

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

In the Matter of)	File No.: EB-TCD-12-00000286 ¹
)	
Jahan Telecommunication, LLC)	NAL/Acct. No.: 201132170007
)	
Apparent Liability for Forfeiture)	FRN: 0020537387
)	

ORDER OF FORFEITURE

Adopted: June 12, 2012

Released: June 12, 2012

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$29,000 against Jahan Telecommunication, LLC (Jahan). Jahan has willfully and repeatedly violated Section 222 of the Communications Act of 1934, as amended (Communications Act or Act),² Section 64.2009(e) of the Federal Communications Commission's (FCC's or Commission's) rules³ and the Commission's *EPIC CPNI Order*⁴ by failing to submit annual customer proprietary network information (CPNI) compliance certificates for both 2008 and 2009, and failing to respond to an Enforcement Bureau (Bureau) order to file certain information regarding its CPNI filings.

2. Jahan is a telecommunications carrier and interconnected VoIP provider located in Mclean, Virginia.⁵ Pursuant to Section 64.2009(e) of the Commission's rules, every telecommunications carrier, including interconnected VoIP providers must file annually on or before March 1 of each year a CPNI compliance certificate.⁶ Based on the record before us, Jahan has failed to file the required CPNI certification for the calendar years 2008 and 2009.

¹ This case was formerly assigned the file number EB-10-TC-194. In January 2012, the Telecommunications Consumers Division assigned the case a new file number.

² 47 U.S.C. § 222.

³ 47 C.F.R. § 64.2009(e).

⁴ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953-54, paras. 51-53 (2007) (*EPIC CPNI Order*), *aff'd sub nom. Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996 (D.C. Cir. 2009).

⁵ See Jahan Products Page, <http://jahantel.com/products.php> (last visited May 30, 2012).

⁶ 47 C.F.R. § 64.2009(e), 47 C.F.R. § 64.2003(o).

II. BACKGROUND

3. Section 222 of the Communications Act imposes the general duty on all telecommunications carriers to protect the confidentiality of their subscribers' proprietary information.⁷ As part of that obligation, carriers that receive or obtain CPNI through the provision of telecommunications or interconnected VoIP service can only use, disclose, or allow access to that information in connection with or to provide such telecommunications services.⁸

4. The Commission adopted rules implementing Section 222 of the Act.⁹ Section 64.2009 of these rules requires carriers to establish and maintain a system designed to ensure that they adequately protect their subscribers' CPNI.¹⁰ Prior to the *EPIC CPNI Order*, Section 64.2009(e) of the Commission's rules required telecommunications carriers such as Jahan to maintain and make publicly available annual certifications of their CPNI compliance.¹¹ The *EPIC CPNI Order* strengthened the CPNI rules by adding additional safeguards to protect CPNI against unauthorized access and disclosure, including an obligation that carriers subject to the CPNI rules file their annual certification with the Commission on or before March 1 of each year.¹² Additionally, as part of their annual certification filing, carriers are required to provide "an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI."¹³

5. As a result of Jahan's failure to file its 2008 CPNI compliance certificate on or before March 1, 2009, the Bureau sent Jahan a letter advising it of its noncompliance and directing it "either to provide evidence of its timely filing of the 2008 report, or to file its CPNI compliance certification for

⁷ Section 222 of the Communications Act provides: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier." 47 U.S.C. § 222(a). *See also* 47 C.F.R. § 64.2003(o) (extending the Commission's CPNI rules to VoIP carriers).

⁸ *See* 47 U.S.C. § 222(c). The Act defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship" and "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier" excluding subscriber list information. *Id.* § 222(h)(1)(A)–(B). The Act provides for certain limited exceptions to a carrier's obligation to protect CPNI. *See id.* § 222(d).

⁹ *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998); *EPIC CPNI Order*, 22 FCC Rcd 6927; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999).

¹⁰ *See* 47 C.F.R. § 64.2009.

¹¹ *See EPIC CPNI Order*, 22 FCC Rcd at 6953–54, para. 52.

¹² *Id.* at 6953, para. 51; 47 C.F.R. § 64.2009(e).

¹³ *EPIC CPNI Order*, 22 FCC Rcd at 6953, para. 51.

calendar year 2008 within 30 days of the date of [the] letter.”¹⁴ The letter warned: “Failure to comply with this directive may result in monetary penalties.”¹⁵ Notwithstanding the Bureau’s warning, Jahan failed to comply by filing a CPNI compliance certificate or evidence of compliance with the Commission’s CPNI rules. The letter also reminded Jahan about the then-upcoming certification filing requirement for calendar year 2009 (due March 1, 2010) and warned that “violations of [the] upcoming filing requirement [might] result in sanctions including monetary penalties.”¹⁶ Jahan failed to file its compliance certification for calendar year 2009.

6. On February 25, 2011, the Bureau released the *Omnibus NAL* against several companies including Jahan proposing a monetary forfeiture of \$29,000 for the apparent failure to comply with Section 64.2009(e) of the Commission’s rules, and the Commission’s *EPIC CPNI Order*, and for failure to respond to a request for certain information regarding the companies’ CPNI filings.¹⁷ The Bureau ordered Jahan to either pay the proposed forfeiture or file a written response within 30 days of the release date stating why the proposed forfeiture should be reduced or canceled.¹⁸ Jahan did not pay the forfeiture or submit a response to the *Omnibus NAL*.

III. DISCUSSION

7. Section 64.2009(e) of the Commission’s rules requires telecommunications carriers, such as Jahan, to file annually before March 1 a CPNI compliance certification signed by an officer of the carrier.¹⁹ We find that Jahan failed to comply with this Commission rule for calendar years 2008 and 2009. Under Section 503(b) of the Communications Act and Section 1.80 of the Commission’s rules, the Commission may 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.²⁰ The Commission may assess this penalty if it determines that the carrier’s noncompliance is willful or repeated.²¹ For a violation to be willful, it need not be intentional.²² 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.”²³ In addition, the Commission has established guidelines for forfeiture amounts

¹⁴ Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Jahan Telecommunications, LLC (Feb. 25, 2010) (on file in EB-TCD-12-00000286).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2160 (Enf. Bur. 2011) (*Omnibus NAL*).

¹⁸ See *id.* at 2163, para 13.

¹⁹ See 47 C.F.R. § 64.2009(e); accord *EPIC CPNI Order*, 22 FCC Rcd at 6953–54, paras. 51–53.

²⁰ See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2); see also *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); FCC Enforcement Advisory No. 2011-02, 26 FCC Rcd 650 (Enf. Bur. 2011).

²¹ See 47 U.S.C. § 503(b)(1)(B).

²² See, e.g., *Media Gen. Commc’ns Holdings, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 6136, 6137–38, para. 6 (2010) (quoting 47 U.S.C. 312(f)(1)) (explaining that the legislative history of Section 312(f)(1) makes clear the same “definition of willful applies to both Sections 312 and 503(b) of the Act”); accord *So. Cal. Broad. Co. Licensee, Radio Station KIEV (AM) Glendale, Cal.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991) (“*Southern California Broadcasting*”).

²³ 47 U.S.C. § 503(b)(2)(E); see *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, 12 FCC Rcd 17087, 17100–101, para. 27 (1997) (*Forfeiture Policy Statement*).

and, where there is no specific base amount for a violation, we retain discretion to set an amount on a case-by-case basis.²⁴

8. The Commission's *Forfeiture Policy Statement* does not establish a base forfeiture amount for the failure to timely file an annual CPNI certification. The \$3,000 base forfeiture amount suggested in the Commission's *Forfeiture Policy Statement* for failure to file documents generally is inadequate when applied to a failure to file CPNI certifications. Failure to file the annual CPNI certification jeopardizes the Commission's ability to effectively monitor and respond to violations of consumer privacy. The annual certification filing obligation is specifically intended to "ensure that carriers regularly focus their attention on their duty to safeguard CPNI" and allow the Commission to "monitor the industry's response to CPNI privacy issues and to take any necessary steps to ensure that carriers are managing customer CPNI securely."²⁵ We find that Jahan has not only failed to comply with a Bureau order but also failed to file its annual certification for calendar years 2008 and 2009, notwithstanding the Bureau's notice and warning. We find that Jahan's history of non-compliance with the Commission's rules affirms our forfeiture decision in the *Omnibus NAL*.

9. In the *Omnibus NAL*, the Bureau took into account the statutory factors for determining a forfeiture amount, Commission precedent involving violations of our CPNI rules, and the fact that protection of a subscriber's CPNI is an important carrier obligation and the certification filing is an important part of that obligation.²⁶ Based on these criteria, the Bureau proposed a forfeiture of \$25,000 against Jahan for failing to file annual CPNI certifications. With respect to determining the forfeiture for Jahan's violation of a Commission order to provide information, the Commission's base forfeiture for failing to respond to Commission communications is \$4,000.²⁷ Taking both sets of apparent violations into account, the *Omnibus NAL* proposed a total forfeiture amount of \$29,000. That amount is consistent with other recent forfeiture orders and the Commission's rules.²⁸ As Jahan neither paid the forfeiture nor filed a response to the *Omnibus NAL*, we find no reason why we should not impose the forfeiture as proposed in the *Omnibus NAL*.

IV. CONCLUSION

10. For the foregoing reasons, we find Jahan has willfully and repeatedly violated Section 222 of the Communications Act, Section 64.2009(e) of the Commission rules and the Commission's *EPIC CPNI Order* by failing to submit annual CPNI compliance certificates for the calendar years 2008 and 2009, and by failing to respond to a Bureau order to submit certain information regarding Jahan's CPNI filings. We assess a monetary forfeiture of \$29,000 against Jahan.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b)(1) of the Act,²⁹ and Sections 0.111, 0.311 and 180(f)(4) of the Commission's rules,³⁰ Jahan Telecommunication, LLC **IS**

²⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22.

²⁵ *EPIC CPNI Order*, 22 FCC Rcd at 6953, para. 51.

²⁶ See *Omnibus NAL*, 24 FCC Rcd at 2162, para. 8; *EPIC CPNI Order*, 22 FCC Rcd at 6953, para. 51.

²⁷ See 47 C.F.R. § 1.80(b)(4).

²⁸ 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); 47 C.F.R. § 1.80(b)(4).

²⁹ 47 U.S.C. § 503(b)(1).

³⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

LIABLE FOR A MONETARY FORFEITURE in the amount of twenty-nine thousand dollars (\$29,000) for willfully and repeatedly violating Section 222 of the Act,³¹ Section 64.2009(e) of the Commission's rules,³² and the Commission's *EPIC CPNI Order*³³ and for failing to provide certain information regarding its CPNI filings in response to a Commission order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁴

12. Payment of the forfeiture must be made by check, credit card, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Regardless of the form of payment, 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). Jahan shall also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. 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 e-mail: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

13. **IT IS FURTHER ORDERED** that a copy of this Order of Forfeiture shall be sent by Certified Mail Return Receipt Requested and First-Class Mail to Jahan Telecommunication, LLC at 1637 Great Falls Street, Mclean, VA, 22101.

FEDERAL COMMUNICATIONS COMMISSION

Richard A. Hindman
Chief
Telecommunications Consumers Division
Enforcement Bureau

³¹ 47 U.S.C. § 222.

³² 47 C.F.R. § 64.2009(e).

³³ *EPIC CPNI Order*, 22 FCC Rcd at 6953–54, paras. 51–53.

³⁴ 47 U.S.C. § 504(a).