

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

In the Matter of)	
)	
Total Call International, Inc.)	File No. EB-07-TC-5038
)	NAL/Acct. No. 200832170016
Apparent Liability for Forfeiture)	FRN: 0006807309

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 19, 2008

Released: February 19, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”),¹ we find that Total Call International, Inc. (“Total Call”) apparently violated section 1.717 of the Commission’s rules² by failing to respond to one (1) informal complaint served on Total Call by the Consumer & Governmental Affairs Bureau (“CGB”). Based upon our review of the facts and circumstances surrounding this apparent violation, we find that Total Call is apparently liable for a forfeiture in the amount of \$4,000.

II. BACKGROUND

2. The Commission’s informal complaint process, administered by CGB, provides an avenue for consumers to have their complaints and inquiries addressed through informal mediation and resolution by CGB staff with the carrier. In this connection, CGB serves the informal complaint(s) on the carrier and requires the carrier to provide a written response within thirty (30) days discussing the satisfaction of the complaint or the carrier’s refusal or inability to satisfy the complaint. Specifically, pursuant to section 1.717:

The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier’s report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the

¹ 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Communications Act of 1934, as amended (the “Act”) to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act”

² See 47 C.F.R. § 1.717.

complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal complaint in accordance with §1.721 of this part.³

3. Pursuant to this process, CGB served on Total Call one (1) informal complaint filed by one (1) consumer.⁴ Total Call, however, has failed to respond to the informal complaint referenced herein.

III. DISCUSSION

A. Apparent Violation

4. 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.⁵ 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.⁶ 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 Act⁷ and the Commission has so interpreted the term in the section 503(b) context.⁸ The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.⁹ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹⁰ 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 no such forfeiture penalty should be imposed.¹¹ 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.¹²

5. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.¹³ 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."¹⁴ 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."¹⁵ Section 403 of

³ 47 C.F.R. § 1.717.

⁴ See Appendix.

⁵ 47 U.S.C. § 503(b)(1)(B) and 47 C.F.R. § 1.80(a)(1).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁸ 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.*").

⁹ 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).

¹⁰ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

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

¹² See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) ("*SBC Forfeiture Order*").

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

¹⁴ 47 U.S.C. § 154(i), (j).

¹⁵ 47 U.S.C. § 218.

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 Finally, section 1.717 of the Commission’s rules requires the Commission to forward informal complaints to the appropriate carriers and requires a written response from the carrier within such time as prescribed by the Commission.¹⁷

6. We find that Total Call apparently violated section 1.717 of the Commission’s rules by failing to respond to the above-referenced informal complaint served by CGB. Further, the Commission on March 2, 2007, reminded carriers of the importance of responding to informal complaints, and the seriousness of the penalties for failure to do so.¹⁸ Nevertheless, Total Call has not responded to the informal complaint referenced herein. We conclude that Total Call’s continuing failure to respond to the informal complaint served by CGB constitutes an apparent willful and repeated violation of a Commission rule.

B. Forfeiture Amount

7. 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.¹⁹ 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.²⁰ 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.²¹ Total Call’s failure to respond warrants the base forfeiture amount of \$4,000 for each informal complaint, for a proposed forfeiture of \$4,000.

8. Total Call will have an opportunity to submit further evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.²²

IV. CONCLUSION AND ORDERING CLAUSES

9. We conclude that Total Call apparently willfully or repeatedly violated a Commission rule by failing to provide a written response to the Commission in response to one (1) informal complaint. Accordingly, a proposed forfeiture is warranted against Total Call for this apparent willful or repeated violation.

10. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 503(b) of the

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

¹⁷ 47 C.F.R. § 1.717. As noted *supra*, CGB serves the informal complaint(s) on the carrier and requires the carrier to provide a written response within thirty (30) days.

¹⁸ Public Notice, *Consumer & Governmental Affairs Bureau Reminds Common Carriers of Their Obligation to Timely Respond to Informal Complaints*, DA 07-989 (March 2, 2007).

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

²⁰ 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).

²¹ 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), *recon. denied* 15 FCC Rcd 303 (1999).

²² 47 U.S.C. § 503(b)(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

Communications Act of 1934, as amended,²³ Section 1.80(f)(4) of the Commission's rules,²⁴ and authority delegated by Sections 0.111 and 0.311 of the Commission's rules,²⁵ TOTAL CALL INTERNATIONAL, INC. IS LIABLE FOR A MONETARY FORFEITURE in the amount of four thousand dollars (\$4,000) for willfully or repeatedly failing to respond to one (1) informal complaint served by CGB in violation of section 1.717 of the Commission's rules.

11. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, TOTAL CALL INTERNATIONAL, INC. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card through the Commission's Revenue and Receivables Operations Group at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

13. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to TOTAL CALL INTERNATIONAL, INC., to its address of record, attn: TCS Corporate Services, Inc., 1090 Vermont Avenue, NW, Suite 910, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau

²³ 47 U.S.C. § 503(b).

²⁴ 47 U.S.C. § 1.80(f)(4).

²⁵ 47 C.F.R. §§ 0.111, 0.311.

Appendix

IC# 07-G64548, served on April 4, 2007