

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

In the Matter of	)	File No.: EB-11-TC-105
	)	
LDC Telecommunications, Inc.	)	NAL/Acct. No.: 201232170003
	)	
	)	FRN: 0003757390
	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: January 17, 2012**

**Released: January 18, 2012**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that LDC Telecommunications, Inc. (LDC)<sup>1</sup> apparently violated an Enforcement Bureau (Bureau) order to produce certain information and documents in response to a Bureau Letter of Inquiry (LOI) relating to an investigation into possible violations of the Communications Act of 1934, as amended (Communications Act or Act). Based upon our review of the facts and circumstances before us, we find that LDC is apparently liable for a forfeiture of \$25,000. Furthermore, we direct LDC to submit, not later than ten (10) calendar days after the release of this NAL, full and complete responses to the Bureau's LOI.

**II. BACKGROUND**

2. The Bureau initiated an investigation of LDC to determine whether it had violated the Communications Act in connection with its billing practices. As part of the investigation, on October 13, 2011, the Bureau sent LDC the LOI, which ordered LDC to provide certain information and documents.<sup>2</sup> The Bureau directed LDC to respond within twenty (20) calendar days from the date of the LOI. The Bureau sent the LOI via certified mail with a return receipt requested to LDC's headquarters. LDC received and signed for the LOI on October 17, 2011.<sup>3</sup> LDC failed to respond to the LOI by the November 2, 2011 due date. On November 4, 2011, the Bureau sent a letter via certified mail (with a return receipt requested) to LDC advising that the due date for the LOI response had passed and giving

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<sup>1</sup> According to our records and publicly available information, LDC Telecommunications, Inc. has offices at 2451 McMullen Booth Road, Suite 200, Clearwater, FL 33759. The Company's President is Sean Connors. Accordingly, all references in this NAL to LDC Telecommunications, Inc. also encompasses the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

<sup>2</sup> See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to LDC, Attn: Sean Connors, Oct. 13, 2011.

<sup>3</sup> The Clearwater, FL post office stamped the return receipt card October 17, 2011.

LDC until November 14, 2011 to respond.<sup>4</sup> LDC received and signed for the letter on November 7, 2011.<sup>5</sup> LDC failed to respond to the November 4, 2011 letter, and to date has still not responded to the LOI.

### III. DISCUSSION

#### A. Apparent Violation

3. Under section 503(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any of the provisions of the Act, or any rule or order issued by the Commission under the Act, shall be liable for a forfeiture penalty.<sup>6</sup> In order to impose such a forfeiture 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 forfeiture penalty should be imposed.<sup>7</sup>

4. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers such as LDC to provide the information and documents sought by the Bureau's LOI. 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."<sup>8</sup> Section 218 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."<sup>9</sup> Section 403 states: "The Commission shall have the same powers and authority to proceed with any inquiry ... including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had."<sup>10</sup>

5. The Bureau's LOI directed to LDC was a legal order of the Commission requiring LDC to produce the requested documents and information. LDC received the LOI and the follow-up letter, as evidenced by the return receipts received by the Commission. LDC failed on two separate occasions to provide the Commission with information necessary for the Commission to complete its investigation. LDC's failure to provide the documents and information sought within the time and manner specified constitutes a violation of a Commission order.

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<sup>4</sup> See Letter from Kimberly A. Wild, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to LDC, Attention: Sean Connors (Nov. 4, 2011). The letter stated, "[t]he LOI the Bureau directed to LDC served as a legal order of the Commission to produce the requested information and documents. LDC's failure to provide the requested information and documents sought within the time and manner specified will be considered a violation of a Commission order and could result in a Notice of Apparent Liability."

<sup>5</sup> The Clearwater, FL post office stamped the return receipt card November 7, 2011.

<sup>6</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(a).

<sup>7</sup> 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

<sup>8</sup> 47 U.S.C. § 154(i).

<sup>9</sup> *Id.* § 218.

<sup>10</sup> *Id.* § 403.

## B. Forfeiture Amount

6. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.<sup>11</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “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.”<sup>12</sup> Our forfeiture guidelines set forth the base amount for certain kinds of violations, and identify criteria, consistent with the section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward. For example, we may adjust a penalty upward for “[e]gregious misconduct,” or whether the subject of an enforcement action has engaged in an “[i]ntentional violation” or “[r]epeated or continuous violation.”<sup>13</sup>

7. Pursuant to section 1.80 of the Commission’s rules and the Commission’s *Forfeiture Policy Statement*, the base forfeiture amount for failure to respond to Commission communications is \$4,000.<sup>14</sup> Using our discretion to adjust the base forfeiture as circumstances warrant, however, we have imposed penalties that are many times higher for failing to respond properly to LOIs. For example, we have imposed substantial forfeitures for completely failing to respond to an LOI,<sup>15</sup> for failing to respond fully to an LOI,<sup>16</sup> and for failing to certify to the accuracy of an LOI.<sup>17</sup> We adjusted the base forfeiture upward in part because “[m]isconduct 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.”<sup>18</sup>

8. We find that LDC’s apparent failure to respond to the Bureau’s LOI in the circumstances presented here warrants a forfeiture of \$25,000. LDC failed to respond to the LOI after receiving and signing for it on October 17, 2011, and after receiving a follow-up letter from Bureau staff reiterating the need for a response and warning it of the consequences of failing to do so. Such apparent disregard for the Commission’s authority and investigatory process appears egregious, intentional, and continuous, and

<sup>11</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (inflation adjustment to \$150,000/\$1,500,000).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100 (1997) (*Forfeiture Policy Statement*); *recon. denied* 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>13</sup> 47 C.F.R. § 1.80(b)(4) note.

<sup>14</sup> 47 C.F.R. § 1.80; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114, Appendix A, Section I.

<sup>15</sup> See, e.g., *Net One International, Net One, LLC, Farrahtel International, LLC*, File No. EB-11-TC-063, Notice of Apparent Liability for Forfeiture and Order, DA 11-1998 (Enf. Bur. Dec. 9, 2011) (imposing \$25,000 penalty for failure to respond to LOI); *BigZoo.com Corp.*, Forfeiture Order, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 penalty for failure to respond to LOI).

<sup>16</sup> See, e.g., *Fox Television Stations*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (2010) (imposing \$25,000 penalty for failure to respond fully to LOI) (*Fox NAL*).

<sup>17</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (imposing \$100,000 penalty for failing to submit a sworn written response).

<sup>18</sup> *Fox NAL*, 25 FCC Rcd at 7081.

therefore supports an adjustment upward for the base forfeiture for failure to respond to a Commission communication.<sup>19</sup>

9. We also direct LDC to respond fully to the LOI within ten (10) calendar days of the date of this NAL. Failure to do so may constitute an additional, continuing violation subjecting LDC to future enforcement action, proposing substantially greater forfeitures and revocation of LDC's operating authority.<sup>20</sup> The penalties we will propose in a given situation will be based on our application of the section 503(b)(2)(E) factors and our forfeiture guidelines.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, as amended,<sup>21</sup> and section 1.80 of the Commission's rules,<sup>22</sup> LDC Telecommunications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$25,000 for willfully violating an Enforcement Bureau directive to respond to a Bureau letter of inquiry.

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>23</sup> within thirty (30) calendar days after the release date of this Notice of Apparent Liability for Forfeiture and Order, LDC Telecommunications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. **IT IS FURTHER ORDERED** that LDC Telecommunications, Inc. **SHALL FULLY RESPOND**, not later than ten (10) calendar days from the release date of this NAL, to the Bureau's Letter of Inquiry dated October 13, 2011, in accordance with the delivery instructions set forth therein.

13. 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 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). LDC Telecommunications, Inc. will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. 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,

<sup>19</sup> 47 C.F.R. § 1.80(b)(4) (identifying criteria for adjustment to base forfeitures).

<sup>20</sup> See *1<sup>st</sup> Source Information Specialists, Inc., d/b/a Locatell.com*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8193, 8196-97 ¶ 13 (2006), *affirmed*, *1<sup>st</sup> Source Information Specialists, Inc., d/b/a Locatell.com*, Forfeiture Order, 22 FCC Rcd 431 (2007).

<sup>21</sup> 47 U.S.C. § 503(b).

<sup>22</sup> 47 C.F.R. § 1.80.

<sup>23</sup> 47 C.F.R. § 1.80.

Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

14. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See [www.fcc.gov/osec/guidelines.html](http://www.fcc.gov/osec/guidelines.html) for further instructions on FCC filing addresses.

15. The Commission will not consider reducing or canceling a proposed 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by Certified Mail Return Receipt Requested and First Class mail to LDC Telecommunications, Inc., c/o Sean Connors, 2451 McMullen Booth Road, Suite 200, Clearwater, FL 33759.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau