

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

In the Matter of)	
)	File No. EB-08-SE-706
)	NAL/Acct. No. 200932100053
WorldNet, L.L.C.)	FRN 0004937116
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 3, 2009

Released: April 3, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that WorldNet, L.L.C. (“WorldNet”) apparently willfully violated a Commission Order in failing to respond to a Letter of Inquiry (“LOI”) from the Enforcement Bureau’s Spectrum Enforcement Division. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹ that WorldNet is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000). We also order WorldNet to respond fully to the LOI within ten (10) days of release of this NAL. If WorldNet again fails to submit a complete response, it will be subject to further enforcement action.

II. BACKGROUND

2. On October 23, 2008, the Enforcement Bureau’s (“Bureau”) Spectrum Enforcement Division (“Division”) issued an LOI directing WorldNet to provide certain information and documents regarding its compliance with the network outage reporting requirements.² The LOI was sent to WorldNet via facsimile and by certified mail with return receipt requested, and the Bureau subsequently received confirmation that the facsimile transmission was successful, and that the LOI that was sent by certified mail was delivered to WorldNet on October 28, 2008. As of the date of this NAL, the Division has not received a response to the LOI.

III. DISCUSSION

A. Failure to Respond to the LOI

3. We find that WorldNet’s failure to respond to the Division’s inquiry constitutes an apparent willful³ violation of a Commission Order. The Division directed WorldNet to provide certain

¹ 47 U.S.C. § 503(b).

² Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Ms. Debra R. Schmidt, Director of Telephony Services, WorldNet, L.L.C. (Oct. 23, 2008) (“LOI”).

³ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act indicates that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 ¶ 5 (1991) (“*Southern California Broadcasting*”).

information and documents related to the company's compliance with the network outage reporting requirements. This information was necessary to enable the Commission to perform its enforcement function and evaluate whether WorldNet violated the Commission's Rules ("Rules").

4. 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."⁴ In addition, the Commission has broad investigatory authority under Sections 4(i), 4(j), and 403 of the Act, its Rules, and relevant precedent. 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."⁵ 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."⁶ Section 403 grants the Commission "full authority and power to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of this Act."⁷ Numerous FCC decisions have reaffirmed the Commission's authority to investigate potential misconduct and punish those that disregard FCC inquiries.⁸

5. There is no question that WorldNet received the October 23, 2008 LOI, as evidenced by confirmation of the facsimile transmission and the certified mail return receipt. Since WorldNet received the LOI, it has neither contacted the Division nor submitted a response to the Division's inquiry.

B. Proposed Forfeiture

6. Under Section 503(b)(1)(B) 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.⁹ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁰ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹¹ We conclude under this standard that WorldNet is apparently liable for forfeiture for its apparent willful violation of a Commission Order.

⁴ 47 U.S.C. § 218.

⁵ 47 U.S.C. § 154(i).

⁶ 47 U.S.C. § 154(j).

⁷ 47 U.S.C. § 403.

⁸ See, e.g., *Cablevision Systems Corp.*, Notice of Apparent Liability for Forfeiture and Order, DA 09-119 (Enf. Bur., rel. January 19, 2009) (proposing a forfeiture of \$25,000 for failing to respond fully to an LOI); *Connect Paging, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 6303, 6306 (Enf. Bur. 2007) (proposing \$4,000 forfeiture for failure to respond to an LOI); *Hauppauge Computer Works, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 3684, 3688 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing an \$11,000 forfeiture for failure to respond to an LOI); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7602 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing \$11,000 forfeiture for failure to respond to provide a complete response to an LOI).

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

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

¹¹ See, e.g., *BigZoo.Com Corporation*, Forfeiture Order, 20 FCC Rcd 3954, 3955 (Enf. Bur. 2005) (forfeiture paid).

7. Under Section 503(b)(2)(B) of the Act,¹² we may assess a common carrier a forfeiture of up to \$150,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,500,000 for a single act or failure to act. In exercising such authority, we are required to take into account “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.”¹³

8. Section 1.80 of the Rules and the Commission’s *Forfeiture Policy Statement* establish a base forfeiture amount of \$4,000 for failure to respond to Commission communications.¹⁴ We find that WorldNet’s failure to respond to the LOI in the circumstances presented here warrants an increase to this base amount. Misconduct of this type exhibits contempt for the Commission’s authority and threatens to compromise the Commission’s ability to adequately investigate violations of its rules. Prompt and full responses to Division inquiry letters are essential to the Commission’s enforcement function. In this case, WorldNet’s apparent violations have delayed our investigation in an area of critical importance, namely, network outage reporting.¹⁵

9. Based on these facts, we therefore propose a twenty thousand dollar (\$20,000) forfeiture against WorldNet for failing to respond to Commission communications. This forfeiture amount is consistent with precedent in similar cases, where companies failed to provide responses to Bureau inquiries concerning compliance with the Commission’s Rules despite evidence that the LOIs had been received.¹⁶

10. We also direct WorldNet to respond fully to the October 23, 2008 LOI within ten (10)

¹² 47 U.S.C. § 503(b)(2)(B). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945, 10947 (2004) (adjusting the maximum statutory amounts for common carriers from \$120,000/\$1,200,000 to \$130,000/\$1,300,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221, 18223 (2000) (adjusting the maximum statutory amounts for common carriers from \$100,000/\$1,000,000 to \$120,000/\$1,200,000). The most recent inflation adjustment took effect September 2, 2008 and only applies to violations that occur after that date. *See* 73 Fed. Reg. 44663-5. As WorldNet’s apparent violations occurred after September 2, 2008, they are therefore subject to the new forfeiture limits.

¹³ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

¹⁴ *See* 47 C.F.R. § 1.80(b)(4); *The 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 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

¹⁵ In *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 16830, 16833 (2004) (adopting 47 C.F.R. Part 4), the Commission recognized “the critical need for rapid, complete, and accurate information on service disruptions that could affect homeland security, public health or safety, and the economic well-being of our Nation.”

¹⁶ *See supra* note 8. *See also*, *Liberty Phones, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 17264 (Enf. Bur., Inv. & Hearings Div. 2007) (proposing a \$20,000 forfeiture for failure to respond to an LOI); *Universal Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 6579, 6582 (Enf. Bur. 2006) (proposing a \$20,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437, 24441 (Enf. Bur. 2004) (proposing a \$20,000 forfeiture for failure to respond to an LOI). These cases ordered or proposed forfeitures of \$20,000 for common carriers who failed to respond to Commission communications.

days of the release of this Notice of Apparent Liability for Forfeiture and Order. Failure to do so may constitute an additional violation subjecting WorldNet to further penalties, including potentially higher monetary forfeitures.¹⁷

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, and the authority delegated by Sections 0.111 and 0.311 of the Rules, WorldNet, L.L.C. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its willful violation of a Commission Order.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture and Order, WorldNet **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. **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. §§ 154(i), 154(j), 218 and 403, WorldNet shall fully respond to the October 23, 2008 Letter of Inquiry sent by the Enforcement Bureau's Spectrum Enforcement Division in the manner described by that Letter of Inquiry within ten (10) days of the release of this Notice of Apparent Liability and Order.

14. 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/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 TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). 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. WorldNet will also send electronic notification on the date said payment is made to Ricardo Durham at Ricardo.Durham@fcc.gov and to Deborah Broderson at Deborah.Broderson@fcc.gov.

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption. The response should also be e-mailed to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, FCC, at Ricardo.Durham@fcc.gov and to Deborah Broderson, Spectrum Enforcement Division, FCC, at Deborah.Broderson@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; 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.

¹⁷ We do not decide in this *NAL* whether the failure to respond to an LOI constitutes a continuing violation.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail return receipt requested to Ms. Debra R. Schmidt, Director of Telephony Services, WorldNet, L.L.C., 1 Riverfront Plaza, Suite 301, Lawrence, Kansas 66044.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau