

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

In the matter of
One Stop Motors, Inc.
Apparent Liability for Forfeiture
File No. EB- 07-TC-809
File No. EB- 07-TC-981
NAL/Acct. No. 200932170961
FRN: 0018740506

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 30, 2009

Released: May 1, 2009

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that One Stop Motors, Inc. ("One Stop Motors") apparently willfully or 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 one unsolicited, prerecorded advertising message to at least one consumer. Based on the facts and circumstances surrounding the apparent violation, we find that One Stop Motors is apparently liable for a forfeiture in the amount of \$4,500.

II. BACKGROUND

2. Section 227(b)(1)(B) prohibits any person from initiating "any telephone call to any residential telephone line using any artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by

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, One Stop Motors has offices at 2950 South Rancho Ste 200, Las Vegas, NV 89102. Rob Wilder is listed as the contact person for One Stop Motors. Accordingly, all references in this NAL to One Stop Motors 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)(B); 47 C.F.R. § 64.1200(a)(2).

rule or order by the Commission.”<sup>4</sup> Section 64.1200(a)(2) of the Commission's rules provides exemptions to the prohibition for calls: 1) made for emergency purposes; 2) not made for a commercial purpose; 3) made for a commercial purpose but “not including or introducing an unsolicited advertisement<sup>5</sup> or constituting a telephone solicitation”;<sup>6</sup> 4) to any person “with whom the caller has an established business relationship<sup>7</sup> at the time the call is made”; or 5) “made by or on behalf of a tax-exempt nonprofit organization.”<sup>8</sup>

3. On March 9, 2007, in response to one or more consumer complaints alleging that One Stop Motors had delivered unsolicited, prerecorded advertising messages, the Commission staff issued a citation<sup>9</sup> to One Stop Motors, pursuant to section 503(b)(5) of the Act.<sup>10</sup> The staff cited One Stop Motors for delivering one or more unsolicited, prerecorded advertising messages to a residential telephone line for car sales services, in violation of section 227 of the Act and the Commission’s related rules and orders. The citation warned One Stop Motors that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included copies of the consumer complaints that formed the basis of the citation.<sup>11</sup> The citation informed One Stop Motors that within 30 days of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. One Stop Motors did not request an interview or otherwise respond to the citation.<sup>12</sup>

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<sup>4</sup> 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

<sup>5</sup> An “unsolicited advertisement” is defined 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.” 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

<sup>6</sup> A “telephone solicitation” is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-exempt nonprofit organization.” 47 U.S.C. § 227(a)(3); 47 C.F.R. § 64.1200(f)(12). We have previously found that “prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempt.” *TCPA Revisions Report and Order*, 18 FCC Rcd 14097-98 (2003).

<sup>7</sup> An “established business relationship” is defined as “a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(4).

<sup>8</sup> 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200(a)(2).

<sup>9</sup> Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-809, issued to One Stop Motors on March 9, 2007.

<sup>10</sup> 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 an applicant for any of those listed instrumentalities for violations of the Act or of the Commission’s rules and orders).

<sup>11</sup> Commission staff mailed the citation to One Stop Motors, 2950 South Rancho Dr., Suite 200, Las Vegas, Nevada 89102-0740. See n.2, *supra*.

<sup>12</sup> Following the issuance of the citation, the Commission continued to receive complaints alleging that One Stop Motors placed unsolicited, prerecorded calls to residential consumers. These complaints resulted in the issuance of an additional citation against One Stop Motors, Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-981, issued to One Stop Motors on June 1, 2007.

4. Despite the citation's warning that subsequent violations could result in the imposition of monetary forfeitures, we have received an additional consumer complaint indicating that One Stop Motors continued to engage in such conduct after receiving the citation.<sup>13</sup> We base our action here specifically on a complaint filed by a consumer establishing that One Stop Motors continued to deliver one unsolicited, prerecorded advertising message to a consumer after the date of the citation.<sup>14</sup>

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 \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.<sup>15</sup> In exercising such authority, we are 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."<sup>16</sup>

### III. DISCUSSION

#### A. Violations of the Commission's Rules Restricting Unsolicited Prerecorded Messages

6. We find that One Stop Motors apparently violated section 227 of the Act and the Commission's related rules and orders by delivering at least one unsolicited, prerecorded advertising messages to the consumer identified in the Appendix. This NAL is based on evidence that a consumer received an unsolicited prerecorded message from One Stop Motors *after* the Commission staff's citation. The prerecorded message advertises a car sales service. Further, we find that the unsolicited, prerecorded message at issue here was not made for any emergency or non-commercial purposes, and was not on behalf of a tax-exempt, nonprofit organization, but was commercial in nature and included an unsolicited advertisement or constituted a telephone solicitation. In addition, according to the complaint, the consumer neither had an established business relationship with One Stop Motors nor gave One Stop Motors permission to deliver the unsolicited, prerecorded message.<sup>17</sup> The prerecorded message at issue

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<sup>13</sup> See Appendix for a listing of the consumer complaint against One Stop Motors requesting Commission action.

<sup>14</sup> We note that evidence of additional instances of unlawful conduct by One Stop Motors may form the basis of subsequent enforcement action.

<sup>15</sup> 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 at \$16,000).

<sup>16</sup> 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).

<sup>17</sup> See complaint dated May 18, 2008, from Leroy Goodknecht (stating that he had never done any business with the company, never made an inquiry or application to the company, and never gave permission for the company to make the call). The complainant involved in this action is listed in the Appendix below.

here therefore falls within the definition of an “unsolicited advertisement.”<sup>18</sup> Based on the entire record, including the consumer complaint, we conclude that One Stop Motors apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering one unsolicited, prerecorded advertising message to one consumer.

## B. Proposed Forfeiture

7. We find that One Stop Motors is apparently liable for a forfeiture in the amount of \$4,500. Although the *Commission’s Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition on delivering unsolicited, prerecorded advertising messages to a residential telephone line, the Commission’s Enforcement Bureau has found these violations to be similar in nature to violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements.<sup>19</sup> The Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.<sup>20</sup> We apply that base amount to one apparent unsolicited, prerecorded advertising message violation. Thus, a total forfeiture of \$4,500 is proposed. One Stop Motors 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.<sup>21</sup>

## IV. CONCLUSION AND ORDERING CLAUSES

8. We have determined that One Stop Motors, Inc. apparently violated section 227 of the Act and the Commission’s related rules and orders by delivering at least one unsolicited, prerecorded advertising message to the consumer identified in the Appendix. We have further determined that One Stop Motors, Inc. is apparently liable for a forfeiture in the amount of \$4,500.

9. 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, and under the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that One Stop Motors, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of \$4,500 for willful or repeated violations of section 227(b)(1)(B) of the Communications Act, 47 U.S.C. § 227(b)(1)(B), sections 64.1200(a)(2) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(2), and the related orders described in the paragraphs above.

10. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission’s rules,<sup>22</sup> within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, One

<sup>18</sup> See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

<sup>19</sup> See *Warrior Custom Golf, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd. 23648, 23652 (Enf. Bur. 2004) (“*Warrior Custom Golf*”) (first NAL to address pre-recorded advertising messages); see also *Septic Safety, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd. 2179 (Enf. Bur. 2005); *Septic Safety, Inc.*, Forfeiture Order, 21 FCC Rcd. 6868 (Enf. Bur. 2006); *I Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 11852 (Enf. Bur. 2006); *I Home Lending Corporation, d/b/a Capital Line Financial, LLC.*, Forfeiture Order, DA 09-539, released March 10, 2009.

<sup>20</sup> 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).

<sup>21</sup> See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

<sup>22</sup> 47 C.F.R. § 1.80.

Stop Motors, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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, 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). One Stop Motor will 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, S.W., 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.

12. The response, if any, must be mailed both to the Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption.

13. 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.

14. 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 One Stop Motors, Inc., Attention: Rob Wilder, 2950 South Rancho Drive, Ste 200, Las Vegas, NV 89102.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

## APPENDIX

<b>Complainant received unsolicited prerecorded messages</b>	<b>Violation Date(s)</b>
Leroy Goodknecht	5/18/08