

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

In the Matter of	)	
	)	
	)	
Travelcomm Industries, Inc.	)	File No.: EB-05-TC-031
d/b/a TravelComm, Inc.	)	NAL/Acct. No.: 200732170058
d/b/a Cheap Tickets Cancun	)	FRN: 0016560401
d/b/a Cancun Adventures	)	
	)	File No.: EB-06-TC-130
	)	NAL/Acct. No.: 200732170070
	)	FRN: 0016560401
	)	
	)	File No. EB-05-TC-037
	)	FRN: 0016560401
	)	

**FORFEITURE ORDER**

**Adopted: March 21, 2011**

**Released: April 12, 2011**

By the Commission:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we impose a monetary forfeiture<sup>1</sup> in the amount of \$72,000 against Travelcomm Industries, Inc. (“Travelcomm”) for willful and repeated violations of section 227 of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> and the Commission’s related rules and orders, by delivering 15 unsolicited advertisements (“junk faxes”) to the telephone facsimile machines of nine consumers,<sup>3</sup> and by delivering one unsolicited, prerecorded advertising message to one consumer.<sup>4</sup>

<sup>1</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>2</sup> See 47 U.S.C. § 227.

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

<sup>4</sup> See 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

## II. BACKGROUND

2. This *Forfeiture Order* arises from four distinct *Notices of Apparent Liability for Forfeiture* (“NALs”)<sup>5</sup> that were issued against Travelcomm.

### A. *Unsolicited Facsimile Advertisement Violations*

3. The Telephone Consumer Protection Act of 1991 (“TCPA”) was enacted by Congress to address problems of abusive telemarketing, in particular junk faxes.<sup>6</sup> As Congress recognized, unsolicited faxes often impose unwanted burdens on the called party, including costs of paper and ink, and making fax machines unavailable for legitimate business messages.<sup>7</sup> 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” except in certain limited situations.<sup>8</sup>

4. On May 19, 2005, in response to one or more consumer complaints alleging that Travelcomm had faxed unsolicited advertisements, the Enforcement Bureau (“Bureau”) issued a citation<sup>9</sup> to Travelcomm, pursuant to section 503(b)(5) of the Act.<sup>10</sup> The Bureau cited Travelcomm for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for vacation packages, in violation of section 227 of the Act and the Commission’s related rules and orders. The *Junk Fax Citation* informed Travelcomm that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 each, and included a copy of the consumer complaints that formed the basis of the citation.<sup>11</sup> The *Junk Fax Citation* informed Travelcomm that within 30 days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement

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<sup>5</sup> See *Travelcomm Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13555 (Enf. Bur. 2007) (“*Prerecorded Message NAL*”); *Mexico Marketing LLC dba Travelcomm Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 14196 (2007) (“*First Junk Fax NAL*”); *Mexico Marketing LLC dba Travelcomm Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 22218 (2007) (“*Second Junk Fax NAL*”); *Mexico Marketing LLC dba Travelcomm Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10742 (2008) (“*Third Junk Fax NAL*”)(collectively “*Junk Fax NALs*”).

<sup>6</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394, *codified at* 47 U.S.C. § 227. See also Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

<sup>7</sup> See, e.g., S. Rep. No. 1462, 102d Cong., 1<sup>st</sup> Sess. 2 (1991); H. Rep. No. 102-317, 102d Congress, 1<sup>st</sup> Sess. 10 (1991).

<sup>8</sup> 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

<sup>9</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, File No. EB-05-TC-137, issued to Travelcomm Industries, Inc. on May 19, 2005 (“*Junk Fax Citation*”).

<sup>10</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>11</sup> Bureau staff mailed the citation to the following addresses: 5895 Carrier Drive, Orlando, FL 32819; P.O. Box 300245, Casselberry, FL 32730; and 322 W. Newell St., Winter Garden, FL 34787.

responding to the citation. On June 2 and August 17, 2005, Travelcomm responded to the *Junk Fax Citation*.<sup>12</sup>

5. Following the issuance of the *Junk Fax Citation*, the Commission received complaints from nine consumers alleging that Travelcomm faxed 15 unsolicited advertisements to them. These violations, which occurred after the *Junk Fax Citation*, resulted in the issuance of three *NALs* against Mexico Marketing dba Travelcomm Industries, Inc. on July 31, 2007, on December 28, 2007, and on June 30, 2008.<sup>13</sup> Travelcomm has since asserted that it is a separate entity from Mexico Marketing, however, and we address here only those violations committed by Travelcomm specifically.<sup>14</sup> Travelcomm filed two responses to the *Junk Fax NALs*.<sup>15</sup>

### **B. Prerecorded Message Violation**

6. Section 227(b)(1)(B) prohibits any person from initiating “any telephone call to any residential telephone line using any artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission.”<sup>16</sup> Section 64.1200(a)(2) of the Commission's rules provides exemptions to the prohibition for calls: 1) made for emergency purposes; 2) not made for a commercial purpose; 3) made for a commercial purpose but “not including or introducing an unsolicited advertisement<sup>17</sup> or constituting a telephone solicitation.”<sup>18</sup>

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<sup>12</sup> Letter from Thomas Kinsella, Cove & Associates, P.A., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission, dated June 2, 2005; Letter from Jordan Cohen, Cove & Associates, P.A., to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Federal Communications Commission (“FCC”), dated August 17, 2005. (Thomas Kinsella and Jordan Cohen, Cove & Associates, P.A., counsel for Travelcomm, indicates an employee erroneously failed to sign for the citation letter which was sent by certified mail. However, both counsel acknowledge that the company received notice of the *Junk Fax Citation* by accessing it on the FCC's website. As standard practice, FCC staff forwards complaints enclosed with the citation upon request from the cited party. However, after doing so, the Commission does not have any record of any further response from same counsel to the *Junk Fax Citation*.)

<sup>13</sup> See note 5 *supra*; see also 47 U.S.C. § 503(b)(1).

<sup>14</sup> While the *Junk Fax NALs* include violations committed by Mexico Marketing, only the violations committed by Travelcomm are included in the attached Appendix and used as the basis for this forfeiture. We take no position at this time as to any liability Mexico Marketing might have for Travelcomm's violations, or Travelcomm may have for Mexico Marketing's violations. Violations committed by Mexico Marketing are addressed in a separate forfeiture order. *Mexico Marketing, LLC*, FCC 11-48 (2011).

<sup>15</sup> On August 30, 2007, Travelcomm responded to the *First Junk Fax NAL* and, in response to a request for additional information from the Bureau, Travelcomm submitted a supplemental response on April 24, 2008, via electronic mail. See Letter from Ricardo Calzada, II, Esq., Dorrough, Calzada & Hamner, P.L., to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated August 30, 2007 (“*Travelcomm's August 30 NAL Response*”); see also Letter via electronic mail from Ricardo Calzada, II, Esq., Dorrough, Calzada & Hamner, P.L., to Rosemary Cabral, Attorney, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated April 24, 2008.

<sup>16</sup> 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

<sup>17</sup> An “unsolicited advertisement” is defined as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise.” 47 U.S.C. §227(a)(4); 47 C.F.R. § 64.1200(f)(13).

4) made to any person “with whom the caller has an established business relationship<sup>19</sup> at the time the call is made;” or 5) “made by or on behalf of a tax-exempt nonprofit organization.”<sup>20</sup>

7. On April 15, 2005, in response to one or more consumer complaints alleging that Travelcomm had delivered an unsolicited, prerecorded advertising message, the Bureau issued a citation<sup>21</sup> to Travelcomm, pursuant to section 503(b)(5) of the Act.<sup>22</sup> The Bureau cited Travelcomm for delivering one or more unsolicited, prerecorded advertising messages regarding vacation travel tickets to a residential telephone line, in violation of section 227 of the Act and the Commission’s related rules and orders. The *Prerecorded Message Citation* informed Travelcomm that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 each, and included a copy of the consumer complaints that formed the basis of the citation.<sup>23</sup> The *Prerecorded Message Citation* informed Travelcomm that within thirty 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. On May 12, 2005, Travelcomm filed a response to the *Prerecorded Message Citation*, stating that it did not have any record of making the call, but offering no other evidence to support its claim.<sup>24</sup>

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<sup>18</sup> A “telephone solicitation” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-exempt nonprofit organization.” 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(12). We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt.” *TCPA Revisions Report and Order*, 18 FCC Rcd 14097-98 (2003).

<sup>19</sup> An “established business relationship” in the context of a pre-recorded message violation is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, 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)(4).

<sup>20</sup> 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

<sup>21</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, File No. EB-05-TC-031, issued to Travelcomm on April 15, 2005 (“*Prerecorded Message Citation*”).

<sup>22</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>23</sup> Bureau staff mailed the citation to the following addresses: Travelcomm Industries, Inc., a.k.a. Travel Comm, Inc., Canadian Travel, Patriot Travel, Attention: Mr. Rigoberto Sotolongo, President, Peter Sotolongo, Dan Marshall, 5850 Lakehurst Drive, Suite 150-30, Orlando, Florida 32819; and Travelcomm Industries, Inc., a.k.a. Travel Comm, Inc., Canadian Travel, Patriot Travel, Attention: Mr. Rigoberto Sotolongo, President, Peter Sotolongo, Dan Marshall, 5895 Carrier Drive, Orlando, Florida 32801..

<sup>24</sup> Letter from Thomas R. Kinsella, Esq., Cove & Associates, P.A., to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated May 12, 2005 (“*Travelcomm’s Prerecorded Citation Response*”).

8. Following the issuance of the *Prerecorded Message Citation*, the Commission received another complaint from a consumer alleging that Travelcomm delivered an unsolicited, prerecorded message. This violation, which occurred after the Bureau's *Prerecorded Message Citation*, resulted in the issuance of a *NAL* against Travelcomm on July 23, 2007, in the amount of \$4,500.<sup>25</sup> The *Prerecorded Message NAL* ordered Travelcomm to either pay the proposed forfeiture amount within thirty days or to submit evidence or arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed. On August 23, 2007, Travelcomm responded to the *Prerecorded Message NAL*.<sup>26</sup>

### C. *Travelcomm's Responses to the NAL*

9. Both Travelcomm's August 23 and August 30, 2007 responses to the *First Junk Fax NAL* and the *Prerecorded Message NAL*<sup>27</sup> provided a general description of its business, stating that it sells vacation packages wholesale to various companies. While Travelcomm admits to entering into contracts with several of these companies to market and sell hotel accommodations,<sup>28</sup> it claims that it did not send facsimiles or phone the complainants.<sup>29</sup> Consequently, Travelcomm requests that the forfeitures proposed in the *First and Second Junk Fax NALs* and the *Prerecorded Message NAL* be canceled.

## III. DISCUSSION

10. With regard to the apparent unsolicited fax advertisement violations, Travelcomm argues that the proposed forfeiture should be canceled because: (1) the company did not receive a copy of the citation; and (2) it did not send the facsimiles as alleged. With regard to the prerecorded message violations, Travelcomm argues that the proposed forfeiture should be cancelled because: (1) the prerecorded message call subject to the proposed forfeiture may have been made inadvertently; and (2) the prerecorded message sent to the complainant was not delivered on its behalf. We have considered Travelcomm's responses to the *Junk Fax NALs* and conclude that Travelcomm has failed to present evidence to warrant rescinding or reducing the proposed forfeitures.<sup>30</sup>

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<sup>25</sup> See n.5 *supra*; see also 47 U.S.C. § 503(b)(1).

<sup>26</sup> Letter from Ricardo Calzada, II, Esq., Dorrough, Calzada & Hamner, P.L., to Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, dated August 23, 2007 ("*Travelcomm's August 23 NAL Response*"). (This *NAL Response* referred to a citation response dated May 12, 2005 that the Commission had not received, a copy of which Attorney Calzada forwarded via electronic mail on March 10, 2008.)

<sup>27</sup> *Travelcomm's August 23 NAL Response*, at 1; *Travelcomm's August 30 NAL Response*, at 1.

<sup>28</sup> *Travelcomm's August 23 NAL Response* at 3-6.

<sup>29</sup> *Travelcomm's August 23 NAL Response* at 4.

<sup>30</sup> See note 15 *supra*. Although Travelcomm did not respond to the *Third Junk Fax NAL*, we extend their challenge of the forfeiture amounts proposed in the *First and Second Junk Fax NALs* to the *Third NAL* as well. We conclude that Travelcomm has failed to present evidence to warrant rescinding or reducing the proposed forfeiture in the *Third Junk Fax NAL* as well.

### A. Unsolicited Facsimile Advertisement Violations

11. Travelcomm has failed to submit any evidence to controvert the Bureau's finding that Travelcomm delivered the unsolicited fax advertisements at issue. *Travelcomm's August 30, 2007 NAL Response* explained that it "did not respond to the citation because one was not sent to it."<sup>31</sup> Our records, however, indicate that Travelcomm indeed received notice of the *Junk Fax Citation*. Its attorneys' correspondence dated June 2 and August 17, 2005, clearly acknowledge notice of the *Junk Fax Citation*.<sup>32</sup> Travelcomm asserts that it did not send the faxes at issue, but our records indicate that Travelcomm is listed as the subscriber for telephone numbers used to send the junk faxes. Travelcomm offers no explanation of how the junk faxes could have originated from the company's phone line without having been sent by the company.

12. Travelcomm argues that the Commission's *Junk Fax NALs* did "not provide enough information for Travelcomm to properly respond in a thorough manner."<sup>33</sup> The *First Junk Fax NAL*, however, described in detail the evidence upon which the proposed forfeiture was based, and contained all the information required by section 503(b)(4) of the Act.<sup>34</sup> Additionally, on October 31, 2007, the Bureau forwarded to Travelcomm's attorney, at his request, copies of the complaints that were the basis of the *First Junk Fax NAL*.<sup>35</sup> On January 17, 2008, the Bureau also forwarded copies of complaints that were the basis of the *Second Junk Fax NAL*, again at the request of Travelcomm's attorney.<sup>36</sup> On April 24, 2008, Travelcomm submitted a supplemental response that purported to contain a detailed response to the complaints that were the basis of the *First and Second Junk Fax NALs*. This response, however, fails to provide any specific information to counter the Commission's findings that Travelcomm sent the faxes at issue, or that the faxes constitute prohibited advertisements as defined in section 227 of the Act and the Commission's rules and orders. The response only states that Travelcomm Industries, Inc. did not send the facsimiles as alleged and, as noted above, provides no evidence to support this claim.<sup>37</sup> Travelcomm's response is insufficient to counter the weight of the evidence we have from the complaining consumers. We therefore conclude that Travelcomm failed to submit sufficient evidence to show that it did not send the faxes in question, or that those faxes were not sent on its behalf.

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<sup>31</sup> *Travelcomm's August 30 NAL Response* at 2.

<sup>32</sup> See n.12, *supra*.

<sup>33</sup> *Travelcomm's August 30 NAL Response* at 2.

<sup>34</sup> 47 U.S.C. § 503(b)(4). This subsection requires, *inter alia*, that the Commission issue a written notice of apparent liability or a notice of opportunity for hearing prior to assessing a forfeiture. Such a notice must identify the legal provision that has apparently been violated, set out the nature of the act or omission and the underlying facts, and must state the date on which the apparently unlawful conduct occurred. In the instant proceeding, the FCC complied with these requirements.

<sup>35</sup> Letter and attachments, from Kimberly Wild, Attorney, Telecommunications Consumers Division, Enforcement Bureau, to Ricardo Calzada, II, Esq., Dorough, Calzada & Hamner, P.L., dated October 31, 2007.

<sup>36</sup> Letter and attachments, from Kimberly Wild, Attorney, Telecommunications Consumers Division, Enforcement Bureau, to Ricardo Calzada, II, Esq., Dorough, Calzada & Hamner, P.L., dated June 17, 2008.

<sup>37</sup> See n.15 *supra*.

13. Both *Travelcomm's August 23 and 30 NAL Responses* request the opportunity to present evidence on this matter in a full evidentiary hearing before an administrative law judge to “better serve the ends of justice.”<sup>38</sup> By the explicit terms of the statute, evidentiary hearings in forfeiture matters are granted at the Commission’s discretion, and we see no need to commence an evidentiary hearing.<sup>39</sup> Travelcomm is entitled only to the administrative enforcement proceeding we are conducting here.

### **B. Prerecorded Message Violation**

14. Travelcomm does not present any evidence to establish an exemption under any of these provisions of section 64.1200(a)(2).<sup>40</sup> As previously mentioned, Section 64.1200(a)(2) of the Commission's rules provides exemptions to the prohibition for calls: 1) made for emergency purposes; 2) not made for a commercial purpose; 3) made for a commercial purpose but “not including or introducing an unsolicited advertisement<sup>41</sup> or constituting a telephone solicitation”;<sup>42</sup> 4) to any person “with whom the caller has an established business relationship<sup>43</sup> at the time the call is made”; or 5) “made by or on behalf of a tax-exempt nonprofit organization.”<sup>44</sup> Travelcomm does not deny making the prerecorded call in question. Instead, Travelcomm states it is “possible that Travelcomm had a preexisting relationship with a consumer located in the same area code as the complainant, Mr. Rayburn, and that Mr. Rayburn was contacted inadvertently.”<sup>45</sup> Travelcomm speculates that if the prerecorded message at issue was delivered, it is “possible a marketer did contact [the complainant,] but not on Travelcomm’s behalf.”<sup>46</sup>

15. Travelcomm’s claim that this particular call was “inadvertent” is not a valid defense under our prerecorded message rules. Travelcomm does not even indicate specific oversights

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<sup>38</sup> *Travelcomm's August 23 NAL Response*, at 1 and 6; *Travelcomm's August 30 NAL Response*, at 1 and 6.

<sup>39</sup> See 47 U.S.C. § 503(b)(1); see also 47 U.S.C. § 503(b)(4). This subsection requires, *inter alia*, that the Commission issue a written notice of apparent liability or a notice of opportunity for hearing prior to assessing a forfeiture. Such a notice must identify the legal provision that has apparently been violated, set out the nature of the act or omission and the underlying facts, and must state the date on which the apparently unlawful conduct occurred. 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>40</sup> 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

<sup>41</sup> See n.18 *supra*.

<sup>42</sup> See n.18 *supra*.

<sup>43</sup> See n.19 *supra*.

<sup>44</sup> See n.18 *supra*.

<sup>45</sup> *Travelcomm's August 23 NAL Response* at 2.

<sup>46</sup> *Travelcomm's August 23 NAL Response* at 2.

that may have caused the prerecorded call to be made or demonstrated the implementation of basic compliance procedures to guard against such calls being made in the first place. Our records indicate that the relevant telephone company has identified Travelcomm as the subscriber for the telephone number used in association with the prerecorded call here. Additionally, the complainant indicates that the prerecorded call advertised discount travel packages, and Travelcomm admits to selling vacation packages.<sup>47</sup> Travelcomm has not provided any persuasive information showing that we should discount this compelling connection between it and the call, and as noted above, Travelcomm does not actually deny having made the call.<sup>48</sup> We therefore conclude that the Bureau correctly found that Travelcomm was responsible for the prerecorded call at issue.

16. Additionally, *Travelcomm's August 23 NAL Response* claimed that the *Prerecorded Message NAL* failed to include information regarding the complaint and violation, which precluded Travelcomm from properly responding.<sup>49</sup> Contrary to Travelcomm's contention, the *Prerecorded Message NAL* described in detail the evidence upon which the proposed forfeiture was based. Indeed, the *Prerecorded Message NAL* contained all the information required by section 503(b)(4) of the Act.<sup>50</sup>

### C. Forfeiture Amount

17. We affirm our findings that Travelcomm violated the Act and our rules on sixteen separate occasions. Although the Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements, the Commission has previously considered \$4,500 per unsolicited prerecorded message and unsolicited fax advertisement to be an appropriate base amount.<sup>51</sup> We apply that base amount to each of the fifteen unsolicited fax advertisement violations and the one unsolicited prerecorded message violation. We are unpersuaded that the proposed forfeiture should be reduced or cancelled. We hereby impose a

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<sup>47</sup> See consumer complaint of James Rayburn, filed August 12, 2006. See also *Travelcomm's August 23 NAL Response* at 2

<sup>48</sup> See n.14, *supra*. We take no position at this time as to any liability Mexico Marketing might have for Travelcomm's violations, or Travelcomm may have for Mexico Marketing's violations.

<sup>49</sup> *Travelcomm's August 30 NAL Response* at 2. Nevertheless, a copy of the consumer complaint and affidavit was forwarded to Travelcomm's counsel. Letter and attachments, from Rosemary Cabral, Attorney, Telecommunications Consumers Division, Enforcement Bureau, to Ricardo Calzada, II, Esq., Dorrough, Calzada & Hamner, P.L., dated January 16, 2008.

<sup>50</sup> 47 U.S.C. § 503(b)(4). This subsection requires, *inter alia*, that the Commission issue a written notice of apparent liability or a notice of opportunity for hearing prior to assessing a forfeiture. Such a notice must identify the legal provision that has apparently been violated, set out the nature of the act or omission and the underlying facts, and must state the date on which the apparently unlawful conduct occurred. In the instant proceeding, we complied with these requirements.

<sup>51</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).

total of \$72,000 for Travelcomm's willful or repeated violation of section 227 of the Act and the Commission's related rules and orders, as set forth in the *NALs*. Thus, a total forfeiture of \$72,000 is imposed.<sup>52</sup>

#### IV. ORDERING CLAUSES

18. 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 Travelcomm Industries, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** to the United States Government in the sum of \$72,000 for willfully and repeatedly violating sections 227(b)(1)(B) and 227(b)(1)(C) of the Communications Act, 47 U.S.C. §§ 227(b)(1)(B), 227(b)(1)(C), and sections 64.1200(a)(2), 64.1200(a)(3) of the Commission's rules, 47 C.F.R. §§ 64.1200(a)(2), 64.1200(a)(3), and the related orders as described in the paragraphs above.

19. 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>53</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). Travelcomm Industries, Inc. will also send electronic notification on the date said payment is made to [Johnny.Drake@fcc.gov](mailto:Johnny.Drake@fcc.gov). 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.

<sup>52</sup> *Travelcomm's August 23 and 30 NAL Responses*, at 5, claim that Peter Sotolongo should not be personally held liable for the proposed forfeiture, attaching an affidavit from Mr. Sotolongo in support of its *NAL* responses. We take no position at this time as to any liability Mr. Sotolongo might have for the violations at issue here.

<sup>53</sup> 47 U.S.C. § 504(a).

20. **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 Travelcomm Industries, Inc., Attention: Mr. Rigoberto Sotolongo, 5850 Lakehurst Drive, # 280, Orlando, Florida 32819; Travelcomm Industries, Inc., c/o Dorough, Calzada & Hamner, P.L., 419 North Magnolia Avenue, Orlando, Florida 32801; and Luisa Valeros, Registered Agent, 11726 Ottawa Avenue, Orlando, FL 32837.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX

## Complainants and Violation Dates

<b>Complainant received facsimile solicitations</b>	<b>Violation Date(s)</b>
Baranaskas, C.	5/9/2007
Davis, W.	7/9/2007
Duranty, M.	5/1/07; 5/2/07; 5/4/07; 5/9/07
Hallikainen, H.	5/4/2007
Kober, S.	5/1/2007
Mahoney, S.	4/30/2007
Ragsdale, W.	4/30/2007
Shepard, A.	5/2/2007
Tilden, B.	4/4/07; 4/16/07; 4/18/07; 4/19/07