

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Custom Teleconnect, Inc.) File No.: EB-IHD-18-00027483
) NAL/Acct. No.: 201932080009
) FRN: 0005026257

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 27, 2019

Released: March 27, 2019

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$3,000 against Custom Teleconnect, Inc. (CTI or Company)1 for apparently failing to timely file an accurate annual report and certification as a provider of inmate calling services (ICS), as required by section 64.6060 of the Commission’s rules (Rules).2 The reporting and certification requirement is necessary to further the Commission’s statutory responsibilities regarding ICS rates and practices and monitoring the ICS industry. We therefore view the requirement to file a timely and accurate annual report and certification as an important obligation for every ICS provider.

II. BACKGROUND

2. Section 64.6060(a) of the Rules requires ICS providers to file with the Commission, by April 1st of each calendar year, a report detailing its provision of interstate, intrastate, and international ICS for the prior calendar year (Annual ICS Report).3 The reporting and certification requirement helps the Commission meet its statutory responsibilities regarding ICS rates and practices.4 The reporting and certification requirement also enables the Commission to capture any trends or changes in calling patterns in a changing ICS industry, facilitates any needed enforcement action, and permits the Commission to monitor ICS providers’ compliance with the Rules and orders.5 As observed by the United States Court of Appeals for the District of Columbia Circuit, with regards to rates charged by ICS providers, the “Commission has plenary authority to regulate interstate rates under [section] 201(b) [of the

1 Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

2 47 CFR § 64.6060.

3 Id. at § 64.6060(a). In light of the court’s decision in Global Tel*Link v. FCC, ICS providers are not required to answer questions that seek specific information regarding video visitation services. See Global Tel*Link v. FCC, 866 F.3d 397, 415 (D.C. Cir. 2017) (vacating the video visitation services reporting requirement in section 64.6060(a)(4) of the Commission’s rules).

4 See Rates for Interstate Inmate Calling Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12891, para. 266 (2015) (2015 ICS Order); see also 47 U.S.C. § 403.

5 See 2015 ICS Order, 30 FCC Rcd at 12891, para. 266.

Communications Act of 1934, as amended (Act)], including ‘practices ... for and in connection with’ interstate calls.”⁶

3. CTI is a Nevada corporation that provides ICS in several states and the District of Columbia.⁷ CTI “holds a section 214 authorization for the resale of domestic and international long distance services, granted on January 23, 1994 in file number ITC-214-19931126-00220.”⁸ On August 22, 2018, the Enforcement Bureau issued a Letter of Inquiry (LOI) to CTI to investigate whether the Company had violated section 64.6060 of the Rules by failing to timely file required data and a required certification.⁹ The Company submitted a response to the LOI on October 4, 2018.¹⁰ CTI stated that it did not file a complete Annual ICS Report by the April 1, 2018 deadline.¹¹ CTI filed an incomplete report on March 28, 2018, and stated it would file an amended report with complete responses, after it responded to the LOI.¹²

III. DISCUSSION

A. CTI Apparently Violated Section 64.6060 of the Rules

4. We find that CTI apparently willfully violated section 64.6060 of the Rules by failing to timely file its Annual ICS Report by the April 1, 2018 deadline.¹³ All companies that provide ICS must submit a report to the Commission, by April 1st of each year, regarding interstate, intrastate, and international ICS for the prior calendar year.¹⁴ Section 64.6060(a) provides that “[t]he report shall be categorized both by facility type and size” and shall contain certain information.¹⁵ An officer or director

⁶ *Global Tel*Link*, 866 F.3d at 415 (quoting 47 U.S.C. § 201(b)). Section 201 of the Act authorizes the Commission to regulate “every common carrier engaged in interstate [] communication.” 47 U.S.C. § 201(a).

⁷ The Company states it is authorized to do business and in good standing in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. *See* Letter from Connie Wightman, Consultant, Inteserra Consulting Group, Inc., Consultants for Custom Teleconnect, Inc. to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau, at 1-2 (Oct. 4, 2018) (on file in EB-IHD-18-00027483) (LOI Response).

⁸ *Id.* at 2.

⁹ *See* Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to William Perna, General Manager, Custom Teleconnect, Inc. (Aug. 22, 2018) (addressing Company’s compliance with 47 CFR § 64.6060) (on file in EB-IHD-18-00027483) (LOI).

¹⁰ *See* LOI Response, *supra* note 7.

¹¹ *See id.* at 3-4.

¹² *See id.* CTI transmitted a completed report to Commission staff on October 15, 2018. *See* E-mail from Deidre Thanski, Compliance Reporting Associate Specialist, Inteserra Consulting Group, Consultants to Custom Teleconnect, Inc., to Gregory Capobianco, Attorney Advisor, Pricing Policy Division, Wireline Competition Bureau (Oct. 15, 2018, 14:23 EDT) (CTI 10/15/18 Email) (on file in EB-IHD-18-00027483).

¹³ *See* 47 CFR § 64.6060.

¹⁴ *See id.* at § 64.6060(a).

¹⁵ *See id.* Every provider of ICS has an affirmative obligation to know and comply with all applicable federal regulatory requirements. *See 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, 17099, para. 22 (1997) (*1997 Forfeiture Guidelines*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

of the reporting ICS provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.¹⁶ The Commission has found that the reporting and certification requirements are necessary in order to have greater transparency and heightened accountability on the part of ICS providers.¹⁷

5. Based on the evidence, we conclude that CTI apparently violated section 64.6060 of the Rules by failing to timely file a complete Annual ICS Report by April 1, 2018. The Company filed an incomplete Annual ICS Report on March 28, 2018, and after CTI received notice that it was being investigated for the compliance failure, the Company submitted a completed report to Commission staff on October 15, 2018.¹⁸

B. Proposed Forfeiture

6. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”¹⁹ As part of the process in determining any forfeiture, section 503(b) requires the Commission to consider 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.”²⁰ As required by the Act, the Commission will apply these statutory factors to determine a forfeiture based on the Commission’s evaluation of each individual case on its own merits.²¹ The Act and the Rules cap potential liability through the statutory maximum forfeiture for any single act or failure to act.²² In addition, the Commission has enacted Rules to establish base penalties for certain violations and identified criteria to consider when determining the appropriate penalty in any given case.²³

7. The Commission may also adopt upward or downward adjustments when appropriate, including repeated violations.²⁴ Under these Rules, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic

¹⁶ See 47 CFR § 64.6060(b).

¹⁷ See *2015 ICS Order*, 30 FCC Rcd at 12892, para. 271.

¹⁸ See LOI Response, *supra* note 7, at 4; CTI 10/15/18 Email, *supra* note 12.

¹⁹ 47 U.S.C. § 503(b).

²⁰ See *id.*

²¹ See *id.*

²² 47 U.S.C. § 503(b); 47 CFR § 1.80(b). Section 503(b) of the Act authorizes us to assess a forfeiture against CTI of up to \$201,340 for each violation, or each day of a continuing violation, up to a statutory maximum of \$2,013,399 for a single act or failure to act. See 47 U.S.C. § 503(b); 47 CFR § 1.80(b). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the DCIA, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation on December 19, 2018. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-1272 (EB 2018).

²³ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

²⁴ See *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)).

gain for the violator.²⁵ We may adjust a forfeiture downward under the Rules for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.²⁶ The Rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”²⁷

8. The Commission has established a base forfeiture of \$3,000 for the failure to file required forms or information.²⁸ Concerning the nature, circumstances, extent and gravity of the violation, the annual ICS filing and certification requirements further the Commission’s statutory responsibilities regarding ICS rates and practices and monitoring the ICS industry. These are important objectives for the Commission. In this case, CTI apparently committed one violation of the annual filing and certification rule. On balance, the upward and downward adjustment factors set forth in the Act and the Rules do not warrant an adjustment to the \$3,000 base forfeiture in this case. Consistent with the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$3,000, for which CTI is apparently liable.

IV. CONCLUSION

9. We have determined that CTI apparently willfully violated section 64.6060 of the Rules. As such, CTI is apparently liable for a forfeiture of \$3,000.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act²⁹ and sections 1.80 of the Rules,³⁰ Custom Teleconnect, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Three Thousand Dollars (\$3,000) for a willful violation of section 64.6060 of the Rules.³¹

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,³² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Custom Teleconnect, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 14-15 below.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Custom Teleconnect, Inc. shall send electronic notification of payment to Jeffrey Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Rizwan Chowdhry at Rizwan.Chowdhry@fcc.gov, and David Janas at David.Janas@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed

²⁵ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8). *See also 1997 Forfeiture Guidelines*, 12 FCC Rcd at 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

²⁶ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

²⁷ *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

²⁸ *See* 47 CFR § 1.80.

²⁹ 47 U.S.C. § 503(b).

³⁰ 47 CFR § 1.80.

³¹ 47 CFR § 64.6060.

³² 47 CFR § 1.80.

FCC Form 159 (Remittance Advice) must be submitted.³³ 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 that should be followed based on the form of payment selected:

- 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.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.³⁴ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk, by phone at (877) 480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

14. 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 1.16 and 1.80(f)(3) of the Rules.³⁵ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Rizwan Chowdhry at Rizwan.Chowdhry@fcc.gov, and David Janas at David.Janas@fcc.gov.

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

³³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁴ See 47 CFR § 1.1914.

³⁵ 47 CFR §§ 1.16, 1.80(f)(3).

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Ms. Connie Wightman, Consultant, Inteserra Consulting Group, Inc., Consultants to Custom Teleconnect, Inc., 151 Southhall Lane, Suite 450, Maitland, Florida 32751.

FEDERAL COMMUNICATIONS COMMISSION

Keith Morgan
Deputy Chief
Enforcement Bureau