

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

In the Matter of)	File No. EB-04-IH-0517
)	
Unicom Communications, L.L.C.)	NAL/Acct. No. 200632080154
)	
Apparent Liability for Forfeiture)	
)	

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE**

Adopted: April 26, 2006

Released: April 27, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Unicom Communications, L.L.C. (“Unicom”) 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 Unicom is apparently liable for a monetary forfeiture in the amount of \$20,000.

II. BACKGROUND

2. Unicom is a division of Smoky Mountains Systems, Inc., a North Carolina firm offering a variety of regulated and non-regulated telecommunications services. Unicom itself is a local and long distance carrier providing interstate telecommunications service in North Carolina and Florida.¹

3. On March 30, 2004, the Bureau’s audit staff sent a letter to Unicom² requesting information pertaining to its compliance with section 64.1195 of the Commission’s rules,³ which requires all telecommunications carriers that provide interstate telecommunications services to register with the Commission. The purpose of this requirement is to assist the Commission in monitoring the entry and operation of interstate telecommunications carriers to ensure that, among other things, they do not engage in fraud or evade oversight.⁴ After receiving an inadequate response and still finding no evidence that

¹ See www.unicomcommunications.com (March 22, 2006).

² See Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Unicom Communications, L.L.C., dated March 30, 2004.

³ See 47 C.F.R. § 64.1195(a).

⁴ *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024, ¶ 59 (2000).

Unicom had registered, the Bureau, on October 28, 2004, issued a letter of inquiry (“LOI”) to Unicom.⁵ The October 28, 2004 LOI directed Unicom to, among other things, submit a sworn written response to a series of questions relating to its apparent failure to satisfy its registration requirement, as well as certain filing and payment obligations relating to, among others, the Universal Service Fund, from 2002 to the date of the LOI.

4. After being granted an extension of the time to respond,⁶ Unicom filed two separate responses to the October 28, 2004 LOI on December 7 and 9, 2004. The responses were deficient in both form and content. Specifically, Unicom produced only three documents in response to several multipart and multiyear document requests,⁷ provided no explanation or support as the LOI instructions required demonstrating how the documents were responsive to the Bureau’s inquiries, and provided no response of any kind to 11 of 14 of the inquiries.

5. After telephone discussions and email correspondence from Bureau staff to Unicom during late December 2004 and January 2005 failed to elicit complete responses, the Bureau sent a letter to Unicom on March 11, 2005.⁸ The March 11, 2005 Letter described specific inadequacies in Unicom’s prior response and warned that failure to respond fully to the Bureau’s inquiries could by itself subject Unicom to potential enforcement action. Unicom responded by facsimile transmission on March 15, 2005 providing a single document that did not answer the Bureau’s inquiries.⁹

6. After receiving no further information, on June 28, 2005, the Bureau issued another letter to Unicom.¹⁰ The June 28, 2005 Letter noted the previous inadequacies in both informational and documentary responses. It also reminded Unicom that it had been directed to answer the inquiries pursuant to certain directions, and to submit a sworn affidavit subject to penalty of perjury, as required by

⁵ See Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Charles D. D’Ascoli, Managing Partner, Unicom Communications, L.L.C., dated October 28, 2004 (“October 28, 2004 LOI”).

⁶ See Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Charles D. D’Ascoli, Managing Partner, Unicom Communications, L.L.C., dated December 2, 2004, extending the due date from November 17, 2004 to December 8, 2004.

⁷ The three documents included a single incorporation renewal in North Carolina for 2004, a balance sheet for 2002, and a federal tax return for 2002. After telephone consultation with Bureau staff regarding the Bureau’s request for information on the company’s gross end user interstate telecommunications service revenues, Unicom produced partial accounting statements purporting to show these revenues in North Carolina and Florida for 2002 and 2003, respectively. The documents did not provide the information requested.

⁸ See Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Charles D. D’Ascoli, Managing Partner, Unicom Communications, L.L.C., dated March 11, 2005 (“March 11, 2005 Letter”).

⁹ On March 15, 2005, Unicom provided a document that purported to be a copy of a Form 499-A, applicable to 2002. Form 499-A, also known as “Telecommunications Reporting Worksheet,” is the form on which carriers must submit annual revenue information to the Universal Service Administrative Company (“USAC”) to enable administrators of various funds to determine and collect the statutorily mandated assessments. Unicom’s submission of this purported 2002 form to the Bureau on March 15, 2005 was apparently intended to appear responsive to a portion of the October 28, 2004 LOI. Subsequent investigation showed, however, that Unicom never actually filed this worksheet with USAC.

¹⁰ See Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Charles D. D’Ascoli, Managing Partner, Unicom Communications, L.L.C., dated June 28, 2005 (“June 28, 2005 Letter”).

Commission rules.¹¹ Furthermore, the June 28, 2005 Letter directed Unicom to provide complete responses to all unanswered inquiries, supported by a sworn affidavit, by July 18, 2005, and again warned that failure to respond fully to the October 28, 2004 LOI could by itself subject Unicom to potential enforcement action. Although Unicom's receipt of this letter is evidenced by return of the certified mail receipt and confirmation of the facsimile transmission, the Bureau has received no further response whatsoever from Unicom to the date of this NAL.

III. DISCUSSION

A. Apparent Violation

7. 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.¹² 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.¹³ 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 Act,¹⁴ and the Commission has so interpreted the term in the section 503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁶ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why such forfeiture penalty should not be imposed.¹⁸ 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.¹⁹

8. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.²⁰ 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."²¹ Section 403 likewise grants the Commission "full

¹¹ 47 C.F.R. § 1.16.

¹² 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).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

¹⁶ *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).

¹⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

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

¹⁹ *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

²⁰ 47 U.S.C. §§ 4(i), 4(j), 218, 403.

²¹ 47 U.S.C. §§ 4(i), 4(j).

authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”²²

9. We find that Unicom apparently violated Commission orders by failing, after multiple opportunities, to respond fully to the October 28, 2004 LOI. 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.”²³ 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.²⁴ As indicated above, the Bureau directed Unicom to provide certain documents and information in order to enable the Commission to perform its enforcement function and evaluate allegations that Unicom violated Commission rules.²⁵ Commission rules specifically require Unicom to maintain these documents and produce them upon the Commission’s request.²⁶ Unicom repeatedly failed to provide sufficient explanation and documentation in response to both the October 28, 2004 LOI and the March 11, 2005 Letter.²⁷ Moreover, Unicom was completely unresponsive to the June 28, 2005 Letter, although the return of the certified mail receipt and confirmation of facsimile establish that Unicom received this letter. The June 28, 2005 Letter reiterated the previous inquiries, specifically instructed Unicom on the proper format for its responses, and again warned of the enforcement consequences of failing to respond.²⁸ In addition, during the period December 2004 to January 2005, Bureau staff attempted to elicit responses through telephone discussions and email correspondence. Unicom’s willful and repeated failures adequately to respond to the Bureau’s inquiries constitute a violation of a Commission order.²⁹

²² 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. § 4(i), (j).

²³ 47 U.S.C. § 218.

²⁴ 47 U.S.C. §§ 4(i), (j), and 403.

²⁵ *See supra* at note 5.

²⁶ *See* 47 C.F.R. § 54.711, which 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.” *Id.*

²⁷ *See supra* at notes 7, 9.

²⁸ *See supra* at note 10.

²⁹ *See, e.g., SBC Forfeiture Order*, 17 FCC Rcd at 7599-7600, ¶¶ 23-28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, amount set high enough to serve as a deterrent in view of SBC's ability to pay); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898, ¶ 11, n. 36 (2003) (delayed response to an LOI considered dilatory behavior, which may result in sanctions in the future); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954, 3955, ¶¶ 5-6 (Enf. Bur. 2005) (“*BigZoo*”) (\$20,000 forfeiture for failure of an entity to provide any response to a USF LOI, notwithstanding evidence that the LOI was received); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, 14076-77, ¶¶ 12, 15 (2004) (\$3,000 forfeiture for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545, 18546-49, ¶¶ 4-12 (2003) (\$10,000 forfeiture for a non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707, 10708, ¶¶ 4-5 (2001) (\$4,000 forfeiture after individual refused to respond to an LOI).

B. Forfeiture Amount

10. 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.³⁰ 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.³¹ 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.”³²

11. 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.³³ Unicom’s failures to respond occurred despite multiple attempts by Bureau staff to call Unicom’s attention to the importance of responding to LOIs.³⁴ We find that these failures to respond to a Bureau LOI in the circumstances presented here warrant a substantial increase to this base amount. Unicom received three written communications from the Bureau, and to date has produced only four unauthenticated, unexplained documents, and has failed to provide a response of any kind to most of the Bureau’s inquiries. 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 investigate adequately 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 — registration and contributions to universal service. Prompt and full responses to Bureau inquiry letters are critical to the Commission’s enforcement function. We therefore propose a forfeiture against Unicom of \$20,000 for failing to respond to the Bureau’s LOI. 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 and registration rules, despite evidence that the LOIs had been received.³⁵

12. We also direct Unicom to respond fully to the October 28, 2004 LOI within thirty days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Unicom to further penalties, including potentially higher monetary forfeitures and/or the revocation of Unicom’s authorization and the authorization of its principals to operate common carrier services

³⁰ 47 U.S.C. § 503(b)(1).

³¹ 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).

³² 47 U.S.C. § 503(b)(2)(D).

³³ 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).

³⁴ *See supra* at notes 8, 10. In addition, Bureau Staff had multiple telephone discussions and email correspondence with Unicom during late December 2004 and January 2005 in order to elicit complete responses. *See supra* at ¶ 5.

³⁵ *Blackstone Calling Card, Inc.*, Notice of Apparent Liability for Forfeiture, DA 05-3192 (Enf. Bur., rel. Dec. 19, 2005) (\$20,000 forfeiture for failure of an entity to provide adequate response to a USF LOI, notwithstanding evidence that the LOI was received); *BigZoo*, 20 FCC Rcd 3954 (same); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

pursuant to section 214 of the Act without prior consent of the Commission.³⁶ In addition, to the extent Unicom's responses to the LOIs evidence noncompliance with the Commission's registration and other rules, the Bureau will not hesitate to propose additional enforcement action.

IV. ORDERING CLAUSES

13. 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, Unicom Communications, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating a Commission order.

14. 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, Unicom Communications, L.L.C. 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.

15. 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.

16. 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, Unicom Communications, L.L.C. shall fully respond to the October 28, 2004 Letter of Inquiry sent by the FCC's Enforcement Bureau within 30 days of the release of this order.

17. 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.

18. 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.

19. 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 12th Street, S.W., Washington, D.C. 20554.

³⁶ 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. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent, by certified mail/return receipt requested, to Mr. Charles D. D'Ascoli, Managing Partner, Unicom Communications, L.L.C., 17 Smoky Mountain Drive, Franklin, North Carolina 28734.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau