

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	File No.: EB-TCD-12-00000416
Telseven, LLC, Calling 10, LLC, Patrick Hines)	NAL/Acct. No.: 20133217005
a/k/a P. Brian Hines)	FRNs: 0009834466, 0018070938,
)	0016963712, 0021816459
)	

FORFEITURE ORDER

Adopted: February 18, 2016**Released: February 18, 2016**

By the Commission: Commissioner O’Rielly concurring in part and dissenting in part.

I. INTRODUCTION

1. The inclusion of unauthorized charges on consumers’ telephone bills is an “unjust and unreasonable” practice under Section 201(b) of the Communications Act of 1934, as amended (Act). In a Notice of Apparent Liability (*NAL*), the Commission detailed apparent violations by Telseven, LLC and Calling 10, LLC (collectively, Calling 10 or Company), and Patrick Hines (Hines) for “cramming” charges for their service on consumers’ local telephone bills and for deceptively marketing their “Enhanced Number Assistance and Directory Assistance” (ENADA) service.¹ After opportunity for further submissions by the parties, we impose a penalty of \$1,680,000, jointly and severally, against Calling 10 and Hines.

2. During a several year period, Calling 10, at the direction of Hines and through its affiliates, amassed approximately one million toll-free numbers for no apparent purpose other than to increase the likelihood that consumers would dial one of these numbers and reach Calling 10 by mistake. When consumers did so, Calling 10 misled them about the nature and cost of its service and then charged consumers approximately seven dollars for a directory assistance service that they did not authorize or use. Calling 10 used these practices to illegally place charges for its unauthorized service on the telephone bills of thousands of consumers. Although Calling 10 failed to respond to the *NAL*, Hines, sole owner, officer, and director of Calling 10, filed a response contending that he should not be held personally liable.² On the basis of Hines’ response, we find no reason to cancel, withdraw, or reduce the proposed penalty, or not to hold Hines personally liable for the violations addressed in the *NAL*.

¹ See *Telseven, LLC and Patrick B. Hines*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15558 (2012) (*NAL*).

² See Letter from Christopher J. Greene, Counsel to Patrick Hines, Purcell, Flanagan, Hay and Greene, to Kimberly A. Wild, Assistant Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 23, 2013) (*NAL Response*).

II. BACKGROUND

3. In response to numerous consumer complaints about Calling 10's³ unauthorized directory assistance charges on consumers' local telephone bills, the Bureau initiated an investigation,⁴ reviewed more than 80 complaints, and interviewed dozens of consumers. The relevant facts upon which the *NAL* was based are not disputed by Hines.⁵ We affirm the findings and conclusions in the *NAL* that Calling 10 and Hines violated Section 201(b) of the Act,⁶ and that Hines is jointly and severally liable for the \$1,680,000 forfeiture proposed in the *NAL*.⁷ As the Commission discussed in the *NAL*, consumers who inadvertently reached Calling 10 by dialing one of its million toll-free numbers heard the following recorded message:

For a charge of 4.99, please have a pen ready to write down our phone number. You can hang up and dial 10 15 15 8000. That number again is 10 15 15 8000. The number you have dialed has a new directory assistance service. Please dial 10 15 15 8000 for more information on the number you have dialed and be connected to a new national directory assistance service. Brought to you by Calling 10. Rates exclude universal service fee and administrative recovery fee. The charge on your phone bill will appear as a call to directory assistance to Nevada. You can also dial 10 15 15 8000 702 555 1212. Subject to terms and conditions of service available at www.Calling10.com. For trouble reporting, you can email service@Calling10.com.⁸

4. Many of Calling 10's one million toll-free numbers were substantially similar to existing working numbers or were numbers formerly used by well-known entities.⁹ Therefore, and as described in

³ Telseven, LLC, asserts that it has operated under the trade name Calling 10, and refers to Telseven, LLC, and Calling 10, LLC, collectively as "Calling 10." See Letter from Steven A. Augustino, Counsel to Telseven, to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 1, 7 (Dec. 5, 2011) (on file in EB-TCD-12-00000416). We refer to the collective enterprise as Calling 10 but use the names "Calling 10, LLC" and "Telseven, LLC" when necessary. Calling 10 did not respond to the *NAL*.

⁴ Previously, the Commission also took enforcement action against Telseven, LLC, and Hines for, among other things, failing to contribute fully to the Universal Service Fund, failing to contribute fully to the administration of the North American Numbering Plan and the administration of local number portability, and for failing to pay regulatory fees when due. See *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636 (2012). Telseven, LLC, Calling 10, LLC, and Hines were also investigated by the California Public Utilities Commission (California PUC). See *Decision Different to Modified Presiding Officer's Decision Finding that Corporate Respondents and Patrick Hines Placed Unauthorized Charges on California Telephone Bills and Closing Proceeding*, Investigation 10-12-010, Decision 14-08-033, California PUC (Aug. 14, 2014) (California PUC Order), available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M101/K922/101922573.PDF>, *reh'g denied*, *Order Denying Rehearing of Decision (D.) 14-08-033*, Decision 15-02-040 (Mar. 2, 2015), available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M146/K995/146995070.PDF> (California PUC Order Denying Rehearing) (concluding that the charges placed on consumers' bills by Telseven, LLC, Calling 10, LLC, and Patrick Hines were not authorized and ordering reparations and a fine of \$19,760,000, jointly and severally), *petition for review denied*, *Hines v. Public Utilities Commission*, case no. A144652 (Sept. 1, 2015).

⁵ A more complete summary of the facts can be found in the *NAL*.

⁶ 47 U.S.C. § 201(b).

⁷ As we explained in the *NAL* and below, we treat Hines and the common carrier corporate entity he controlled as the same entity for purposes of finding that he violated Section 201(b) in his personal capacity as a holder of a Section 214 authorization issued by the Commission. See *NAL*, 27 FCC Rcd at 15571–73, paras. 26–31 (finding that Hines was the sole owner, employee, officer, and director, had complete control of Calling 10, organized and dismantled businesses as necessary to avoid liability, and participated directly in the activities described in the *NAL*).

⁸ *NAL*, 27 FCC Rcd at 15561, para. 4.

⁹ *Id.* at 15559, para. 1.

more detail in the *NAL*, consumers were confused by the recording because they never intended to reach Calling 10 and did not understand the nature of the Company's offered service.¹⁰ Calling 10 did not engage in any advertising; consumers therefore reached Calling 10 only by mistake.¹¹ The Company did not offer evidence that any consumer actually used its service to obtain directory assistance.¹² In addition, many complainants who mistakenly reached Calling 10 reported that the Company charged them even though they never called 10 15 15 8000, and all of the complainants stated that they had not authorized the Calling 10 charges on their telephone bills.¹³

5. The Commission concluded that Calling 10's message was misleading and deceptive for several other reasons, including:

- The message failed to disclose that Calling 10 would bill consumers for dialing the dial-around¹⁴ number, without regard to whether the Company provided any actual directory assistance service to them. In fact, Calling 10 routinely billed consumers who hung up the phone without seeking its directory assistance service, if they dialed the 10 15 15 8000 number. As a result, Calling 10 charged complainants without providing any directory assistance service to them at all.¹⁵
- The message did not inform consumers that the number they had been trying to reach was no longer in service, except for purposes of driving traffic to Calling 10's ENADA service; instead, the Company's message implied that that the Calling 10 service was associated with the party the caller was trying to reach.¹⁶
- The message did not clearly and conspicuously disclose the actual fee for the Calling 10 service; the message mentioned \$4.99, but Calling 10 actually charged consumers over \$7.00.¹⁷

6. The *NAL* concluded that Calling 10 and Hines apparently violated Section 201(b) of the Act by cramming charges on consumers' telephone bills and engaging in the unjust and unreasonable practice of deceptively marketing the ENADA service.¹⁸ The *NAL* found that Calling 10 and Hines apparently controlled almost one million toll-free numbers solely to catch consumers who dialed those

¹⁰ *Id.* at 15567, para. 5.

¹¹ *Id.*

¹² *Id.* at 15567–69, paras. 17–22.

¹³ *Id.* at 15564–67, paras. 12–15.

¹⁴ “Dial-around” or “direct access” numbers, such as Calling 10's 10 15 15 8000, allow a telephone subscriber to bypass (i.e., dial around) the subscriber's presubscribed long distance telephone carrier, if any, and instead use (i.e., directly access) the dial-around carrier's service for a particular telephone call. Any toll charges for such calls are assessed by the dial-around carrier or its agent, and not the consumer's presubscribed long distance carrier. The Calling 10 recording only provides a dial-around number for the directory assistance platform, not a number a consumer could dial using his or her own presubscribed long distance carrier (or cell phone). The charges assessed by Calling 10 may be, in whole or in part, the toll charges for the alleged dial-around calls to its directory assistance platform in Nevada.

¹⁵ *NAL*, 27 FCC Rcd at 15565–67, paras. 13–16; *see also, e.g., Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that “membership” and other fees relating to a psychic hotline were not authorized and the consumers had never spoken to anyone at the psychic hotline; such charges were, therefore, unjust and unreasonable and prohibited by Section 201(b) of the Act).

¹⁶ *NAL*, 27 FCC Rcd at 15568, para. 20.

¹⁷ *Id.* at 15569, para. 21.

¹⁸ *Id.* at 15569, para. 22.

numbers, the recorded message was misleading and implied that the dial-around number was associated with the number the caller was trying to reach, and callers were charged over \$7.00 just by dialing the number even though they did not receive directory assistance.¹⁹ The *NAL* proposed a \$1,680,000 forfeiture and concluded that Hines was jointly and severally liable for the proposed forfeiture.²⁰

7. On April 19, 2011, Hines sold certain Calling 10 assets to another company, Assist 123, LLC,²¹ which itself has been the subject of Commission enforcement action.²² On April 20, 2012, before the *NAL* was released, Telseven, LLC, and Calling 10, LLC, filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division.²³

8. Thereafter, on January 23, 2013, Hines filed a timely response, on behalf of himself individually, to the *NAL*.²⁴ In his response, Hines does not discuss the Section 201(b) violations, but contends that the Commission should rescind the proposed forfeiture against him because it did not correctly apply the “piercing the corporate veil” test and that Florida law should apply to this case. Calling 10 did not file a response to the *NAL*.

III. DISCUSSION

9. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,²⁵ Section 1.80 of the Commission’s rules,²⁶ and the Commission’s *Forfeiture Policy Statement*.²⁷ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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.”²⁸ As discussed below, we have fully considered Hines’ response to the *NAL*, but we do not find his arguments persuasive. We therefore affirm the findings and conclusions in the *NAL* that Calling 10 and Hines violated Section 201(b) of the Act,²⁹ and that Hines is jointly and severally liable for the \$1,680,000 forfeiture proposed in the *NAL*.³⁰

¹⁹ *Id.* at 15569, paras. 21–22.

²⁰ *Id.* at 15571–73, paras. 26–31.

²¹ See Letter from Douglas Orvis II, Attorney for Assist 123, Morgan, Lewis, and Bockius, LLP, to Kimberly A. Wild, Assistant Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (July 11, 2012) (on file in EB-TCD-12-00005541).

²² *Assist 123, LLC*, Order and Consent Decree, 29 FCC Rcd 8248 (2014).

²³ Notification from Jason B. Burnett and Paige A. Wagner, Counsel for Calling 10, GrayRobinson, P.A., Notice of Filing Chapter 7 Bankruptcy, U.S. Bankr. Ct., Mid. Dist. Fla., Jacksonville Div., Case No.: 3:11-bk-2682-PMG (Apr. 23, 2012) (on file in EB-TCD-12-00000416) (stating that on April 20, 2012, Telseven, LLC, and Calling 10, LLC, had filed for Chapter 7 bankruptcy). That proceeding remains active.

²⁴ See *NAL* Response. Hines received an extension of time in which to file the *NAL* Response.

²⁵ 47 U.S.C. § 503(b).

²⁶ 47 CFR § 1.80.

²⁷ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁸ 47 U.S.C. § 503(b)(2)(E).

²⁹ 47 U.S.C. § 201(b).

³⁰ As we explained in the *NAL* and below, we treat Patrick Hines and the common carrier corporate entity he controlled as the same entity for purposes of finding that Patrick Hines violated Section 201(b) in his personal capacity as a holder of a Section 214 authorization issued by the Commission. See *NAL*, 27 FCC Rcd at 15571–73, paras. 26–31.

10. Hines does not dispute the facts that support the Section 201(b) violations discussed in the *NAL*. Rather, he argues that the Commission should not hold him personally liable because the test articulated by the Commission “does not form the basis for determining whether an individual owner of a corporate entity is separately liable for a forfeiture of that entity under the Communications Act of 1934, as amended.”³¹ Specifically, Hines argues that the cases cited in the *NAL* in support of “piercing the corporate veil” and imposing liability directly on him do not support the Commission’s conclusion because they do not involve forfeiture orders.³² Hines also attempts to distinguish between cases that involve two corporations and those in which the veil-piercing test is applied to the relationship between an individual and a corporation, as is the case here.³³ The cases nevertheless demonstrate, as we discussed in the *NAL*, that the Commission may hold one entity or individual liable for the acts or omissions of a different, related entity, even when the strict standards of common law alter ego would not apply.³⁴ In addition, the general principle behind piercing the corporate veil in *APCC Services*—that separate corporate structures can be ignored where the purpose of a statutory scheme or regulation would otherwise be frustrated—holds true under the facts here.³⁵

11. We also affirm our finding in the *NAL* that Calling 10 and Hines are jointly and severally liable. As explained in the *NAL*, it is well established that we may hold one entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or shareholders; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Communications Act and to prevent the entities from defeating the purpose of statutory provisions.³⁶ As the U.S. Court of Appeals for the D.C. Circuit held in *Capital Telephone*, “a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience,

³¹ *NAL* Response at 1.

³² *Id.* at 2.

³³ *Id.*

³⁴ See *NAL*, 27 FCC Rcd at 15571–73, paras. 26–31.

³⁵ *APCC Servs.*, Memorandum Opinion and Order, 22 FCC Rcd 4286, 4307, para. 47 (2007).

³⁶ See *NAL*, 27 FCC Rcd at 15571, para. 27. The Commission and the courts have long stated that “[w]here the statutory purpose could . . . be easily frustrated through the use of separate . . . entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation.” *Improving Public Safety Communications in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887–88 (2010) (citing *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971)); see also *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 739 (D.C. Cir. 1974) (*Capital Telephone*) (finding that the FCC correctly treated the individual and the corporation he controlled as the same entity and granted only one license and that “substantial evidence supports the Commission’s decision to pierce Capital’s corporate veil in order to carry out the statutory mandate ‘to provide a fair, efficient, and equitable distribution of radio service.’”). The courts have also looked through the corporate form in analogous situations, such as those of the parent and subsidiaries in *Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d 1313, 1321–22 (5th Cir. 1993) (finding that FERC correctly looked behind corporate forms and treated the parent and subsidiaries as a single entity where the parent pipeline set up subsidiaries to sell gas at prices at which the parent could not legally sell), two corporations that were controlled by one family in *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (concluding that although two newspapers were separate corporations, with separate editorial staffs, and located in communities over fifty miles apart, the FCC correctly denied applications of both corporations when the record showed that one family owned all of the stock in both corporations, the owners took active part in the control and policy formulation of the newspapers, and the true applicant in each case was the same group of individuals), and several corporations used to operate one business in *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (“The fact that several corporations are used in carrying on the business does not relieve them of their several statutory obligations more than it relieves them of the taxes severally laid upon them.”).

justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.”³⁷

12. As in *Capital Telephone*, it is necessary to look beyond the corporate name and take “cognizance of the identity of ownership and control” between Calling 10 and Hines in order to implement core statutory directives and our implementing rules.³⁸ As we discuss below, we affirm the conclusion in the *NAL* that all three of these factors were met in this case.

13. With respect to the first two factors—common identity and common control—the evidence demonstrates that Hines had complete control of Calling 10; was the sole, direct, or indirect owner of Calling 10, and the only officer and director of the Company;³⁹ and repeatedly organized and dismantled related or affiliated businesses.⁴⁰ Hines used the Calling 10 address as his address.⁴¹ Hines executed and signed all transactional documents on behalf of Telseven, LLC, and Calling 10, LLC, including Telseven, LLC’s, Articles of Organization⁴² and its billing and collection contracts.⁴³ He also signed all declarations attesting to the truth and accuracy of his companies’ responses to the Commission.⁴⁴ Hines admits that he was the “managing member” and “only member” of Calling 10; that, other than himself, there were no employees working for Telseven, LLC, or Calling 10, LLC; and that the Company otherwise only had a single consultant in Nevada and a single consultant in California.⁴⁵ Hines does not name any person in his *NAL* Response, other than himself, who would have been responsible for the unauthorized charges on consumers’ telephone bills for the “directory assistance” service.⁴⁶

14. The third criterion for holding an entity or person responsible for the acts of another—the need to preserve the integrity of the Act and to prevent the defeat of the purpose of the statutory provisions at issue—is also clearly satisfied here. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”⁴⁷ The inclusion of unauthorized charges and fees on consumers’ telephone bills is an “unjust and unreasonable” practice under Section 201(b);⁴⁸ additionally, unfair and deceptive marketing practices by interstate common

³⁷ *Capital Telephone*, 498 F.2d at 738.

³⁸ *Id.*

³⁹ *NAL*, 27 FCC Rcd at 15572, para. 29.

⁴⁰ *Id.* at 15571, para. 26.

⁴¹ Hines stated in his deposition that his “current address” was 200 Executive Way, Ponte Vedra Beach, Florida. See *In re Telseven, LLC*, Case No. 3:12-bk-02682-PMG (Bankr. M.D. Fl.), Transcript of Examination of Witness Patrick Brian Hines (Aug. 6, 2012) (Hines Deposition). The same address is listed for Telseven, LLC, on the FCC Form 499-A (filed Apr. 1, 2011), and was also provided for Hines, as President of Telseven, LLC, in the FCC Registration System (CORES) (filed Nov. 6, 2003).

⁴² *NAL*, 27 FCC Rcd at 15572, para. 29. We also note that Calling 10 was undercapitalized, with only \$1000. See California PUC Order at 38 & n.84.

⁴³ *NAL*, 27 FCC Rcd at 15572, para. 29.

⁴⁴ *Id.*

⁴⁵ See Hines Deposition at 12–13, 23–24, 37.

⁴⁶ Similarly, the California PUC found that Hines failed to “identify any business associate, partner, or shareholder other than himself who might have been responsible for the corporate respondents’ unauthorized charges or the scheme which resulted in them.” California PUC Order Denying Rehearing at 6.

⁴⁷ 47 U.S.C. § 201(b).

⁴⁸ See, e.g., *LDDI MO&O*, 15 FCC Rcd at 3302, para. 14; see also *Cheap2Dial Tel., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863 (2011) (finding that the placement of unauthorized monthly charges for
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carriers constitute unjust and unreasonable practices under Section 201(b).⁴⁹ Failure to hold Hines responsible for Calling 10's Section 201(b) violations would eviscerate the prohibition of Section 201(b) as applied to Calling 10, because he and the Company are one and the same, he has attempted to render Calling 10 judgment proof by creating a web of interrelated companies all of which he controlled, and he then caused Calling 10 to file for bankruptcy.

15. As we discussed above and in the *NAL*, Hines was ultimately the sole owner and officer of Calling 10 (and all the related companies he created) and controlled every aspect of the Calling 10 operation.⁵⁰ He directly participated in the deceptive marketing and cramming activities discussed in the *NAL*. He ran the entire scheme where his Responsible Organizations (RespOrgs⁵¹) obtained close to one million toll-free numbers that consumers could inadvertently or mistakenly dial.⁵² He created the misleading and deceptive recording for his so-called directory assistance service. He charged consumers without their authorization for "directory assistance" (when no directory assistance was requested or provided), resulting in a large volume of consumer complaints and subsequent investigations.⁵³

16. Hines established numerous corporations to carry out this fraudulent operation and used Calling 10 as a conduit for his personal interests. Telseven, LLC, and Calling 10, LLC, are both controlled and owned by the Patrick Hines Revocable Trust.⁵⁴ Calling 10, LLC's, Operating Agreement

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dial-around long distance service on consumers' local telephone bills violates Section 201(b)); *Main St. Tel. Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853 (2011) (same); *Norristown Tel. Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844 (2011) (same); *VoiceNet Tel., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874 (2011) (same).

⁴⁹ See, e.g., *STi Telecom Inc. (formerly Epana Networks, Inc.)*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808, 12810, para. 6 (2011) (finding that the marketing materials used to sell prepaid calling cards were misleading and deceptive regarding the rates and charges applicable to the service and therefore violated Section 201(b)), Forfeiture Order, 30 FCC Rcd 11742, 11744-45, paras. 7-10 (2015); *NobelTel, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11760, 11762-63, para. 6 (2012) (same), Forfeiture Order, 30 FCC Rcd 11779, 11780-81, paras. 4-5 (2015); *Locus Telecomms., Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818, 12820-21, para. 7 (2011) (same), Forfeiture Order, 30 FCC Rcd 11805, 11807, para. 6 (2015); *Lycal Tel, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12827, 12829, para. 6 (2011) (same), Forfeiture Order, 30 FCC Rcd 11792, 11794, para. 6 (2015); *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16669, 16671, para. 6 (2011) (same), Forfeiture Order, 30 FCC Rcd 11765, 11767, para. 6 (2015); *Touch-Tel USA, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12836, 12838, para. 6 (2011) (same), Forfeiture Order, 30 FCC Rcd 11730, 11732, para. 6 (2015).

⁵⁰ *NAL*, 27 FCC Rcd at 15571, para. 26.

⁵¹ A RespOrg is responsible for managing a toll-free subscriber's record in the Service Management System database which controls routing on all toll-free telephone numbers and coordinates with the subscriber's toll-free service providers. See 47 CFR § 52.101(b), (d).

⁵² *Id.* at 15561, 15572-73, paras. 3, 29-31.

⁵³ *Id.* at 15565-67, paras. 13-16.

⁵⁴ *Id.* at 15572-73, para. 30. After the Commission began its investigation into the Company's violations, but prior to the issuance of the *NAL*, Hines transferred his membership interests to the Patrick Hines Revocable Trust (Hines Trust). This ownership transfer from Hines to the Hines Trust was disclosed to the Commission during the bankruptcy proceeding. See Burnett Apr. 25, 2012 Letter, *supra* note 11; see also *In re Telseven, LLC, Case No. 3:12-bk-02582-PMG, U.S. Bankr. Ct., Mid. Dist. Fla., Corporate Ownership Statement (Rule 7007.1)* (May 4, 2012) (on file in EB-IHD-14-00014999) (disclosing the Patrick Hines Revocable Trust). Telseven, LLC, is owned by the Hines Trust and it appears that Calling 10, LLC, through a number of intervening entities, is also owned by this trust. Specifically, Calling 10, LLC, is owned by Red Resources, Ltd., a company located at Palm Grove House, P.O. Box 438, Road Town, Tortola, British Virgin Islands, which is owned by Blue Consulting, which in turn is owned by the Hines Trust as well. See *NAL*, 27 FCC at 15572-73, para. 30. See also Testimony of Patrick Hines, Proceeding No. 11012010, Consumer Protection and Safety Division, California PUC at 260 (Nov. 16 and 17, 2011) (continued....)

filed with the State of Delaware provided that 100 percent of net cash from operations was to be paid out for the benefit of its one member, Tarajara Properties—later Red Resources—which was owned 100 percent by Blue Consulting, which was owned by the Patrick Hines Revocable Trust.⁵⁵ Hines established a number of different entities that he would use and terminate at will in the furtherance of his aforementioned cramming scheme, including Levendo, LLC (which entered into the contracts for billing Calling 10, LLC, services and for the Calling 10 directory assistance service);⁵⁶ RespOrgs,⁵⁷ such as Signal One (which secured the toll-free numbers on behalf of Calling 10); and Tarajara Properties, Red Resources, and Blue Consulting (all apparent conduits to the Patrick Hines Revocable Trust).⁵⁸

17. As Calling 10 developed legal problems—through the Commission’s and other law enforcement investigations—Hines sold the assets of the companies⁵⁹ and had the companies file for bankruptcy. The Commission, in order to prevent Hines from defeating the purpose of Section 201(b), must look beyond the Calling 10 corporate name and hold Hines personally liable for the unjust and unreasonable practices he conducted, as discussed in the *NAL*.⁶⁰

18. Hines argues we should not “pierce the corporate veil” to hold an individual owner of a corporate entity liable for the entity’s violations, but rather that the test should only apply when two corporate entities are involved. He asserts that the piercing the corporate veil test “makes no sense with respect to an individual owner of a corporate entity”⁶¹ because all three of the factors would always apply in the case of a small business, making the test meaningless.⁶² We disagree. Among other things, Hines’ argument ignores the objective of the third factor—the “necess[ity] to preserve the integrity of the Communications Act and to prevent the entities from defeating the purpose and provisions of statutory

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(Hines PUC Testimony); Hines PUC Testimony at 302, 430 (stating Calling 10 is owned by Red Resources, which is owned by Blue Consulting, which is in turn owned by the Hines Trust); Hines Deposition at 26 (describing the chain of corporations as “overly complicated, disregarded entities”). Hines also stated that, despite the chain of corporations, he was paid directly by Calling 10. Hines Deposition at 26. In short, even after the transfer of control to the Hines Trust, Hines retained sole control of Calling 10 as the trustee of the Hines Trust, which he managed for his sole benefit as the beneficiary of the Hines Trust. See Testimony of Patrick Hines, Proceeding No. I1012010, Consumer Protection and Safety Division, California PUC at 302, 431 (Nov. 16 and 17, 2011) (stating Hines is the beneficiary of the trust). Moreover, neither the Company nor Hines has disputed that Hines is the sole beneficiary of the Hines Trust. Importantly, Hines and the Company represented to the Commission without equivocation that he was the sole owner of Telseven and controlled the Company. See International Section 214 Application of Telseven, LLC, FCC File No. ITC-214-20040209-00047, Attachment 2, granted Dec. 1, 2005, DA 05-3129, Report No. TEL-00970 (Hines identified as 100% owner of Telseven in Company’s FCC license application) (cited in *NAL*, 27 FCC Rcd at 15559 n.10).

⁵⁵ *NAL*, 27 FCC Rcd at 15572–73, para. 30.

⁵⁶ Calling 10 contracted with Wholesale Carrier Services, Inc. (WCS), to transport the calls to Calling 10’s ENADA platform in Nevada. See Testimony of Rudy Sastra, Proceeding No. I1012010, Consumer Protection and Safety Division, California PUC at 18 & n.38 (July 12, 2011). WCS and ILD Teleservices, Inc., provided the purported directory assistance services. See Hines PUC Testimony at 260.

⁵⁷ Three Calling 10 affiliates were the RespOrgs for Calling 10. See *NAL*, 27 FCC Rcd at 15558, para. 1 n.5.

⁵⁸ *Id.* at 15572–73, para. 30.

⁵⁹ Assist 123, LLC, whose officers include individuals who served as consultants to Calling 10, as well as one of Hines’ relatives, obtained the Calling 10 toll-free numbers one year prior to the Calling 10 bankruptcy. See *Assist 123, LLC*, Order and Consent Decree, 29 FCC Rcd 8248 (2014).

⁶⁰ *NAL*, 27 FCC Rcd at 15573, para. 31.

⁶¹ *NAL* Response at 1-3.

⁶² *Id.*

provisions.”⁶³ Indeed, the test captures individuals similarly situated to Hines because that is who the test is designed to capture—egregious violators of the Act who create sham corporate forms to evade liability. Accepting Hines’ assertion would create a blanket exemption from corporate veil-piercing for the very inequity the doctrine is intended to address. We accordingly conclude that both the three factor test—and our review of the equities—clearly urges piercing Calling 10’s corporate veil, and Hines has provided no basis to disturb that conclusion.⁶⁴

19. Moreover, the D.C. Circuit’s decision in *Capital Telephone* upheld the Commission’s decision to pierce the corporate veil between an individual and his wholly owned corporation. In *Capital Telephone*, the Commission pierced the corporate veil of the Capital Telephone Company, Inc. when both it and its sole owner, Mr. Peter Bakal, sought licenses for the only two high band paging channels available in a certain region of New York. Affirming the Commission, the D.C. Circuit stated “[t]he Commission recognized [that] injustice ... would be done to [a competing applicant] if both the Bakal and Capital applications were granted. This would, in effect, grant to one individual the use of all the most desirable available high-band paging channels in the ... area ...”⁶⁵ The court found that “substantial evidence supports the Commission’s decision to pierce Capital’s corporate veil in order to carry out the statutory mandate ‘to provide a fair, efficient, and equitable distribution of radio service.’”⁶⁶ Here, the Commission is acting to prevent reliance on corporate form to frustrate our efforts to implement core statutory provisions.⁶⁷ Contrary to Hines’ argument, we are not “eviscerat[ing] automatically” corporate legal structures.⁶⁸

20. Hines also argues that the Commission’s goal of promoting small businesses counsels against piercing the corporate veil here.⁶⁹ Hines cannot reasonably rely upon this goal where the small business in question has been willfully and repeatedly “cramming” charges for its service on consumers’ local telephone bills

21. Hines also protests that, “in its almost 80 year history, the FCC has not applied the ‘pierce the corporate veil’ test described in the NAL to find an individual owner ... separately liable for a forfeiture against that entity.”⁷⁰ As discussed above, the applicable standard permits us to pierce the veil of a corporation to reach an individual owner who has acted to undermine the statute under which his company is regulated. It does not, moreover, preclude us from finding that owner liable for a forfeiture and we do so here based upon the clear record before us.

⁶³ Contrary to Hines’ assertion, there are instances where violations would not rise to the level of frustrating the purpose of the Act and thus implicate this test. See *Lockheed Martin Corp.*, Order on Reconsideration, 17 FCC Rcd 13160, 13167, para. 18 (2002) (determining that the public interest would not be served by additional Commission action against a licensee for a minor rule violation); *David A. Davila, et al.*, Memorandum Opinion & Order, 6 FCC Rcd 2897, 2899, para. 10 (1991) (late disclosure of a loan agreement is a minor rule violation that, without more, does not raise a substantial and material question of fact with respect to licensee’s character qualifications). However, egregious violations such as those committed by Hines undoubtedly qualify.

⁶⁴ *Capital Telephone*, 498 F.2d at 737 (“The broad **equitable** standards of the statute, enacted to further public convenience, clearly support the Commission’s decision to look beyond the corporate entity to serve the interests of fairness, justice and **equity**.”) (emphasis added).

⁶⁵ *Capital Telephone*, 498 F.2d at 736.

⁶⁶ *Id.* at 739 (quoting 47 U.S.C. § 307(b)).

⁶⁷ See 47 U.S.C. §§ 159, 251(e)(2), 254(d).

⁶⁸ NAL Response at 3.

⁶⁹ *Id.*

⁷⁰ *Id.* at 2.

22. Finally, Hines contends that because the Company is a Florida limited liability company, the Commission should apply Florida corporate law to determine whether to pierce the corporate veil.⁷¹ We disagree. As an initial matter, the Commission is enforcing federal law, which Calling 10 and Hines violated. Therefore, it is appropriate for the Commission to rely on federal common law, which clearly supports the Commission's decision to pierce the corporate veil.⁷² Even if we were to apply Florida law, the outcome would not be altered, as it is appropriate to pierce the corporate veil under that state's law if "it [can] be shown that the corporation is formed or used for some illegal, fraudulent or other unjust purpose,"⁷³ which accurately describes Calling 10.⁷⁴

23. Hines nonetheless contends that "the [NAL] is devoid of any allegations that Calling 10 was established or used for an improper, illegal or fraudulent purpose."⁷⁵ We disagree. The NAL details how those entities were used to engage in unjust and unreasonable practices in violation of Section 201(b) of the Act. Indeed, the first paragraph of the NAL states that the Commission finds that Hines and Calling 10 "have apparently willfully and repeatedly violated Section 201(b) of the Communications Act . . . by deceptively marketing their . . . service and by 'cramming' charges for that service on consumers' local telephone bills without authorization."⁷⁶ This description is repeated throughout the NAL in describing the relationship between Calling 10 and Hines.⁷⁷ The NAL also describes the deceptive nature of the marketing practices⁷⁸ and emphasizes that such deceptive marketing and cramming were egregious.⁷⁹

24. Hines failed to produce any evidence that a consumer authorized the charges he imposed or obtained directory assistance from his company. As the sole corporate officer and manager, he had the power to correct the fraudulent activities (if, as he contends, the fraud was the corporate activity, rather than his own actions), particularly after consumers complained of the unauthorized charges. He failed to do so, however, and instead continued the deceptive marketing and cramming scheme for many years. In

⁷¹ *Id.* at 4–5.

⁷² See *Ivy Broad. Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (As a result of the Act's comprehensive regulatory scheme, "the duties, charges, and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed solely by federal law," and the states are precluded from acting in this area."); *MCI Telecomms. Corp. v. O'Brien Mktg., Inc.*, 913 F. Supp. 1536, 1541 (federal common law, rather than state law, applies to the issue of piercing the corporate veil in a proceeding interpreting the Act). Hines's reliance on *Stromberg Metal Works v. Press Mech., Inc.*, 77 F.3d 928 (7th Cir. 1996) for his argument that Florida law controls is unavailing. Hines inappropriately seeks to rely on a case subject to federal jurisdiction only because of a diversity of citizenship, as opposed to cases such as *Ivy Broad Co.* and *MCI Telecomms. Corp.*, which pertain to the enforcement of a valid federal statute. In *Stromberg*, the U.S. Court of Appeals for the Seventh Circuit addressed the veil piercing matter as a subsidiary issue to resolving a choice of law question in a contractual dispute. Only after deciding that Illinois law applied because of the controlling contract did the court apply that state's standard for piercing the corporate veil. See *Stromberg*, 77 F.3d at 933–34. And under Illinois law, the corporate veil piercing law of a company's state of incorporation is applied. See *id.* (citing *Kern v. Chicago & Eastern Illinois R.R.*, 6 Ill.App.3d 247, 250–51, 285 N.E.2d 501, 503–04 (1st Dist. 1972)). The laws of the state of incorporation do not always govern corporate veil piercing. See *id.*

⁷³ *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So.2d 1114, 1121 (Fla. 1984) (quoting *Robert's Fish Farm v. Spencer*, 153 So.2d 718, 721 (Fla. 1963)).

⁷⁴ Other cases cited by Hines do not support his argument that the Commission erred in piercing the corporate veil here and merely repeat the same finding quoted above. See, e.g., *Ally v. Naim*, 581 So.2d 961 (Fla. 3d DCA 1991); *Hilton Oil Transport, et al. v. Oil Transport Co.*, 659 So. 2d 1141 (Fla. 3d DCA 1995).

⁷⁵ NAL Response at 5–6.

⁷⁶ NAL, 27 FCC Rcd at 15558, para. 1.

⁷⁷ See e.g., *id.* at 15564, para. 12.

⁷⁸ *Id.* at 15567–69, paras. 17–21.

⁷⁹ *Id.* at 15570, para. 24.

an investigation such as this one, where the corporate enterprise was designed to carry out the fraudulent activities of one person, the activities consisted of deceptive marketing and cramming violations of Section 201(b) of the Act, and the corporation has since sold its assets and then filed for bankruptcy protection, we find that the purpose of the statute would otherwise be frustrated if we permitted Patrick Hines to hide behind his corporate entities and avoid personal liability for such statutory violations.⁸⁰

25. Based on the record before us and in light of the applicable statutory factors, we find that Calling 10 and Hines are jointly and severally liable for a total forfeiture of \$1,680,000. As explained in the *NAL*, this total results from applying a \$40,000 forfeiture for each of the 14 cramming violations that occurred within the 12 months prior to the release date of the *NAL*⁸¹ and applying an upward adjustment⁸² to the forfeiture in light of the scope and egregiousness of the violations.

IV. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁸³ and Section 1.80 of the Commission's rules,⁸⁴ Telseven, LLC, Calling 10, LLC, and Patrick Hines, **ARE JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of one million six hundred eighty thousand dollars (\$1,680,000) for willfully and repeatedly violating Section 201(b) of the Act.

⁸⁰ The imposition of a forfeiture on Hines is also consistent with other cases in which the courts have held corporate officers personally liable for participating in or authorizing an entity's violations of law. *See Texas v. Am. Blastfax*, 164 F. Supp. 2d 892, 897–98 (W.D. Texas 2001) (“[I]f the officer directly participated in or authorized the statutory violation, even though acting on behalf of the corporation, he may be personally liable [for violations of the Telephone Consumer Protection Act]”); *see also* 47 U.S.C. § 153(39) (defining a “person” to include individuals as well as corporate entities); *United States v. Pollution Servs. of Oswego, Inc.*, 763 F.2d 133, 134–35 (2nd Cir. 1985) (“In light of the clear congressional intent to hold ‘person[s]’ liable for violations [of the Rivers and Harbors Appropriations Act], we see no reason to shield from civil liability those corporate officers who are personally involved in or directly responsible for statutorily proscribed activity.”). *See also*. In other contexts, the courts have found the responsible corporate officer of a company to be personally liable for unlawful acts where the corporate officer was in a position of responsibility *vis-à-vis* the illegal conduct, had the power to prevent others from engaging in such conduct or to promptly correct the violation, and failed to take action. *See, e.g., United States v. Hodges X-Ray, Inc.*, 759 F.2d 557, 560–62 (6th Cir. 1985).

⁸¹ *See id.* at 15570–71, para. 25. Section 503(b)(6) of the Act does not empower the Commission to impose a forfeiture for violations that are the subject of an *NAL* and that occurred more than one year prior to the issuance of an *NAL*. For that reason, the forfeiture proposed in the *NAL* was based on the 14 specific apparent “cramming” violations referenced in the *NAL* Appendix that occurred within 12 months of the release date of the *NAL*. Older complaints, however, are relevant to determining the *amount* of the forfeiture to impose for violations that occurred within the last year, as these older violations establish the “extent and gravity of the violations” and the “history of prior offenses” of Calling 10. *See, e.g., Sandhill Communications*, Notice of Apparent Liability, 25 FCC Rcd 17762, 17769, para. 15 n.45 (Enf. Bur. 2010) (noting that Section 503(b)(6) does not bar the Commission from assessing whether a company's conduct prior to the statute of limitations period violated the Act and Commission rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period).

⁸² The upward adjustment is the equivalent of an additional \$80,000 per violation. We are assessing an upward adjustment in light of the deceptive marketing practices; however, we could have found a separate violation of Section 201(b) for each instance of deceptive marketing. Here, we are not imposing penalties for the additional violations, but we consider them to be aggravating factors that also warrant upward adjustments of our base forfeiture amounts. *See, e.g., Tim Gibbons*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11432, 11438, para. 14 (2012).

⁸³ 47 U.S.C. § 503(b).

⁸⁴ 47 CFR § 1.80.

27. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.⁸⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁸⁶

28. 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. Telseven LLC, Calling 10, LLC, and Patrick Hines shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁸⁷ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

29. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer–Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁸⁸ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

⁸⁵ *Id.*

⁸⁶ 47 U.S.C. § 504(a).

⁸⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁸⁸ See 47 CFR § 1.1914.

30. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Christopher J. Greene, attorney for Patrick Hines, at Purcell, Flanagan, Hay and Greene, 1548 Lancaster Terrace, Jacksonville, FL 32204.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary