

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

In the Matter of	)	File No. EB-07-TC-1259
	)	
Atlas Advertising, Inc.	)	NAL/Acct. No. 200832170070
	)	
	)	FRN: 0017835091

**FORFEITURE ORDER**

**Adopted: September 16, 2010****Released: September 28, 2010**

By the Commission:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of \$45,000 against Atlas Advertising, Inc. (“Atlas”) for willful and repeated violations of section 227 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and the Commission’s related rules and orders,<sup>2</sup> by delivering at least ten unsolicited advertisements to the telephone facsimile machines of at least ten consumers.

**II. BACKGROUND**

2. This Forfeiture Order arises from two distinct Notices of Apparent Liability for Forfeiture<sup>3</sup> that were issued against Atlas. The facts and circumstances surrounding these cases are set forth in the *NALs* and need not be reiterated at length.

3. Section 227(b)(1)(C) of the Act makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”<sup>4</sup> The term “unsolicited advertisement” is defined in the Act and the Commission’s rules as “any material advertising the commercial availability or quality of any property,

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<sup>1</sup> 47 U.S.C. § 227.

<sup>2</sup> See 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act ....”; see also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate, or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

<sup>3</sup> *Atlas Advertising, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 8774 (Enf. Bur. 2008); *Atlas Advertising, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13753 (2008) (collectively “*NALs*”).

<sup>4</sup> 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

goods, or services which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise."<sup>5</sup> There is, however, an exception to the Commission's rule that permits a party to deliver unsolicited advertisements to persons with whom it has an established business relationship<sup>6</sup> if certain conditions are met (*i.e.*, the sender obtained the number of the facsimile machine either (i) through a voluntary communication by the recipient directly to the sender within the context of the established business relationship, or (ii) through a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution).<sup>7</sup>

4. On April 9, 2007, in response to one or more consumer complaints alleging that Atlas had faxed unsolicited advertisements, the Enforcement Bureau ("Bureau") issued a citation<sup>8</sup> to Atlas, pursuant to section 503(b)(5) of the Act.<sup>9</sup> The Bureau cited Atlas for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for factory unclaimed buildings, in violation of section 227 of the Act and the Commission's related rules and orders. The citation warned Atlas that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaints that formed the basis of the citation.<sup>10</sup> The citation informed Atlas that within thirty (30) days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement responding to the citation. Atlas did not request an interview or otherwise respond to the citation.

5. Following the issuance of the citation, the Commission received complaints from ten consumers alleging that Atlas faxed at least ten unsolicited advertisements to them. These violations, which occurred after the Bureau's citation, resulted in the issuance of two Notices of Apparent Liability for Forfeiture against Atlas, one on June 6, 2008, in the amount of \$4,500, and one on September 17, 2008, in the amount of \$40,500.<sup>11</sup> The *NALs* ordered Atlas to either pay the proposed forfeiture amounts within thirty (30) days or submit evidence or arguments in response to the *NALs* to show that no forfeitures should be imposed or that some lesser amounts should be assessed. Atlas did not respond to the *NALs* or pay the proposed forfeiture amounts.

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<sup>5</sup> See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

<sup>6</sup> An "established business relationship" is defined as a prior or existing relationship formed by a voluntary two-way communication "with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party." See 47 U.S.C. § 227(a)(2); *see also* 47 C.F.R. § 64.1200(f)(5).

<sup>7</sup> See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

<sup>8</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-1259, issued to Atlas on April 9, 2007.

<sup>9</sup> See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate, or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission's rules and orders).

<sup>10</sup> Bureau staff mailed the citation to the following address: Atlas Advertising, Inc., Attn: George Poelcher, 310 Bridge Street, Beaver, PA 15009.

<sup>11</sup> See n.3, *supra*; *see also* 47 U.S.C. § 503(b)(1).

### III. DISCUSSION

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.<sup>12</sup> In exercising such authority, we are to 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>13</sup>

7. Although the Commission’s *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements, the Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.<sup>14</sup> In the NALs, we applied that base amount to the ten apparent violations.

8. Atlas did not respond to the NALs or pay the proposed forfeiture amounts. Atlas has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture, and we are not aware of any mitigating circumstances that would warrant a reduction of the forfeiture penalties. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$45,000 for Atlas’s willful and repeated violation of section 227 of the Act and the Commission’s related rules and orders, as set forth in the NALs.

### III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80(f)(4) of the Commission’s rules, 47 C.F.R. § 1.80(f)(4), that Atlas Advertising, Inc. IS LIABLE FOR A MONETARY FORFEITURE to the United States Government in the sum of \$45,000 for willfully and repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. § 227(b)(1)(c), section 64.1200(a)(3) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(3), and the related orders as described in the paragraphs above.

<sup>12</sup> Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) first to \$11,000 and more recently to \$16,000. See 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

<sup>13</sup> See 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, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>14</sup> See *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); see also *US Notary, Inc.*, Notice of Apparent Liability for Forfeiture, 15 Rcd 16999 (2000); *US Notary, Inc.*, Forfeiture Order, 16 FCC Rcd 18398 (2001); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this 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>15</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Atlas Advertising, Inc. will also send electronic notification to [Johnny.Drake@fcc.gov](mailto:Johnny.Drake@fcc.gov) on the date said payment is made. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

11. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Atlas Advertising, Inc., Attention: George Poelcher, 310 Bridge Street, Beaver, PA 15009; 310 Bridge Street, W. Bridgewater, PA 15009 and 109 Pleasant Drive, Aliquippa, PA 15001.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>15</sup> 47 U.S.C. § 504(a).