

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

In the Matter of
Ureach Technologies, Inc.
Apparent Liability for Forfeiture
File No.: EB-06-TC-405
NAL/Acct. No.: 200832170058
FRN: 0017954074

ORDER

Adopted: February 17, 2011

Released: February 17, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we find that a proposed forfeiture issued by the Enforcement Bureau ("Bureau") to Ureach Technologies, Inc. ("Ureach") should not be imposed. In a Notice of Apparent Liability for Forfeiture ("NAL") issued on July 17, 2008, the Bureau found Ureach apparently liable for a forfeiture in the amount of \$9,000 for delivering two unsolicited advertisements to the telephone facsimile machines of two consumers. In its responses to the NAL, however, Ureach demonstrates that it is not responsible for the advertisements at issue. Based on our review of Ureach's responses and the record, we now find that Ureach did not violate section 227 or our related rules, and conclude that no forfeiture should be imposed.

II. BACKGROUND AND DISCUSSION

2. Section 227(b)(1)(C) of the Act makes it "unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement." The term "unsolicited advertisement" is defined in the Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise." Under the Commission's rules, an "established business

1 See Ureach Technologies, Inc., Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10988 (Enf. Bur. 2008).

2 Letter from Lauren Thelander, Morrison Cohen, LLP, 909 Third Avenue, New York, NY 10022, to Office of the Secretary, FCC, and Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-405, dated July 24, 2008 ("July 2008 Response"); letter from Lauren Thelander, Morrison Cohen, LLP, 909 Third Avenue, New York, NY 10022, to Office of the Secretary, FCC, and Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-405, dated August 19, 2008 ("August 2008 Response"). Information in the record indicates that Ureach held the telephone numbers in question during the relevant time period but that the numbers were actually used by a customer of Ureach.

3 47 U.S.C. § 227(b)(1)(C); see also 47 C.F.R. § 64.1200(a)(3).

4 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

relationship”<sup>5</sup> exception permits a party to deliver a message to a consumer if the sender has an established business relationship with the recipient *and* the sender obtained the number of the facsimile machine through the voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or through a directory, advertisement, or a site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.<sup>6</sup> These rules apply only in certain circumstances to a “facsimile broadcaster,” defined as “a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.”<sup>7</sup> Under the rule, “a facsimile broadcaster will be liable for violations of [the junk fax rules], including the inclusion of opt-out notices on unsolicited advertisements, *if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.*”<sup>8</sup>

3. On September 11, 2006, in response to one or more consumer complaints alleging that Ureach had faxed unsolicited advertisements, the Bureau issued a citation<sup>9</sup> to Ureach, pursuant to section 503(b)(5) of the Act,<sup>10</sup> for using a telephone facsimile machine, computer, or other device to send unsolicited advertisements for hardware and office supplies to a telephone facsimile machine, in violation of section 227 of the Act and the Commission’s related rules and orders. The citation informed Ureach that within thirty (30) days of the date of the citation, the company could either request an interview with Commission staff, or provide a written statement responding to the citation.

4. On July 17, 2008, in response to two additional consumer complaints concerning unsolicited facsimile advertisements for vending machines, the Bureau issued the *NAL* to Ureach in the amount of \$9,000. On July 24, 2008, and August 19, 2008, Ureach responded to the *NAL*, claiming that it supports a set of core products, several of which contain facsimile applications that are offered to individuals as well as small businesses on a subscription basis. Ureach asserts that it did not have any involvement with, or any notice of, any customers who sent faxes that may have been in violation of the Commission’s rules and orders, and that Ureach did not send the faxes in question.<sup>11</sup> In addition, Ureach stated that it takes measures to prevent unauthorized facsimile transmissions, such as requiring its subscribers to agree to and adhere to its Terms of Services Agreement, which explicitly prohibits subscribers from violating any local, state or national laws and regulations, including the Act and all other related FCC rules and regulations.<sup>12</sup>

5. Upon review of the record, including Ureach’s July 2008 and August 2008 Responses, we conclude that Ureach demonstrates that it is not responsible for the advertisements at issue.<sup>13</sup> Those

---

<sup>5</sup> An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5).

<sup>6</sup> See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

<sup>7</sup> 47 C.F.R. § 64.1200(f)(6).

<sup>8</sup> 47 C.F.R. § 64.1200(a)(3)(vii) (emphasis added).

<sup>9</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-06-TC-405, issued to Ureach Technologies, Inc. on September 11, 2006.

<sup>10</sup> See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to non-common carriers for violations of the Act or of the Commission’s rules and orders).

<sup>11</sup> July 2008 Response at 1-2; August 2008 Response at 2.

<sup>12</sup> July 2008 Response at 2-3; August 2008 Response at 2.

<sup>13</sup> Information in the record indicates that Ureach held the telephone numbers in question during the relevant time period but that the numbers were actually used by a customer of Ureach.

advertisements offered products that Ureach does not appear to provide, and were apparently transmitted on behalf of other business entities, thus supporting Ureach's assertion that it was not the "sender" of these advertisements.<sup>14</sup> Further, the record offers no evidence that is inconsistent with Ureach's assertion that it does not have a "high degree of involvement" with those senders' transmissions. For example, the record contains no evidence that Ureach determined the content of the faxed messages, provided a source of fax numbers, made representations about the legality of faxing to those numbers, advised a client about how to comply with the fax advertising rules, or had actual notice of unlawful activity.<sup>15</sup> Finally, Ureach appears to have taken steps to prevent unsolicited facsimile transmissions, such as requiring customers to adhere to a Terms of Service Agreement that expressly prohibits such activity, and suspending services to entities violating such agreement. We therefore conclude that the proposed forfeiture in the *NAL* issued to Ureach should not be imposed because it did not have a "high degree of involvement in, or actual notice of, the unlawful activity."<sup>16</sup>

### III. ORDERING CLAUSES

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended ("Act"), and 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), and under the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, the proposed forfeiture in the amount of \$9,000 issued to Ureach Technologies, Inc. in the July 17, 2008 *Notice of Apparent Liability for Forfeiture* **WILL NOT BE IMPOSED.**

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Ureach Technologies, Inc., Attn: David J. Warnock, Senior Vice President and Chief Financial Officer, 2137 Highway 35, Holmdel, New Jersey 07733 and Lauren Thelander, Morrison Cohen LLP, 909 Third Avenue, New York, NY 10022.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

---

<sup>14</sup> Compare 47 C.F.R. § 64.1200(f)(6) ("[t]he term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee") with 47 C.F.R. § 64.1200(f)(8) ("[t]he term *sender* for purposes of paragraph (a)(3) of this section means the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement").

<sup>15</sup> See 47 C.F.R. § 64.1200(a)(3); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd 14014, 14129 ¶ 195 (2003); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787, 3808 ¶ 40 (2006).

<sup>16</sup> 47 C.F.R. § 64.1200(a)(3)(vii).