

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

In the Matter of) File No. EB-01-IH-0035
) TRS Company Code: 819100
PTT Telekom, Inc.) NAL/Acct. No. 200132080025

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2001

Released: March 29, 2001

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that PTT Telekom, Inc. ("PTT") has apparently violated 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706 by willfully and repeatedly failing to contribute to universal service support programs. Based on our review of the facts and circumstances in this case, we conclude that PTT is apparently liable for a forfeiture in the amount of \$137,000.

II. BACKGROUND

2. In 1996, Congress amended the Communications Act of 1934 (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.¹

In implementing that section, we authorized the Universal Service Administrative Company ("USAC") to administer universal service support mechanisms and to perform billing and collection functions.² As to these matters, we 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.³ In addition, we gave USAC the authority to bill carriers monthly, with the first payment being due in February 1998.⁴ To foster

¹ 47 U.S.C. § 254(d).

² 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).

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

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

compliance with universal service requirements, our rules provide that a carrier's failure "to submit required . . . contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law."⁵

3. PTT did not file its first Worksheet until August 30, 1999, nearly two years after it was due. At that time, PTT filed Worksheets not only for 1997 but also for 1998 and for the first six months of 1999. Based upon information in the 1997 and 1998 Worksheets, USAC sent PTT an invoice dated September 15, 1999, which set forth PTT's liability to the universal service funds for high cost and low income areas, school and libraries, and rural health care. The amount billed was \$189,257.83, which represented all of the contributions PTT should have made in 1998 as well as those already due in 1999. Although a PTT representative called USAC to inquire about payment arrangements, PTT never made any payments to USAC. USAC has continued to send out monthly invoices to PTT, and in November 2000 and January 2001 attempted unsuccessfully to speak with someone at PTT to inform it of its delinquency.

4. On February 1, 2001, the Enforcement Bureau sent a letter to PTT, which explained that PTT was potentially the subject of an enforcement action.⁶ PTT failed to respond to the Bureau's letter.⁷ As of February 2001, PTT owes a balance of approximately \$925,000, which represents required contributions and late payment penalties billed through January 2001.

III. DISCUSSION

5. We conclude that PTT is apparently liable for forfeiture for willful and repeated violations of 47 U.S.C. § 254 and the Commission's rules governing universal service contributions. According to USAC's records, PTT has not paid any of its required universal service contributions. Consequently, PTT's unpaid contribution balance has grown to approximately \$925,000. As noted above, 47 U.S.C. § 254(d) and 47 C.F.R. §§ 54.706 and 54.709 require that interstate telecommunications carriers make universal service contributions in the amounts calculated by USAC. PTT has not done so, and we find that PTT's failures to make the required contributions are not only apparently willful and repeated but also apparently egregious and intentional. 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,⁸ and "repeated" means more than once.⁹ The record before us indicates that PTT knew of its obligation to contribute to universal service programs on a monthly basis but chose repeatedly not to meet that obligation.

⁵ 47 C.F.R. § 54.713.

⁶ Letter from Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, to PTT Telekom, Inc. dated February 1, 2001.

⁷ The Enforcement Bureau mailed the February 1, 2000 letter to PTT by certified mail, return receipt requested. The return receipt reflects that PTT received the Bureau's letter on February 9, 2001.

⁸ See *Jerry Szoka*, 14 FCC Rcd 9857, 9865 (1999); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁹ See *Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980).

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.¹⁰ If the violator is a common carrier, 47 U.S.C. § 503(b)(2)(B) authorizes us 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.¹¹ In assessing a forfeiture, 47 U.S.C. § 503(b)(2)(D) requires us 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.¹²

7. Taking into account the statutory factors, as well as precedent, we find PTT apparently liable for a forfeiture of \$137,000. This forfeiture consists of three components. First, we have assessed a base figure of \$40,000, \$20,000 for each of two apparent violations, i.e., the failures to pay the November and December 2000 invoices.¹³ The Commission established such a base figure in order to deter delinquencies regardless of their amount.¹⁴ Second, consistent with our recent actions in this area,¹⁵ we have added an amount that is approximately one half of the unpaid universal service contributions for two representative months. In this case, we have chosen the months of November and December 2000, which results in an addition of \$51,500 to the base figure. This second component of the forfeiture illustrates 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.¹⁶ Finally, we have applied an upward adjustment of \$45,500, slightly less than 50 percent of the sum of the first two components to account for the egregious nature of PTT's violations. As noted, PTT has paid nothing toward universal service

¹⁰ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(2). Recently, we amended section 1.80(b) of our rules to increase the maximum penalties that may be imposed. Accordingly, for a common carrier, the forfeiture limit for each violation is now \$120,000, with a maximum potential forfeiture of \$1,200,000 for a continuing violation involving a single act or failure to act. *See Amendment of Section 1.80(b) of the Commission's Rules*, 15 FCC Rcd 18221 (2000).

¹¹ *See also* 47 C.F.R. § 1.80(b)(2).

¹² *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*").

¹³ *See ConQuest Operator Services Corp.*, 14 FCC Rcd 12518, 12527 (1999) ("*ConQuest Forfeiture Order*") (We determined that \$20,000 should be the general base amount for failure to pay the assessed universal service contribution in a timely manner).

¹⁴ *See id.*

¹⁵ *See America's Tele-Network Corp.*, 15 FCC Rcd 20903 (2000) (Notice of Apparent Liability), 15 FCC Rcd 24391 (2000) (Forfeiture Order); *Intellicall Operator Services*, 15 FCC Rcd 15359 (2000) (Notice of Apparent Liability), 15 FCC Rcd 21771 (2000) (Forfeiture Order); *Matrix Telecom, Inc.*, 15 FCC Rcd 15344 (2000) (Notice of Apparent Liability), FCC 01-48, released February 20, 2001 (Forfeiture Order). *See also North American Telephone Network, LLC*, 15 FCC Rcd 14022 (Enf. Bureau 2000) (Notice of Apparent Liability); DA 01-540, released March 2, 2001 (Forfeiture Order).

¹⁶ *See ConQuest Forfeiture Order*, 14 FCC Rcd at 12527.

for more than three years and has apparently ignored Commission correspondence on the subject. We cannot and will not countenance this kind of behavior on the part of those we regulate.¹⁷

8. Although PTT's failures to pay its contributions in months other than November and December 2000 represent separate violations of the Act and our rules, we do not find apparent liability for these apparent violations at this time. Nevertheless, we warn PTT that these violations could form the basis for additional notices of apparent liability.¹⁸ If PTT 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 PTT's operating authority.¹⁹

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to 47 U.S.C. § 503(b), and 47 C.F.R. § 1.80, PTT Telekom, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of one hundred thirty-seven thousand dollars (\$137,000) for violating the Act and our rules requiring regular contributions for universal service.

10. IT IS FURTHER ORDERED THAT, pursuant to 47 C.F.R. § 1.80, within thirty days of this NOTICE OF APPARENT LIABILITY, PTT Telekom, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made 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.

12. The response, if any, must be mailed to Charles W. Kelley, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-B443, Washington D.C. 20554 and MUST INCLUDE the file number listed above.

13. 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 ("GAAP"); 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.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554. See 47 C.F.R. § 1.1914.

¹⁷ See *America's Tele-Network Corp.*, 15 FCC Rcd 20903 (2000) (Notice of Apparent Liability), 15 FCC Rcd 24391 (2000) (Forfeiture Order) (50 percent upward adjustment for intentional and egregious non-payment of universal service contributions).

¹⁸ *ConQuest Forfeiture Order*, 14 FCC Rcd at 12527.

¹⁹ See *CCN, Inc. et al.*, 12 FCC Rcd 8547 (1997) (the "Fletcher Companies").

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail/Return Receipt Requested, to Ron Kiser, PTT Telekom, Inc., 1000 N. Orlando Avenue, Winter Park, Florida 32789; and to National Registered Agents, Inc., 1090 Vermont Avenue, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary