

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

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| In the Matter of |) | |
| |) | |
| Telefyne Inc. |) | File No. EB-06-MDIC-0047 |
| |) | File No. EB-06-MDIC-0084 |
| Apparent Liability for Forfeiture |) | File No. EB-07-MDIC-0019 |
| |) | |
| |) | NAL/Acct. No. 2008-3209-0002 |
| |) | FRN: 0006-7006-11 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 6, 2008

Released: March 7, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This *Notice of Apparent Liability for Forfeiture* (“NAL”) finds that Telefyne Inc. (“Telefyne” or “Defendant”) apparently violated section 1.717 of the Commission’s rules¹ by failing to respond to three informal complaints served on Defendant by the Commission. Based upon our review of the facts and circumstances surrounding this apparent violation, we find that Telefyne is apparently liable for a forfeiture in the amount of \$12,000.

II. BACKGROUND

2. The Commission’s informal complaint rules provide a mechanism for complainants to (i) allege that a common carrier has violated Title II of the Communication Act of 1934, as amended (the “Act”),² and (ii) receive a response in writing from the carrier defendant. The process is designed to enable the parties to resolve disputes informally. A complainant initiates the process by filing the informal complaint with the Commission.³ Pursuant to section 1.717 of the rules, the Commission then issues a “Notice of Informal Complaint” (“Notice”). In that Notice, the Commission forwards the informal complaint to the appropriate carrier and prescribes a time for such carrier to respond in writing to the informal complaint.⁴ The defendant must file its response with the Commission and serve it on the complainant.⁵ If the complainant is not satisfied by the carrier’s response, and the parties are not able to resolve the dispute informally, the complainant may file a formal complaint.⁶

3. Payphone service providers (“PSPs”) and their representatives often file informal complaints

¹ 47 C.F.R. § 1.717.

² 47 U.S.C. §§ 201 - 276.

³ 47 C.F.R. §§ 1.716 - 717.

⁴ 47 C.F.R. § 1.717.

⁵ 47 C.F.R. § 1.717.

⁶ See 47 C.F.R. §§ 1.718, 1.720-1.736 (describing the formal complaint process).

in an effort to recover per-call payphone compensation that carriers allegedly owe.⁷ Pursuant to rule 1.717, the Commission served on Telefyne three informal complaints filed by various PSPs, each requiring Telefyne to respond within a specified number of days.⁸ The Commission's Notice regarding the first informal complaint, filed by APCC Services, Inc., was served on Telefyne on September 26, 2007.⁹ The Notice required Telefyne to "file a response within ten business days..."¹⁰ The Commission's Notice further stated that "failure to respond" may subject Telefyne, Inc. to enforcement action.¹¹ Identical Notices were served on Telefyne for the other two informal complaints (filed by G-Five LLC and PBS TelCom, Inc.).¹² Telefyne has not responded to any of these informal complaints as required by the Commission.

III. DISCUSSION

A. Authority

4. Any person who the Commission determines has willfully or repeatedly failed to comply with any provision of the Act, or any rule, regulation, or order issued by the Commission, is liable to the United States for a forfeiture penalty.¹³ As defined by the Act, "willful" means "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁴ The legislative history of section 312(f)(1) of the Act clarifies that this definition of "willful" applies to both sections 312 and 503(b) of the Act,¹⁵ and the Commission has so interpreted the term in the section 503(b) context.¹⁶ The Commission also may assess a forfeiture for violations that are merely repeated, and not willful.¹⁷ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.¹⁸

5. To impose 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.¹⁹ 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

⁷ See 47 C.F.R. §§ 64.1300-64.1340 (describing payphone compensation obligations).

⁸ See Appendix.

⁹ *APCC Services, Inc. v. Telefyne, Inc.*, Notice of Possible Enforcement Action, File No. EB-06-MDIC-0047 (Sept. 18, 2007) ("Notice").

¹⁰ See Notice at 2.

¹¹ Notice at 2.

¹² See Appendix.

¹³ 47 U.S.C. § 503(b)(1)(B).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁶ 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.*").

¹⁷ 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).

¹⁸ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

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

Commission order or rule.²⁰

6. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.²¹ 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.”²² 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 Finally, as noted above, rule 1.717 directs the carrier to respond to informal complaints within the prescribed time.²⁴

7. We find that Telefyne apparently violated section 1.717 of the Commission’s rules by failing to respond to the above-referenced informal complaints served by the Commission. The Commission recently reminded carriers of the importance of responding to informal complaints, and the seriousness of the penalties for failure to do so.²⁵ Nevertheless, Defendant has not responded to the three informal complaints. We conclude that Defendant’s continuing failure to respond to the informal complaints constitutes an apparent willful and repeated violation of a Commission rule.

B. Forfeiture Amount

8. The Act establishes the Commission’s authority to assess forfeitures; the Commission’s rules set the limits. 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.²⁶ Section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement* establish a base forfeiture amount of \$4,000 for failure to respond to a Commission communication.²⁷ Telefyne’s failure to respond to the Commission’s notices of three informal complaints, as required by section 1.717 of the Commission’s rules,²⁸ warrants the base forfeiture amount of \$4,000 for each informal complaint, for a proposed forfeiture of \$12,000.

9. Telefyne will have an opportunity to submit evidence and arguments in response to this NAL to attempt to show that no forfeiture should be imposed or that some lesser amount should be assessed.²⁹

²⁰ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (“*SBC Forfeiture Order*”).

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

²² 47 U.S.C. §§ 154(i), 154(j).

²³ 47 U.S.C. § 218.

²⁴ 47 C.F.R. § 1.717.

²⁵ *Consumer & Governmental Affairs Bureau Reminds Common Carriers of Their Obligation to Timely Respond to Informal Complaints*, Public Notice, 22 FCC Rcd 4243 (2007).

²⁶ 47 U.S.C. § 503(b)(2)(B), as amended. See 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). Citing 28 U.S.C. § 2461, the Debt Collection Improvement Act, the Commission adjusted the statutory amounts upward (from \$100,000 to \$130,000 per violation or day of continuing violation, and from \$1,000,000 to \$1,325,000 for any single act or failure to act, as described).

²⁷ 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).

²⁸ 47 C.F.R. § 1.717.

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

IV. CONCLUSION AND ORDERING CLAUSES

10. We conclude that Telefyne apparently willfully or repeatedly violated a Commission rule by failing to provide written responses to the Commission in response to three informal complaints. Accordingly, a proposed forfeiture is warranted against Defendant for this apparent willful or repeated violation.

11. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁰ section 1.80(f)(4) of the Commission's rules,³¹ and authority delegated by sections 0.111 and 0.311 of the Commission's rules,³² Telefyne Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of \$12,000.00 for willfully or repeatedly failing to respond to three informal complaints served by the Commission, in violation of section 1.717 of the Commission's rules.

12. 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, Telefyne Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 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. Questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be served by first class mail with a certified mail return receipt requested to Telefyne Inc., at its addresses of record, 13430 Gulf Beach Highway, Pensacola, FL 32507; 4286 Woodbine R, Ste B, Pace, FL 32571; and c/o its principle, Jorge Bellas, 5841 Balderas Ave., Pensacola, FL 32507.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau

³⁰ 47 U.S.C. § 503(b).

³¹ 47 C.F.R. § 1.80(f)(4).

³² 47 C.F.R. §§ 0.111, 0.311.

Appendix**Informal Complaints against Telefyne Inc.**

| File No. | Complainant | Defendant | Service Dates |
|-----------------|---------------------|------------------|----------------------|
| EB-06-MDIC-0047 | APCC Services, Inc. | Telefyne Inc. | 09/26/07 |
| EB-06-MDIC-0084 | G-Five LLC | Telefyne Inc. | 09/26/07 |
| EB-07-MDIC-0019 | PBS TelCom, Inc. | Telefyne Inc. | 09/26/07 |