

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

In the Matter of)
Cardinal Broadband, LLC,) File No.: EB-07-SE-310
aka Sovereign Telecommunications,) NAL/Acct. No.: 200832100069
a wholly owned subsidiary of Cardinal)
Communications, Inc.) FRN: 0018035063

FORFEITURE ORDER

Adopted: July 13, 2012

Released: July 13, 2012

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Cardinal Broadband, LLC, aka Sovereign Telecommunications, a wholly-owned subsidiary of Cardinal Communications, Inc., for its willful violation of Section 1.17(a)(2) of the rules (Rules) of the Federal Communication Commission (FCC or Commission). The noted violation involved Cardinal's provision of incorrect material factual information related to Cardinal's failure to provide E911 service to dozens of its customers at the Millstone condominium community in Golden, Colorado for more than two months. We conclude that Cardinal provided the information to the Commission without a reasonable basis for believing that the information was correct and not misleading.

II. BACKGROUND

2. On August 15, 2008, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture to Cardinal in the amount of \$25,000 for its apparent violation of Section 1.17(a)(2) of the Rules by providing incorrect material factual information to the Commission without a reasonable basis for believing that the information was correct and not misleading. In a matter closely related to the Section 1.17 NAL, the Bureau issued a Notice of Apparent Liability for Forfeiture to Cardinal in the amount of \$25,000 for its apparent failure to provide E911 service in willful and repeated violation of Section 9.5(b) of the Commission's Rules. In the VoIP E911 NAL, the Bureau determined

1 Cardinal Broadband, LLC (Cardinal) was formed in 2005 as a Colorado limited liability company. On October 1, 2010, pursuant to an acquisition by Roomlinx, Inc. of Cardinal's parent, Roomlinx, Inc. became the sole member of Cardinal. See Roomlinx, Inc., Annual Report (Form 10-K), at 50 (Mar. 30, 2012).

2 47 C.F.R. § 1.17(a)(2).

3 Cardinal Broadband, LLC, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233 (Enf. Bur. 2008) (Section 1.17 NAL).

4 Cardinal Broadband, LLC, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 12224 (Enf. Bur. 2008) (VoIP E911 NAL). Section 9.5(b)(1) of the Rules provides, in relevant part, that providers of interconnected Voice over Internet Protocol (VoIP) service "must, as a condition of providing service to a consumer, provide that consumer with E911 service as described in this section." 47 C.F.R. § 9.5(b)(1). See IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10266, para. 37 (2005) (VoIP E911 Order), aff'd sub nom. Nuvio v. FCC, 473 F.3d 302 (D.C. Cir. (continued ...)

that Cardinal was subject to the requirements of Section 9.5 as a provider of interconnected VoIP services and that Cardinal failed to provide compliant E911 service.⁵

3. In the *Section 1.17 NAL*, the Bureau concluded that Cardinal's statement in the company's response to the Bureau's initial letter of inquiry⁶ that "[t]he service Cardinal resells does not 'require a broadband connection from the user's location' ... [or] 'Internet protocol-compatible customer premises equipment'"⁷ (CPE), and thus does not meet two of the four criteria for interconnected VoIP service, was incorrect material factual information.⁸ Specifically, the Bureau found that, based on Cardinal's publicly available marketing material and its subsequent admission that it provides interconnected VoIP service, Cardinal failed to exercise reasonable diligence to determine the accuracy of the information it provided, and therefore, at the time it made the representations to the Bureau, Cardinal did not have a reasonable basis for believing that the information was correct and not misleading.⁹

4. On October 10, 2008, Cardinal filed a single response to both the *Section 1.17 NAL* and the *VoIP E911 NAL*.¹⁰ In this Consolidated NAL Response, Cardinal disputes the conclusion that it violated Section 1.17(a)(2) of the Rules.¹¹ Alternatively, Cardinal requests cancellation or reduction of the proposed forfeiture on the ground that payment would pose a financial hardship.¹²

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹³ Section 1.80 of the Rules,¹⁴ and the *Forfeiture Policy Statement*.¹⁵ In examining Cardinal's Consolidated NAL Response, Section 503(b) of

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 2006). *See also*, 47 C.F.R. § 9.5(a) (making the E911 service requirements "applicable to providers of interconnected VoIP services"). An interconnected VoIP service is a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet Protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. *See* 47 C.F.R. § 9.3; *see also VoIP E911 Order*, 20 FCC Rcd at 10257-58, para. 24.

⁵ *VoIP E911 NAL*, 23 FCC Rcd at 12227-12228, paras. 9, 12. In a companion decision issued concurrently with this Forfeiture Order, we affirm the *VoIP E911 NAL*.

⁶ *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Cardinal Communications, Inc. (Sept. 10, 2007) (Initial LOI).

⁷ Letter from Edward A. Garneau, Chief Executive Officer, Cardinal Communications, Inc., and Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 9, 2007) (Initial LOI Response) at 3 (emphasis in original).

⁸ *Section 1.17 NAL*, 23 FCC Rcd at 12235, para. 7.

⁹ *Id.* at 12235, para. 8.

¹⁰ *See Cardinal Broadband, LLC*, Opposition to Notices of Apparent Liability for Forfeiture (filed Oct. 10, 2008) (Consolidated NAL Response). Cardinal requested and was granted an extension of time to respond.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *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*).

the Act requires that the Commission 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 other such matters as justice may require.¹⁶ As discussed below, we have considered Cardinal's response in light of these statutory factors and find that neither cancellation nor reduction of the proposed forfeiture amount is warranted.

A. Provision of incorrect material factual information

6. Section 1.17(a) of the Rules¹⁷ provides, in pertinent part, that in any investigation, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

7. Any person who has received a letter of inquiry from the Commission or its staff or is otherwise the subject of a Commission investigation must comply with the requirements of Section 1.17 of the Rules.¹⁸ In expanding the scope of Section 1.17 in 2003 to include written statements made without a reasonable basis for believing the statements are correct and not misleading, the Commission explained that it intended this requirement to clarify the obligations of persons dealing with the Commission, ensure that they exercised due diligence in preparing written submissions, and enhance the effectiveness of the Commission's enforcement efforts.¹⁹ Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.²⁰

8. In its Consolidated NAL Response, Cardinal argues that no forfeiture should be imposed because the company's statement in its Initial LOI response that "[t]he service Cardinal resells does not 'require a broadband connection from the user's location' ... [or] 'Internet protocol-compatible [CPE]'" was accurate in light of the way that Cardinal provides service to its customers.²¹ Although Cardinal's Consolidated NAL Response does not explain the basis for this claim, we can glean the company's

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ 47 C.F.R. § 1.17(a).

¹⁸ *Id.* § 1.17(b)(4).

¹⁹ *In the Matter of Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4016-17, paras. 1-2, 4021, para. 12 (2003) ("Amendment of Section 1.17"), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

²⁰ *See Amendment of Section 1.17*, 18 FCC Rcd at 4017, para. 2 (stating that the revision to Section 1.17 is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive").

²¹ Consolidated NAL Response at 2.

apparent rationale from prior filings.²² In its January 7 LOI Response, for example, Cardinal reiterated that the service it resells does not require either a broadband connection or Internet Protocol-compatible CPE, noting that what it “did not make clear” in its Initial LOI Response was that the “service” the company resells includes both interconnected VoIP and conventional analog telephone service and that customers who elect to use conventional analog telephone service do not need either a broadband connection or Internet Protocol-compatible CPE.²³

9. At the outset, we note that the Bureau previously considered and properly rejected Cardinal’s argument that it is not an interconnected VoIP service provider because it also sells Qwest analog telephone service, a service that does not require either a broadband connection or Internet Protocol-compatible CPE.²⁴ In the *VoIP E911 NAL*, the Bureau stated that “[c]onventional analog telephone service and interconnected VoIP service are distinct services[,]” and that “Cardinal’s status as an interconnected VoIP service provider is unaffected by the fact that it also offers conventional analog telephone service.”²⁵

10. Moreover, we find that Cardinal’s unqualified statement in its Initial LOI Response that the service Cardinal resells does not “require” a broadband connection or Internet Protocol-compatible CPE was both inaccurate and misleading. The critical question at issue in the LOI was whether Cardinal’s *VoIP offering* met the thresholds in Section 9.5(a), specifically, whether a broadband connection and Internet Protocol-compatible CPE were required in order to utilize Cardinal’s VoIP service.²⁶ Cardinal subsequently admitted that its VoIP service requires these capabilities.²⁷ For the reasons set forth in the *Section 1.17 NAL*, we affirm the finding that Cardinal did not have a reasonable basis for claiming otherwise or for believing that the information it initially provided was correct and not misleading.

11. Cardinal appears to rely on the fact that it resells two different services (interconnected VoIP and conventional analog telephone) and that one of those services (conventional analog telephone) does not require a broadband connection or Internet Protocol-compatible CPE. However, the ability of Cardinal’s customers to choose a non-VoIP offering is not relevant to the nature and requirements of its VoIP service. Indeed, to find for Cardinal we would have to conclude that Cardinal’s customers who chose the VoIP offering were not “required” to have the broadband connection or Internet Protocol-compatible CPE necessary to that service because they could have chosen analog service instead. This argument is counterintuitive. In addition, if Cardinal had exercised even a minimum of diligence, such as

²² See Letter from Ronald S. Bass, Principal Accounting Officer, Cardinal Communications, Inc., to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 7, 2008) (January 7 LOI Response) at 3, 7, 15, 19.

²³ *Id.* at 7 (stating that “[w]hat we did not make clear is we offer digital service side-by-side with Qwest analog service so no internet related equipment is required. If a customer wants analog phone we get it for them through Qwest hence, there is no requirement for a broadband connection nor is there a requirement for customer premises equipment.”).

²⁴ *VoIP E911 NAL*, 23 FCC Rcd at 12228, para. 11.

²⁵ *Id.*

²⁶ See Initial LOI. The second inquiry in the Initial LOI directed Cardinal to respond to the following question regarding Cardinal’s VoIP service offering: “State whether Cardinal currently provides interconnected VoIP service to the public.” *Id.* at 1.

²⁷ January 7 LOI Response at 17-18. The record indicates that the service Cardinal resold uses an integrated access device (IAD) to connect through a T1 to the provider’s server, which then connected with the PSTN. *Id.* at 17.

by reviewing its own marketing materials, the *VoIP E911 Order* or Section 9.3 of the Rules,²⁸ it could have avoided the inaccuracies in its statement.²⁹ By failing to either perform reasonable due diligence or to adequately explain its statement, Cardinal omitted from its initial LOI Response “information that is necessary to prevent any material factual statement that is made from being incorrect or misleading,” precisely the outcome that Section 1.17 was intended to prevent.³⁰

12. Further, we disagree with Cardinal’s contention that that the proposed forfeiture should be cancelled or reduced because Ronald Bass, the Cardinal employee who submitted the company’s Initial LOI Response, believed at that time that the response was accurate.³¹ As noted in the *Section 1.17 NAL*, even absent intent to deceive, a false statement may constitute an actionable violation of Section 1.17 of the Rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.³² As a consequence, the assertion that Mr. Bass believed the response to be truthful, even if accurate, is not enough for Cardinal to avoid liability under Section 1.17. In this regard, we note that Cardinal’s acknowledgment in the Consolidated NAL Response that Mr. Bass, Cardinal Communications, Inc.’s Principal Accounting Officer, was “probably not the best person to handle the response since Mr. Bass is an accountant and not a telecom employee”³³ underscores the Bureau’s previous finding that Cardinal failed to exercise reasonable due diligence to ensure that the statements the company made in its Initial LOI Response were truthful, accurate, and not misleading.³⁴

13. Cardinal’s provision of incorrect material factual information is especially egregious given the vital public safety matter at issue. The Commission has found that violations of E911 requirements are serious, noting the critical function these requirements serve in promoting and safeguarding life and property.³⁵ As the Commission has stated, “E911 service saves lives and property by helping emergency services personnel do their jobs more quickly and efficiently.”³⁶ Moreover,

²⁸ Both the *VoIP E911 Order* and Section 9.3 of the Rules clearly define interconnected VoIP as a service that, *inter alia*, requires a broadband connection from the user’s location and Internet Protocol-compatible CPE. *See supra* note 4.

²⁹ *Section 1.17 NAL*, 23 FCC Rcd at 12236, para. 8. As the Commission has stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.” *See Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021, para. 12 (2003).

³⁰ 47 C.F.R. § 1.17(a). *See Invision Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13095, 13103-04, para. 25 (2008), *response pending* (finding that a television importer’s failure to exercise due diligence to ensure that the information provided in its LOI Response was not misleading constituted a violation of Section 1.17(a)).

³¹ Consolidated NAL Response at 2.

³² *See Section 1.17 NAL*, 23 FCC Rcd at 12235, para. 6.

³³ Consolidated NAL Response at 2.

³⁴ *See Section 1.17 NAL*, 23 FCC Rcd at 12236, para. 8.

³⁵ *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852, para. 2 (1999), *clarified*, 16 FCC Rcd 18982 (2001); *see also Sprint Nextel*, 22 FCC Rcd at 16418, para. 10; *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 3501, 3504, para. 7 (2003) (forfeiture paid).

³⁶ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18679, para. 5 (1996) (subsequent history omitted).

according to the complainant, local emergency officials considered the situation so dire that they distributed flyers warning of the lack of 911 service and directing residents to use the police department's regular number in case of emergency.³⁷ Given the critical importance of providing consumers the ability to call 911, Cardinal should have exercised greater due diligence in preparing its written submissions regarding its provision of E911.

B. Lack of a basis for reduction of the proposed forfeiture

14. Finally, Cardinal asserts that payment of the proposed forfeiture would pose a financial hardship.³⁸ The Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.³⁹ In addition, and as detailed in the instructions provided in the *Section 1.17 NAL*, “[c]laims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three year period.”⁴⁰ Cardinal only submitted financial statements covering the eight-month period January through August 2008. Moreover, Cardinal's revenues, as reflected in the limited financial statements it did submit, would not warrant a reduction of the forfeiture amount.⁴¹

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁴² and Sections 0.111, 0.311, and 1.80 of the Rules,⁴³ Cardinal Broadband, LLC **IS LIABLE FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for providing incorrect material factual information to the Commission in willful violation of Section 1.17(a)(2) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release date of this Forfeiture Order.⁴⁴ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁴⁵ Cardinal shall send electronic notification of payment to Josh Zeldis at Josh.Zeldis@fcc.gov and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

17. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of

³⁷ *VoIP E911 NAL*, 23 FCC Rcd at 12229, para. 17.

³⁸ Consolidated NAL Response at 3.

³⁹ See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089, para. 8 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

⁴⁰ See *Section 1.17 NAL*, 23 FCC Rcd at 12235, para. 15.

⁴¹ Based on established precedent, the \$25,000 forfeiture proposed in the *Section 1.17 NAL* is not excessive in comparison to Cardinal's reported gross revenues. See *supra* note 39.

⁴² 47 U.S.C. § 503(b).

⁴³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁴⁴ *Id.* § 1.80.

⁴⁵ 47 U.S.C. § 504(a).

payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

18. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴⁷ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail return receipt requested to Jon Bartlett, President, Cardinal Broadband, LLC, 2150 West 6th Avenue, Suite H, Broomfield, CO 80020 and to Michael Wasik, Chairman and CEO, Roomlinx, Inc., 2150 West 6th Avenue, Suite H, Broomfield, CO 80020.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁴⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴⁷ See 47 C.F.R. § 1.1914.