

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-SED-14-00016210 ¹
)	
The Hinton Telephone Company)	NAL/Acct. No.: 201432100027
of Hinton, Oklahoma, Inc.,)	
d/b/a Hinton Telephone Company)	FRN: 0004365334

FORFEITURE ORDER

Adopted: March 18, 2015

Released: March 18, 2015

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$100,000 against Hinton Telephone Company of Hinton, Oklahoma, Inc. (Hinton) for failing to use reasonable judgment when it knowingly routed 911 calls to an automated operator message—a message that instructed callers to “hang up and dial 911” to report an emergency. This violation of the Commission’s 911 rules continued for three months after Hinton learned of the problem, creating a significant threat to the life and property of Caddo County, Oklahoma, residents. Despite knowing of this ongoing risk to public safety, Hinton did nothing to resolve the problem and returned its system to functionality only after being directed to do so by FCC investigators. Such behavior is manifestly unacceptable and undermines the public’s ability to make one of the most important calls they ever have to make—calls to first responders in times of critical need.

2. In response to the Notice of Apparent Liability for Forfeiture (*NAL*), Hinton simply restates the same arguments we previously rejected in the *NAL* to justify its continued failure to protect the safety of its customers by following the Commission’s 911 rules. We again reject these arguments. We are also unpersuaded by Hinton’s arguments that we should reduce the amount of the penalty. Accordingly, after reviewing Hinton’s response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$100,000 forfeiture the Enforcement Bureau previously proposed.

II. BACKGROUND

3. In May 2013, the Commission’s Public Safety and Homeland Security Bureau (PSHSB) received a complaint that Hinton was not providing basic 911 service to its Caddo County, Oklahoma, customers.² Hinton stated that it previously routed its 911 calls to a live AT&T operator, but that AT&T subsequently discontinued this service and substituted an automated operator in place of the live operator.³ Despite knowing that 911 calls were no longer sent to a live operator—and, instead, were sent to a recording that told callers to “hang up and dial 911”⁴—Hinton failed to fix the problem by routing

¹ The investigation initiated under File No. EB-SED-13-00010169 was subsequently assigned File No. EB-SED-14-00016210. Any future correspondence with the FCC concerning this matter should reflect the new case number.

² *The Hinton Telephone Company of Hinton, Oklahoma, Inc., d/b/a Hinton Telephone Company*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9228, 9229, para. 5 (Enf. Bur. 2014) (*NAL*).

³ *Id.*

⁴ *Id.* At para. 4 n.9. The complaint received by the Commission included a recording purported to be the message heard by a caller dialing 911 on Hinton’s network, which stated “Hinton Telephone Company. The local time is. . . . If this call is an emergency, hang up and dial 911. To place a call, press one. If you need additional assistance, (continued....)”

such calls directly to the Caddo County Public Safety Answer Point (PSAP) until August 2013, three months after it learned of the issue and only after PSHSB directed it to act immediately.⁵ The Spectrum Enforcement Division of the Enforcement Bureau (Bureau) subsequently commenced an investigation by directing Hinton to respond to a series of inquiries into the company's provision of basic 911 service.⁶

4. On August 4, 2014, the Bureau issued the *NAL* proposing a \$100,000 forfeiture against Hinton for its apparent willful and repeated violation of Sections 64.3001 and 64.3002(d) of the Commission's rules (Rules) for failing to use reasonable judgment over a three-month period, from May 6, 2013 to August 5, 2013, when it knowingly routed 911 calls to an automated operator message.⁷

5. On September 3, 2014, Hinton filed a response to the *NAL*, requesting that the proposed forfeiture be cancelled.⁸ Hinton's *NAL* Response reiterates the same arguments it asserted in its earlier Letter of Inquiry (LOI) Responses,⁹ which the Bureau already considered and rejected in the *NAL*. Hinton argues that, given the unique, complicated, and difficult circumstances of providing 911 service in Caddo County, it exercised reasonable judgment by routing 911 calls to a pre-recorded message while it considered and developed alternative options.¹⁰ Hinton also argues for cancellation of the proposed forfeiture on the basis that the company has an excellent record of regulatory compliance,¹¹ and that the proposed forfeiture is significant for a company of Hinton's size and would adversely impact the company's ability to construct and deploy broadband service.¹² We reject each of these claims below.

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press zero for the operator or remain on the line. To hear your options again, press star." Hinton did not dispute this in its *NAL* Response. *See generally*, Hinton, Response to Notice of Apparent Liability (Sep. 3, 2014) (on file in EB-SED-14-00016210) (*NAL* Response).

⁵ *Id.*

⁶ *See* Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kenneth Doughty, CEO, Hinton Telephone Company (Jan. 27, 2014) (on file in EB-SED-14-00016210); Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kenneth Doughty, CEO, Hinton Telephone Company (July 10, 2014) (on file in EB-SED-14-00016210); E-mail from Josh Zeldis, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company (May 30, 2014, 12:48 EDT) (on file in EB-SED-14-00016210); E-mail from Josh Zeldis, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company (Jun. 12, 2014, 15:57 EDT) (on file in EB-SED-14-00016210); E-mail from Josh Zeldis, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company (July 15, 2014, 12:33 EDT) (on file in EB-SED-14-00016210).

⁷ *See NAL*, 29 FCC Rcd at 9233–35, paras. 11–14; *see also* 47 C.F.R. §§ 64.3001, 64.3002(d).

⁸ *NAL* Response.

⁹ *See* Letter from Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company, to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 10, 2014) (on file in EB-SED-14-00016210); Letter from Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company, to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (May 27, 2014) (on file in EB-SED-14-00016210); Letter from Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company, to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (June 10, 2014) (on file in EB-SED-13-00016210); Letter from Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company, to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (June 18, 2014) (on file in EB-SED-14-00016210); Letter from Kendall Parish, Ron Comingdeer & Associates, Counsel for Hinton Telephone Company, to Josh Zeldis, Spectrum Enforcement Division, FCC Enforcement Bureau (July 21, 2014) (on file in EB-SED-14-00016210) (together, the LOI Responses).

¹⁰ *See NAL* Response at 3–11.

¹¹ *See id.* at 2, 12.

¹² *See id.* at 12.

III. DISCUSSION

6. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),¹³ Section 1.80 of the Rules,¹⁴ and the Commission's *Forfeiture Policy Statement*.¹⁵ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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."¹⁶ As discussed below, we have fully considered Hinton's response to the *NAL*, but we do not find it persuasive. We therefore affirm the \$100,000 forfeiture proposed in the *NAL*.

A. Hinton Acted Unreasonably by Continuing to Route 911 Calls to an Automated Message for Three Months after Notification

7. Hinton sets forth a number of facts that it claims demonstrate that it exercised reasonable judgment in its decision to continue to route 911 calls to AT&T's operator for three months even after it learned those calls were being sent to an automated message service.¹⁷ According to Hinton, after it learned of the issue in May it: (1) sought the advice of Oklahoma Corporation Commission staff; (2) placed notices in local newspapers and in customer bills informing customers they could reach various emergency numbers more quickly by dialing them directly; and (3) analyzed potential temporary solutions, each of which, according to Hinton, were fraught with difficulty.¹⁸ According to Hinton, the fact that it responded so quickly to PSHSB's directive to resolve the issue is a testament to the preparation that it had done.¹⁹

8. As we stated in the *NAL*, we find no merit in Hinton's argument that it exercised reasonable judgment by continuing to route 911 call to AT&T's operator service for three months after discovering that AT&T had replaced its voice operator service with an automated message.²⁰ Section 64.3001 of the Rules directs telecommunications carriers to transmit all 911 calls to a PSAP, a designated statewide default answering point, or to an appropriate local emergency authority.²¹ Section 64.3002(d) of the Rules imposes on telecommunications carriers the obligation to "identify an appropriate local emergency authority, based on the exercise of reasonable judgment, and complete all translation and routing necessary to deliver 911 calls to such appropriate local emergency authority. . . ."²²

9. As the Commission has stated, 911 service is intended to enable people everywhere to quickly connect to trained individuals who have ready access to police, fire, and health emergency service providers.²³ After Hinton discovered that 911 calls were being routed to an automated message service, it

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

¹⁷ See *NAL* Response at 5–9.

¹⁸ See *id.* at 5–6, 8–9.

¹⁹ See *id.* at 10.

²⁰ See *NAL*, 29 FCC Rcd at 9231–33, paras. 9–10.

²¹ 47 C.F.R. § 64.3001.

²² 47 C.F.R. § 64.3002(d).

²³ See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Call Systems*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18678–79, para. 3 (1996); see also *In the Matters of 911 Governance and Accountability Improving 911 Reliability*, Policy Statement and Notice (continued....)

was unacceptable for the company to take three months without any action and to act only after being directed to do so by PSHSB staff.²⁴ As we determined in the *NAL*, Hinton was obligated, consistent with the requirements of Sections 64.3001 and 64.3002(d) of the Rules, to reassess its call routing protocols and ascertain whether, based on the exercise of reasonable judgment, there was an alternative appropriate local emergency authority to which it could route its 911 calls.²⁵ We recognize that Hinton faced challenges in the implementation of the new Caddo County 911 call center.²⁶ However, given the availability of a viable workaround, it was unreasonable for Hinton to wait until pressed by PSHSB staff to implement a reasonable solution.²⁷

B. Hinton’s Record of Regulatory Compliance Does Not Warrant Cancellation of the Proposed Forfeiture

10. Hinton contends that it should not be subject to the \$100,000 forfeiture proposed in the *NAL* because of its 64-year record of compliance with the Rules, its successful provision of 911 and E911 services in the other Oklahoma counties it serves, as well as its service to customers in Caddo County.²⁸ However, Hinton’s compliance record is not spotless²⁹ and its successful provision of 911 and E911 services in other Oklahoma counties does not excuse or mitigate its failure over an extended period of time to use reasonable judgment in routing 911 calls in Caddo County. In addition, any good-faith efforts taken by Hinton to comply with the Rules following the Bureau’s investigation is expected and generally does not serve to mitigate a forfeiture.³⁰ Accordingly, we decline to reduce the forfeiture on this basis.

C. Hinton’s Desire to Improve Broadband Service to its Customers and its Purported Inability to Pay Are Not Valid Grounds for Cancellation of the Proposed Forfeiture

11. Hinton also contends that it should not have to pay the \$100,000 proposed forfeiture because such a penalty would adversely impact its ability to bring broadband services to its rural customers, and suggests that it is unable to pay the proposed forfeiture.³¹ The Commission has long supported programs that assist rural communities and schools with access to modern telecommunications services, including broadband deployment. However, the Commission also has a clear interest in

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of Proposed Rulemaking, 29 FCC Rcd 14208, 14209, paras. 1–3 (2014); *In the Matter of Improving 911 Reliability Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Report and Order, 28 FCC Rcd 17476, 17484, para. 23 (2013).

²⁴ See *NAL* Response at 5.

²⁵ See *NAL*, 29 FCC Rcd at 9232, para. 10.

²⁶ See *NAL* Response at 6–8 (noting that the Caddo County Courthouse was being remodeled, new names for streets and county roads throughout the county were being assigned, and a possible number translation change to route these 911 calls would have jeopardized E911 service already implemented in other counties that Hinton served).

²⁷ See *id.* at 9.

²⁸ See *id.* at 12. Hinton also attaches a letter from Benny Bowling, Commissioner, Caddo County Board of Commissioners to Josh Zeldis, Federal Communications Commission, stating that Hinton is “doing a good job serving their subscribers with telephone service and building broadband service to the rural areas” and indicating his belief that Hinton is doing the best for their subscribers in the provisioning of E911 service. See also *id.*, Exh. A.

²⁹ See *In Re The Hinton Telephone Company of Hinton, Oklahoma, Inc.*, Notice of Apparent Liability for Forfeiture, 6 FCC Rcd 7002 (Mobile Servs. Div. 1991) (assessing a \$7,000 penalty for failure to file a timely application for a pro forma transfer of control of Hinton).

³⁰ See, e.g., *R.J.’s Late Night Entm’t Corp.*, Memorandum Opinion and Order, FCC 15-181 (Enf. Bur. Feb. 9, 2015); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (“[t]he Commission expects [each licensee], and it is each licensee’s obligation, to know and comply with all of the Commission’s rules”).

³¹ See *NAL* Response at 12.

regulatory compliance, especially when public safety considerations like 911 reliability are compromised. Hinton has made no showing of a public benefit from cancelling the forfeiture, and provides scant evidence that the penalty would affect its plans to develop rural broadband services.³² Weighing the evidence at hand and the public interests at stake, we decline to cancel the forfeiture on this basis.

12. Finally, Hinton responds with an implicit claim of financial hardship.³³ Any claim of inability to pay must specifically identify the basis for the claim by reference to financial documentation submitted.³⁴ Hinton, however, has not provided any of the required financial documentation to support a claim of financial hardship. Consistent with our prior decisions, we therefore find that forfeiture cancellation or reduction is not warranted on this basis.³⁵

IV. CONCLUSION

13. Based on the record before us and in light of the applicable statutory factors, we conclude that Hinton willfully and repeatedly Sections 64.3001 and 64.3002(d) of the Rules by failing to use reasonable judgment when it knowingly routed 911 calls to an automated operator message for an extended period of time.³⁶ We decline to cancel or reduce the \$100,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,³⁷ and Section 1.80 of the Rules,³⁸ Hinton **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for willfully and repeatedly violating Sections 64.3001 and 64.3002(d) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.³⁹ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁴⁰

16. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the *NAL*/Account Number and FRN referenced above. Hinton shall send electronic notification of payment to JoAnn Lucanik at joann.lucanik@fcc.gov and William Reed at william.reed@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴¹ When completing the Form 159, enter the

³² *See id.*

³³ *See id.*

³⁴ As stated in the *NAL*, the Commission will not consider 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.” *NAL*, 29 FCC Rcd at 9236, para. 20.

³⁵ *See In the Matter of Indigo Wireless, Inc.*, Forfeiture Order, 29 FCC Rcd 7404, 7408, para. 9, *aff’d*, Memorandum Opinion and Order, 29 FCC Rcd 14076 (denying request for cancellation or reduction of forfeiture due to lack of adequate documentation).

³⁶ 47 C.F.R. §§ 64.3001, 64.3002(d).

³⁷ 47 U.S.C. § 503(b).

³⁸ 47 C.F.R. § 1.80.

³⁹ *Id.*

⁴⁰ 47 U.S.C. § 504(a).

⁴¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁴² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Kenneth Doughty, Chief Executive Officer, The Hinton Telephone Company of Hinton, Oklahoma, Inc., d/b/a Hinton Telephone Company, 200 West Main Street, Hinton, Oklahoma, 73047 and to Kendall Parrish, Comingdeer & Associates, 6011 North Robinson Avenue, Oklahoma City, Oklahoma 73118.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

⁴² See 47 C.F.R. § 1.1914.