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

In the Matter of	)	File Nos.: EB-08-TC-998
	)	EB-07-TC-5233
The Street Map Company	)	
	)	NAL/Acct. No.: 201132170002
Apparent Liability for Forfeiture	)	FRN: 0020318242
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 27, 2011 **Released: June 1, 2011**

By the Commission: Commissioner Baker not participating.

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find that The Street Map Company ("Street Map")[1] apparently willfully and repeatedly violated section 227(b)(1)(C) of the Communications Act of 1934, as amended (the "Communications Act" or "Act"), and section 64.1200(a)(3) of the Commission's rules, by delivering 51 unsolicited advertisements, or "junk faxes," to the telephone facsimile machines of 48 consumers.[2] Based on the facts and circumstances surrounding these apparent violations, we find that Street Map is apparently liable for a forfeiture in the amount of $315,500.

II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 ("TCPA") was enacted by Congress to address problems of abusive telemarketing, including junk faxes.[3] Unsolicited faxes often impose unwanted burdens on the called party, including costs of paper and ink, and making fax machines unavailable for legitimate business messages. 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

[1] According to publicly available information, Street Map is also doing business as Rockford Map Gallery, LLC, First State Map & Globe Co., Globe World, Rockford Map and Globe, and Trump Map. Co. Therefore, all references in this NAL to "Street Map" encompass all of these companies. Street Map has offices at 24-A Trolley Square, Wilmington, DE 19806; 1800 Lovering Ave., Wilmington, DE 19806-2122; and 717 N. Union St., Wilmington, DE 19805. Patrick Keane is listed as the contact person for Street Map. Accordingly, all references in this *NAL* to "Street Map" also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

[2] *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).

[3] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394, *codified at* 47 U.S.C. § 227. *See also* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005), *codified at* 47 U.S.C. § 227.

United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement…."[4]

3. On February 5, 2008, in response to consumer complaints alleging that Street Map had faxed unsolicited advertisements, the Bureau issued a citation to Street Map, pursuant to section 503(b)(5) of the Act.[5] The Bureau cited Street Map for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements to a telephone facsimile machine, in violation of section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules.[6] The citation informed Street Map 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. Street Map did not respond to this citation.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have continued to receive additional consumer complaints indicating that Street Map continued to send junk faxes *after* issuance of the citation. Eleven of these complaints resulted in the Commission issuing an NAL against Street Map on November 10, 2010, and proposing a forfeiture in the amount of $55,000.[7] The *November 2010 NAL* ordered Street Map either to pay the proposed forfeiture within thirty days or to submit evidence or arguments to show that no forfeiture should be imposed or that some lesser amount should be assessed. To date, Street Map has neither paid the forfeiture proposed nor responded to the *November 2010 NAL*.

5. In addition to the complaints forming the basis of the *November 2010 NAL*, the Commission has received still more complaints. Specifically, the Commission has received additional complaints filed by 48 consumers, alleging that Street Map sent at least 51 additional unsolicited advertisements not accounted for in the *November 2010 NAL* to telephone facsimile machines between June 5, 2010 and November 30, 2010.[8]

[4] 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if the sender has an "established business relationship" ("EBR") with the recipient; and the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website on which the recipient voluntarily and publicly provided its facsimile number. In addition, the unsolicited ad must notify the recipient how to opt out of receiving future such ads, subject to certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(3); *See also Junk Fax Prevention Act R&O,* 21 FCC Rcd 3787, 3793-96 (2006), *modified on other grounds*, 23 FCC Rcd 15059 (2008).

[5] *See* 47 U.S.C. § 503(b)(5) (requiring 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, or engaged in activities for which such instrumentalities are necessary, for violations of the Act or of the Commission's rules and orders).

[6] Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-08-TC-998, issued to Street Map on February 5, 2008. Earlier, the Commission had issued a similar citation to First State Globe & Map Co., and received no response. Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-5233, July 15, 2007. At the time the citation was issued to First State, the Commission was not aware that First State and Street Map were associated.

[7] *The Street Map Company*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16371 (2010) ("*November 2010 NAL*").

[8] *See* Appendix for a listing of the consumer complaints against Street Map requesting Commission action. We note that evidence of additional instances of unlawful conduct by Street Map may result in further enforcement action.

III. DISCUSSION

A. Apparent Violations of Section 227(b)(1)(C) of the Act and the Commission's Rules Restricting Unsolicited Facsimile Advertisements

6. In this NAL, we find that Street Map has again apparently violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of our rules by using a facsimile machine, computer, or other device to send unsolicited advertisements to consumers. Each of the consumers listed in the Appendix has provided evidence that Street Map apparently used a telephone facsimile machine, computer, or other device to send the consumer one or more unsolicited advertisements for maps.[9] Further, according to the complaints, the consumers did not have an established business relationship with Street Map, and did not give Street Map permission to send the facsimile transmissions. Based on the entire record, including the consumer complaints, we therefore conclude that Street Map has apparently violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules by sending 51 unsolicited advertisements to 48 consumers' facsimile machines.

B. Proposed Forfeiture

7. After we have first issued a citation to an entity, as we have in this case, section 503(b) of the Act authorizes the Commission to propose a forfeiture for each subsequent violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act. Section 503(b)(2)(E) mandates that, "[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall 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."[10] Our forfeiture guidelines set forth the base amount for penalties for certain kinds of violations, and identify criteria, consistent with the section 503(b)(2)(E) factors, that may influence whether we adjust the base amount downward or upward.[11] For example, we may adjust a penalty upward for "[e]gregious misconduct," an "[i]ntentional violation," or where the subject of an enforcement action has "[p]rior violations of any FCC requirements."[12] Currently, the maximum penalty that the Commission may impose against an entity such as Street Map is $16,000 per violation.[13]

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[9] The faxes at issue here therefore fall within the definition of an "unsolicited advertisement." *See* 47 U.S.C. § 227(a)(5); 47 C.F.R. § 64.1200(f)(13). An "unsolicited advertisement" is "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." 47 U.S.C. § 227(a)(5).

[10] 47 U.S.C. § 503(b)(2)(E).

[11] 47 C.F.R. § 1.80(b)(4) note. The absence of a particular type of violation from the forfeiture guidelines must "not be taken to mean that the violation is unimportant or nonexistent," and "the Commission retains discretion to impose forfeitures for other violations." *Commission's Forfeiture Policy Statement*, Report & Order, 12 FCC Rcd 17,087, 17,110 (1997).

[12] 47 C.F.R. § 1.80(b)(4) note.

[13] 47 U.S.C. § 503(b)(2)(C). Section 503(b)(2)(C) provides for forfeitures of up to $10,000 for each violation in cases, as in the instant case, where the violation does not involve a Commission licensee, common carriers, among others. *See* 47 U.S.C. § 503(b)(2)(C). 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). *See also 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 at $16,000).

8. The Commission has generally considered a penalty of $4,500 per unsolicited fax advertisement as an appropriate base forfeiture for violating the prohibition against sending them.[14] In addition, where the consumer has requested that the company stop sending facsimile messages, and the company has continued to send them, the Commission has previously considered $10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.[15] Consistent with this past approach, we will apply the $4,500 base forfeiture to 49 of the apparent violations at issue in this NAL, and a $10,000 forfeiture to two of the apparent violations in this NAL where the consumer received a facsimile from Street Map after specifically requesting that the company cease sending them. Based on the application of these standards, the total forfeiture proposed in this case would be $240,500.

9. In the past, the Commission generally has not adjusted upward the base forfeiture for multiple, repeated violations of our junk fax rules. The base forfeiture of $4,500 alone was generally considered sufficient to protect consumers and deter companies from engaging in further unlawful conduct.[16] It has become increasingly apparent, however, that the amount of our proposed forfeitures for apparent violations of the junk fax prohibitions has failed to deter the more persistent wrongdoers, as is evident in this case.[17]

10. As a result, we believe that different and harsher penalties than those we have imposed in the past are appropriate for entities who engage in a significant number violations, such as Street Map.[18] With today's NAL, we have now taken *four enforcement actions*, involving a total of *sixty-two apparent violations*, against Street Map for noncompliance with section 227 that Congress enacted and that we have implemented and are charged with enforcing.[19] All of these apparent violations, except those that

[14] *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).

[15] *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)*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 24,406, 24,411 (2000).

[16] *See e.g., Get-Away, Inc.* 15 FCC Rcd at 1812. *But see Fax.com, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 15927 (2002) (applying an upward adjustment of the base forfeiture for each of 489 apparent junk fax violations, for a total proposed forfeiture of $5,379,000).

[17] For example, we recently issued a forfeiture order against another entity, assessing a *total penalty of over $1.6 million*, imposed through *three different NALs*, and involving *nearly 300 violations* of our junk fax rules. *Mexico Marketing, LLC*, Forfeiture Order, FCC 11-48 (2011). The repeated nature of the apparent violations in this case and those at issue in *Mexico Marketing* persuade us that an upward adjustment is necessary to adequately deter entities from violating our junk fax prohibitions. Our decision to impose an adjustment in today's NAL demonstrates our recognition of the greater power that Congress has given us, and that appears to need to be exercised in order to enforce Congress's prohibition against unsolicited fax ads.

[18] This is consistent with the action taken by the Commission with respect to Fax.com, Inc. where we imposed a harsher penalty for a significant number of violations. *See Fax.com, Inc.*, 17 FCC Rcd at 15943.

[19] Section 504(c) of the Act, 47 U.S.C. § 504(c), prohibits the Commission from using the issuance of an NAL against a party in one proceeding to the prejudice of that party in another proceeding, until either the party pays the forfeiture or a court issues a final order that it do so. However, this prohibition does not restrict the Commission from considering the *facts* that underlie prior NALs. *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report & Order, 12 FCC Rcd 17087, 17102-17104 (1997). Thus, consideration in the current NAL of Street Map's past conduct that led to our earlier enforcement actions is fully consistent with section 504(c) of the Act. *See Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion & Order, 15 FCC Rcd. 303, 303-305 (1999).

formed the basis for the original citations, occurred *after* the Enforcement Bureau first warned Street Map, via citation, that its conduct violated the law, and some apparent violations relate to conduct that occurred after the *November 2010 NAL*. The penalty that we apply must take into account, in the language of section 503(b)(2)(E), this "degree of culpability" and "history of prior offenses,"[20] and in the language of our forfeiture guidelines, such an "intentional violation[s]" and the "prior violations of … FCC requirements."[21]

11. Accordingly, weighing the facts before us, including the fact that Street Map has engaged in a significant number of violations after warnings by the Commission, we impose an upward adjustment of $75,000 for the unsolicited fax advertisements at issue here, for a total proposed forfeiture of $315,500. ($240,500 + $75,000 = $315,500) As a practical matter, this adjustment amounts to a penalty of around $6,000 for each of the apparent violations at issue in this NAL.[22] The penalty we propose here is well within our discretion, because as indicated above, the Act permits us to impose a forfeiture of as much as $16,000 per violation, or a total of $832,000 for the fifty-two violations at issue in this NAL. Moreover, while in the past we generally have not adjusted upward the base forfeiture for junk faxes as a result of the number of violations at issue, doing so now is clearly within our discretion under the factors set forth in section 503(b)(2)(E) of the Act, and in fact consistent with our past approach of applying a harsher penalty to junk fax violations for a significant number of apparent violations.[23] We believe the adjustment amount and overall penalty we impose here against Street Map is appropriate due to the number of apparent violations, and the fact that Street Map apparently engaged in much of the misconduct deliberately, given its disregard for the Commission's previous warnings. Those who violate our junk fax rules are on notice that we intend to use the full range of our enforcement power to deter future noncompliance and protect consumers from the annoyance and harms caused by such conduct, including assessing the statutory maximum forfeiture amount of $16,000 per violation.

IV. CONCLUSION

12. We have determined that The Street Map Company apparently violated section 227(b)(1)(C) of the Act and section 64.1200(a)(3) of the Commission's rules by using a telephone facsimile machine, computer, or other device to send 51 unsolicited advertisements to the 48 consumers identified in the Appendix. We have further determined that The Street Map Company is apparently liable for a forfeiture in the amount of $315,500.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED**, 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, that The Street Map Company is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A**

[20] 47 U.S.C. § 503(b)(2)(E).

[21] 47 C.F.R. § 1.80 sec. II (Adjustment Criteria for Section 503 Forfeitures).

[22] The upward adjustment of $75,000 amounts to approximately $1,500 for each of the 49 apparent violations at issue in this NAL that are not already subject to upward adjustment (*i.e.*, all of the violations except the two for which we assess a $10,000 penalty). The combination of the base forfeiture and the upward adjustment for each of the 49 apparent violations is therefore approximately $6,000. We note, however, that while the upward adjustment we apply in this case amounts to approximately $1,500 per violation, it is not the Commission's intent in every case of junk faxes to mechanically apply a $1,500 upward adjustment. We fully intend, as we did in this case, to apply an appropriate upward adjustment on a case-by-case basis, taking into account our obligation under section 503(b)(2)(E) of the Act. In this respect, we may apply a higher forfeiture amount, including the $16,000 statutory maximum if the facts of a particular case warrant.

[23] *See supra* note 18.

FORFEITURE in the amount of $315,500 for willful and repeated violations of section 227(b)(1)(C) of the Communications Act, 47 U.S.C. § 227(b)(1)(C), and section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3).

14. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[24] that within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, The Street Map Company **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 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, 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 Street Map Company shall 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, 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.

16. The response, if any, must be mailed both to: Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, Attn: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 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, D.C. 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.

[24] 47 C.F.R. § 1.80.

18. **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 The Street Map Company, Attention: Patrick Keane, 24-A Trolley Square, Wilmington, DE 19806, 1800 Lovering Ave., Wilmington, DE 19806-2122, and 717 N. Union St., Wilmington, DE.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Complainants and Apparent Violation Dates

Complainant received facsimile solicitations	Apparent Violation Date(s)
A. Glass, Georgia Inst. of Tech. – College of Computing	6/5/2010
S. Goba, Illinois Document Preparation Co.	6/21/2010
S. Arteman, Arteman's Cycle Repair	6/30/2010
B. Krasny	7/7/2010
S. Weigel	7/13/2010
L. Tanner	7/16/2010
C. Rowe	8/1/2010
G. Roland, Roland, Inc.	8/3/2010
A. Gallo, The George Washington University	8/9/2010 (2 faxes)
C. Sweigler	8/12/2010
J. Wright	8/12/2010
A. Deperty	8/12/2010
M. Markin	8/15/2010
G. Howard	8/17/2010
M. Perry	8/19/2010
A. Thornock	8/23/2010
M. Gerebenics	8/12/2010; 8/13/2010
W. Scull	9/4/2010
K. Hall	9/6/2010
R. Pike, Flight Express	9/8/2010; 10/4/2010
M. Coleman	9/10/2010
R. Blaustein	9/14/2010
K. Laufer	8/30/2010
D. Peterson, Brooks & Peterson CPS's, LLC	9/17/2010
W. Smith	9/21/2010
M. Freeman	9/11/2010
P. Leitman	8/30/2010
S. Wascher	9/6/2010
R. Antonin, Law Offices of R. Fluerantin & Associates, P.A.	9/28/2010
H. Lavado	9/14/2010
D. Kappel	10/4/2010
H. Bischoff	10/11/2010
L. Dudley, Dudley's Trophies	10/13/2010
A. Vance	10/15/2010
D. Taylor, Diamond Dust	10/12/2010
J. Sheaffer	10/20/2010
E. Walton, Monroe County Scoio-Legal Center	10/19/2010
C. Schembri	10/28/2010
G. Cast, PDA Myrtle Beach/Florence	11/6/2010
J. James	11/14/2010
J. Andelin	11/14/2010
J. Hawley	11/16/2010
M. Crenshaw, Luck Stone Corporation	11/16/2010
M. Kleiman	11/26/2010

J. Ochse, WareOnEarth	11/2/2010
D. Wood, USPTO	11/30/2010

Complainant received facsimile solicitations after requesting no more be sent	**Violation Date(s)**
S. Scaramuzzo	6/24/2010
D. Neumetzger	10/30/2010