

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Vermont Telephone Company, Inc.)	File No.: EB-IHD-13-00010654 ¹
)	NAL/Acct. No.: 201232080004
Participant in Auction No. 86)	FRN: 0005209374

MEMORANDUM OPINION AND ORDER

Adopted: May 6, 2016

Released: May 9, 2016

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We grant the Petition for Reconsideration filed by Vermont Telephone Company, Inc. (VTel or Company) seeking review of the forfeiture order issued in this proceeding by the Enforcement Bureau (Bureau). In addition, we terminate the *Forfeiture Order*. In the *Forfeiture Order*, the Bureau imposed a \$25,000 penalty against VTel under Section 1.17 of the Commission's rules (Rules) for failing to submit accurate gross revenue information to the Commission in Connection with the bidding credit the Company received in Auction No. 86.²

II. BACKGROUND

2. On October 14, 2011, the Bureau issued a Notice of Apparent Liability for Forfeiture (NAL) against VTel in the amount of \$34,000 for its apparent willful and repeated violation of Sections 1.17 and 1.65 of the Rules.³ On November 14, 2011, VTel filed a response to the NAL requesting that "the Commission not impose the proposed forfeiture of \$34,000."⁴ On December 23, 2014, the Bureau issued a *Forfeiture Order* against VTel under Section 1.17 of the Rules.⁵ On January 22, 2015, VTel filed an Application for Review of the *Forfeiture Order*.⁶ On April 15, 2016, VTel submitted a letter to the

¹ The investigation was initiated under EB-11-IH-0734 and subsequently assigned File No. EB-IHD-13-00010654.

² *Vermont Telephone Company, Inc.*, Forfeiture Order, 29 FCC Rcd 16052, 106054–55, para. 10 (Enf. Bur. 2014) (*Forfeiture Order*).

³ See *Vermont Telephone Co., Inc.* Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 14130 (Enf. Bur. 2011) (*NAL*).

⁴ See Vermont Telephone Company, Inc., Response to Notice of Apparent Liability at 1 (Nov. 14, 2011) (on file in EB-IHD-13-00010654) (*NAL Response*).

⁵ See *Forfeiture Order*, 29 FCC Rcd at 16054–55, para. 15 (reducing the amount of VTel's apparent liability from \$34,000 to a penalty of \$25,000); 47 CFR § 1.17 (requiring that an applicant for a Commission authorization submit truthful and accurate factual information to the Commission).

⁶ See Vermont Telephone Company, Inc., Application for Review at 3 (filed Jan. 22, 2015) (on file in EB-IHD-13-00010654) (*Application for Review*).

Commission, permitting the Enforcement Bureau to treat its Application for Review, in the alternative, as a Petition for Reconsideration.⁷

III. DISCUSSION

3. The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings.⁸ The Commission may exercise broad discretion with respect to enforcement investigations “so long as the matter is within the agency’s jurisdiction.”⁹ The Supreme Court has repeatedly recognized that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”¹⁰ Such considerable discretion is necessary because, among other reasons, “[t]he agency is far better equipped . . . to deal with the many variables involved in the proper ordering of its priorities.”¹¹

4. Consistent with our prosecutorial discretion in enforcement proceedings, and based on the totality of the circumstances and a careful weighing of the benefits of further adjudication against the costs to the agency,¹² the Bureau has determined that the public interest is best served by granting the relief requested by VTel’s Petition for Reconsideration and vacating the *Forfeiture Order*.

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Rules, the Petition for Reconsideration filed by VTel **IS GRANTED** on the basis discussed herein.¹³

6. **IT IS FURTHER ORDERED** that the Forfeiture Order **IS VACATED** and the above-captioned investigation **IS TERMINATED**.

⁷ See Letter from Bennett L. Ross, Esq., Wiley Rein LLP, Counsel to Vermont Telephone Company, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (April 15, 2016) (April 2016 Letter) (on file in EB-IHD-13-00010654); citing *Main Street Tel. Com; Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order on Reconsideration, 24 FCC Rcd 2521 (2009) (treating Application for Review of action taken pursuant to delegated authority as a Petition for Reconsideration pursuant to 47 U.S.C. § 405 and 47 CFR § 1.1106. and finding it proper to “consider the merits of the Petition because it was filed within thirty days of the release of the [underlying order]”); *Burlington Cablevision, Inc.*, Order on Reconsideration, 13 FCC Rcd 772 (1998) (treating an Application for Review as a Petition for Reconsideration); see also *Channel 51 of San Diego, Inc.*, Order, 27 FCC Rcd 1922, para. 3 (Enf. Bur. 2012) (on the Bureau’s own motion, treating an application for review as a Petition for Reconsideration).

⁸ See *Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922, 23932, para. 24 (2004) (citing *Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186 (1999)) (*Radio One*).

⁹ See 47 U.S.C. § 403. See also *Viacom Inc., ESPN Inc.*, Forfeiture Order, 30 FCC Rcd 797, 804, para. 18 (2015) (*Viacom/ESPN*); *Spanish Broad. Sys. Holding Co., Inc.*, Forfeiture Order, 27 FCC Rcd 11956, 11959, para. 8 n. 30 (EB 2012) (Section 403 provides broad discretion as to the type of misconduct the Commission may investigate and subject to enforcement action).

¹⁰ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (citing *United States v. Batchelder*, 442 U.S. 114 (1979); *United States v. Nixon*, 418 U.S. 683 (1974); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Confiscation Cases*, 7 Wall. 454 (1869)).

¹¹ *Id.*

¹² *Radio One*, 19 FCC Rcd at 23932, para. 24 (citing *N.Y. State Dept. of Law v. FCC*, 984 F.2d 1209, 1213 (D.C. Cir. 1993)).

¹³ 47 U.S.C. § 405; 47 CFR § 1.106.

7. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and shall be sent by first class mail and certified mail, return receipt requested, to Dr. J. Michel Guité, Chief Executive Officer, Vermont, Telephone Company, Inc., 354 River St., Springfield, VT 05156, and its counsel Bennett L. Ross, Esq., Wiley Rein LLP, 1776 K Street, N.W., Suite 800, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau