

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

In the Matter of	)	
	)	
LTD Broadband LLC	)	File No.: EB-IHD-21-00033102
	)	NAL/Acct. No.: 202232080010
	)	FRN: 0020926788

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 3, 2022**

**Released: May 3, 2022**

By the Acting Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. The Federal Communications Commission (FCC or Commission) has long-standing rules that bar communications between and among auction applicants during an auction that could detract from a fair and competitive auction process. To that end, the Commission also requires auction applicants to self-report such violations promptly upon their occurrence. Timely reporting of these “prohibited communications” allows the Commission to address swiftly the effects to the auction process.

2. We propose a forfeiture of \$100,000 against LTD Broadband LLC (LTD or Company), for repeatedly engaging in prohibited communications of its bidding and bidding strategies during the Commission’s Rural Digital Opportunity Fund (RDOF) Phase I Auction (Auction 904), and its failure to timely report such prohibited communications. We find that LTD, an applicant in Auction 904 bidding for financial support to offer voice and broadband service in underserved areas, apparently violated section 1.21002(b) of the Commission’s rules<sup>1</sup> by willfully and repeatedly engaging in prohibited communications of its bidding, bidding strategies, and bidding results to Cox Communications, Inc. (Cox) via LTD’s investment agent, RJM & Company, LLC (RJM). We also find that LTD apparently violated section 1.21002(e) of the Commission’s rules by failing to report these communications to the Commission within the required five-day reporting window.<sup>2</sup>

**II. BACKGROUND**

3. LTD is a Nevada company that provides fiber and fixed wireless broadband service, has 145 employees, and is the fourth-largest Wireless Internet Service Provider (WISP) in the United States.<sup>3</sup> LTD also states that it was the single largest winner of universal service support in Auction 904.<sup>4</sup> Cox is

<sup>1</sup> 47 CFR § 1.21002(b), (e).

<sup>2</sup> 47 CFR § 1.21002(c) (“An applicant that makes or receives communications that may be prohibited [. . .] shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.”).

<sup>3</sup> See LTD, *About [LTD]*, <https://ltdbroadband.com/about> (last visited Mar. 8, 2022).

<sup>4</sup> See Linda Hardesty, *The biggest RDOF winner LTD Broadband responds to naysayers*, Fierce Telecom, <https://www.fiercetelecom.com/telecom/biggest-rdof-winner-ltd-broadband-responds-to-naysayers> (Feb. 11, 2021) (last visited Mar. 8, 2022).

Exhibit A

a Georgia company that provides internet, television, phone, and other services in 18 U.S. states.<sup>5</sup> Both LTD and Cox were applicants in Auction 904, bidding for the competitive allocation of financial support to offer voice and broadband services to underserved portions of the country, including rural areas.<sup>6</sup>

4. On June 11, 2020, the Commission released a public notice setting forth the filing requirements and other procedures for Auction 904.<sup>7</sup> The *Procedures Public Notice* thoroughly explained the application of section 1.21002 of the Commission's rules, which prohibits certain communications during the auction process in order to "serve the important public interest in a fair and competitive auction."<sup>8</sup> The Commission explained that the rule "prohibits an applicant in Auction 904 from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies during the prohibition period."<sup>9</sup> The Commission further explained that a communication conveying "bids or bidding strategies" includes communications that relate to post-auction market structure.<sup>10</sup> The Commission also specifically emphasized—as it has repeatedly emphasized in many other such public notices preceding prior auctions, including Universal Service Fund auctions<sup>11</sup>—that prohibited communications regarding bids or bidding strategies "may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."<sup>12</sup> The Commission also reminded prospective applicants that section 1.21002(e) requires applicants to report within five business days any communication made or received that "may be" a prohibited communication, and noted that the obligation "continues until the report has been made."<sup>13</sup>

5. In Auction 904, the prohibited communications period (Quiet Period) began on July 15, 2020, at 6:00 p.m. EST when the FCC Form 183 (Short-Form Application) filing window closed,<sup>14</sup> and ended on January 29, 2021, at 6 p.m. EST when the FCC Form 683 (Long-Form Application) filing window closed.<sup>15</sup> LTD and Cox each submitted Short-Form Applications by the July 15, 2020 deadline.<sup>16</sup>

<sup>5</sup> See Cox, *Cox Service Areas*, <https://www.cox.com/local/residential> (last visited Mar. 8, 2022); see also Cox, *Contact Us*, <https://www.cox.com/aboutus/headquarters.html> (last visited Mar. 8, 2022).

<sup>6</sup> *386 Applicants Qualified to Bid In the Rural Digital Opportunity Fund Phase I Auction (Auction 904); Bidding to Begin on October 29, 2020*, AU Docket No. 20-34, WC Docket No. 19-126, Public Notice, 35 FCC Rcd 11356, 11372, 11378 (2020) (Attach. A: Qualified Bidders sorted by applicant name) (*Qualified Bidders Public Notice*).

<sup>7</sup> *Rural Digital Opportunity Fund Phase I Auction Scheduled For October 29, 2020; Notice and Filing Requirements and Other Procedures For Auction 904*, AU Docket No. 20-34, WC Docket No. 19-126, Public Notice, 35 FCC Rcd 6077 (2020) (*Auction 904 Procedures Public Notice*).

<sup>8</sup> *Id.* at 6131, para. 146.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6133, para. 154.

<sup>11</sup> See, e.g., *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, para. 140 (2018) (*Auction 903 Procedures Public Notice*); see also, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Memorandum Opinion and Order, 9 FCC Rcd 7684, 7689, para. 12 (1994).

<sup>12</sup> *Id.* at 6133-34, para. 157.

<sup>13</sup> *Id.* at 6136-37, para. 167; 47 CFR § 1.21002(e).

<sup>14</sup> *Id.* at 6082, para. 12.

<sup>15</sup> See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13888 para. 2

(continued....)

On October 13, 2020, the Qualified Bidders Public Notice (*Qualified Bidders Public Notice*) was released, making public to all prospective bidders and their agents that LTD and Cox were qualified to bid in Auction 904.<sup>17</sup> The *Qualified Bidders Public Notice* reminded Auction 904 applicants of their obligation to comply with section 1.21002 of the Commission's rules, by not engaging in prohibited communications.<sup>18</sup> Applicants were also again reminded of their obligation to report any communication made or received that "appears" to violate section 1.21002 within five business days.<sup>19</sup>

6. Bidding in Auction 904 began on October 29, 2020, and concluded on November 25, 2020.<sup>20</sup> LTD emerged as the largest winning bidder.<sup>21</sup> Cox also won a sizeable lot of bids spanning more than 8,000 locations.<sup>22</sup> On December 7, 2020, the winning bidders were announced in the *Auction 904 Closing Public Notice*, which also announced January 29, 2021, as the deadline for winning bidders to submit the required post-auction Long-Form Applications for RDOF funding support, as well as the end of the prohibited communications period.<sup>23</sup> In the *Auction 904 Closing Public Notice*, all applicants were again reminded to comply with the prohibited communications rules until after the long-form submission deadline.<sup>24</sup>

7. LTD and Cox each stated on their respective Short-Form Applications that they did not have joint bidding agreements with any Auction 904 applicants.<sup>25</sup> LTD and Cox both certified that the content of their respective applications was "true and correct."<sup>26</sup> On its Short-Form Application, LTD

(Continued from previous page) \_\_\_\_\_  
(2020) (*Auction 904 Closing Public Notice*). The purpose of the long-form application was for winning bidders to file their application for CAF-II funding and for the Commission to determine whether a long-form applicant is qualified to receive such financial support from the Universal Service Fund. See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6088-89, para. 27; 47 CFR § 1.21004(a).

<sup>16</sup> See Application to Participate in Auction 904, FCC Form 183, LTD Broadband LLC, File No. 0009148672 (filed Sept. 23, 2020), [https://auctionfiling.fcc.gov/form175/search175/printablePage\\_template.htm?searchLevel=B&application\\_id=12176249&file\\_num=0009148672&version=2&auction\\_id=904&subSearchLevel=Detail&secondaryTabName=final&ind=appInfo](https://auctionfiling.fcc.gov/form175/search175/printablePage_template.htm?searchLevel=B&application_id=12176249&file_num=0009148672&version=2&auction_id=904&subSearchLevel=Detail&secondaryTabName=final&ind=appInfo) (LTD Short-Form Filing). See also Application to Participate in Auction 904, FCC Form 183, Cox Communications, Inc., File No. 0009147974 (filed Sept. 23, 2020), [https://auctionfiling.fcc.gov/form175/search175/printablePage\\_template.htm?searchLevel=B&application\\_id=12166601&file\\_num=0009147974&version=2&auction\\_id=904&subSearchLevel=Detail&secondaryTabName=final&ind=appInfo](https://auctionfiling.fcc.gov/form175/search175/printablePage_template.htm?searchLevel=B&application_id=12166601&file_num=0009147974&version=2&auction_id=904&subSearchLevel=Detail&secondaryTabName=final&ind=appInfo) (Cox Short-Form Filing).

<sup>17</sup> *Qualified Bidders Public Notice*, 35 FCC Rcd at 11372, 11378 (2020) (Attach. A: Qualified Bidders sorted by applicant name).

<sup>18</sup> *Id.* at 11363-65, paras. 44-51.

<sup>19</sup> *Id.* at 11364, para. 48.

<sup>20</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6082, para. 12. *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13888, para. 1.

<sup>21</sup> Information calculated from Auction 904 winning bidder data. See *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13888, Attach. A.

<sup>22</sup> *Id.*

<sup>23</sup> *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13888, para. 2; 47 CFR § 1.21004(a).

<sup>24</sup> See *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13899-13900, paras. 32-35.

<sup>25</sup> See LTD Short-Form Filing; Cox Short-Form Filing.

<sup>26</sup> See *id.*

listed Corey Hauer, sole managing member and 100% owner of LTD, as solely responsible for the Company's participation in Auction 904.<sup>27</sup>

8. LTD hired an investment agent named RJM to raise "capital for investment into LTD" in order to support and "expand LTD's operations."<sup>28</sup> LTD hired RJM on November 24, 2020, which was during the Quiet Period. According to LTD, Auction 904 was the perfect opportunity to "expand" its fiber operations and designed its bidding strategy around targeting the most rural service areas of the Auction.<sup>29</sup> RJM knew of LTD's bidding strategy and also knew that LTD was winning in "many areas."<sup>30</sup>

9. RJM and LTD never entered into a non-disclosure agreement that would have governed RJM's involvement in securing capital investment to support LTD's expansion of its fiber operations.<sup>31</sup> Although 47 CFR § 1.21002 does not bar an auction applicant like LTD from communicating bids and bidding strategies with agents like RJM, LTD was on notice that applicants must take "appropriate steps" to keep agents from becoming "conduits" for prohibited communications.<sup>32</sup> Indeed, in the Commission's *Auction 904 Procedures Public Notice*, as in connection with prior auctions,<sup>33</sup> the Commission explained that "appropriate steps" included concrete "firewall" measures like a signed "non-disclosure agreement."<sup>34</sup> Moreover, firewalls to protect against prohibited communications should be created *before* the applicant communicates any auction-related information to its agents.<sup>35</sup> Such firewalls are, after all, intended to *prevent* violations from occurring. Although LTD cautioned RJM via e-mail to be cautious when speaking with other Auction 904 applicants,<sup>36</sup> LTD's admonition came only *after* LTD communicated auction-related information to RJM,<sup>37</sup> and the informal warning from LTD was in tension with RJM's contractual mandate to identify investors or lenders; to contact those investors; and to

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<sup>27</sup> See LTD Short-Form Filing. See also Letter from Stephen E. Coran, Esq., Counsel to LTD Broadband LLC, Lerman Senter PLLC, to Marlene H. Dortch, Secretary, and Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 4-5 (Jan. 25, 2022) (on file in EB-IHD-21-00033102) (LTD LOI Response).

<sup>28</sup> LTD LOI Response at 5-6.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 19.

<sup>32</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6134, para. 160.

<sup>33</sup> See e.g. *Auction 903 Procedures Public Notice*, paras. 144-45. Here the Commission explains that applicants can communicate with parties *only* "provided that the applicant takes appropriate steps to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other applicants." This advice is identical to the warnings issued to applicants in Auction 904, even down to recommending specific firewalls like a "non-disclosure agreement." Most specifically, para. 144 of this *Auction 903 Procedures Public Notice* explains that third parties can advise applicants if and only if "such firms implement firewalls and other compliance procedures to prevent" prohibited communications. In short, the use of preventative firewalls is not new or unique to Auction 904.

<sup>34</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6134, para. 160.

<sup>35</sup> *Id.* (mandating that an "applicant should take appropriate steps to ensure that any third party it employs for advice pertaining to its bids or bidding strategies does not become a conduit for prohibited communications to other applicants, which would violate the rule." "As long as firms implement firewalls," they can engage with applicants in the relevant auction since those firewalls will "help prevent such individuals from communicating the bids or bidding strategies of one applicant to another.").

<sup>36</sup> LTD LOI Response at 6.

<sup>37</sup> See *id.* at 7 (explaining that LTD's warnings to RJM occurred on November 30 and December 1, 2020, but that LTD nonetheless communicated its bidding strategies to RJM in multiple phone calls throughout the month of November, 2020.).

“{ [ ] }”<sup>38</sup>  
 RJM’s requirement to introduce investors and lenders to “{ [ ] }” included, but was not limited to generating detailed financial models, sharing a “{ [ ] },” and describing “{ [ ] }.”<sup>39</sup>

10. Richard Moyer, the managing partner of RJM sent numerous e-mails during the Quiet Period to representatives of Cox seeking to “{ [ ] }”<sup>40</sup> On December 15 and 23, 2020, Mr. Moyer e-mailed Cox to { [ ] }.<sup>41</sup> This came after a phone conversation on December 17, 2020, between Cox and Mr. Moyer where { [ ] }.<sup>42</sup> Mr. Moyer then e-mailed Cox again about { [ ] } on January 8, 2021.<sup>43</sup> In his e-mail, Mr. Moyer { [ ] }

{ [ ] } The correspondence and phone call occurred on the same day that applicants were again admonished by the Commission not to engage in prohibited communications associated with the publicized bids.<sup>47</sup> Nonetheless, the day before the end of the Quiet Period, on January 28, 2021, Mr. Moyer contacted Cox *again* to { [ ] }.<sup>48</sup>

<sup>38</sup> Material set off by double brackets { [ ] } is confidential and is redacted from the public version of this document. LTD LOI Response (Attach. 1, Letter Agreement between LTD and RJM at 1-2). This contractual mandate { [ ] } risked running afoul of LTD’s warning via e-mail to { [ ] }

{ [ ] } LTD LOI Response  
 { [ ] } Since phone calls between RJM and Cox revealed that LTD’s strategy was { [ ] }

{ [ ] } See LTD LOI Response at 14.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> LTD LOI Response at 10; LTD LOI Response { [ ] }

{ [ ] } The entire narrative of each e-mail and phone call during the quiet period can be found in the LTD LOI Response at 10-11. The dates of the communications at issue in this Notice of Apparent Liability are the phone calls and e-mails between RJM and Cox on December 7, 15, and 23, 2020, and on January 8, 2021.

<sup>41</sup> *Id.* at 19-20.

<sup>42</sup> LTD LOI Response at 10.

<sup>43</sup> *Id.*

<sup>44</sup> LTD LOI Response { [ ] }

<sup>45</sup> See { [ ] }

{ [ ] }

<sup>46</sup> See *id.* at 1-2.

<sup>47</sup> *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13899-13900.

<sup>48</sup> LTD LOI Response at 10; LTD LOI Response ({ [ ] }

{ [ ] }.



11. On January 14, 2021, {{ }}<sup>49</sup> {{ }} received this notification shortly after counsels for LTD and Cox discussed amongst themselves whether the call on January 8, 2021, constituted a reportable communication by their own estimation.<sup>50</sup> On January 21, 2021, OEA staff met with Corey Hauer, LTD's CEO, via conference call and advised him of the ongoing application of the prohibited communication rule.<sup>51</sup> Despite having separate conversations with both Commission officials and Cox's counsel about the communications, LTD failed to report the potential violation to the Commission.<sup>52</sup> Subsequently, this matter was referred to the Enforcement Bureau (Bureau) on May 3, 2021.

### III. DISCUSSION

#### A. LTD Apparently Violated Sections 1.21002(b), (e) of the Commission's rules

12. Section 1.21002(b) of the Commission's rules provides, in pertinent part, that:

After the deadline for submitting applications to participate, an applicant [in an auction] is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support.<sup>53</sup>

13. Section 1.21002(e) of the Commission's rules provides, in pertinent part, that:

An applicant that makes or receives communications that may be prohibited pursuant to paragraph (b) of this section shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.<sup>54</sup>

14. We find that LTD apparently engaged in prohibited communications with Cox during Auction 904, in apparent violation of section 1.21002(b) of the Commission's rules. LTD, an Auction 904 applicant, sought investments through its agent, RJM, and shared information regarding its bids, bidding strategies, and bidding outcomes with Cox, another Auction 904 applicant, during the Quiet Period.<sup>55</sup> The Commission has been clear that communicating whether or not a party is bidding

<sup>49</sup> See LTD LOI Response at 11-12.

<sup>50</sup> See LTD LOI Response at 11-12 (LTD explains in its LOI Response that its attorneys and those for Cox phoned each other on January 11, 2021, to discuss whether the January 8 phone call merited reporting. LTD notes that "Scott Hill, an attorney for LTD [...] recalls that the Cox attorney stated that he did not believe the January 8, 2021 meeting discussed information that required the submission of such a report.").

<sup>51</sup> See *id.*

<sup>52</sup> See LTD LOI Response at 14.

<sup>53</sup> 47 CFR § 1.21002(b).

<sup>54</sup> 47 CFR § 1.21002(e).

<sup>55</sup> The entire narrative of each e-mail and phone call during the quiet period can be found in the LTD LOI Response at 10-11. The dates of the communications at issue in this Notice of Apparent Liability are the phone calls and e-mails between RJM and Cox on December 7, 15, 17, and 23, 2020, and on January 8 and 28, 2021. Each one of these communications either {

}} is precisely the sort of anti-competitive behavior that 47 CFR § 1.21002 prohibits.

constitutes the prohibited conveyance of bids or bidding strategies.<sup>56</sup> Applicants were also warned to “remain vigilant not to communicate, directly or indirectly, information that affects or could affect, bids or bidding strategies;” this prohibition extended *after* the winning bidders were announced and until the close of the Long-Form Application filing window.<sup>57</sup> Indeed, the Commission was quite specific in explaining that the prohibition “include[d] communications regarding capital calls or requests for additional funds in support of bids or bidding strategies.”<sup>58</sup> Not only did LTD’s agent relay numerous messages about the scope and strategies of LTD’s bidding, it also made explicit requests for financial support relating to Auction 904.<sup>59</sup>

15. LTD took none of the “appropriate steps” that the Commission advised Auction 904 applicants take to prevent third parties from becoming a “conduit for prohibited communications to other applicants, which would violate the rule.”<sup>60</sup> Auction 904 applicants were advised by the Commission to either disclose agreements with other applicants that would have permitted communications during the Quiet Period, or to implement auction-specific non-disclosure agreements with third parties before sharing bids or bid strategies with them.<sup>61</sup> LTD neither disclosed any bidding arrangement with Cox, nor apparently took any “appropriate steps,” such as executing an auction-specific non-disclosure agreement with RJM, before authorizing RJM to solicit funding for LTD’s broadband expansion.<sup>62</sup> Such a non-disclosure agreement between LTD and RJM could have prevented prohibited communications between Cox and RJM during the Auction 904 Quiet Period. It should be noted that while these types of “firewalls” are helpful, even if LTD took such a step to assist in preventing prohibited communications, that in itself is not an absolute defense when violations do occur. Ultimately, it is the Auction 904 applicant’s responsibility to ensure its agents do not become a “conduit” for prohibited communications during the Quiet Period.<sup>63</sup>

16. Moreover, LTD failed to report these prohibited communications to the Commission within five business days of their occurrence in apparent violation of section 1.21002(e) of the Commission’s rules. When Commission staff learned of the prohibited communications made on LTD’s behalf,<sup>64</sup> weeks or months after most of the communications had occurred, they contacted LTD, warned the Company that the prohibited communications rules governing the Quiet Period were still in effect, and advised LTD that it had an ongoing obligation to report prohibited communications.<sup>65</sup> LTD {{

<sup>56</sup> See e.g. *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 154.

<sup>57</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 61323-23, paras. 151, 156.

<sup>58</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6133, para. 157.

<sup>59</sup> LTD LOI Response at 10-11.

<sup>60</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6134, para. 160.

<sup>61</sup> *Id.*

<sup>62</sup> LTD LOI Response at 19. See also LTD LOI Response (Attach. 3, Nov. 30, 2020 and Dec. 1, 2020 e-mails between Corey Hauer and Richard Moyer) (Corey Hauer of LTD and Richard Moyer of RJM shared e-mail correspondence on Dec. 1, 2020, and informally discussed {{

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<sup>63</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6134, para. 160.

<sup>64</sup> See {{ [redacted] }} at 1-2.

<sup>65</sup> See LTD LOI Response at 10-11, 14-15.

}},<sup>66</sup> but decided not to report the communications even after this specific reminder from the Commission.<sup>67</sup> Accordingly, we find that LTD apparently violated section 1.21002(b) and (e) of the Commission's rules by willfully and repeatedly engaging in prohibited communications of its bidding, bidding strategies, and bidding results to Cox via LTD's investment agent RJM, and by failing to report those prohibited communications.

## B. Proposed Forfeiture

17. Under section 503(b)(1) of the Communications Act of 1934, as amended (the Act), any person who is determined by the Commission to have failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission willfully and repeatedly shall be liable to the United States for a forfeiture penalty.<sup>68</sup> In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>69</sup> 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 in a willful and repeated manner<sup>70</sup>

18. The Commission's *Forfeiture Policy Statement*<sup>71</sup> specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act, 47 U.S.C. § 503(b)(2)(E), such as "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."<sup>72</sup> Moreover, section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of such act, *irrespective of any intent* to violate . . . any rule or regulation of the Commission . . . ."<sup>73</sup>

19. Given the importance of the prohibited communications rule to maintaining the integrity and competitiveness of the auction process, the Commission has previously assessed a forfeiture in the amount of \$100,000 for violations of this rule.<sup>74</sup> The Commission has also seen fit to adjust the forfeiture

<sup>66</sup> See LTD LOI Response at 14-15.

<sup>67</sup> *Id.*

<sup>68</sup> See 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(1).

<sup>69</sup> See 47 U.S.C. § 503(b)(4); 47 CFR § 1.80(f).

<sup>70</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid). See 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(b)(2). See also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020), amended by Erratum, 36 FCC Rcd 1349 (EB 2021); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 86 Fed. Reg. 3830 (Jan. 15, 2021) (setting January 15, 2021, as the effective date for the increases).

<sup>71</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17,087, 17,113 (1997), recons. denied 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 CFR § 1.80(b).

<sup>72</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17, 100-101, para. 27.

<sup>73</sup> 47 U.S.C. § 312(f)(1) (emphasis added). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>74</sup> See *AMG Technology Investment Group, LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7649, para. 2 (2019) (*AMG NAL*). See also, e.g., *Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007), appeal denied, *Star Wireless, LLC v. FCC & USA*, 522 F.3d 469 (D.C. Cir. 2008) (*Star & Northeast Order*). In the Order on Review, the Commission affirmed the Bureau's determination that Star Wireless and Northeast Communications were each liable for a monetary forfeiture of \$100,000 for violation of the auctions prohibited communications rule, but reduced the forfeiture to \$75,000 because each

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amount when warranted by the totality of the facts unique to each case. For example, the Commission has assessed a lower forfeiture for violations of the Commission's rules in previous auctions because the parties had an otherwise unblemished history of compliance.<sup>75</sup> Most recently, the Commission reduced the forfeiture to \$75,000 when the target reported apparently prohibited Communications.<sup>76</sup>

20. The facts and circumstances of the instant case do not merit a reduction from the \$100,000 forfeiture amount the Commission has previously imposed for engaging in prohibited communications. The record shows that LTD exhibited a disregard for the rule against prohibited communications. For nearly two months during the post-bidding phase of the Quiet Period, LTD's agent, RJM, engaged in repeated prohibited communications with Cox to solicit financial support for LTD's fiber expansion plans. RJM {[

]}.<sup>77</sup> Communications between applicants in the period between the announcement of winning bidders and the deadline to complete Long-Form Applications has the potential to delay auction administration and to facilitate anti-competitive practices. RJM's communications with Cox on behalf of LTD during this portion of the Quiet Period {[

]} represent precisely the sort of communications the Commission's rules prohibit.<sup>78</sup>

21. LTD, through RJM, engaged in prohibited communications with another Auction 904 bidder despite the Commission's repeated and explicit admonitions against prohibited communications in each phase of the Auction 904 process. LTD was obligated to ensure that its agent did not become a conduit for prohibited communications.<sup>79</sup> However, LTD took none of the advised precautions to help prevent the prohibited communications that transpired between its agent RJM and fellow Auction 904 applicant Cox. The Commission's warnings were published throughout Auction 904 in the *Procedures Public Notice*, *Qualified Bidders Public Notice*, and *Auction 904 Closing Public Notice*.

22. LTD failed to report any of these communications, as required by section 1.21002(e) of the Commission's rules,<sup>80</sup> even after direct reminders from the Commission.<sup>81</sup> Taking into consideration

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company had a history of compliance with Commission rules. Subsequently, the Bureau applied this compliance record reduction to another prohibited communications decision against Cascade Access, LLC. *See Cascade Access, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1350, 1354, para. 14 (EB 2009) (*Cascade NAL*).

<sup>75</sup> *Star Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 17648 (EB 2003), Forfeiture Order, 19 FCC Rcd 18626 (EB 2004), *order granted in part sub nom, Star and Northeast*, 22 FCC Rcd at 8943; *Northeast Communications of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 17672 (EB 2003), Forfeiture Order, 19 FCC Rcd 18635 (EB 2004), *order granted in part sub nom, Star Wireless, LLC and Northeast Communications of Wisconsin, Inc.*, Order on Review, 22 FCC Rcd 8943 (2007). In the Order on Review, the Commission affirmed the Bureau's determination that Star Wireless and Northeast Communications were each liable for a monetary forfeiture of \$100,000 for violation of the auctions prohibited communications rule, but reduced the forfeiture to \$75,000 because each company had a history of compliance with Commission rules. Subsequently, the Bureau applied this compliance record reduction to another prohibited communications decision against Cascade Access, LLC. *See Cascade NAL*, 24 FCC Rcd at 1354, para. 14; Forfeiture Order, 28 FCC Rcd 141 (EB 2013), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 14018 (EB 2015). To be sure, the Commission may also decide in the future that it is appropriate to make an upward adjustment to the forfeiture up to the statutory maximum allowed under its Rules. *See* 47 CFR § 1.80.

<sup>76</sup> *See, e.g., AT&T Services, Inc.*, 34 FCC Rcd 7660,7667, para. 16 (2019) (Because AT&T self-reported its apparently prohibited communications, the Commission saw fit to appraised only a \$75,000 forfeiture).

<sup>77</sup> LTD LOI Response at 10

<sup>78</sup> *See* {[ ]} at 1-2.

<sup>79</sup> *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6134, para. 160.

<sup>80</sup> 47 CFR § 1.21002(e).

the facts in this matter pursuant to sections 503(b) of the Act and 1.80 of the Commission's rules, we find that LTD is apparently liable for a forfeiture of \$100,000.<sup>82</sup>

#### IV. ORDERING CLAUSES

23. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act<sup>83</sup> and section 1.80 of the Commission's rules,<sup>84</sup> that LTD Broadband LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$100,000 for its willful violations of section 1.21002(b) and (e) of the Commission's rules,<sup>85</sup> and the procedures established specifically for Auction 904 in the *Auction 904 Public Notice*.

24. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,<sup>86</sup> that within thirty (30) calendar days of the release date of this Notice, LTD Broadband LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 27 below.

25. LTD shall send electronic notification of payment to Jeffrey Gee, Kalun Lee, Rizwan Chowdhry, Ryan McDonald, and Pam Slipakoff of the Enforcement Bureau, Federal Communications Commission, at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), [Ryan.McDonald@fcc.gov](mailto:Ryan.McDonald@fcc.gov), and [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by wire transfer, credit card, or ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's Registration System (the Commission's FRN Management and Financial system).<sup>87</sup> The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>88</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>89</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>81</sup> See LTD LOI Response at 14-15.

<sup>82</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>83</sup> 47 U.S.C. § 503(b).

<sup>84</sup> 47 CFR § 1.80.

<sup>85</sup> 47 CFR § 1.21004(a).

<sup>86</sup> 47 CFR § 1.80.

<sup>87</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>88</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>89</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

26. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>90</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

27. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.<sup>91</sup> The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, and must include the NAL account number referenced in the caption. The statement must also be e-mailed to Jeffrey Gee, Kalun Lee, Rizwan Chowdhry, Ryan McDonald, and Pam Slipakoff of the Enforcement Bureau, Federal Communications Commission, at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), [Ryan.McDonald@fcc.gov](mailto:Ryan.McDonald@fcc.gov), and [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov). Until further notice, the Commission will not accept any hand or messenger delivered filings.

28. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>92</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

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<sup>90</sup> See 47 CFR § 1.1914.

<sup>91</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>92</sup> 47 U.S.C. § 503(b).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>93</sup>

29. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to Stephen Coran, Counsel to LTD Broadband LLC, Lerman Senter PLLC, 2001 L Street NW, Suite 400, Washington, D.C. 20036, and by e-mail to [scoran@lermandsenter.com](mailto:scoran@lermandsenter.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Acting Chief  
Enforcement Bureau

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<sup>93</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).