

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

In the Matter of) File No. EB –00-IH-0057
)
Matrix Telecom, Inc.) NAL/Acct. No. X32080022

FORFEITURE ORDER

Adopted: February 8, 2001

Released: February 20, 2001

By the Commission:

I. INTRODUCTION

1. In this Forfeiture Order, we find that Matrix Telecom, Inc. (“Matrix”) has violated Section 254(d) of the Communications Act of 1934, as amended (the “Communications Act” or the “Act”), 47 U.S.C. § 254(d), and Section 54.706 of the Commission’s rules, 47 C.F.R. § 54.706, by willfully and repeatedly failing to make required contributions to universal service support programs. Based on our review of the facts and circumstances in this case and after considering Matrix’s response to our Notice of Apparent Liability (“NAL”) in this matter,¹ we conclude that Matrix is liable for a forfeiture in the amount of one hundred thirteen thousand dollars (\$113,000).

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.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 The Commission gave USAC the authority to bill carriers monthly, starting in February 1998, for their contributions.⁴

¹ *Matrix Telecom, Inc., Notice of Apparent Liability for Forfeiture*, FCC 00-262, (released July 27, 2000).

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); 47 C.F.R. § 54.702(b).

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

3. Matrix, an interstate telecommunications carrier, does not dispute its liability for universal service contributions. Since it began receiving invoices, Matrix has paid more than \$1 million dollars towards universal service. Matrix, however, has missed payments, underpaid its monthly invoices and failed to cure its arrearages. As a result, Matrix owed over \$1 million in universal service payments as of April 2000.

4. In February 2000, the Enforcement Bureau sent a letter to Matrix explaining that it was the subject of a potential enforcement action.⁵ In its response, Matrix stated that it “wishes to ensure full compliance with the Commission’s Rules and seeks to retire its outstanding universal service obligation as soon as practicable.”⁶ In a follow-up letter, Matrix reported that it had presented USAC with a payment plan designed to cure its arrearage in thirty-six months.⁷ Matrix represented that each month it will pay an amount equal to its current monthly obligation and an additional \$21,500 toward the amount it is in arrears. Matrix began making payments pursuant to this plan in May 2000, prior to the issuance of the NAL in this matter.

III. DISCUSSION

5. In the NAL, we found Matrix apparently liable for a forfeiture of \$113,000 based on its failure to make required universal service contributions in November and December 1999. In its response, Matrix asserts that the Commission should reduce or rescind the proposed forfeiture. Matrix contends that the amount of the forfeiture is too high in light of its efforts to pay its universal service contributions. Matrix also argues that its current financial condition will not permit it to pay a forfeiture of this size.

6. We disagree with Matrix’s contention that the amount of the forfeiture is too high in light of its efforts to pay its universal service contributions. Matrix and other carriers that fail to pay required universal service contributions and accrue arrearages of the amounts present in this case are appropriately subject to commensurate forfeitures. In calculating the forfeiture amount in the NAL, we took into account Matrix’s significant efforts to satisfy its universal service obligations. In recognition of those efforts, we applied a downward adjustment of \$76,614 to the proposed forfeiture, a reduction of over 40 percent. Consequently, we decline to reduce or rescind the proposed forfeiture amount.

7. We also disagree with Matrix’s assertion that it is unable to pay a forfeiture of \$113,000. We have reviewed the financial information submitted by Matrix and find that Matrix has ample current assets to pay a forfeiture of this amount. The Commission previously has held that a licensee’s gross revenues are generally the best indicator of its ability to pay a forfeiture. *See, e.g., Independent Communications, Inc.*, FCC 00-284 (released August 25, 2000) (a proposed forfeiture equal to one percent of the corporate licensee’s gross revenues was not excessive and elimination or reduction of the forfeiture was not warranted even though the company operated at a loss); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089

⁵ Letter from David H. Solomon, Chief, Enforcement Bureau, to Matrix Telecom, Inc. dated February 16, 2000.

⁶ Letter from Thomas K. Crowe, Esq., counsel for Matrix to David H. Solomon, Chief, Enforcement Bureau, dated March 10, 2000.

⁷ Letter from Todd Murcer, Manager of Business Development, Matrix Telecom, Inc. to Suzanne M. Tetreault, Assistant Chief, Enforcement Bureau, dated May 30, 2000.

(1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues). The financial information provided by Matrix indicates that the proposed forfeiture amount is substantially less than one percent of Matrix's annual gross revenues. As we stated in the *Forfeiture Policy Statement*, forfeitures should not be simply an affordable cost of doing business.⁸ We continue to believe that a forfeiture in the amount of \$113,000 is appropriate based on all the facts and circumstances of this case.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Section 1.80(f)(4) of the Commission's rules,¹⁰ Matrix IS LIABLE FOR A FORFEITURE in the amount of one hundred thirteen thousand dollars (\$113,000) for willfully and repeatedly violating Section 254 of the Act, 47 U.S.C. § 254, and Section 54.706 of the Commission's rules, 47 C.F.R. § 54.706.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the Commission may refer the case to the Department of Justice for collection pursuant to Section 504(a) of the Act, 47 U.S.C. § 504(a). Matrix may pay the forfeiture by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554. *See* 47 C.F.R. § 1.1914.

10. IT IS FURTHER ORDERED THAT a copy of the Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Matrix's counsel, Thomas Crowe, Esq., 2300 M Street, N.W., Suite 800, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

⁸ *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).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80(f)(4).