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

In the Matter of	)	
	)	
Presidential Who's Who	)	File No. EB-08-TC-2507
dba Presidential Who's Who, Inc.	)	
	)	NAL/Acct. No. 201032170005
Apparent Liability for Forfeiture	)	FRN: 0020197919
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 13, 2010 **Released: September 13, 2010**

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"),[1] we find that Presidential Who's Who dba Presidential Who's Who, Inc. ("Presidential Who's Who")[2] apparently willfully and repeatedly violated section 227 of the Communications Act of 1934, as amended ("Act"), and the Commission's related rules and orders, by delivering at least seventy-three unsolicited advertisements to the telephone facsimile machines of at least sixty-nine consumers.[3] Based on the facts and circumstances surrounding these apparent violations, we find that Presidential Who's Who is apparently liable for a forfeiture in the amount of $345,000. Presidential Who's Who will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.

[1] *See* 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act ...." *See also* 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person's place of residence; and (C) subsequently engages in conduct of the type described in the citation).

[2] According to publicly available information, Presidential Who's Who is also doing business as Presidential Who's Who, Inc. Therefore, all references in this NAL to "Presidential Who's Who" encompass Presidential Who's Who as well as Presidential Who's Who, Inc. Presidential Who's Who has offices at 2927 Queens Plaza, Long Island City, NY 11101 and 140 Rockaway Parkway, Valley Stream, NY 11580. Mark Anthony McFallen is listed as the contact person for Presidential Who's Who. Accordingly, all references in this NAL to Presidential Who's Who also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

[3] *See* 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3); *see also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order and Third Order on Reconsideration*, 21 FCC Rcd 3787 (2006) ("*2006 TCPA Order*").

II. BACKGROUND

2. Section 227(b)(1)(C) of the Act makes it "unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement."[4] The term "unsolicited advertisement" is defined in the Act and the Commission's rules as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission in writing or otherwise."[5] Under an exception to the general prohibition in the Commission's rules, a party may deliver unsolicited advertisements to persons with whom it has an "established business relationship"[6] if certain conditions are met (*i.e.*, the sender obtained the number of the facsimile machine either (i) through a voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or (ii) through a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.)[7]

3. On June 18, 2008, in response to one or more consumer complaints alleging that Presidential Who's Who had faxed unsolicited advertisements, the Enforcement Bureau ("Bureau") issued a citation[8] to Presidential Who's Who, pursuant to section 503(b)(5) of the Act.[9] The Bureau cited Presidential Who's Who for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements for entry in and sale of the publication "Presidential Who's Who" to a telephone facsimile machine, in violation of section 227 of the Act and the Commission's related rules and orders. The citation warned Presidential Who's Who that subsequent violations could result in the imposition of monetary forfeitures of up to $11,000 per violation, and included a copy of the consumer complaints that formed the basis of the citation.[10] The citation informed Presidential Who's Who that within 30 days of the date of the citation, it could either request an interview with Commission staff, or provide a written statement responding to the citation. Frank Ciaccio, on behalf of Presidential Who's Who, requested an interview and claimed that the fax on which the citation was based was not an advertisement.[11]

---

[4] 47 U.S.C. § 227(b)(1)(C); *see also* 47 C.F.R. § 64.1200(a)(3).

[5] 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13).

[6] An "established business relationship" is defined as a prior or existing relationship formed by a voluntary two-way communication "with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party." 47 C.F.R. § 64.1200(f)(5); *see also* 47 U.S.C. § 227(a)(2).

[7] *See* 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

[8] Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-08-TC-2507, issued to Presidential Who's Who on June 18, 2008.

[9] *See* 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or who are not applicants for any of those listed instrumentalities for violations of the Act or of the Commission's rules and orders).

[10] Bureau staff mailed the citation to the following address: Presidential Who's Who, 2927 Queens Plaza, Long Island City, NY 11101. *See* note 2, *supra*. As indicated below, *see infra* note 14, for violations occurring after September 2, 2008, the forfeiture maximum has since been increased to $16,000 per violation.

[11] Telephone interview conducted on July 11, 2008 between Frank Ciaccio, representing Presidential Who's Who, and Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, and Mary (continued....)

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have received additional consumer complaints indicating that Presidential Who's Who continued to engage in such conduct after issuance of the citation.[12] We base our action here specifically on complaints filed by sixty-nine consumers establishing that Presidential Who's Who continued to send seventy-three unsolicited advertisements to telephone facsimile machines after the date of the citation.[13]

5. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act, by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is $16,000 for a violation occurring on or after September 2, 2008.[14] In exercising such authority, the statute directs us 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."[15]

III. DISCUSSION

A. Violations of the Commission's Rules Restricting Unsolicited Facsimile Advertisements

6. We find that Presidential Who's Who apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least seventy-three unsolicited advertisements to the sixty-nine consumers identified in the Appendix. This NAL is based on evidence that sixty-nine consumers received unsolicited fax advertisements from Presidential Who's Who *after* the Bureau's citation. The facsimile transmissions advertise entry in "Presidential Who's Who" publication and an opportunity to purchase the compilation publication.

(...continued from previous page)
Romano, Special Advisor, Telecommunications Consumers Division, Enforcement Bureau. The staff determined that the fax in question was, in fact, an advertisement. *See infra* para. 4.

[12] *See* Appendix for a listing of the consumer complaints against Presidential Who's Who requesting Commission action.

[13] We note that evidence of additional instances of unlawful conduct by Presidential Who's Who may form the basis of subsequent enforcement action.

[14] Section 503(b)(2)(C) provides for forfeitures up to $10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. *See* 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) first to $11,000 and more recently to $16,000. *See* 47 C.F.R. §1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum for this type of violator set at $11,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at $11,000); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation,* 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to $16,000).

[15] 47 U.S.C. § 503(b)(2)(D); *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, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

7. We disagree with the contention of Frank Ciaccio, on behalf of Presidential Who's Who, that the fax on which the citation was based was not an advertisement, but a request for information from people to include their information in its publication free of charge.[16] Instead, we find that the faxes in question serve as a pretext to advertise a commercial product or service - the "Presidential Who's Who" publication and associated products. First, these faxes invite individuals to share information and give their permission to have it included in its publication. Although there is no cost for inclusion in the publication, the products associated with the publication, such as professional directories or plaques, are later commercially available. For example, a complainant indicated that the offer to be included in the publication was free of charge, but when she later called the company, "they try to sell you the publication at a ridicu[lous] price."[17] Moreover, other complainants indicate that the faxes also offered the opportunity to purchase the publication.[18] The Commission has found that when promotions for "free" services serve as pretext for later solicitations, the original promotional fax constitutes an advertisement.[19] Specifically, we stated that "free" publications are "often part of an overall marketing campaign to sell property, goods, or services," and thus, absent an established business relationship, were prohibited as "unsolicited advertisements."[20] In this instance, we find that the faxes serve as part of an overall campaign to sell the "Presidential Who's Who" publication and associated products, and as such they are advertisements within the meaning of the section 227. Further, according to the complaints, the consumers did not give Presidential Who's Who permission to send the facsimile transmissions.[21] Consequently, the faxes at issue here fall within the definition of an "unsolicited advertisement."[22] Complaints also indicate that the recipients did not have established business relationships with Presidential Who's Who.[23] Based on the entire record, including the consumer complaints, we therefore conclude that Presidential Who's Who apparently violated section 227 of the Act and the Commission's related rules and orders by sending seventy-three unsolicited advertisements to sixty-nine consumers' facsimile machines.

B. Proposed Forfeiture

8. We find that Presidential Who's Who is apparently liable for a forfeiture in the amount of $345,000. Although the *Commission's Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine to send unsolicited

[16] *See supra* note 11.

[17] *See, e.g.*, complaint dated November 17, 2009, from C. Cox.

[18] *See, e.g.*, complaints dated September 14, 2009, from M. DeWater, and from J. Shamblin, dated December 9, 2009.

[19] *2006 TCPA Order*, 21 FCC Rcd 3787, para. 52 (footnotes omitted).

[20] *Id.* (More broadly, the Commission stated: "We conclude that facsimile messages that promote goods or services even at no cost, such as free magazines subscriptions, catalogs, or free consultations or seminars, are unsolicited advertisements under the TPA's definition. In many instances, 'free' seminars serve as a pretext to advertise commercial products and services. Similarly, 'free' publications are often part of an overall marketing campaign to sell property, goods, or services. For instance, while the publication itself may be offered at no cost to the facsimile recipient, the products promoted within the publication are often commercially available. Based on this, it is reasonable to presume that such messages describe the 'quality of any property, goods, or services.' Therefore, facsimile communications regarding such free goods and services, if not purely 'transactional,' would require the sender to obtain the recipient's permission beforehand, in the absence of an EBR.")

[21] *See, e.g.*, complaint dated November 17, 2009, from V. Asenio (stating that he has never done any business with the fax advertiser, never made an inquiry or application to the fax advertiser and never given permission for the company to send the fax.) The complainants involved in this action are listed in the Appendix.

[22] *See* 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13) (definition previously at § 64.1200(f)(10)).

[23] *See, e.g., supra* note 21.

advertisements, the Commission has previously considered $4,500 per unsolicited fax advertisement to be an appropriate base amount.[24] We apply that base amount to each of seventy of the apparent violations. In addition, where the consumer requests the company to stop sending facsimile messages, and the company continues to send them, the Commission has previously considered $10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.[25] Here, three consumers specifically requested that Presidential Who's Who cease sending facsimiles.[26] Notwithstanding these requests, an additional three facsimiles were sent to these consumers. Thus, we apply the $10,000 amount to each of three of these apparent violations. Thus, a total forfeiture of $345,000 is proposed. Presidential Who's Who will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.[27]

IV. CONCLUSION

9. We have determined that Presidential Who's Who apparently violated section 227 of the Act and the Commission's related rules and orders by using a telephone facsimile machine, computer, or other device to send at least seventy-three unsolicited advertisements to the sixty-nine consumers identified in the Appendix. We have further determined that Presidential Who's Who is apparently liable for a forfeiture in the amount of $345,000.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the rules, 47 C.F.R. § 1.80, that Presidential Who's Who is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of $345,000 for willful or repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3), and the related orders described in the paragraphs above.

11. **IT IS FURTHER ORDERED THAT**, pursuant to section 1.80 of the Commission's rules,[28] within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Presidential Who's Who **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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/NYC, and account number 27000001. For payment by credit card,

---

[24] *See Get-Aways, Inc.,* Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805 (1999); *Get-Aways, Inc.,* Forfeiture Order, 15 FCC Rcd 4843 (2000); *see also US Notary, Inc.,* Notice of Apparent Liability for Forfeiture, 15 Rcd 16999 (2000*); US Notary, Inc.,* Forfeiture Order, 16 FCC Rcd 18398 (2001*)*; *Tri-Star Marketing, Inc.,* Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.,* Forfeiture Order, 15 FCC Rcd 23198 (2000).

[25] *See Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC 16,837, 16,842 (2000); *21st Century Fax(es) Ltd., AKA 20th Century Fax(es)*, 15 FCC Rcd 24,406, 24,411 (2000).

[26] *See* Appendix.

[27] *See* 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

[28] 47 C.F.R. § 1.80.

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). Presidential Who's Who will 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, SW, 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.

13. 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 Kurt Schroeder, Acting 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.

14. 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.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class mail to Presidential Who's Who, Attention: Mark Anthony McFallen, 2927 Queens Plaza, Long Island City, NY 11101 and 140 Rockaway Parkway, Valley Stream, NY 11580.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Violation Dates

Complainant received facsimile solicitations	Violation Date(s)
Asensio, V.	11/17/09
Axilbund, C.	11/17/09
Baldwin, G.	12/15/09
Benefield, R.	3/30/10
Bishop, C.	3/23/10
Blumenthal, M.	9/14/09
Borgic, D.	1/20/10
Brown, K.	9/14/09
Brunjes, D.	1/05/10, 3/23/10
Ciulik, J.	9/30/09
Cox, C.	11/17/09
Chapura, J.	2/01/10
Davis, R.	11/17/09
Davis, W.	1/05/10
Decker, B.	10/07/09
Drattell, E.	9/14/09
Edwards, K.	11/17/09
Falcon, J.	11/2/09
Fuller, J.	11/2/09
Geary, T.	9/14/09
Gomes, R.	10/14/09
Gade, F.	10/20/09, 12/07/09
Grant, H.	9/29/09
Hackman, D.	11/17/09
Hanson, G.	12/09/09
Hudkins, J.	11/17/09
Jansky, M.	9/29/09
Jimenez, O.	10/06/09
Johnson, M.	3/23/10
Jones, J.	2/01/10
Kane, J.	1/20/10
Kalm, T.	9/14/09
Kang, C.	10/14/09
King, S.	10/06/09
Lagrutta, R.	3/30/10
Leigh, D.	1/12/10
Lester, R.	2/16/10
Lewis, R.	10/20/09
Lilly, T.	3/23/10
Mac, G.	2/01/10
Malarkey, P.	1/20/10
Malear, R.	12/15/09
Marzane, R. D.	2/01/10
McLees, R.	10/27/09

Maskey, M.	11/2/09
Muenchow, J.	2/23/10
Newberg, B.	1/20/10
Norman, D.	11/2/09
O'Connell, M.	1/20/10
Pitrik, Mike	2/16/10
Poss, V.	1/12/10
Richardson, K.	10/08/09
Rodman, R.	11/17/09
Schultz, C.	9/14/09
Shamblin, J.	12/09/09
Schlosshauer, P.	9/14/09
Schlesinger, S.	12/12/09, 4/22/10
Soesbe, K.	11/08/09, 11/23/09
Spittler, R.	11/17/09
Stacharawski, G.	1/12/10
Swartz, M.	3/30/10
Tilden, R. B.	11/02/09
Wilson, T.	2/23/10
Witherspoon, C.	11/2/09
Wood, V.	9/30/09
VanDeWater, M.	9/14/09

Complainant received facsimile solicitations after requesting no more be sent	**Violation Date(s)**
Asuri, R.	10/27/09
Broder, S.	11/2/09
Wax, B.	9/30/09