

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

In the Matter of)	File No. EB-08-TC-5682
)	
The City of Daytona Beach)	NAL/Acct. No. 200932170821
)	
Apparent Liability for Forfeiture)	FRN: 0007936313
)	
)	

ORDER

Adopted: September 1, 2009**Released: September 1, 2009**

By the Acting Chief, Enforcement Bureau:

1. In this Order, we cancel a proposed forfeiture in the amount of twenty thousand dollars (\$20,000) issued to The City of Daytona Beach ("Daytona Beach"). On February 24, 2009, the Bureau issued to Daytona Beach a *Notice of Apparent Liability for Forfeiture* ("*Omnibus NAL*")¹ based on Daytona Beach's apparent violation of section 222 of the Act,² section 64.2009(e) of the Commission's rules,³ and the Commission's *EPIC CPNI Order*,⁴ by failing to timely file an annual compliance certification with the Bureau.

2. Upon review of the record, and based on additional information provided by Daytona Beach, we agree with Daytona Beach that Daytona Beach was not a telecommunications carrier at the time the CPNI certification filing was due.⁵ Accordingly, we find that Daytona Beach did not violate section 222 of the Act,⁶ section 64.2009(e) of the Commission's rules,⁷ or the Commission's *EPIC CPNI Order*. Consequently, we conclude that no forfeiture should be imposed.

3. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and sections 0.111, 0.311 and 1.80(f) (4) of the

¹ *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enf. Bur. 2009) ("*Omnibus NAL*").

² 47 U.S.C. § 222.

³ 47 C.F.R. § 64.2009(e).

⁴ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) ("*EPIC CPNI Order*"); *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, No. 07-132, (D.C. Cir. decided Feb. 13, 2009).

⁵ See Letter from Benjamin S. Gross, Assistant City Attorney, The City of Daytona Beach, to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC (June 26, 2009) ("June 26 Letter").

⁶ 47 U.S.C. § 222.

⁷ 47 C.F.R. § 64.2009(e).

Commission's rules, that the proposed forfeiture in the amount of twenty thousand dollars (\$20,000) issued to City of Daytona Beach in the February 24, 2009 *Omnibus Notice of Apparent Liability for Forfeiture* **IS CANCELLED**.

4. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to City of Daytona Beach, to its Assistant City Attorney, Benjamin S. Gross, 301 S. Ridgewood Avenue, Suite 220, Daytona Beach, FL 32114.

FEDERAL COMMUNICATIONS COMMISSION

Suzanne M. Tetreault
Acting Chief, Enforcement Bureau