

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

In the Matter of ) File No. EB 00-IH-0053  
)  
America's Tele-Network Corp. ) NAL/Acct. No. x32080024

**FORFEITURE ORDER**

**Adopted:** November 30, 2000

**Released:** December 5, 2000

By the Commission:

**I. INTRODUCTION**

1. In this Forfeiture Order, we find that America's Tele-Network Corp. ("ATNC") has violated section 254(d) of the Communications Act of 1934, as amended (the "Communications Act" or 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.<sup>1</sup> Based on our review of the facts and circumstances of this case and after considering ATNC's response to our Notice of Apparent Liability ("NAL") in this matter,<sup>2</sup> we conclude that ATNC is liable for a forfeiture in the amount of one hundred fifty-four thousand dollars (\$154,000).

**II. BACKGROUND**

2. In the NAL, we briefly described the universal service program, including the mechanisms established by the Commission in response to Congress' 1996 amendments to the Communications Act creating the universal service program. In particular, section 254 of the Act requires 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.<sup>3</sup>

In implementing section 254, the Commission authorized the Universal Service Administrative Company ("USAC") to administer universal service support mechanisms and to perform billing

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<sup>1</sup> 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

<sup>2</sup> *America's Tele-Network Corp.*, Notice of Apparent Liability for Forfeiture, FCC 00-276 (released August 1, 2000).

<sup>3</sup> 47 U.S.C. § 254(d).

and collection functions.<sup>4</sup> The Commission gave USAC the authority to bill carriers monthly, starting in February 1998, for their contributions.<sup>5</sup>

3. In accordance with its authority, USAC began billing ATNC in February 1998. Notwithstanding its receipt of monthly bills and despite repeated contacts from USAC, ATNC failed to submit any of its required contributions through 1999. In February 2000, the Enforcement Bureau sent a letter to ATNC explaining that it was the subject of a potential enforcement action.<sup>6</sup> In its response to the Bureau's letter, ATNC stated that it had withheld payments based on its belief that "universal service support programs and contribution assessments are unconstitutional and invalid," "notwithstanding the decision of the Fifth Circuit Court of Appeals in *Texas Office of Public Utility Counsel v. FCC*."<sup>7</sup> Nevertheless, ATNC stated that it sought "to evaluate the potential of a settlement," which would result in payment of current invoices and retirement of "verified" arrearages over a 24-month period.<sup>8</sup> In responding to a staff inquiry,<sup>9</sup> ATNC subsequently stated that it did not pay its universal service contributions because its customers failed to pay line item charges for universal service.<sup>10</sup> Finally, in response to a further staff inquiry in May 2000,<sup>11</sup> ATNC explained its billing arrangements and reiterated its belief that its customers did not pay universal service charges. Nonetheless, ATNC acknowledged that it regularly received from its billing agent approximately 63 percent of the amounts billed to customers and that the billed amounts included universal service charges.<sup>12</sup>

4. In May 2000, ATNC began making universal service contributions. As of July 18, 2000, ATNC had paid more than \$320,000 to USAC. Accounting for those payments, ATNC

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<sup>4</sup> 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).

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

<sup>6</sup> Letter from David H. Solomon, Chief, Enforcement Bureau, to America's Tele-Network Corp. dated February 16, 2000 ("Bureau's February 2000 letter").

<sup>7</sup> Letter from Charles H. Helein, Esq., counsel for ATNC, to James W. Shook, Investigations and Hearings Division, Enforcement Bureau, dated February 25, 2000, citing *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) (subsequent history omitted) ("ATNC February 2000 letter"). In that decision, the court, *inter alia*, denied constitutional challenges to the universal service contribution system.

<sup>8</sup> ATNC February 2000 letter, *supra* note 7.

<sup>9</sup> Letter from David H. Solomon, Chief, Enforcement Bureau, to America's Tele-Network Corp. dated April 20, 2000.

<sup>10</sup> Letter from John W. Little, President, ATNC, to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, dated April 28, 2000. In this regard, we note that a customer's failure to pay universal service line item charges has no bearing on a carrier's obligation to contribute to universal service. See *Federal-State Board on Universal Service*, 14 FCC Rcd 8030, 8038 (1999).

<sup>11</sup> Letter from David H. Solomon, Chief, Enforcement Bureau, to America's Tele-Network Corp. dated May 3, 2000.

<sup>12</sup> Letter from Charles H. Helein, Esq., counsel for ATNC, to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, dated May 15, 2000.

still owed more than \$1 million as of the July 2000 invoice. ATNC has made no contributions toward universal service since that time.

5. We concluded in the NAL that ATNC had apparently violated the Act and our rules by willfully and repeatedly failing to pay universal service contributions. We further concluded that ATNC's apparent violations were both egregious and intentional. Consequently, the proposed forfeiture contained an upward adjustment.<sup>13</sup>

6. In its response to the NAL, ATNC challenges the NAL's upward adjustment of the proposed forfeiture. ATNC claims that the NAL mischaracterized its arguments concerning the constitutionality of the universal service program and erroneously found that it had "shifted" its defense to justify its failure to pay. ATNC further disputes the NAL's finding that it had received "substantial" income from its billing agent and failed to make a commitment to pay arrearages. Finally, ATNC contends that imposing an upward adjustment is inconsistent with Commission precedent. In this regard, ATNC believes it is being treated more harshly than similarly situated carriers.

### III. DISCUSSION

7. In determining the amount of a forfeiture penalty, we 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 such other matters as justice may require."<sup>14</sup> The NAL proposed a forfeiture of \$154,000 based on three components. First, consistent with Commission precedent, we assessed a base figure of \$40,000 as a general penalty of \$20,000 for each of the two violations at issue. Second, we added to the base amount of \$40,000 an amount equal to one-half of the contributions due for the months of November and December 1999, or \$62,671.<sup>15</sup> Finally, we applied an upward adjustment of nearly 50% of the sum of the first two components, or \$51,329, to account for the apparent egregious and intentional nature of the violations.

8. After considering ATNC's arguments, we decline to reduce or eliminate the upward adjustment. ATNC does not dispute that for more than two years, it paid nothing into the universal service fund. In response to the Bureau's February 2000 letter, ATNC clearly stated that it withheld payments due to its belief that the universal service program was unconstitutional, notwithstanding a contrary finding by the U.S. Court of Appeals for the Fifth Circuit.<sup>16</sup> ATNC then argued that its failure to pay resulted from a notice appearing on local exchange carrier ("LEC") bills stating that nonpayment of long distance charges would not result in interruption of local service, and encouraging customers either to withhold or seek refunds of universal service charges. In this regard, we note that a customer's failure to pay does not excuse a carrier from

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

<sup>14</sup> 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Guidelines*, 12 FCC Rcd at 17100-01.

<sup>15</sup> For a more complete discussion of our system for determining forfeitures for failures to contribute universal service payments, see the NAL at ¶¶ 8 and 9 and the cases cited therein.

<sup>16</sup> We note that ATNC's failure to pay continued until May 2000, nearly ten months after the court rendered its decision, and nearly three months after ATNC acknowledged the court's decision.

contributing to universal service. The Commission's rules permit carriers to pass through all or part of their universal service contributions to their end-users in customer bills. However, the statutory requirement to contribute is not dependent on a carrier's ability successfully to do so.<sup>17</sup> While some customers may have withheld payments or sought refunds, the fact is that ATNC regularly received from its billing agent approximately 63% of the total amount billed to customers, including line item charges for universal service.

9. Although ATNC stated in its February 2000 letter that it sought "to evaluate the potential of a settlement," ATNC has made no commitment of any kind to USAC to pay off its arrearage within a specified timeframe. In this regard, although ATNC has paid more than \$436,000 toward universal service to date, its total indebtedness according to USAC still stands at more than \$1,000,000. Further, since July 2000, ATNC has made no contributions toward universal service.

10. We disagree that imposing an upward adjustment is inconsistent with Commission precedent or results in harsher treatment for ATNC than that meted out to similarly situated carriers. In both *Intellicall Operator Services*<sup>18</sup> and *Matrix Telecom, Inc.*,<sup>19</sup> the Commission applied a downward adjustment after finding that each carrier had made efforts to satisfy its universal service obligation prior to receipt of a letter from the Enforcement Bureau, and had committed to pay off its indebtedness by a date certain. In *North American Telephone Network, L.L.C.*,<sup>20</sup> the Enforcement Bureau proposed a forfeiture that contained neither an upward nor a downward adjustment after finding that the carrier had made a few payments before notification of potential enforcement action. By contrast, ATNC made no payments prior to the Enforcement Bureau's letter, and still has never committed to pay off its arrearage within a specified timeframe.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act,<sup>21</sup> and section 1.80(f)(4) of the Commission's rules,<sup>22</sup> America's Tele-Network Corp. is LIABLE FOR A FORFEITURE in the amount of one hundred fifty-four thousand dollars (\$154,000) for willfully and repeatedly violating section 254 of the Act,<sup>23</sup> and section 54.706 of the Commission's rules.<sup>24</sup>

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<sup>17</sup> See *Federal-State Board on Universal Service*, *supra* note 10, 14 FCC Rcd at 8038.

<sup>18</sup> *Intellicall Operator Services*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13539 (2000) (subsequent history omitted).

<sup>19</sup> *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544 (2000).

<sup>20</sup> *North American Telephone Network, L.L.C.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 14022 (Enf. Bureau 2000).

<sup>21</sup> 47 U.S.C. § 503.

<sup>22</sup> 47 C.F.R. § 1.80(f)(4).

<sup>23</sup> 47 U.S.C. § 254.

<sup>24</sup> 47 C.F.R. § 54.706.

12. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules,<sup>25</sup> within thirty days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.<sup>26</sup> America's Tele-Network Corp. may pay the forfeiture by mailing a check or money order, 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. A request for payment of the full amount of this Forfeiture Order under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>27</sup>

13. IT IS FURTHER ORDERED THAT a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to America's Tele-Network Corp. in care of Charles H. Helein, Esq., The Helein Law Group, P.C., 8180 Greensboro Drive, Suite 700, McLean, Virginia 22102, and to 720 Hembree Place, Roswell, Georgia 30076, attention: John W. Little.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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<sup>25</sup> 47 C.F.R. § 1.80.

<sup>26</sup> 47 U.S.C. § 504(a).

<sup>27</sup> See 47 C.F.R. § 1.1914.