

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

In the Matter of)	
)	File No. EB-08-IH-5217
)	
Teleplus, LLC)	NAL/Acct. No. 200932080046
)	
)	FRN No. 0014157283
Apparent Liability for Forfeiture)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 4, 2009

Released: June 4, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Teleplus, LLC (“Teleplus”) apparently violated section 214 of the Communications Act of 1934, as amended (the “Act”)¹ and section 63.18 of the Commission’s rules by willfully or repeatedly failing to obtain an international section 214 authorization before providing international telecommunications service.² Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Teleplus is apparently liable for a total forfeiture of \$100,000.

II. BACKGROUND

2. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” require, or will require, the construction, extension, or operation of the line.³ While the Commission has granted “blanket” authority to carriers providing domestic service,⁴ meaning that such carriers need not apply to the Commission for such authority before providing domestic service, the

¹ 47 U.S.C. § 214.

² 47 C.F.R. § 63.18.

³ 47 U.S.C. § 214(a).

⁴ 47 C.F.R. § 63.01(a) (“Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.”).

Commission has not done the same for providers of international telecommunications services.⁵ Rather, section 63.18 of the Commission's rules requires that any carrier that seeks section 214 authority "for provision of common carrier communication services between the United States, its territories or possessions, and a foreign point shall request such authority by application."⁶ Through this process the applicant provides the Commission with, among other things, contact information, ownership information, information on any affiliations it may have with foreign carriers, certification that it will comply with Commission rules, and certification that the applicant is not subject to denial of Federal benefits pursuant to the Anti-Drug Abuse Act of 1988.⁷ The application requirement applies to carriers that resell the service of another authorized carrier,⁸ and to domestic providers of wireless telecommunications service that also provide international telecommunications service.⁹

3. Teleplus is a Florida-based company that has provided international telecommunications services since May 2005.¹⁰ Teleplus provides prepaid calling cards that are mainly used by consumers to make U.S. interstate, intrastate, and international telephone calls. Teleplus sells its prepaid calling cards directly to consumers through the www.teleplusllc.com and www.callingcardplus.com web sites, as well as through distributors and resellers.¹¹

4. On February 17, 2006, Teleplus submitted an application for international section 214 authority, in which it stated that it had not previously received authority under section 214 of the Act.¹² Because Teleplus was owned by foreign nationals, the application was referred to the Executive Branch for review for national security, law enforcement, foreign policy, and trade concerns.¹³ During the course of Executive Branch review, while its 214 application was still pending, Teleplus represented to the

⁵ *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion & Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11366 n.8 (1999) (grant of blanket authority is only for domestic services and does not extend to the provision of international services).

⁶ 47 C.F.R. § 63.18.

⁷ *See id.*

⁸ *See id.* § 63.18(e)(2).

⁹ *1998 International Biennial Regulatory -- Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909, 4926-27, ¶¶ 38-39 (1999) ("*1998 International Biennial Review Order*"). *See also Personal Communications Indus. Ass'n's Broadband Personal Communications Servs. Alliance's Pet. for Forbearance for Broadband Personal Communications Servs.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16881-84, ¶¶ 45-54 (1998) (declining PCIA's request to forbear from requiring section 214 authority for a broadband PCS carrier to provide international services) ("*PCIA Forbearance Order*"); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Servs.*, Second Report and Order, 9 FCC Rcd 1411, 1481, ¶ 182 n.369 (1994) (declining to forbear from application of section 214 to CMRS carriers' provision of international services).

¹⁰ *See Response of Teleplus, LLC. to the Enforcement Bureau's March 30, 2009 Letter of Inquiry* (Apr. 10, 2009) ("*LOI Response*"), Response to Inquiry No. 6.

¹¹ *See* E-mail from Anteneh "Alonzo" T. Beyene, Regulatory Consultant to Teleplus, Regnum Group, Inc., to Jennifer Rockoff, National Security Division, U.S. Department of Justice and Mikelle Morra, International Bureau, FCC (May 15, 2008).

¹² *See* File No. ITC-214-20060217-00099.

¹³ *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, ¶¶ 61-66 (1997), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

Department of Justice and the Commission's International Bureau that it had accumulated a customer base of at least 1,000 retail end users and had earned several million dollars in revenue from its prepaid calling card services in calendar year 2007 alone.¹⁴ The International Bureau granted Teleplus's section 214 application on June 19, 2008 after the conclusion of Executive Branch review, without prejudice to subsequent enforcement action by the Commission for non-compliance with the Act or the Commission's rules.¹⁵

5. On March 30, 2009, the Commission's Enforcement Bureau ("Bureau") issued a letter of inquiry ("LOI"), initiating an investigation into whether Teleplus may have violated the Act and the Commission's rules pertaining to the provision of international telecommunications service.¹⁶ Teleplus responded to the LOI on April 10, 2009.¹⁷

III. DISCUSSION

6. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁸ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁹ The legislative history of section 312(f)(1) of the Act clarifies that this definition applies to both sections 312 and 503(b) of the Act²⁰ and the Commission has so interpreted the term in the section 503(b) context.²¹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²² "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²³ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been

¹⁴ See E-mail from Anteneh "Alonzo" T. Beyene, Regulatory Consultant to Teleplus, Regnum Group, Inc., to Mikkelle Morra, International Bureau, FCC (Mar. 13, 2008); E-mail from Anteneh "Alonzo" T. Beyene, Regulatory Consultant to Teleplus, Regnum Group, Inc., to Jennifer Rockoff, National Security Division, U.S. Department of Justice and Mikkelle Morra, International Bureau, FCC (May 15, 2008).

¹⁵ See *International Authorizations Granted*, Public Notice, Rep. No. TEL-01280, DA No. 08-1441 (rel. June 19, 2008).

¹⁶ See Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Amr Ibrahim, Teleplus, LLC (Mar. 30, 2009) ("LOI").

¹⁷ See LOI Response.

¹⁸ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); see also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

¹⁹ 47 U.S.C. § 312(f)(1).

²⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²¹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

²² See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision, Inc.*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

²³ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁴ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁵

7. The fundamental issue in this case is whether Teleplus apparently violated the Act and the Commission's rules by willfully or repeatedly failing to obtain an international section 214 authorization before providing international telecommunications service, as required by section 63.18 of the Commission's rules. We answer this question in the affirmative. Based on the preponderance of the evidence, we conclude that Teleplus is apparently liable for a forfeiture of \$100,000 for apparently willfully or repeatedly violating section 214 of the Act and section 63.18 of the Commission's rules.²⁶

A. Teleplus Apparently Failed to Obtain an International Section 214 Authorization Before Providing International Telecommunications Service

8. We find that Teleplus provided international telecommunications service without an international section 214 authorization from May 2005 until June 18, 2008. In the *LOI Response*, Teleplus states that it began providing international telecommunications service in May 2005.²⁷ However, Teleplus did not apply for international section 214 authority until February 17, 2006, and stated in the application that it had not previously been granted such authority.²⁸ Moreover, even though it continued to provide international telecommunications service, Teleplus failed to apply for Special Temporary Authority from the Commission while its application was pending, further aggravating its apparent violation. Furthermore, in response to the Bureau's request for a list of all international section 214 authorizations held by Teleplus, the company listed only the authorization granted on June 18, 2008.²⁹ Thus, Teleplus apparently provided international telecommunications service without Commission-granted international section 214 authority from May 2005 to June 18, 2008. We therefore conclude based on a preponderance of the evidence that Teleplus has apparently willfully violated section 214 of the Act and section 63.18 of the Commission's rules.

B. Proposed Forfeiture Amount

9. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.³⁰ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.³¹ In determining the

²⁴ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(F).

²⁵ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²⁶ 47 U.S.C. § 214; 47 C.F.R. § 63.18.

²⁷ *LOI Response*, Response to Inquiry No. 6.

²⁸ See ¶ 4 *supra*.

²⁹ *LOI Response*, Response to Inquiry No. 4.

³⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

³¹ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2); see also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000). These are the statutory maxima in effect for the period of the apparent violation.

appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “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.”³²

10. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this NAL.³³ Nevertheless, section 503(b) does not bar us from assessing whether Teleplus’s conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.³⁴ Therefore, although we find that Teleplus apparently violated the Act and our rules for over three years, we propose forfeitures here only for violations that occurred within the last year.

11. We conclude that Teleplus has apparently failed to obtain an international section 214 authorization from the Commission prior to providing international telecommunications service. A carrier’s failure to obtain the 214 authorization undermines the Commission’s ability to accomplish Congress’ objectives in section 214 of the Act. Teleplus apparently operated as an international telecommunications service provider from May 2005 until June 18, 2008 without authorization from the Commission. We therefore find that this apparent violation of the Act and the Commission’s rules was repeated. Given the unambiguous language of the Act,³⁵ the Commission’s rules and decisions,³⁶ and even the Commission’s web site,³⁷ it should have been apparent to Teleplus that it was required to obtain section 214 authority from the Commission to provide international telecommunications service.

12. In light of the Commission’s clear requirements, and the important public interest considerations involving national security, law enforcement, foreign policy, and trade policy,³⁸ we find that Teleplus’s failure to obtain section 214 authority from the Commission prior to providing international telecommunications service was also egregious. We also find that a proposed forfeiture must be large enough to have a deterrent effect on companies with gross revenues commensurate with those of Teleplus.³⁹ Pursuant to the Commission’s mandate from Congress to consider “the nature, circumstances,

³² 47 U.S.C. § 503(b)(2)(E).

³³ 47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

³⁴ *See, e.g., Globecom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903, ¶ 23 (2003); *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671, ¶ 8 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37, ¶ 3 (1967).

³⁵ 47 U.S.C. § 214(a).

³⁶ *See, e.g.*, 47 C.F.R. §§ 63.12, 63.18, 63.20, 63.21, 63.23; *see also* 1998 *International Biennial Review Order*, 14 FCC Rcd 4909; *Regulation of Int’l Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992) (“*International Resale Order*”).

³⁷ For example, the Commission’s website has a list of frequently asked questions about section 214 applications for providers of international telecommunications services. *See* <http://www.fcc.gov/ib/pd/pdf/214faq.html>. Among the questions and answers are the following: “Question: If I am merely reselling the international services of another carrier, do I have to file a section 214 application? Answer: Yes, including in the case of mobile international services. Refer to 47 CFR § 63.18(c)(2), global resale service.”

³⁸ *See* 1998 *International Biennial Review Order*, 14 FCC Rcd at 4915-17, ¶¶ 15-18; *id.* 4939-40, ¶¶ 72-74.

³⁹ *See* ¶ 4 *supra*; *LOI Response*, Response to Inquiry No. 7 (providing revenue data for 2006 through the first quarter of 2009).

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,⁴⁰ we find that, consistent with prior precedent for entities failing to receive prior authorization from the International Bureau, a proposed forfeiture of \$100,000 is warranted for Teleplus's apparent willful repeated failure to obtain section 214 authority from the Commission prior to providing international telecommunications service.⁴¹

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED THAT, 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, and the authority delegated by section 0.111 of the Commission's rules, 47 C.F.R. § 0.111, Teleplus, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$100,000 for willfully and repeatedly violating the Act and the Commission's rules.

14. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁴² within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Teleplus, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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 above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYCC, 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). 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. Teleplus will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov.

16. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. Teleplus also will e-mail an electronic copy of its response to Hillary.DeNigro@fcc.gov.

⁴⁰ 47 U.S.C. § 503(b)(2)(E).

⁴¹ *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Red 8689, 8703, ¶35 (2007); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 09-1, ¶ 38 (rel. Jan. 14, 2009); *Omnia International Telecom, LLC d/b/a OMNIAT Telecom*, Notice of Apparent Liability for Forfeiture and Order, FCC 09-26, ¶ 25 (rel. Mar. 31, 2009).

⁴² See 47 C.F.R. § 1.80.