

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

In the Matter of)	File No.: EB-TCD-12-00000234 ¹
)	
Tim Gibbons)	NAL/Acct. No.: 201232170005
)	
United Employee Benefits Group, United)	FRN: 0021538509
Employee Benefits, United Benefits, f/k/a)	
Benchmark Mortgage, National Employee)	
Benefits Group)	
)	
United Employee Benefits, LLC)	
)	
Apparent Liability for Forfeiture)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 4, 2012

Released: September 4, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Tim Gibbons, operating as United Benefits, United Employee Benefits (UEB), and United Employee Benefits Group (UEBG), all formerly known as Benchmark Mortgage or National Employee Benefits Group (NEBG), independently and together with United Employee Benefits, LLC, apparently willfully and repeatedly violated Section 227(b)(1)(C) of the Communications Act of 1934, as amended (the Communications Act or Act), and Section 64.1200(a)(4) of the Commission's rules, by sending 99 unsolicited advertisements, or "junk faxes," to the telephone facsimile machines of 87 consumers.² Based on the facts and circumstances surrounding these apparent violations, we find that Tim Gibbons and United Employee Benefits, LLC, are apparently jointly and severally liable for a forfeiture in the amount of \$1,584,000.

¹ This case was formerly assigned the file number EB-10-TC-478. In January 2011, the Telecommunications Consumers Division reassigned this case the number set forth in the caption.

² See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(4) (formerly codified at 47 C.F.R. § 64.1200(a)(3)). In February 2012, the Commission amended the rules governing prerecorded advertising calls and, as a result, largely renumbered 47 C.F.R. § 64.1200. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 27 FCC Rcd 1830 (2012). Although the new prerecorded call provisions have not yet taken effect pending approval by the Office of Management and Budget, renumbering became effective on July 11, 2012. Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 77 Fed. Reg. 34233-01 (June 11, 2012) (to be codified at 47 C.F.R. pt. 64). Accordingly, rules governing the use of telephone facsimile machines to send unsolicited advertisements have been changed from Section 64.1200(a)(3) to 64.1200(a)(4). See also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787 (2006).

II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 was enacted by Congress to address problems of abusive telemarketing, including junk faxes.³ 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. Section 227(b)(1)(C) of the Act thus 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”⁴

3. On October 22, 2010, in response to a consumer complaint alleging that NEBG had faxed an unsolicited advertisement, the Enforcement Bureau (Bureau) issued a citation to NEBG and Benchmark Mortgage dba NEBG pursuant to Section 503(b)(5) of the Act.⁵ The Bureau cited NEBG and Benchmark Mortgage dba NEBG for using a telephone facsimile machine, computer, or other device, to send an unsolicited advertisement for financial services to a telephone facsimile machine in violation of Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission’s rules.⁶ The citation was directed to the attention of Tim Gibbons, president and contact person for NEBG, and expressly warned him that future violations of the Act and the Commission’s rules governing telephone solicitations and unsolicited advertisements “may subject you and your company to monetary forfeitures.” The citation informed the recipients that within 30 days of the date of the citation, they could either request an interview with Commission staff, or provide a written statement responding to the citation. The Commission never received any response.⁷

4. Despite the citation’s warning that subsequent violations could result in the imposition of monetary forfeitures, we received numerous complaints from consumers alleging that NEBG had faxed additional unsolicited advertisements to them. On February 29, 2012, the Commission issued an NAL in the amount of \$603,000 against NEBG,⁸ and Mr. Gibbons in his personal capacity,⁹ based on complaints

³ 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) (Junk Fax Act).

⁴ 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if the sender has an established business relationship (EBR) with the recipient, and the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website on which the recipient voluntarily made its facsimile number available for public distribution. In addition, the unsolicited advertisement must notify the recipient of how to opt out of receiving future such ads, subject to certain requirements. The Commission has adopted implementing rules. *See* 47 C.F.R. § 64.1200(a)(4).

⁵ *See* 47 U.S.C. § 503(b)(5).

⁶ Citation from Joshua P. Zeldis, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-10-TC-478, issued to National Employee Benefits Group and Benchmark Mortgage dba National Employee Benefits Group, on October 22, 2010.

⁷ Our records indicate that National Employee Benefits Group acknowledged receipt of the citation, as evidenced by a signed United States Postal Service return receipt, Article Number 7008 0500 0000 9339 3528 (National Employee Benefits Group, Attn.: Tim Gibbons, President, 795 Folsom Street, 1st Floor, San Francisco, CA 94107).

⁸ *National Employee Benefits Group*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 2734 (2012) (*February 2012 NAL*). Our records indicate that National Employee Benefits Group acknowledged receipt of the *February 2012 NAL*, as evidenced by a signed United States Postal Service return receipt, Article Number 7007 2560 001 6093 7751 (2800 Post Oak Blvd., Suite 4100, Houston, TX 77056), as well as evidence of another signed United States Postal Service return receipt, Article Number 7007 2560 001 7744 (8871 West Flamingo Road, Suite 202, Las Vegas, NV 89147).

⁹ *February 2012 NAL*, 27 FCC Rcd 2734, n.1.

filed by 79 consumers alleging 97 violations of our junk fax rules. The *February 2012 NAL* ordered the respondents either to pay the proposed forfeiture amount within 30 days or to submit evidence or arguments to show that no forfeiture should be imposed or that some lesser amount should be assessed. Although counsel for Mr. Gibbons originally sought and obtained an extension of time to respond to the *February 2012 NAL*, neither Mr. Gibbons nor his counsel nor NEBG ultimately provided any substantive response.¹⁰

5. As the Commission neared release of the *February 2012 NAL*, and the Bureau continued to develop other investigations, staff identified complaints against “United Employee Benefits” or “United Employee Benefits Group” about unsolicited faxes, which were similar in many respects to the faxes sent by NEBG. For example, faxes appearing to come from NEBG and UEB/UEBG have the same layout and are styled as office memoranda directed to “all employees” about financial “assistance” or “relief” programs, and offer such employees “0% interest” on “restructured” credit card programs, a reduction of their card debt payments by 60% or more, and a waiver of certain fees if a designated claim number or code is used when ordering the service.¹¹ Altogether, Bureau staff identified complaints filed by 87 consumers alleging that UEB/UEBG sent 99 additional unsolicited advertisements to telephone facsimile machines.¹²

6. In addition to apparently having sent similar faxes that offer similar services, NEBG and UEB/UEBG also appear to have a commonality of addresses, personnel, telephone numbers, and websites. While UEBG does not appear to exist as an independent legal entity or to be a registered fictitious business name, “United Employee Benefits, LLC” is a limited liability company registered in Nevada, with Mr. Gibbons and Jennifer Yoffe identified as officers and managers.¹³ The registration statement of United Employee Benefits, LLC with the Nevada Secretary of State lists the entity’s address as 8871 West Flamingo Road, Suite 202, Las Vegas, Nevada, which is an address at which NEBG acknowledged receipt of the *February 2012 NAL*.¹⁴ The contact number set forth in the UEB/UEBG faxes (888-872-1112) is assigned to Tim Gibbons and NEBG.¹⁵ The website “nebg.org” now redirects

¹⁰ On March 29, 2012, Attorney Robert M. Ungar submitted a letter on behalf of Tim Gibbons, president of NEBG, requesting an extension to respond to the *February 2012 NAL*. See Letter from Robert M. Ungar, attorney representing Tim Gibbons, to Marlene H. Dortch, Secretary, Federal Communications Commission (March 29, 2012) (on file in EB-10-TC-478). This extension request was granted on April 11, 2012. See e-mail from Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, to Attorney Robert M. Ungar (April 11, 2012, 2:19 p.m. E.D.T.). However, on May 9, 2012, Attorney Ungar sent an e-mail to Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, indicating that despite the request for an extension to respond to the NAL, a formal response would not be submitted. See e-mail from Attorney Robert Ungar to Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission (May 9, 2012, 11:01 a.m. E.D.T.).

¹¹ See Appendices A, B and C.

¹² See Appendix D for a listing of the consumer complaints against UEB/UEBG requesting Commission action. We note that evidence of additional instances of unlawful conduct by either Tim Gibbons, NEBG or UEBG may form the basis of subsequent enforcement action.

¹³ <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=YAeRCD5zwdN0ZGznnthaWA%253d%253d> (last visited on May 23, 2012).

¹⁴ See *supra* note 8.

¹⁵ E-mail from David Guerro, j2 Global to Al McCloud, Access Specialist, Telecommunications Consumers Division, Enforcement Bureau, dated February 14, 2012 (responding to a Commission inquiry, David Guerro confirmed that from August 7, 2011 to date of production, Tim Gibbons of National Employee Benefits Group, 1560 Youd Road, Winton, CA 95388, was listed as the billing contact for 888-872-1112 in the carrier’s records). A recent update indicates that the number still belongs to Tim Gibbons.

users to a website for “United Benefits,” which identifies the toll-free number registered to Tim Gibbons at NEBG.¹⁶ A recent order issued by the State of California Department of Real Estate against UEB and Mr. Gibbons connected UEB and NEBG by finding that “National Employee Benefits Groups ... now operates under the name UEB.”¹⁷

III. DISCUSSION

A. Apparent Violations of Section 227(b)(1)(C) of the Act and the Commission’s Rules Restricting Unsolicited Facsimile Advertisements

7. We find that Tim Gibbons and United Employee Benefits, LLC, apparently violated Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of our rules by sending 99 unsolicited advertisements to the facsimile machines of 87 consumers, identified in Appendix D. Under our rules, the sender of a junk fax is “the person or entity on whose behalf a facsimile unsolicited advertisement is sent or whose goods or services are advertised or promoted in the unsolicited advertisement.”¹⁸ Each of these consumers has provided evidence that he or she received a junk fax or faxes from Tim Gibbons or United Employee Benefits, LLC without having expressly authorized such faxes to be sent or having an established business relationship (EBR) with Mr. Gibbons or one of his businesses.¹⁹ The faxes at issue here clearly constitute advertisements, as they advertise (supposed) commercial availability of financial relief services. The faxes therefore fall within the definition of a prohibited “unsolicited advertisement.”²⁰

B. Proposed Forfeiture

8. After we have first issued a citation to a person under Section 503(b)(5) of the Act,²¹ as we have in this case, Section 503(b)(1) authorizes the Commission to propose a forfeiture for subsequent conduct of the type described in the citation that violates the Act, or any rule, regulation, or order issued by the Commission under the Act.²² Section 503(b)(2)(E) mandates that, “[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall 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.”²³

¹⁶ <http://www.nebgroup.org>. The former website for Benchmark Mortgage, the entity previously cited by the Bureau as doing business as NEBG, stated that Benchmark “manages and oversees the financial programs and portfolios of The National Employee Benefits Group (subsidiary of United Employees Benefits Group).” http://www.benchmarkmortgagebank.com/national_employee_benefits_group (last visited on May 23, 2012). Benchmark’s website appears to have since been disabled.

¹⁷ http://www.dre.ca.gov/pdf_docs/loanmod_drs/H11212SF.pdf (last visited July 20, 2012).

¹⁸ 47 C.F.R. § 64.1200(f)(10).

¹⁹ In filing complaints regarding the faxes listed in Appendix D, each consumer stated that he or she had not agreed to receive fax advertisements from NEBG or UEBG and had not done any business with or made an inquiry or application to NEBG or UEBG. See *Junk Fax Prevention Act R&O*, 21 FCC Rcd at 3793-9, para. 9-21, 3812, para. 46 (concluding that if a complaint is filed, the burden of proof rests on the fax sender to demonstrate that there is a valid EBR with the recipient or that prior express consent to fax was given).

²⁰ 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(15). The term “unsolicited advertisement” means “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.” See also *supra* note 15, and Appendix C.

²¹ 47 U.S.C. § 503(b)(5).

²² 47 U.S.C. § 503(b)(1)(B) and (b)(5).

²³ 47 U.S.C. § 503(b)(2)(E).

Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations, and identify criteria, consistent with the Section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.²⁴ For example, we may adjust a penalty upward for “[e]gregious misconduct,” an “[i]ntentional violation,” or where the subject of an enforcement action has engaged in a “[r]epeated or continuous violation.”²⁵ Currently, the Commission may impose a maximum penalty of \$16,000 per violation against individuals or entities such as Mr. Gibbons and United Employee Benefits, LLC.²⁶

9. Historically, the Commission has assessed a penalty of \$4,500 per unsolicited fax advertisement as an appropriate base forfeiture for violating the prohibition against sending them.²⁷ Recently, however, the Commission has proposed higher penalties against entities and individuals who have engaged in numerous and repeated violations. For example, in the *February 2012 NAL* against NEBG and Mr. Gibbons, the Commission proposed a forfeiture of \$603,000, which included an upward adjustment for the numerous junk fax violations (97) junk fax violations involved.²⁸ As we have noted in these recent cases, we intend to apply appropriate upward adjustments, including the \$16,000 statutory maximum, on a case-by-case basis, taking into account our obligation under section 503(b)(2)(E) of the Act. Indeed, where the Commission has found that a given violator of junk fax or other TCPA prohibitions appears to have engaged in deceit by attempting to disguise its identity to evade law enforcement, or misrepresenting material facts, the Commission has proposed the full statutory maximum of \$16,000 per unsolicited fax.²⁹

²⁴ 47 C.F.R. § 1.80(b)(6) note. The absence of a particular type of violation from the forfeiture guidelines must “not be taken to mean that the violation is unimportant or nonexistent,” and “the Commission retains discretion to impose forfeitures for other violations.” *Commission’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report & Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (*Forfeiture Policy Statement*).

²⁵ 47 C.F.R. § 1.80(b)(6) note.

²⁶ 47 U.S.C. § 503(b)(2)(C). Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases, as in the instant case, where the violation does not involve a Commission licensee or common carriers, among others. *See* 47 U.S.C. § 503(b)(2)(C). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under Section 503(b)(2)(C) to \$16,000. *See* 47 C.F.R. § 1.80(b)(7). *See also 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 an increase in the maximum forfeiture for this type of violation to \$16,000).

²⁷ *See Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805, 1812, para. 16 (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, 17003, para. 13 (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, 11300, para.12 (2000) (*Tri-Star NAL*); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

²⁸ *February 2012 NAL*, 27 FCC Rcd 2734, 2737, para. 8 (applying a \$150,000 upward adjustment in proposing a forfeiture for 97 junk fax violations); *see also Laser Technologies*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10792, 10795, para. 9 (2011) (applying a \$50,000 upward adjustment in proposing a forfeiture for 40 junk fax violations); *Presidential Who’s Who*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8989, 8993–95, paras. 11–13 (2011) (applying a \$150,000 upward adjustment in proposing a forfeiture for 31 junk fax violations, taking into account the violator’s 73 prior junk fax violations) (*Presidential Who’s Who NAL*); *The Street Map Company*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8318, 8321–22, paras. 10-11 (2010) (applying a \$75,000 upward adjustment in proposing a forfeiture for 51 junk fax violations, taking into account the violator’s prior 11 junk fax violations).

²⁹ *Sabrina Javani d/b/a EZ Business Loans*, Notice of Apparent Liability for Forfeiture, FCC 12-75 (rel. July 10, 2012); *Teresa Goldberg a/k/a Tammy Pocknett d/b/a Software Training Co. et al.*, Notice of Apparent Liability for

(continued...)

10. Consistent with the factors that must control our determination of the amount of a forfeiture penalty to assess for a given violation and violator, we propose the maximum penalty of \$16,000 for each of the 99 violations at issue in this NAL, for a total proposed forfeiture of \$1,584,000. As in other recent cases where the Commission has proposed the maximum penalty, we do so here because Mr. Gibbons and United Employee Benefits Group, LLC have apparently engaged in numerous and repeated violations, and have done so intentionally and in an egregious manner.

11. With today's NAL, we have now taken enforcement actions against Mr. Gibbons and his businesses for approximately 200 apparent violations of the Act and the Commission's implementing rules.³⁰ As noted previously, all of these apparent violations occurred *after* the Enforcement Bureau first warned Mr. Gibbons, via citation, that the conduct of faxing unsolicited ads violated the law. The fact that Mr. Gibbons and his businesses appear to have engaged in such a large number of violations after having been told that such conduct violated the law strongly suggests that they acted with deliberate and intentional disregard for TCPA requirements and the consumers the law is designed to protect.

12. The apparent attempt of Mr. Gibbons to confuse and disguise his businesses further suggests a deliberate intent to violate the prohibition against sending junk faxes. As discussed above, Mr. Gibbons appears to have called the business at issue in the *February 2012 NAL* and the current NAL by a number of different names, including "Benchmark Mortgage," "National Employee Benefits Group," "United Employee Benefits," and "United Employee Benefits Group." The faxes of UEB/UEBG directed recipients to the website www.uebg.org, which now identifies yet additional business names, "United Benefits" and "United Pre-Legal Mediation Group, LLC." At times, Mr. Gibbons' marketing materials have suggested that these business names reflected different actual businesses (*e.g.*, "United Benefits originated as a financial service to borrowers/clients of Benchmark [M]ortgage"; United Benefits has "merged under the portfolios of United Prelegal Mediation"),³¹ but with the single exception of the Nevada limited liability company of "United Employee Benefits, LLC" (owned/managed by Mr. Gibbons), none of these names in fact appears to be an actual independent legal entity, or a registered fictitious business name.³² Mr. Gibbons appears to have further attempted to confuse consumers about his business by using different addresses and phone numbers for the different names.

13. In an apparent attempt to conceal the nature and status of his business and confuse fax recipients still more, Mr. Gibbons deceptively makes his faxes appear to relate to employee benefits by formatting them to look like an office memorandum directed to "employees." As one complainant

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Forfeiture, 27 FCC Rcd 2723 (2012); *Travel Club Marketing d/b/a Travelink Corp. et al.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 15381 (2011).

³⁰ Section 504(c) of the Act, 47 U.S.C. § 504(c), prohibits the Commission from using the issuance of an NAL against a party in one proceeding to the prejudice of that party in another proceeding, until either the party pays the forfeiture or a court issues a final order that it do so. However, this prohibition does not restrict the Commission from considering the *facts* that underlie prior NALs. *Forfeiture Policy Statement*, 12 FCC Rcd at 17102-04, paras. 33-36. Thus, consideration in the current NAL of Mr. Gibbons' and NEBG/UEBG's past conduct that led to our earlier enforcement actions is fully consistent with Section 504(c) of the Act. See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 15 FCC Rcd. 303, 304-05, paras. 3-5 (1999).

³¹ <http://uebg.org> (last visited July 19, 2012).

³² Both California and Nevada law require persons (including both natural and artificial persons) operating under fictitious names to register those names with the state. Cal. Bus. & Prof. Code § 17910; Nev. Rev. Stat. 602.010. As the California law states, the registration requirement is "designed to make available to the public the identities of persons doing business under the fictitious name." *Id.* § 17900(a)(1).

explained, “[t]his fax disguises itself as an ‘office memo’ to ‘all employees’ offering special ‘employee benefit.’ Not only is the sender wasting my paper and ink, the sender is a blatant fraud.”³³ Thus, another complainant stated that Mr. Gibbons’ business “[a]ppears to be deceptive ‘scam’ fax targeted at misleading our employees.”³⁴

14. As a further reason to impose the maximum penalty available in this case, we note that the faxes at issue in this NAL violate not only the prohibition on sending junk faxes but certain other rules as well, pertaining to the manner in which consumers are notified about and must be able to exercise their right to opt out of receiving future junk faxes. For example, fax advertisements that are otherwise permissible (due to an EBR or prior express invitation or permission) must include a domestic telephone and facsimile machine number for the recipient to transmit an opt-out request to the sender 24 hours a day, 7 days a week.³⁵ Several consumers explain, however, that the telephone number appearing on the junk faxes, ostensibly to provide an opportunity to opt out of receiving future advertisements from UEB/UEBG, were not operational. One complainant stated that UEB’s “[o]pt-out phone number is not in service”;³⁶ another explained that UEB’s “‘do not fax’ number does not appear to work” because his requests “appear to be ignored;”³⁷ and still another asked the Commission to “shutdown these unlawful operators” because “[n]otwithstanding contacting the facsimile removal number, these companies continue to forward unsolicited facsimiles to our office.”³⁸ In addition, all of the junk faxes that consumers provided to the Commission also failed to include the statement, required by the Act and the Commission’s rules,³⁹ that failure to honor a properly submitted opt-out request within 30 days is unlawful. Each deficient opt-out notice and each instance when Mr. Gibbons either failed to allow submission of an opt-out request or failed to honor a valid opt-out request within 30 days represents additional violations of the Commission’s rules and section 227 of the Act that could carry separate penalties of up to \$16,000 each. In this case, we are not imposing penalties for the additional violations, but we do consider them to be aggravating factors that also warrant upward adjustments of our base forfeiture amounts.

15. As with the forfeiture proposed in the *February 2012 NAL*,⁴⁰ the penalty we propose in this NAL applies to Mr. Gibbons, whether acting in his own name or through another business or individual name (*e.g.*, Benchmark Mortgage, NEBG, UEBG, United Benefits, United Pre-legal Mediation Group). As the business name UEB at issue in some of the faxes that are the subject of this NAL may

³³ FCC Form 1088A – Junk Fax Complaint from R. Rast (October 4, 2011).

³⁴ FCC Form 1088A – Junk Fax Complaint from T. Dunn, Canyon Ranch (March 14, 2012). *See also* FCC Form 1088A – Junk Fax Complaint from J. Taylor (September 7, 2011) (“The ad is structured as an internal memo, fraudulently announcing ‘a special covered benefit being provided free to all employees.’ However it was not sent by my employer.”).

³⁵ 47 C.F.R. § 64.1200(a)(4)(iii)(D) and (E); *see also* 47 U.S.C. § 227(b)(2)(D)(iv)(I). If neither of these numbers is toll-free, a separate cost-free mechanism such as a website or e-mail address must be available for a fax recipient to transmit an opt-out request. 47 C.F.R. § 64.1200(a)(4)(iii)(D)(2); 47 U.S.C. § 227(b)(2)(D)(iv)(II). The sender must also include a clear and conspicuous notice on the first page of the advertisement that the fax recipient is entitled to request that the sender not transmit any future fax advertisements. 47 U.S.C. § 227(b)(1)(C)(iii), 227(b)(2)(D)(i) and (ii); 47 C.F.R. § 64.1200(a)(4)(iii).

³⁶ FCC Form 1088A – Junk Fax Complaint from C. Moore, (January 4, 2012).

³⁷ FCC Form 1088A – Junk Fax Complaint from T. Andrews (April 24, 2012).

³⁸ FCC Form 1088A – Junk Fax Complaint from T. Peterson (December 15, 2011).

³⁹ 47 C.F.R. § 64.1200(a)(4)(iii)(B); *see also* 47 U.S.C. § 227(b)(2)(D)(ii).

⁴⁰ The *February 2012 NAL* was issued against NEBG, which was defined to include Mr. Gibbons. *February 2012 NAL*, 27 FCC Rcd at 2734 n.1.

refer to the Nevada limited liability company “United Employee Benefits, LLC,” which Mr. Gibbons owns and manages, the penalty we propose here likewise applies to that entity.

16. Accordingly, weighing the facts before us, we propose the maximum penalty allowed under the Act and the Commission’s rules, \$16,000, for each of the 99 unsolicited fax advertisements recorded in Appendix D, for a total penalty of \$1,584,000 against Mr. Gibbons (in his own name and other names through which he conducts business) and United Employee Benefits, LLC. This penalty takes into account, in the language of Section 503(b)(2)(E), the “degree of culpability” and “history of prior offenses,” and in the language of our forfeiture guidelines, the apparent “intentional violation[s]” and “prior violations of . . . FCC requirements” at issue in this NAL. We believe this upward adjustment and overall penalty against Mr. Gibbons and United Employee Benefits, LLC are appropriate in view of the number and scope of the apparent violations, the fact that Mr. Gibbons and United Employee Benefits, LLC apparently engaged in much of this misconduct intentionally and in disregard of the Commission’s previous warnings.

IV. CONCLUSION

17. We have determined that Tim Gibbons, operating as United Benefits, United Employee Benefits, or United Employee Benefits Group, all formerly known as Benchmark Mortgage or National Employee Benefits Group, independently and together with United Employee Benefits, LLC, apparently violated Section 227(b)(1)(C) of the Act and Section 64.1200(a)(4) of the Commission’s rules, by using a telephone facsimile machine, computer, or other device to send 99 unsolicited advertisements to the 87 consumers identified in the Appendix D. We have further determined that Tim Gibbons and United Employee Benefits, LLC are apparently jointly and severally liable for a forfeiture in the amount of \$1,584,000.

V. 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 of the Commission’s rules, 47 C.F.R. § 1.80, that Tim Gibbons, operating as United Benefits, United Employee Benefits, or United Employee Benefits Group, all formerly known as Benchmark Mortgage or National Employee Benefits Group, independently and together with United Employee Benefits, LLC, are hereby **NOTIFIED** of their **APPARENT JOINT and SEVERAL LIABILITY FOR A FORFEITURE** in the amount of \$1,584,000 for willful and repeated violations of Section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), and Section 64.1200(a)(4) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(4).

19. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission’s rules,⁴¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Tim Gibbons, operating as United Benefits, United Employee Benefits, or United Employee Benefits Group, all formerly known as Benchmark Mortgage or National Employee Benefits Group, together with United Employee Benefits, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Tim Gibbons and United Employee Benefits, LLC shall send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov and Rosemary Cabral at Rosemary.Cabral@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be

⁴¹ 47 C.F.R. § 1.80.

submitted.⁴² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

21. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁴³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to: Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand or messenger-delivered mail should be directed, without envelopes, to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses.

23. 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; 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.

⁴² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴³ See 47 C.F.R. § 1.1914.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to Tim Gibbons and United Employee Benefits, LLC, 8871 West Flamingo Road, Suite 202, Las Vegas, NV 89147; National Employee Benefits Group, United Employee Benefits Group, and Tim Gibbons, 2800 Post Oak Blvd, Suite 4100, Houston, TX 77056; Registered Agent for Service: Silver Shield Services, Inc., United Employee Benefits, LLC, P.O. Box 3540, 3315 Highway 50, Silver Springs, NV 89429; and Attorney Robert Ungar, counsel for Mr. Gibbons, 14724 Ventura Boulevard, Penthouse, Sherman Oaks, CA 91403.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Sample Pre-citation Fax

OFFICE MEMORANDUM

TO: ALL EMPLOYEES
SUBJECT: FINANCIAL ASSISTANCE PROGRAM
DATE: 10/13/2010
CC: THE NATIONAL EMPLOYEE BENEFITS GROUP

Nationwide employee productivity is in serious decline and doing so at a disproportionate rate to the failing economy. The leading factor being blamed for declining employee productivity is said to be serious financial hardships. Many of us are proving to be severely stressed in trying to balance work with an overwhelming personal financial crisis.

For that reason the following program is being offered for all employees who find themselves in this position:

The National Employee Benefits Groups, Financial Relief Program

The National Employee Benefits Group is a financial services organization dedicated solely to financial programs for the nation's employees. The organization bridges the gap between employees and creditors when modifications are needed to re-structure payment rates and terms to protect the employed and their families. These are very aggressive programs implemented to avoid catastrophic events such as home foreclosures and/or bankruptcy.

A special corporate code is provided below that waives expensive retainer costs so anyone that needs help can get professional representation without the heavy upfront costs. Here are a few of the immediate benefits of The National Employee Benefits Group,

- **Credit card payments instantly reduced by as much as 60%**
- **0% Interest** on all credit card settlement plans
- **Home Foreclosure proceedings resolved.**
- **Back Mortgage payments forgiven and/or delayed**
- **Renegotiated and/or reduced home loan principle balances**
- **MORTGAGE LOAN MODIFICATIONS** under new **FEDERAL LAW (Home Stability Initiative)**
- **All Employees Qualify** and are guaranteed acceptance in programs. No credit required

All inquiries are strictly confidential and able to be made direct with The National Employees Benefits Group. Federal privacy laws protect the confidentiality of all employee communications and/or participations in any of The National Employees Benefits programs. www.nebgroup.org email: customer@nebgroup.org Special note: If you experience extended hold times when calling use email address provided to supply contact information and receive priority returned calling by using the corporate code provided.

The toll free number is (888) 341-8999 select option 1.

Corporate code C518219

To remove your fax number from our database please call toll free (888) 231-8714

APPENDIX B

NEBG's February 2012 NAL Sample Fax

OFFICE MEMORANDUM

TO: ALL EMPLOYEES
 SUBJECT: FINANCIAL ASSISTANCE PROGRAM
 DATE: 3/1/2011
 CC: THE NATIONAL EMPLOYEE BENEFITS GROUP

Employers around the country are experiencing serious declines in employee productivity and doing so at a disproportionate rate to the failing economy. The leading factor cited for employees loss in productivity is distractions directly related to personal financial hardships. Employees are finding themselves overwhelmed in the need to balance work with the pressure to resolve personal financial crisis.

For that reason the following program is being offered for all employees who find themselves in this position:

The National Employee Benefits Groups, Financial Relief Programs

The National Employee Benefits Group is a financial services organization dedicated solely to financial relief programs for the nation's employees. The organization in helping to protect employees and their families bridges the gap in the borrower/creditor relationship when modifications are needed to re-structure financial obligations, payments, rates and/or terms. These are aggressive, protective programs designed and implemented to avoid catastrophic events such as home foreclosures and/or bankruptcy.

A special corporate code is provided below that waives expensive retainer costs so anyone that needs help can get professional representation without the heavy upfront costs. Here are a few of the immediate benefits of The National Employee Benefits Group,

- **Credit card payments instantly reduced by as much as 60%**
- **0% Interest** on all credit card "Restructuring Programs"
- **Home Foreclosure proceedings resolved. Back mortgage payments forgiven and/or delayed**
- **Renegotiated and/or reduced home loan principle balances**
- **MORTGAGE LOAN MODIFICATIONS** under new **FEDERAL LAW (Home Stability Initiative)**
- **All Employees Qualify** and are guaranteed acceptance in programs. No credit required

All inquiries are strictly confidential and able to be made direct with The National Employees Benefits Group. Federal privacy laws protect the confidentiality of all employee communications and/or participations in any of The National Employees Benefits programs. www.nebgroup.org email: customercare@nebgroup.org

Special note: The phone number provided below allows for immediate access to the industry's leading financial specialists. All are advised to opt out to leaving a message for call back by pressing #1 if hold times exceed 5 minutes. Alternatively, an email requesting a callback can be sent to customercare@nebgroup.org please be sure to specify the area of concern as being mortgage or credit card related or both along with your personal contact information. A special corporate code is provided at the bottom of this memo which allows for direct access with no initial consulting charges or retainer fees.

The toll free number is **(888) 341-8999** select option 1.

Corporate code C518245

To remove your fax number from our database please call toll free (888) 231-8714

APPENDIX C

Current Sample Fax

OFFICE MEMO

TO: ALL EMPLOYEES
 SUBJECT: SPECIAL "EMPLOYEE BENEFIT" FOR FINANCIAL RELIEF PROGRAM
 DATE: 12/15/2011
 CC: UNITED EMPLOYEE BENEFITS

This memo is to bring about awareness to a special "Covered Benefit" being provided free to all employees who are finding it difficult to manage personal financial hardships. The most important aspect of navigating through financial hardships is understanding all the options which are available. This "Benefit" is designed to educate employees to those options.

Surprisingly, statistics are proving that although most all employed individuals qualify for special relief concessions from their creditors most are too afraid or embarrassed to secure professional assistance to achieve them. Additionally employees point to large upfront retainer costs as being the second leading cause in not securing professional representation in helping to resolve these matters.

With these concerns being recognized the following "Benefits" claim number (03-534-430) is being provided to insure those employees that need help receive it without the need for upfront retainer costs for initial consultations.

100% assistance is guaranteed for all employees wishing to enter "Pre-legal Financial Restructuring" programs. These programs can assist in overcoming both current and or previously defaulted debt. These are areas that United Employee Benefits can help:

- Special "0% Interest" through "Restructured" credit card programs
- Credit Card payments immediately reduced by as much as 65% (this is not bankruptcy)
(This program applies specifically to those struggling to make minimum payments or impacts to balances owed)
- "Financial Restructuring" is the leading reform necessary in meeting the financial requirements of those seeking or needing;
 1. Home Loan Mortgage modifications, and/or balance reductions
(*Restructuring" balances loss risk management protocols with borrower's ability to repay)
 2. Home equity loans and 2nd mortgages dismissed under many "Pre-legal Financial Restructuring Strategies"

A special direct toll free hotline has been established connecting those that call with the nation's leading financial specialists. These include access to mortgage bankers, investment bankers, high level collection experts, portfolio managers and credit analysts.

It is worth pointing out that all communications (including the initial inquiry) with United Employee Benefits are covered under Federal Privacy laws which strictly prohibit any information being shared with creditors, employers or anyone without the employees formal written consent.

The claim number for this program is 03-534-430 (the claim number is only for benefits qualification under a region and does not in any way identify any employee or employers)

The toll free number is (888) 872-1112 press option 1

Inquiry by email: customercare@uebp.org

website: www.uebp.org

Special note: Due to high call volumes at various times it is requested that employees who experience hold times exceeding 2 minutes please press #1 and leave a message for a return call. Email inquiries please list area of concern ex., mortgage, credit cards (or both if applicable)

To remove fax number from database please call toll free (855) 402-0794

APPENDIX D

Complainants and Apparent Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
Mermelstein, M.	9/6/11, 9/12/11, 11/8/11
Nowacky, G.	9/6/11
Stuart, S.	10/10/11, 3/14/12
Korver, A.	10/10/11, 3/14/12
Grout, S.	10/11/11
Izumi, J.	12/6/11
Hudkins, J.	12/12/11
MacIntyre, A.	12/15/11
Benefield, R.	9/6/11
Taylor, J.	9/7/11
Carroll, S.	9/12/11
Colby, N.	9/15/11
Camp, K.	9/19/11
Sgroi, J.	9/21/11
Hill, A.	9/22/11
Bodnar, J.	9/22/11
Ellis-Raymond, R.	9/27/11
Ritter, F.	9/29/11
Rast, R.	10/4/11
Jones, K.	10/3/11
Schieler, T.	10/3/11
Smith, S.	10/4/11
Goyda, C.	10/4/11
Smolko, J.	10/5/11
Waller, R.	10/6/11
Buchanan, N.	10/10/11
Kulakofksy, R.	10/10/11, 3/14/12
Bargmeyer, A.	10/10/11
Sturtz, W.	10/18/11
Morgan, D. (LEI Engineers)	10/18/11
Silverman, T.	11/8/11
Windham, T.	11/14/11
Sherman, M.	11/14/11, 1/4/12, 2/27/12
Weeden, H.	11/14/11
King, C.	11/15/11
Richard, M.	11/15/11
Immesberger, A.	11/21/11
Jensen, G.	11/22/11, 3/14/12
Steinberg, S.	11/28/11, 3/6/12
de Geofroy, L.	11/28/11
Schuman, A.	11/28/11, 1/11/12
Carreno, F.	12/1/11
Coleman, R.	12/1/11
Burton, L.	12/1/11
Jensen, G.	12/5/11

Patrick, D.	12/6/11
DeLong, J.	12/6/12
Buck, C.	12/12/11
Deaver, R.	12/15/11
Pfund, A.	12/15/11
Hofler, E.	12/15/11
Peterson, T. (Law Office of Tulane M. Peterson)	12/15/11
Masters, V.	11/1/11, 12/1/11
Webb, J.	12/19/11
Lavado, H.	12/21/11, 2/21/12
Nedbalak, L.	1/4/12
Moore, C.	1/4/12
Hershberger, J. (Willis Agricultural Storage, Inc.)	1/17/12
Telljohann, J.	1/18/12
Bye, P.	1/18/12
Anzalone, M.	1/18/12
Geiyer, R.	1/18/12
Safro, B.	1/23/12
Johnson, B.	1/26/12
Lester, R. (Septa)	1/27/12
Wolin, M.	2/06/12
Rycomb, F. (Kenton School District)	2/6/12
Leinemann, J.	2/8/12
Miller, E.	2/13/12
Johnson, B.	2/13/12
Roberson, K.	2/13/12
Curtis, T.	2/27/12
Hofkin, R.	2/27/12
Fitch, J.	3/6/12
Sanderson, R.	3/6/12
O'Daniel, D.	3/12/12
Bye, P.	3/13/12
Dunn, T. (Canyon Ranch)	3/14/12
Dumke, L.	3/21/12
Roach, P.	3/21/12
Andrews, T.	4/24/12
Nabor, J.	4/24/12
Sherman, M.	4/30/12
Partin, C.	5/8/12
Jensen, G.	6/20/12
Williams, G.	6/13/12
Bradshaw, P.	6/26/12