

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

In the Matter of
Access.1 New Jersey License Company, LLC
Licensee of Station WMGM-TV, Wildwood, New Jersey
File Number: EB-06-IH-3725
Facility ID Number: 61111
NAL/Acct. Number: 201132080024
FRN: 0009510595

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 24, 2011

Released: March 24, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we assess a monetary forfeiture in the amount of four thousand dollars (\$4,000) against Access.1 New Jersey License Company, LLC ("Access.1" or "the Licensee"), licensee of Station WMGM-TV, Wildwood, New Jersey ("Station WMGM-TV" or "the Station"), for its apparent willful violation of section 317 of the Communications Act, as amended ("the Act"), and section 73.1212 of the Commission's rules. As discussed below, we find that Access.1 apparently violated section 317 of the Act and the Commission's sponsorship identification rule.

II. BACKGROUND

2. The Commission received a complaint jointly filed by Free Press and the Center for Media and Democracy ("CMD") alleging that Access.1's Station WMGM-TV had aired a Video News Release ("VNR") produced for Matrixx Initiatives, the makers of Zicam cold remedy, without also airing a sponsorship identification announcement. The Enforcement Bureau ("Bureau") issued a letter of inquiry to the Licensee concerning the allegations raised in the Complaint.

3. Access.1 responded to the LOI and stated that Station WMGM-TV aired an edited version of the Matrixx Initiatives Zicam VNR on October 18, 2006 during the "Lifeline" health segment

1 See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212.

2 See Complaint of Timothy Karr, Campaign Director, Free Press, and Diane Farsetta, Senior Researcher, Center for Media and Democracy, dated November 14, 2006 ("Complaint").

3 See Letter from Hillary S. DeNigro, Chief, Investigations & Hearings Division, Enforcement Bureau, to Access.1 New Jersey License Company, dated April 26, 2007 ("LOI").

that appears on the Station once a week.<sup>4</sup> Access.1 further stated that it had received the VNR from D S Simon Productions.<sup>5</sup>

4. Access.1 provided a recording and transcript of the broadcast at issue.<sup>6</sup> Before a commercial break, Station WMGM-TV's anchor previewed upcoming segments, and stated: "And we will show you how to treat the common cold, especially when you are traveling."<sup>7</sup> Following the break, the Station's anchor introduced the VNR as follows: "Health reporter Robin Stoloff joins us tonight to tell us how to take care of a common medical ailment." The transcript, in its entirety, is as follows:<sup>8</sup>

[Reporter] A national survey by Harris Interactive, shows only nine percent of travelers over the age of thirty say they feel very knowledgeable about how to treat the common cold. This is especially important as we begin the cold and flu season and one of the biggest travel times of the year.

[Voiceover] Nearly two-thirds of U.S. travelers [thirty] and over say they are somewhat or not at all knowledgeable about treating the common cold, according to the new Zicam Travel Well Survey conducted by Harris Interactive. Yet [two] out of [five] travelers surveyed say colds have negatively impacted their trips.

Allison Janse wrote Germ Freak's Guide to Outwitting Colds & Flu, she says being a mother of premature twins made her start researching how to avoid germs.

[Caption: Allison Janse, Author] You can do everything I say in my book. You can eat right, exercise, walk around in a bubble suit. But, eventually, you're gonna get sick. And in m[y] research, I found that homeopathic zinc products can shorten the duration of your illness.

[Voiceover] Travelers are at [an] increased risk of getting sick because of things like greater exposure to viruses, stress and other variables. The survey showed [four] in [five] of the U.S. travelers surveyed believe the worst time to catch the common cold is while traveling.

Dr. Mark Siegel of New York University says that obtaining relief is possible, but that it's important to begin treatment as soon as symptoms occur.

[Caption: Dr. Marc Siegel, New York University] There is no cure for the common cold. But there are some things you can do to get better. Especially in the first 48 hours. You can take an intranasal zinc preparation, like Zicam. To cut down on the severity and duration of symptoms. You can also take a decongestant. Get more rest. Drink some chicken soup. And sleep.

[Voiceover] Nearly [ninety] percent of the U[.]S[.] travelers survey [sic] say reducing the duration of the common cold would be important or very important for treating the common cold,

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<sup>4</sup> See Letter from James L. Winston, Esquire, Rubin, Winston, Diercks, Harris & Cooke, L.L.P., counsel for Access.1 New Jersey License Company LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 20, 2007, at 2-3, 4 & Exh. 4 ("*LOI Response*").

<sup>5</sup> See *id.* at 2 & Exh. 4.

<sup>6</sup> See *id.* at Exhs. 7-8.

<sup>7</sup> See *id.* at Exh. 8.

<sup>8</sup> Bracketed text within the block quote reflects minor, non-substantive edits.

but only [thirty-three] percent of those travelers who typically use over-the-counter medications to treat the common cold, have used a zinc cold remedy.

[Allison Janse] I think the survey showed me that people really need help figuring out how to treat a common cold when they're on the go. For instance, most people don't know that zinc products are available to help them. I mean, yes, we'd like to avoid all germs and never get sick, but that's not gonna happen. If you do get sick, there are things you can do to fight back.

[Reporter] To see this report again or to find out more about zinc as a treatment for the common cold, go to our website, [www.nbc40.net], click on Health and then [go to] Lifeline.<sup>9</sup>

5. The recording of the broadcast showed approximately four different shots of the Zicam product mentioned in the script as well as a shot of the cover of the Zicam Travel Well Survey. No other zinc cold remedies or products for treating the common cold were shown.<sup>10</sup> The broadcast featured a physician, who specifically recommended the use of Zicam, but no other name brand cold remedy, during the first forty-eight hours of a cold to alleviate the severity and duration of symptoms. Although use of a decongestant was mentioned as a treatment, no specific decongestant products were named or shown.<sup>11</sup>

6. In its *LOI Response*, Access.1 stated that the Station announced that the "Lifeline" segment was sponsored by Shore Memorial Hospital, and further stated that "neither Shore Memorial Hospital, nor anyone associated with Shore Memorial Hospital, was involved in the production or delivery of the VNR material to the Station."<sup>12</sup> Access.1 argued that no additional sponsorship identification announcement was required for the inclusion of the VNR material in the Station's October 18, 2006 "Lifeline" report.<sup>13</sup> Specifically, Access.1 stated that because the Station and its employees received no consideration for broadcasting the VNR material and no report that would have required the Station to provide a sponsorship identification announcement, no additional sponsorship identification announcement was required.<sup>14</sup> The Licensee asserts that its conduct was consistent with guidance in the Commission's 2005 *Public Notice* concerning the use of VNR material.<sup>15</sup>

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<sup>9</sup> See *id.* at Exh. 7.

<sup>10</sup> See *id.* at Exh. 8.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* at 4 & Exh. 1. See also *id.* at Exh. 8 (prior to the "Lifeline" report, the Station aired a full screen depiction of the Shore Memorial Hospital's logo, below the caption "Sponsored By" and audio accompanying this material stated: "'Lifeline' with Robin Stoloff brought to you by Shore Memorial Hospital, dedicated to embracing your tomorrows").

<sup>13</sup> See *id.* at 4-7.

<sup>14</sup> See *id.* at 4-5, 7 & Exhs. 1-4.

<sup>15</sup> See *id.* at 8 (citing *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Red 8593 (2005) ("2005 Public Notice")).

### III. DISCUSSION

#### A. Sponsorship Identification Laws

7. Section 317(a)(1) of the Act and section 73.1212(a) of the Commission's rules require broadcast stations to broadcast an announcement disclosing whenever any matter is broadcast in exchange for valuable consideration "directly or indirectly paid or promised to or charged or accepted by, the station so broadcasting" at the time the material is aired.<sup>16</sup> Specifically, section 317(a)(1) provides:

All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: *Provided*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.<sup>17</sup>

Section 73.1212(a) of the Commission's rules, which implements section 317(a)(1) of the Act, further provides:

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce:

- (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and
- (2) By whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.<sup>18</sup>

8. The Commission has explained that the sponsorship identification rules are "grounded in the principle that listeners and viewers are entitled to know who seeks to persuade them."<sup>19</sup> The disclosures required by the sponsorship identification rules provide listeners and viewers with information concerning the source of material in order to prevent misleading or deceiving those listeners and viewers.<sup>20</sup> As set forth above, pursuant to section 317 and the Commission's implementing rule, the obligation to provide such a disclosure for material "furnished without a charge or at a nominal charge for use on, or in connection with, a broadcast" is triggered when the use of the material falls outside of the

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<sup>16</sup> 47 U.S.C. § 317(a); 47 C.F.R. § 73.1212(a).

<sup>17</sup> 47 U.S.C. § 317(a)(1). The clause from this subsection stating, "*Provided*, That 'service or other valuable consideration' shall not include . . . unless . . ." is hereinafter referred to as the "proviso."

<sup>18</sup> 47 C.F.R. § 73.1212(a).

<sup>19</sup> See, e.g., 2005 Public Notice, 20 FCC Rcd at 8593-94.

<sup>20</sup> See *Sonshine Family Television, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18686 (2007), Forfeiture Order, 24 FCC Rcd 14830, 14834 ¶ 12 (2009) (forfeiture reduced and paid).

proviso because it involves “an identification of any person, product service, trademark or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.”<sup>21</sup>

9. When Congress amended section 317 in 1960 and adopted the proviso, it provided twenty-seven examples regarding the types of consideration that would trigger the obligation to provide sponsorship identification and those that would not because they fell within the proviso.<sup>22</sup> The Commission included those examples plus nine more in public notices released following its adoption of revised sponsorship identification rules in 1963 and 1975.<sup>23</sup> Example 26 provides as follows:

26. (a) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company or its buses. No announcement is required because there is no payment other than the matter furnished and there is no mention of the bus company.

(b) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(c) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.<sup>24</sup>

We reject Access.1’s argument that no sponsorship identification announcement was required because Station WMGM-TV and its employees did not receive and were not promised consideration for the broadcast of the VNR material and because the Station and its employees did not receive a report pursuant to section 507 of the Act that would have required it to provide a sponsorship identification announcement for the VNR material aired.<sup>25</sup> As set forth above, section 317 and the Commission’s sponsorship identification rules also include a proviso concerning service or property furnished without charge or at nominal charge for use on a broadcast, and require a sponsorship identification announcement if the products or services are shown to an extent that is disproportionate to the subject matter of the broadcast.<sup>26</sup> As the Commission’s Public Notices have made clear, the definition of

<sup>21</sup> See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a)(2).

<sup>22</sup> H.R. Rep. No. 1800, 86<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 1, at 12-17 (1960) (“House Report”).

<sup>23</sup> See *In re Applicability of Sponsorship Identification Rules*, Public Notice, 40 FCC 141 (1963) (“1963 Public Notice”). The 1963 Public Notice was updated in 1975. See *Applicability of Sponsorship Identification Rules*, Public Notice, 40 Fed. Reg. 41936 (1975) (“1975 Public Notice”).

<sup>24</sup> 1975 Public Notice, 40 Fed. Reg. at 41939, Example 26; 1963 Public Notice, 40 FCC at 148, Example 26.

<sup>25</sup> See 47 U.S.C. §§ 317(b), 508. Section 507 establishes a reporting scheme designed to require disclosure to the licensee of payments to other persons for the inclusion of matter in programming. See 47 U.S.C. § 508. Section 317(b) requires sponsorship identification disclosures where a licensee receives a report under section 507 “of circumstances that would have required an announcement had the consideration been received by the licensee.” 47 U.S.C. § 317(b). See also 47 C.F.R. § 73.1212(c) (implementing sponsorship identification requirements where the licensee receives a report pursuant to section 507).

<sup>26</sup> See 47 U.S.C. § 317(a)(1); 47 C.F.R. § 73.1212(a)(2). See also *supra* note 23.

consideration is extremely broad.<sup>27</sup> Moreover, Commission precedent makes clear that VNR material constitutes “valuable consideration” within the meaning of section 317 that may require a sponsorship identification announcement under some circumstances.<sup>28</sup> Furthermore, the *2005 Public Notice* reminded broadcast licensees that applicable statutory provisions and the Commission’s rules generally require them to clearly disclose the nature, source and sponsorship of program matter that they air, including VNRs.<sup>29</sup> The Commission also has warned that it will take enforcement action against broadcast stations that do not comply with the disclosure responsibilities set forth in the rules.<sup>30</sup>

#### **B. Access.1 Failed to Provide Requisite Sponsorship Identification Analysis**

10. We now consider whether Access.1 was required to provide a sponsorship identification announcement for the VNR material broadcast on Station WMGM-TV. In other words, did the use of the VNR material fall outside of the section 317(a)(1) proviso? As set forth above, Example 26 from the *House Report* indicates that no announcement is required for a promotional film in which the company’s products or services are clearly identifiable and “shown fleetingly ... in a manner reasonably related” to the subject matter of the film, but that announcement is required if the company’s products or services are “shown to an extent disproportionate to the subject matter of the film.”<sup>31</sup>

11. The subject matter of the report at issue here, based on the recording and transcript, was how to treat the common cold.<sup>32</sup> Yet, the VNR focuses almost exclusively on Matrixx’s Zicam product in its visual depictions or verbal identifications of products, and the VNR contained extensive images of Zicam – a total of four different shots, some of them close-up and some of them extended.<sup>33</sup> As stated above, the VNR identifies the product by name. In addition, the VNR features a physician associated with New York University who specifically recommends Zicam as a remedy for treating the common cold, but does not mention any other cold remedies by brand name.<sup>34</sup>

12. We conclude that the identification of Matrixx’s Zicam cold product exceeded an identification that was reasonably related to the subject matter of the programming at issue.<sup>35</sup> The VNR

<sup>27</sup> See *1975 Public Notice*, 40 Fed. Reg. 41936; *1963 Public Notice*, 40 FCC 141.

<sup>28</sup> See *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 17474, 17477 ¶ 8, 17478 ¶¶ 9-10, 17479 ¶ 11 (Enf. Bur. 2007) (forfeiture paid). See also *Advertising Council Request for Declaratory Ruling or Waiver Concerning Sponsorship Identification Rules*, Order, 17 FCC Rcd 22616 (2002) (credit towards satisfaction of a statutorily-mandated matching PSA obligation constituted valuable consideration for airing programming with government-approved anti-drug and anti-alcohol themes); *Westinghouse Broadcasting Co., Inc.*, Letter by Direction of the Commission, 40 FCC 28 (1958) (furnishing of films of a Senate hearing investigating a strike against the Kohler Company to a television station by the National Association of Manufacturers constituted “valuable consideration” under section 317).

<sup>29</sup> See *2005 Public Notice*, 20 FCC Rcd at 8593-94.

<sup>30</sup> See *id.*

<sup>31</sup> Compare *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26(b); *1963 Public Notice*, 40 FCC at 148, Example 26(b) with *1975 Public Notice*, 40 Fed. Reg. at 41939, Example 26(c); *1963 Public Notice*, 40 FCC at 148, Example 26(c).

<sup>32</sup> See *LOI Response* at Exhs. 7-8.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> By its use of the VNR, Station WMGM-TV “impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.” See *1975 Public Notice*, 40 Fed. Reg. at 4139, Example 26(c); *1963 Public Notice*, 40 FCC Rcd at 148, Example 26(c).

material in question therefore does not fall within the scope of the proviso set forth in section 317 and section 73.1212(a)(2), which is directed to material that contains only “fleeting or transient” references to products or brand names.<sup>36</sup> Instead, like the bus company in Example 26(c), Zicam was shown to an extent disproportionate to the subject matter of the report, obligating Station WMGM-TV to provide a sponsorship identification announcement.<sup>37</sup>

13. Although the Station provided a sponsorship identification announcement for Shore Memorial Hospital, which was another sponsor of the “Lifeline” segment in which the Zicam VNR appeared, this sponsorship announcement did not provide information concerning Matrixx’s sponsorship of the VNR material. Because the material that aired on Station WMGM-TV fell outside the proviso, the Station should have aired a sponsorship identification announcement to alert viewers that Matrixx was the source of the VNR material seeking to persuade them. We note that the risk of viewer confusion as to the source of the material may have been especially great here, because the Station provided viewers with an identification of Shore Memorial Hospital as the sponsor of the program segment, yet the commentary by the physician in the segment – *i.e.* during the VNR – was in fact material sponsored by Matrixx, the maker of Zicam. For the foregoing reasons, we find that Access.1’s airing of VNR material on Station WMGM-TV’s October 18, 2006 news program without providing a sponsorship identification announcement was an apparent violation of section 317 of the Act and section 73.1212 of the Commission’s rules.<sup>38</sup>

### C. Proposed Action

14. Under section 503(b)(1) 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.<sup>39</sup> 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.<sup>40</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>41</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>42</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>43</sup> The Commission will then issue a forfeiture if it finds, by a

<sup>36</sup> *Comcast Corp.*, 22 FCC Rcd at 17477.

<sup>37</sup> *See* 47 U.S.C. § 317; 47 C.F.R. § 73.1212(a)(2).

<sup>38</sup> Because we find that Access.1 was required to provide sponsorship identification for this material as it fell outside the proviso, we need not address Access.1’s arguments that no announcement was required under the provisions of the Act and the Commission’s rules requiring announcements in connection with broadcasts for which the broadcaster receives a report pursuant to section 507 of the Act.

<sup>39</sup> *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). *See also* 47 U.S.C. § 503(b)(1)(D) (providing that any person who is determined by the Commission to have violated any provision of section 1464 shall be liable for a forfeiture penalty).

<sup>40</sup> 47 U.S.C. § 312(f)(1).

<sup>41</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>42</sup> *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>43</sup> *See* 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>44</sup>

15. The Commission's forfeiture guidelines establish a base forfeiture amount of four thousand dollars (\$4,000) for sponsorship identification violations.<sup>45</sup> In addition, the Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act<sup>46</sup> and section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>47</sup> Based upon our review of the record in this case and the statutory factors identified above, we find that Access.1 is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

#### IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,<sup>48</sup> and sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,<sup>49</sup> that Access.1 New Jersey License Company, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of four thousand dollars (\$4,000) for its apparent willful violation of the sponsorship announcements requirements of section 317 of the Communications Act of 1934, as amended, and section 73.1212 of the Commission's rules.

17. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that within fifteen (15) days of the release date of this *NAL*, Access.1 New Jersey License Company, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

18. 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. Access.1 New

<sup>44</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

<sup>45</sup> 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, 17115 (1197), *recons. denied*, 15 FCC 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80.

<sup>46</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>47</sup> 47 C.F.R. § 1.80(a)(4).

<sup>48</sup> See 47 U.S.C. §§ 317, 503(b).

<sup>49</sup> See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1212.

Jersey License Company, LLC must also send electronic notification on the date said payment is made to [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov), [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov), [Anjali.Singh@fcc.gov](mailto:Anjali.Singh@fcc.gov), and [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

19. 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 Commission's rules. The written statement shall be mailed to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554, and **MUST INCLUDE** the NAL/Account Number referenced above. To the extent practicable, any response should also be sent by e-mail to [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov), [Melanie.Godschall@fcc.gov](mailto:Melanie.Godschall@fcc.gov), [Anjali.Singh@fcc.gov](mailto:Anjali.Singh@fcc.gov), and [Kenneth.Scheibel@fcc.gov](mailto:Kenneth.Scheibel@fcc.gov).

20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent'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.

21. **IT IS FURTHER ORDERED**, that the *Complaint IS GRANTED* to the extent indicated herein and **IS OTHERWISE DENIED**, and the Complaint proceeding **IS HEREBY TERMINATED**.<sup>50</sup>

22. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by Certified Mail/Return Receipt Requested, to Access.1 New Jersey License Company, LLC, at its address of record and to its counsel, James L. Winston, Esquire, Rubin, Winston, Diercks, Harris & Cooke, L.L.P., 1201 Connecticut Avenue, N.W., Suite 200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>50</sup> For purposes of the forfeiture proceeding initiated by this *NAL*, Access.1 New Jersey License Company LLC, shall be the only party to this proceeding.