

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

In the Matter of)	File No. EB-05-IH-0808
)	
Universal Telecommunications, Inc.)	NAL/Acct. No. 200632080162
)	
Apparent Liability for Forfeiture)	FRN 0010-5735-09

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: June 13, 2006

Released: June 15, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Universal Telecommunications, Inc. (“Universal”) apparently violated Commission orders by willfully and repeatedly failing to respond to directives 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 Universal is apparently liable for a monetary forfeiture in the amount of \$20,000.

II. BACKGROUND

2. Universal is a Georgia-based company that characterizes itself as providing “an array of services for businesses across the United States and Canada.”¹ Universal offers various services to the public, including “affordable long distance to millions of satisfied customers throughout the country.”² It registered with the Commission as an interstate telecommunications carrier on March 22, 2004 and appears to have filed some Telecommunications Reporting Worksheets (“Worksheets”) after that date.

3. Starting in 2004, the Bureau has conducted several audits to identify resellers of telecommunications services that failed to register as telecommunications service providers with the Commission, and thus also may have failed to satisfy various Commission program requirements.³ Universal was identified as a reseller in one of these audits. Bureau staff determined that although Universal appeared to have registered and filed certain Worksheets, it subsequently failed to file required Worksheets and make associated program payments. The Bureau then issued a letter of inquiry (“LOI”) to Universal on August 17, 2005.⁴ The LOI directed Universal, among other things, to submit a sworn

¹ See <http://www.uteworldnet.com/USP/servicesUSP.asp> (last accessed on June 13, 2006).

² *Id.*

³ See 47 C.F.R. § 64.1195(a).

⁴ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Ruth Peterson, Universal and CT Corporation, Registered Agent for Universal, dated August 17, 2005 (“August 17, 2005 LOI”). The LOI specifically required Universal to provide relevant information with respect to Universal

written response to a series of questions relating to Universal's apparent failure to file Worksheets and to make mandated federal telecommunications regulatory program payments. Universal did not respond to the LOI on the due date for its response or at any time since that date. Universal also has not responded to telephone messages left by Bureau staff regarding the failure to respond to the LOI.

4. As a result of Universal's failure to respond, the Bureau sent a follow-up letter on October 21, 2005, directing Universal to provide complete responses to inquiries in the original LOI. The October 21, 2005 Letter also warned Universal that its failure to respond fully to the Bureau's LOI could subject Universal to potential enforcement action.⁵ Universal again failed to respond to the October 21, 2005 Letter in any manner. In a final attempt to solicit a response, Bureau staff contacted Universal via telephone and left multiple messages about its continuing failure to respond. To date, the Bureau has not received any response from Universal.

III. DISCUSSION

A. Apparent Violation

5. Under section 503(b)(1) of the Communications Act of 1934, as amended (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.⁶ 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.⁷ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act⁸ and the Commission has so interpreted the term in the section 503(b) context.⁹ The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹¹ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability

and any affiliate, predecessor-in-interest, parent company, subsidiary, director, officer, employee, and agent. Receipt of the letter is shown by confirmation of the facsimile transmission to the Universal and CT Corporation facsimile numbers and by the certified mail return receipts.

⁵ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Ruth Peterson, Universal, dated October 21, 2005 ("October 21, 2005 Letter"). The letter was sent by certified mail/return receipt and by facsimile to Universal in Atlanta and Decatur, Georgia and CT Corporation, Universal's Registered Agent, in New York, NY. Receipt of the letter is shown by confirmation of the facsimile transmission to the Universal and CT Corporation facsimile numbers and by the certified mail return receipts.

⁶ 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).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁹ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*").

¹⁰ *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).

¹¹ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision.*, 16 FCC Rcd at 1362, ¶ 9.

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.¹² 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.¹³

6. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.¹⁴ 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.”¹⁵ Section 403 of the Act grants the Commission “full authority and power at any time to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”¹⁶

7. We find that Universal apparently violated Commission orders by failing on multiple occasions to respond to Bureau inquiries. Section 218 of the Act specifically 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.”¹⁷ Sections 4(i), 4(j), and 403 of the Act unequivocally grant the Commission the power to direct responses to inquiries in order to execute its functions.¹⁸ As indicated above, the Bureau directed Universal to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that Universal violated Commission rules. There is no question that Universal received both the August 17, 2005 LOI and the October 21, 2005 Letter, as evidenced by confirmation of the facsimile transmissions and U.S. certified mail return receipts executed by Universal agents. Further, Bureau staff took the additional step of attempting to contact Universal by telephone. In those messages, Bureau staff specifically stated that the Bureau had not received the required response to the LOI. Despite the Bureau’s significant efforts to elicit information from Universal, as of the date of this NAL, Universal has failed to provide any response to the Bureau’s LOI. We conclude that Universal’s continuing failure to respond to the Bureau’s LOI constitutes an apparent willful and repeated violation of Commission orders.¹⁹

¹² 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹³ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (“*SBC Forfeiture Order*”).

¹⁴ 47 U.S.C. §§ 154(i), (j), 218, & 403.

¹⁵ 47 U.S.C. § 154(i), (j).

¹⁶ 47 U.S.C. § 403; see also 47 U.S.C. § 154(i), (j).

¹⁷ 47 U.S.C. § 218.

¹⁸ 47 U.S.C. §§ 154(i),(j), & 403.

¹⁹ See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd 7589, 7599-7600, ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (“*BigZoo*”) (ordering \$20,000 forfeiture for failure to respond to an LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, Forfeiture Order, 19 FCC Rcd 22025 (Enf. Bur. 2004) (ordering \$3,000 forfeiture against non-

B. Forfeiture Amount

8. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails 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.²⁰ 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.²¹ 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.”²²

9. 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.²³ Universal's failures to respond occurred despite Bureau staff's repeated attempts to call Universal's attention to the importance of responding to the LOI. We find that the total failure to respond to the LOI, notwithstanding the Bureau's efforts to contact Universal executives, warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in an area of critical importance to the Commission -- contributions to the Universal Service Fund. Prompt and full responses to Bureau inquiry letters are critical to the Commission's enforcement function. We therefore propose a total forfeiture against Universal of \$20,000 for failing to respond to Commission communications. This forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to LOIs concerning compliance with the Commission's universal service rules despite evidence that the LOIs had been received.²⁴

10. We also direct Universal to respond fully to the August 17, 2005 LOI within thirty (30) days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Universal to further penalties, including potentially higher monetary forfeitures, the revocation

commercial educational station for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual's failure to respond to an LOI).

²⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

²¹ 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).

²² 47 U.S.C. § 503(b)(2)(D).

²³ 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).

²⁴ See, e.g., *BigZoo*, 20 FCC Rcd at 3955 (ordering \$20,000 forfeiture for failure to respond to LOI); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

of operating authority, and the disqualification of any Universal principal from the provision of any common carrier services without the prior consent of the Commission.²⁵

IV. ORDERING CLAUSES

11. 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, Universal Telecommunications, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating Commission orders.

12. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, Universal Telecommunications, Inc., 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.

13. Payment of the forfeiture must 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. IT IS FURTHER ORDERED, that pursuant to sections 4(i), 4(j), 218 and 403 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, Universal Telecommunications, Inc., shall fully respond to the August 2005 and October 2005 Letters of Inquiry sent by the FCC's Enforcement Bureau within thirty (30) days of the release of this order.

15. 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 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. E-mail address: william.davenport@fcc.gov.

16. 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.

²⁵ See *CCN, Inc., et al, Order to Show Cause and Opportunity for Hearing*, Order, 13 FCC Rcd 13599 (1998) (revoking carrier's operating authority based on findings of repeated violations); see also, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

17. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail/return receipt requested to Ms. Ruth Peterson, President, Universal Telecommunications, Inc., 3781 Presidential Parkway, Atlanta, Georgia 30340 and 2799 Lawrenceville Highway, Suite 111, Decatur, Georgia 30033 and CT Corporation, Registered Agent, Universal Telecommunications, Inc, 111 Eighth Avenue, New York, New York 10011.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau