

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

In the Matter of) File No. EB –00-IH-0055
)
Intellicall Operator Services) NAL/Acct. No. 32080023

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 21, 2000

Released: July 27, 2000

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Intellicall Operator Services ("Intellicall") has apparently violated Section 254(d) of the Communications Act of 1934, as amended (the "Act"), and Section 54.706 of the Commission's rules by willfully and repeatedly failing to make required contributions to universal service support programs.¹ Based on our review of the facts and circumstances in this case, we conclude that Intellicall is apparently liable for a forfeiture in the amount of \$198,000.

II. BACKGROUND

2. In 1996, Congress amended the Act to require that:

Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.²

In implementing Section 254, the Commission authorized the Universal Service Administrative Company ("USAC") to administer universal service support mechanisms and to perform billing and collection functions.³ As to these matters, the Commission directed USAC to distribute, receive and process the Universal Service Worksheet (now the Telecommunications Reporting Worksheet) ("Worksheet"), which is used to report certain categories of revenue for the purpose of calculating a carrier's universal service contribution, and to adjust carriers' contributions in accordance with factors established by the Commission.⁴ In addition, the Commission gave USAC the authority to bill carriers monthly, starting in February 1998 for their contributions.⁵

¹ 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

² 47 U.S.C. § 254(d).

³ See Amendment of Parts 54 and 69 – Changes to Board of NECA, Inc., 12 FCC Rcd 18400, 18415 (1997) ("NECA Changes Order"); 47 C.F.R. § 54.702(b).

⁴ See NECA Changes Order, 12 FCC Rcd at 18424-25; 47 C.F.R. §§ 54.709(a)(1-3), 54.711(a).

To foster compliance with universal service requirements, the Commission’s rules provide that a carrier’s failure “to submit the required . . . contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law.”⁶

3. Intellicall, an interstate telecommunications service provider, does not appear to dispute its liability for universal service contributions and has paid a portion of the amount it owes for universal service. USAC’s records reflect that Intellicall has made over twenty payments to USAC in the last two years totaling more than \$3 million. During that period, however, Intellicall has missed several payments, underpaid its monthly invoices and failed to cure its arrearages. As a result, Intellicall owed over \$2 million in universal service payments as of April 17, 2000.

4. In February 2000, the Enforcement Bureau sent a letter to Intellicall which explained that Intellicall was the subject of a potential enforcement action.⁷ In its response, Intellicall states that it is in “complete understanding of the potential enforcement action for failure to pay outstanding balances due. . . .”⁸ In the same letter, Intellicall indicates a commitment to “remedy the current situation.” Since it received the Enforcement Bureau letter, Intellicall contacted USAC and presented USAC with a payment plan designed to cure its current arrearage in twenty-one months. Intellicall committed to pay each month an amount equal to its current monthly obligation and an additional \$75,000 toward the amount it is in arrears. Intellicall began making payments on this plan in April 2000. Intellicall made payments for April, May, and June.

III. DISCUSSION

5. We conclude that Intellicall is apparently liable for forfeiture for willful and repeated violations of Section 254 of the Act and the Commission’s rules governing universal service contributions. Since early 1998, Intellicall has paid only a portion of its universal service obligations. As noted above, Section 254(d) of the Act and Sections 54.706 and 54.709 of the Commission’s rules require that interstate telecommunications carriers make universal service contributions in the amount calculated by USAC.⁹ We find that Intellicall’s failure to make the required contributions is both willful and repeated. The term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules,¹⁰ and “repeated” means more than once.¹¹ Considering the record before us, it appears that Intellicall was aware of its obligation to contribute to universal service programs, yet knowingly

⁵ See Amendment of Part 54 – Universal Service, 12 FCC Rcd 22423, 22425 (1997); 47 C.F.R. §§ 54.709(a)(4), 54.709(d).

⁶ 47 C.F.R. § 54.713.

⁷ Letter from David H. Solomon, Chief, Enforcement Bureau, to Intellicall Operator Services dated February 16, 2000.

⁸ Letter from George M. Trevino, Corporate Controller, to James W. Shook, Investigations and Hearings Division, Enforcement Bureau dated March 10, 2000.

⁹ 47 U.S.C. 254(d); 47 C.F.R. §§ 54.706, 54.709.

¹⁰ See Jerry Szoka, 14 FCC Rcd 9857, 9865 (1999); Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

¹¹ See Hale Broadcasting Corp., 79 FCC 2d 169, 171 (1980).

failed to meet that obligation. Intellicall apparently received USAC's invoices, but failed to make the required universal service payments.

6. Section 503(b)(1)(B) of the Act provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.¹² Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$110,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,100,000 for a single act or failure to act.¹³ In assessing a forfeiture, we take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include 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.¹⁴

7. Although Intellicall's delinquency has continued since early 1998, we limit the scope of this NAL to Intellicall's apparent failures to make the contributions assessed in USAC invoices for January and February 2000, each of which sought a monthly contribution of \$288,613 for the universal service programs. Although, in the past, we have sanctioned carriers for failure to make the required universal service contributions for only one month of a continuing violation, we expressly stated that:

[I]n light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future. . . . [O]ur future notices likely will cover greater periods of non-payment than a single month . . . [and] will be based on some variant of [our] formula, which includes, as a component of the forfeiture, one half of the unpaid contribution amount for the period in question.¹⁵

8. Taking into account the factors listed in Section 503(b)(2)(D) of the Act,¹⁶ as well as Commission precedent, we find Intellicall apparently liable for a forfeiture of \$198,000. This forfeiture consists of three components. First, we have assessed a base figure of \$40,000 as a general fixed penalty of \$20,000 for each of the two violations at issue.¹⁷ As we noted in the Conquest Forfeiture Order, it is necessary to set a base figure designed to deter delinquencies regardless of their amount.¹⁸ Second, consistent with the ConQuest Forfeiture Order, we have added to the base amount of \$40,000 an amount equal to one half of the unpaid \$577,226 universal service contributions for the months of January and February 2000, or an addition of

¹² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

¹³ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2).

¹⁴ 47 U.S.C. § 503(b)(2)(D). *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, 17100-01 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Guidelines").

¹⁵ ConQuest Operator Services Corp., 14 FCC Rcd 12518, 12528 (1999) ("ConQuest Forfeiture Order").

¹⁶ 47 U.S.C. § 503(b)(2)(D).

¹⁷ *See* ConQuest Forfeiture Order, 14 FCC Rcd at 12527 (The Commission determined that \$20,000 should be the general penalty for failure to pay the assessed universal service contribution in a timely manner).

¹⁸ *See id.*

\$288,613.¹⁹ We have imposed this component of the forfeiture to illustrate that a delinquent carrier’s culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contributions it fails to make.²⁰ Finally, for the reasons explained below, we have applied a downward adjustment of \$130,613, approximately 40% of the sum of the first two components.

9. The Act and the Commission’s rules provide a framework for adjusting the forfeiture amounts imposed depending on the facts and circumstances of the particular case.²¹ Although Intellicall has for more than two years failed to pay in full outstanding balances when due, we note that Intellicall has acknowledged its liability for the amounts assessed, and has made significant efforts to satisfy its universal service obligations. As noted, Intellicall made over twenty payments toward its universal service obligations, which totaled approximately \$3 million. Further, Intellicall has now submitted a plan for curing its arrearage. We consider Intellicall’s significant efforts to pay to be a factor warranting a downward adjustment of the amount of the forfeiture. We also consider its submission of a plan to cure its outstanding balance and commencement of payments on that plan to be a factor warranting a downward adjustment.

10. Although Intellicall’s failure to make payment in other months represents independent violations of the Act and our rules, we are not imposing any sanction for these apparent violations at this time. Nevertheless, we note that these violations could form the basis for additional notices of apparent liability.²² If Intellicall continues to violate our universal service rules, such violations could result in future NALs proposing substantially greater forfeitures, or could result in issuance of a show cause order to revoke Intellicall’s operating authority.²³

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,²⁴ and Section 1.80 of the Commission’s rules,²⁵ Intellicall Operator Services is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of one hundred ninety eight

¹⁹ *Id.* See also Operator Communications, Inc., 13 FCC Rcd 16082, 16087 (1998)

²⁰ See Conquest Forfeiture Order, 14 FCC Rcd at 12,527, ¶ 19.

²¹ See 1.80(b)(4) of the Commission’s rules and accompanying note, 47 C.F.R. 1.80(b)(4). See also Forfeiture Guidelines, 12 FCC Rcd at 17100-01 (“[T]he adjustment factors we evaluate in considering the actions of the violator include egregious misconduct, ability or inability to pay, intentional violations, prior violation of the same or other requirements, good faith or voluntary disclosure, and history of overall compliance. 47 U.S.C. § 503(b)(2)(D). In sum, although the base amount is the starting point in assessing a forfeiture, the forfeiture may be decreased below the base amount or increased to the statutory maximum when the adjustment criteria are considered based on the facts of the case”).

²² ConQuest Forfeiture Order, 14 FCC Rcd at 12527.

²³ See CCN, Inc. et al., 12 FCC Rcd 8547 (1997) (the “Fletcher Companies”).

²⁴ 47 U.S.C. § 503.

²⁵ 47 C.F.R. § 1.80.

thousand dollars (\$198,000) for violating the Act and the Commission's rules requiring regular contributions for universal service.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,²⁶ within thirty days of this NOTICE OF APPARENT LIABILITY Intellicall Operator Services SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above.

14. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

15. 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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.²⁷

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Intellicall Operator Services, attn: George M. Trevino, Corporate Controller, 16200 Addison Road, Suite 100, Addison, TX 75001.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

²⁶ Id.

²⁷ See 47 C.F.R. § 1.1914.