 (2003); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (Enf. Bur. rel. July 28, 2004); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. rel. Sept. 9, 2003) ("*WCSS Forfeiture Order*"); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. rel. May 14, 2001).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(B). See also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>17</sup> 47 C.F.R. § 1.80; *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"); recon. denied 15 FCC Rcd 303 (1999).

<sup>18</sup> See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7600, ¶ 28 (fining SBC \$100,000 for violating an order to submit a sworn statement with its response to a Bureau LOI); *WCSS Forfeiture Order*, 18 FCC Rcd 18545 (\$10,000 forfeiture for submitting a jurisdictional objection in lieu of a response to a Bureau Letter of Inquiry).

Act.<sup>19</sup> Prompt and full responses to Bureau inquiry letters are, accordingly, critical to the Commission's enforcement function.

13. Furthermore, BigZoo's conduct here is particularly egregious. The company received the Bureau's LOI and through counsel sought and obtained not one but two extensions of time to respond. Nevertheless, the company still has not filed a response of any kind to the LOI. We therefore propose a forfeiture against BigZoo of \$20,000 for failing to respond to the Bureau's LOI.

14. We also direct BigZoo to respond fully to the October 15, 2004, LOI within thirty days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting BigZoo to further penalties, including potentially higher monetary forfeitures and/or the revocation of BigZoo's authorization to operate as a common carrier pursuant to section 214 of the Act.<sup>20</sup>

#### IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, BigZoo.com Corporation is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating a Commission order.

16. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, BigZoo.com Corporation SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. 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, 8<sup>th</sup> Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

18. IT IS FURTHER ORDERED, that pursuant to sections 4(i), 4(j), 218 and 403 of the of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 218 and 403, and section 54.711 of the Commission's rules, 47 C.F.R. § 54.711, BigZoo.com Corporation shall fully respond to the October 15, 2004, Letter of Inquiry sent by the FCC's Enforcement Bureau within 30 days of the release of this order.

19. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

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<sup>19</sup> 47 U.S.C § 503(b)(6).

<sup>20</sup> See *NOS Communications, Inc., Affinity Network, Inc., and NOSVA Limited Partnership*, Order to Show Cause, Notice of Opportunity for Hearing, 18 FCC Rcd 6952 (2003).

20. 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.

21. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Chief, Revenue and Receivables Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

22. IT IS FURTHER ORDERED that the Secretary shall send, by certified mail/return receipt requested, a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE to Pantipa Sarai, BigZoo.com Corporation, 55 South Lake Avenue, Suite 700, Pasadena, CA 91101.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau