

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

In the Matter of)	File No. See Appendix I
)	
Annual CPNI Certification)	NAL/Acct. No. See Appendix I
)	
Omnibus Notice of Apparent Liability for Forfeiture and Order)	FRN: See Appendix I

OMNIBUS NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: February 25, 2011

Released: February 25, 2011

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Omnibus Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that the companies listed in Appendix I (“the Companies”), have apparently willfully and repeatedly violated (1) section 64.2009(e) of the Federal Communications Commission’s (“FCC” or “Commission”) rules¹ by failing to submit an annual customer proprietary network information (“CPNI”) compliance certificate, and (2) an Enforcement Bureau (“Bureau”) order by failing to provide certain information regarding their CPNI filings.² Based upon our review of the facts and circumstances surrounding both apparent violations, we find that the Companies are each apparently liable for a monetary forfeiture in the amount of \$29,000. Furthermore, we direct the Companies to file the reports required under section 64.2009(e) of the Commission’s rules that were due March 1, 2009, and March 1, 2010.

II. BACKGROUND

2. Section 222 of the Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers’ proprietary information.³ The Commission has issued rules implementing section 222.⁴ The rules require, among other things, that carriers and entities providing interconnected Voice-over-Internet-Protocol service establish and maintain systems designed to

¹ See 47 C.F.R. § 64.2009(e); 47 U.S.C. § 403.

² See Appendix I listing the dates that the inquiries were sent to the Companies.

³ See 47 U.S.C § 222.

⁴ 47 C.F.R. §§ 64.2001-2011. Section 64.2003(o) of the rules defines “telecommunications carrier” to include a provider of Voice-over-Internet-Protocol service.

ensure that they adequately protect their subscribers' CPNI and file with the Commission annually, on or before March 1, a certification of their compliance with the CPNI rules.⁵

3. According to publicly available information, each of the Companies is a telecommunications carrier. However, based on the record before us, none of the Companies has filed the certification required by the Commission's rules.

4. In late February 2010, as a result of the Companies' apparent noncompliance with the certification filing requirement for calendar year 2008 (due March 1, 2009), the Bureau sent each company a letter advising it of its noncompliance, and directing each "either to provide evidence of its timely filing of the 2008 report, or to file its CPNI compliance certification for calendar year 2008 within 30 days of the date of this letter."⁶ The letter warned that "[f]ailure to comply with this directive may result in monetary penalties."⁷ Based on the record before us, none of the Companies complied with this directive.

5. The letter also reminded each of the Companies about the then-upcoming certification filing requirement for calendar year 2009 (due March 1, 2010), and also warned that "violations of this upcoming filing requirement may result in sanctions including monetary penalties."⁸ Once again, however, based on the record before us, none of the Companies filed a certification for calendar year 2009.

III. DISCUSSION

6. The Companies have apparently violated section 64.2009(e) of the Commission's rules by failing to file the required compliance certifications for both 2008 and 2009 calendar years, and have apparently violated a Bureau order by failing to provide certain information. The Act provides the Commission with broad power to compel carriers to provide "full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created," and to "issue such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions."⁹ Given the purpose of section 222 of the Act in protecting CPNI, and the Commission's implementing rules, the Bureau's order to the Companies to produce information about their 2008 certifications is an order the Commission or its delegate is empowered to issue.

7. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture against a common carrier of up to \$150,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁰ The Commission may assess this penalty

⁵ See 47 C.F.R. § 64.2009(e). See also Enforcement Advisory No. 2011-02, DA 11-159 (rel. January 28, 2011); Enforcement Advisory No. 2010-01, DA 10-91 (rel. January 15, 2010).

⁶ See, e.g., Letter to A2Z Telecom, Inc. from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission mailed February 26, 2010.

⁷ *Id.*

⁸ *Id.*

⁹ 47 U.S.C. §§ 154(i), 218.

¹⁰ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2) (*Amendment of Section 1.80 of the Commission's Rules*, Order, 12 FCC Rcd 1038 (1997)(inflation adjustment to \$100,000/\$1,100,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18,221 (2000)(inflation adjustment to \$120,000/\$1,200,000);); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (inflation adjustment to \$150,000/\$1,500,000)). See also FCC Enforcement Advisory, DA 11-159 (rel. January 28, 2011).

if it determines that the carrier's noncompliance is "willful or repeated."¹¹ For a violation to be willful, it need not be intentional.¹² In exercising our forfeiture authority, we are required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹³ The Commission has established base forfeitures for certain violations in its guidelines, but retains discretion to set the actual amount to impose on a case-by-case basis.¹⁴

8. With respect to determining the forfeiture for the Companies' violation of the Commission's CPNI rules, we note that the Bureau has proposed a penalty of \$20,000 for failure to file a CPNI certification in a given calendar year,¹⁵ and has proposed a fine of \$25,000 for a repeat violation, *e.g.*, when the Commission has previously taken some form of enforcement action, such as issuing an admonishment or a citation, against the violator.¹⁶ Against this backdrop, we propose a forfeiture of \$25,000 against each of the Companies at issue in this NAL. While we have not previously issued a citation, admonishment, or NAL against any of them for a violation of the Commission's CPNI rules, we have advised each of the Companies, through the letters we sent in early 2010, that they appeared to be in noncompliance with our rules for calendar year 2008, and we reminded them of the then-upcoming filing requirement for calendar year 2009. Further, notwithstanding the section 503(b)(6) one-year statute of limitations for assessing forfeitures,¹⁷ we are permitted in this NAL to consider the Companies' failure to file the certification required for calendar year 2008 (due March 1, 2009) for two different reasons. First, section 503(b)(2)(E) not only permits, but indeed *requires*, us to consider an entity's past violations in determining a forfeiture penalty: "the Commission or its designee *shall* take into account . . . with respect to the violator, *any history of prior offenses* . . ."¹⁸ Second, in a number of recent actions, the Commission has held that the failure to file forms is a continuing violation until cured,¹⁹ *i.e.*, the Companies at issue in this NAL continue to violate the certification filing requirement for 2008 until they file the certification. Accordingly, we find that an adjustment upward from the \$20,000 forfeiture we have proposed for failure to file a CPNI certification is therefore warranted.

9. With respect to determining the forfeiture for the Companies' violation of a Commission order to provide information, we note that the Commission's base forfeitures for failing to respond to Commission communications is \$4,000.²⁰ Based on each of the Companies' failure to respond to the

¹¹ See 47 U.S.C. § 503(b)(1)(B).

¹² *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

¹³ See 47 U.S.C. § 503(b)(2)(E); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17100-17101 (1997) ("*Forfeiture Policy Statement*"); *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁴ *Forfeiture Policy Statement*, 12 FCC Rcd 17098-99, ¶ 22.

¹⁵ *Annual CPNI Certification, Omnibus Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 2299 (*Enf. Bur.* 2009).

¹⁶ For the annual CPNI certifications for calendar year 2008, the Bureau issued NALs in the amount of \$25,000 against the carriers that failed to file for both calendar year 2007 and 2008. See *Omnibus Notice of Apparent Liability for Forfeiture*, 25 FCC Rcd 1790 (*Enf. Bur.* 2010).

¹⁷ 47 U.S.C. § 503(b)(6).

¹⁸ 47 U.S.C. § 503(b)(2)(E)(emphasis added).

¹⁹ *Compass Global, Inc.*, 23 FCC Rcd 6125, 6139 (2008); *Telrite Corp.*, 23 FCC Rcd 7231, 7244 (2008); *VCI Co.*, 22 FCC Rcd 15933, 15940 (2007).

²⁰ See 47 C.F.R. § 1.80(b)(4).

Bureau's letter containing the order to provide information, we believe that an additional \$4,000 forfeiture on top of the \$25,000 for failure to file a certification is appropriate.

10. Accordingly, we propose a forfeiture of \$29,000 against each of the Companies. We further order each of the Companies to file the certifications required by section 64.2009(e) of the Commission's rules within 30 days of the date of this NAL. Failure to file such certifications may result in further enforcement actions by the Bureau.

IV. CONCLUSION

11. We have determined that the Companies set forth in Appendix I of this NAL and Order have apparently willfully or repeatedly violated section 64.2009(e) of the Commission's rules and have apparently willfully or repeatedly violated a Bureau order by failing to provide certain information. We find each of the Companies apparently liable for a forfeiture of \$29,000.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED THAT**, pursuant to section 503(b) of the Act,²¹ section 1.80 of the Commission's rules,²² and authority delegated by sections 0.111 and 0.311 of the Commission's rules,²³ each Company listed in Appendix I of this Order is hereby **NOTIFIED** of their **APPARANT LIABILITY FOR A MONETARY FORFEITURE** in the amount of twenty nine thousand dollars (\$29,000) each for willfully and repeatedly violating section 64.2009(e) of the Commission's rules by failing to submit annual compliance certificates, and willfully and repeatedly violating a Bureau order by failing to provide certain information.

13. **IT IS FURTHER ORDERED THAT**, pursuant to section 1.80 of the Commission's rules,²⁴ within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, each of the Companies listed in Appendix I of this Order **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED THAT**, pursuant to sections 4(i) and 4(j) of the Act and section 64.2009(e) of the Commission's rules, the companies in Appendix I **SHALL SUBMIT** the reports required under section 64.2009(e) of the Commission's rules that were due March 1, 2009, and March 1, 2010 within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*. The report must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Acct. No. referenced in the caption. A copy of the report must also be emailed to Richard A. Hindman at Richard.Hindman@fcc.gov and Kimberly Wild at Kimberly.Wild@fcc.gov.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in Attachment I. Payment by check or money order may be mailed

²¹ 47 U.S.C. § 503(b).

²² 47 U.S.C. § 1.80.

²³ 47 C.F.R. §§ 0.111, 0.311.

²⁴ 47 C.F.R. § 1.80.

to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). The Companies will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. 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, Division 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.

17. 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.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture and Order* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the Companies’ addresses of record.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

APPENDIX I

Case Name	EB File Number	FRN	Date Sent	NAL Acct Number
A2Z Telecom, Inc.	EB-10-TC-022	0017898669	2/26/2010	201132170014
Civicom, Inc.	EB-10-TC-086	0018221515	2/25/2010	201132170013
Communications Masters, Inc	EB-10-TC-096	0016305435	2/26/2010	201132170012
Conversenetworks, LLC	EB-10-TC-105	0018114249	2/26/2010	201132170011
Canopco, Inc.	EB-10-TC-073	0017960725	2/25/2010	201132170010
EnterConference	EB-10-TC-138	0018083949	2/25/2010	201132170009
ESLITE Networks, LLC	EB-10-TC-144	0017665217	2/25/2010	201132170008
Jahan Telecommunication	EB-10-TC-194	0020537387	2/26/2010	201132170007
Owtel, Inc.	EB-10-TC-248	0016273583	2/26/2010	201132170006
ReadyTalk	EB-10-TC-278	0020537395	2/26/2010	201132170005