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

In the Matter of	)	
	)	File No. EB-09-SE-218
Verizon	)	NAL/Acct No. 201032100034
	)	FRN 0010790335

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 8, 2010 **Released: July 9, 2010**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find that Verizon apparently willfully violated Section 4.11 of the Commission's Rules ("Rules"),[1] by failing to file a true, complete and accurate Final Communications Outage Report regarding a significant disruption in its network services ("outage"). Based on the facts and circumstances before us, we conclude that Verizon is apparently liable for a forfeiture in the amount of twenty-five thousand dollars ($25,000).

II. BACKGROUND

2. The Commission first imposed outage reporting requirements on wireline communications providers in 1992.[2] Recognizing that these requirements address critical public interest concerns, the Commission later revised its rules to extend these mandatory reporting requirements to all communications providers.[3] In addition, in an effort to facilitate rapid reporting and reduce administrative burdens on covered entities, the Commission adopted a common metric for determining the general outage-reporting threshold criteria and required that outage reports be timely filed electronically.[4] The Commission explained that these requirements enable this agency to effectively monitor and oversee the reliability and security of the nation's communications systems, and thus carry out its responsibilities under the Communications Act.[5] Most important, the outage reporting requirements ensure that communication providers promptly, fully, and accurately report significant disruptions in their network services that could affect our Nation's "homeland security, public health and

[1] 47 C.F.R. § 4.11.

[2] *See Notification by Common Carriers of Service Disruptions,* Report and Order, 7 FCC Rcd 2010 (1992); Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 8517 (1993); Second Report and Order, 9 FCC Rcd 3911 (1994); Order on Reconsideration of Second Report and Order, 10 FCC Rcd 11764 (1995).

[3] *See* 47 C.F.R. Part 4; *see also New Part 4 of the Commission's Rules Concerning Disruptions to Communications,* Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16882-94 ¶¶ 97-126 (2004) ("*2004 Network Outage Order*") (extending the network outage reporting requirements to paging and wireless, cable circuit-switch telephony, and satellite communications providers).

[4] *Id.* at 16869-72 ¶¶ 71-75.

[5] *Id.* at 16837 ¶ 12.

safety, as well as [our] economic well-being."[6] The Commission concluded that the outage reporting requirements, as strengthened and expanded, ensure that the public has "secure communications that they can rely upon for their daily needs, as well as during terrorist attacks, fires, natural disasters (such as hurricanes, earthquakes, and tornadoes) and war;"[7] and that the Commission has the information about "communications disruptions and their causes" to prevent similar future disruptions and to facilitate alternative communications sources.[8]

3. Under Section 4.9 of the Rules, all communications providers are required to electronically report to the Commission outages that meet certain threshold criteria. The threshold criteria for wireline communications providers are set forth in Section 4.9(f) of the Rules.[9] A wireline communications provider must notify the Commission of any outage that lasts at least 30 minutes and: (1) potentially affects at least 900,000 user telephony or paging minutes; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices or facilities; or (4) potentially affects 911 facilities. If a wireline communications provider experiences an outage that meets the threshold criteria, it is required to electronically submit to the Commission a Notification within 120 minutes, an Initial Communications Outage Report ("Initial Report") within 72 hours, and a Final Communications Outage Report ("Final Report") within 30 days of its discovery of the outage.[10] The Notification serves to notify the Commission that a major event has occurred and assist the Commission in determining whether an immediate response is required (*e.g*., terrorist attack or systemic failure) and whether patterns of outages are emerging (*e.g*., phased terrorist attacks) that warrant further coordination or other action.[11] The Initial and Final Reports provide the Commission with more detailed data necessary to analyze outages in order to improve network reliability and security.[12]

4. Under Section 4.11 of the Rules, the Final Report must "contain all pertinent information on the outage, including any information that was not contained in the Initial Report."[13] Section 4.11 of the Rules requires that "the person submitting the Final report … be authorized by the provider to legally bind the provider to the truth, completeness, and accuracy of the information contained in the report."[14] Section 4.11 further requires that the Final Report "be attested by the person submitting the report that

[6] *Id.* at 16910 ¶ 160.

[7] *2004 Network Outage Order*, 19 FCC Rcd at 16837 ¶ 11. Noting that there are many examples of the critical need for, and our dependence upon, reliable communications service, the Commission offered the example of our financial infrastructure, which largely consists of computers, databases, and communications links. The Commission stated that:

> If the communications links were severed, or severely degraded, ATM machines would not be able to supply cash, credit card transactions would not 'go through,' banks would not be able to process financial transactions (including checks), and the financial markets would become dysfunctional. In a short time, economic activity would ground to a halt and consumers' ability to purchase food, fuel or clothing would be severely limited if not destroyed.

Id. at 16836-37 ¶ 11.

[8] *Id.*

[9] 47 C.F.R. § 4.9(f)(1)-(4). A wireline communications provider is defined as a provider that "offer[s] terrestrial communications through direct connectivity, predominantly by wire, coaxial cable, or optical fiber, between the serving central office … and end user location(s)." *See* 47 C.F.R. § 4.3(g).

[10] *See* 47 C.F.R. § 4.9(f)(4).

[11] *See 2004 Network Outage Order*, 19 FCC Rcd at 16870-72 ¶¶ 73-75.

[12] *See id.*

[13] 47 C.F.R. § 4.11.

[14] *Id.*

he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct, and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete, and accurate."[15]

5. Verizon, a wireline communications provider, has been subject to the outage reporting requirements described above since the requirements were first imposed in 1992. Commission records reflect that Verizon experienced a significant outage, for which it submitted timely reports, but for which its Final Report was incomplete and inaccurate in several important respects. On January 4, 2010, the Enforcement Bureau's Spectrum Enforcement Division issued Verizon a Letter of Inquiry ("LOI") and initiated an investigation into the company's compliance with Section 4.11 of the Rules.[16] In its response to the LOI,[17] Verizon maintains that its Final Report was accurate and thus complied with Section 4.11. We disagree. Having reviewed Verizon's LOI Response and Final Report, we find that Verizon's submission did not completely and accurately describe the outage in several important respects, and thus that it did not comply with the requirements of Section 4.11 of the Rules.

III. DISCUSSION

A. Verizon Apparently Failed to File a Complete and Accurate Final Outage Report

6. Section 4.9 of the Rules requires Verizon to timely file reports for outages that meet the threshold criteria. Section 4.11 of the Rules requires Verizon to submit, and attest that it has submitted, a true, complete and accurate Final Report that contains all pertinent information, including any information that was not contained in its Initial Report. The completeness and accuracy of the Final Report is critical in enabling the Commission to assess the full impact of significant communications disruptions and to effectively respond to future incidents.

7. Verizon experienced a reportable network outage, as described in the Confidential Appendix. Commission records reflect that Verizon timely filed its Reports, including its Final Report, regarding that outage. The issue presented here is not the timeliness of Verizon's filings but rather the completeness and accuracy of its Final Report. As detailed more fully in the Confidential Appendix, we find that Verizon's Final Report was incomplete and inaccurate in several important respects. We

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[15] *Id.*

[16] *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Kathleen Grillo, Vice President, Federal Regulatory, Verizon (January 4, 2010).

[17] *See* Letter from Mark J. Montano, Assistant General Counsel, Verizon to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (February 3, 2010). Verizon requested its Response and associated documents be accorded confidential treatment. Pursuant to 47 C.F.R. § 0.457(d)(vi), Verizon's outage report is not routinely available for public inspection. Pursuant to 47 C.F.R. § 0.459(d)(3), we will accord the other materials confidential treatment until any request for inspection is made, and will rule on Verizon's request at that time.

therefore find that Verizon apparently willfully[18] violated Section 4.11 of the Rules by filing a Final Report that was not true, complete and accurate.

B. Proposed Forfeiture

8. Under Section 503(b)(1)(B) of the Act and Section 1.80(a)(1) of the Rules, 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.[19] 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.[20] 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.[21] We conclude under this standard that Verizon is apparently liable for forfeiture for its apparent willful violation of Section 4.11 of the Rules.

9. Under Section 503(b)(2)(B) of the Act, we may assess a common carrier a maximum forfeiture of $150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of $1,500,000 for any single continuing violation.[22] In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs the Commission to consider factors, such as "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."[23]

10. The Commission's *Forfeiture Policy Statement*[24] and Section 1.80 of the Rules do not establish a base forfeiture amount for failing to submit a true, complete and accurate Final Report as

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[18] "Willful" is defined as the "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 clarifies 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 Southern California Broadcasting Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶5 (1991), *recon. denied,* Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) ("*Southern California*"); *see also San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042 ¶ 9 (2007), *consent decree ordered,* 25 FCC Rcd 1494 (2010); *Lotus Broadcasting Corp.*, Memorandum Opinion and Order, 9 FCC 2d 227 ¶¶ 5-6 (1967); *Bureau D'Electronique Appliquee*, Forfeiture Order, 20 FCC Rcd 17893 (Spectrum Enf. Div., Enf. Bur. 2005). By consciously and deliberately submitting a Final Report that was incomplete and inaccurate in several respects, Verizon's apparently willfully violated Section 4.11 of the Rules.

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

[20] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[21] *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

[22] 47 U.S.C § 503(b)(2)(B). The Commission thrice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), 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*, Order, 23 FCC Rcd 9845 (2008); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation,* Order, 19 FCC Rcd 10945 (2004); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation,* Order, 15 FCC Rcd 18221 (2000); *see also* 47 C.F.R. § 1.80(c).

[23] 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.

[24] *See 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) ("*Forfeiture Policy Statement*").

required under Section 4.11 of the Rules. This does not, of course, mean that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.[25] The Commission retains the discretion to issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.[26]

11. In determining the appropriate forfeiture amount for violation of the reporting requirements under Section 4.11, we start by taking into account the importance of filing a true, complete and accurate Final Report, such that the Commission can rely fully on the accuracy of that report. In other analogous circumstances, the Commission has emphasized that it relies "heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities."[27] It is because of this need to be able to rely on the information submitted to us that the Commission requires that the Final Report of a reportable outage must be "attested by the person submitting the report that he/she has read the report prior to submitting it and on oath deposes and states that the information contained therein is true, correct and accurate to the best of his/her knowledge and belief and that the communications provider on oath deposes and states that this information is true, complete and accurate."[28]

12. We have considered the nature of Verizon's apparent violation, the submission of an attested Final Report that, although timely filed, was incomplete and inaccurate in several important respects. As the Commission has found in other reporting violation cases involving the lack of accuracy and completeness, we believe a significant forfeiture is appropriate here.[29] If communications providers ignore our rules and submit unreliable information, the purpose of the network outage reporting requirements is undermined. Consistent with similar precedent,[30] we find that a forfeiture in the amount of $25,000 is appropriate under the circumstances presented in this case.

13. Specifically, we take into account that the Commission's outage reporting requirements, generally, and the completeness and accuracy of the Final Report, specifically, are critical in enabling the

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[25] *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

[26] *See id.*

[27] *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Notice of Proposed Rulemaking, 17 FCC Rcd 3296, 3297 (2002). *See also Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission* Report and Order, 18 FCC Rcd 4016, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

[28] 47 C.F.R. § 4.11.

[29] Serious reporting violations by carriers have resulted in assessments of significant forfeitures. *See e.g.*, *VCI Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 15933, 15940 ¶ 18 (2007) (Commission established $20,000 as the base forfeiture amount for a carrier's failure to file accurate revenue on FCC Form 497, proposing a $320,000 forfeiture for VCI's sixteen apparent violations); *Global NAPs California, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 13545, 13554-56 ¶¶ 24-27 (Enf. Bur. 2009) (assessing $25,000 proposed forfeiture against a carrier for apparently violating Section 52.15(f) of the Rules, 47 C.F.R. § 52.15(f), finding that filing of inaccurate reports undermines the Commission's ability to monitor and ensure the efficient allocation of telephone numbering resources) ("*Global NAPs California, Inc.*"); *Cardinal Broadband LLC, aka Sovereign Telecommunications,* Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233, 12235-37 ¶¶ 6-11 (Enf. Bur. 2008) (assessing a $25,000 forfeiture against an interconnected VoIP service provider for apparently violating Section 1.17 of the Rules, finding that the submission of misleading or inaccurate information regarding its status reflects a lack of due diligence and impedes the Commission's ability to carry out its statutory responsibilities) ("*Cardinal Broadband LLC*").

[30] *See Global NAPs California, Inc.*, 24 FCC Rcd at 13554-56 ¶¶ 24-27; *Cardinal Broadband LLC*, 23 FCC Rcd at 12235-37 ¶¶ 6-11.

Commission to assess the full impact of significant communications disruptions and to effectively respond to future incidents. The submission of a less than complete and accurate Final Report undermines the Commission's understanding of and ability to address outages that have the potential of jeopardizing our nation's homeland security, safety and economic well-being.[31] A communications provider that submits incomplete and inaccurate information shows a lack of due diligence in meeting its reporting obligations under Section 4.11 of the Rules. An inaccurate and incomplete Final Report does not meet the requirements of Section 4.11. Finally, such a Final Report impedes the Commission's thorough analysis and understanding of the effects of an outage, and compromises the Commission's long-term interests of ensuring network reliability and security. Accordingly, for the reasons discussed above and in the Confidential Appendix, we conclude that Verizon is apparently liable for a $25,000 forfeiture for its apparent willful violation of Section 4.11 of the Rules.

V. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Verizon is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand ($25,000) for its apparent willful violation of Section 4.11 of the Rules.

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

16. 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. Verizon will also send electronic notification on the date said payment is made to Jennifer.Burton@fcc.gov and JoAnn.Lucanik@fcc.gov.

17. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement 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 statement should also be emailed to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov and Jennifer Burton at Jennifer.Burton@fcc.gov.

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-

[31] *See supra* notes 9 - 12 and accompanying text.

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.

19. **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 Mark J. Montano, Assistant General Counsel, Verizon, 1320 North Courthouse Road, 9th Floor, Arlington, Virginia 22201.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau