

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

In the Matter of)	File No. EB-04-IH-0654
)	
International Telecom Exchange, Inc.)	NAL/Acct. No. 200632080161
)	
Apparent Liability for Forfeiture)	FRN 0013218409
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: May 31, 2006

Released: June 1, 2006

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc. (collectively, “ITE”) apparently violated a Commission order by willfully and repeatedly failing to respond on a timely basis to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Further, we find that ITE has apparently violated section 64.604(c)(5)(iii)(A) of the Commission’s rules by willfully and repeatedly failing to contribute to the Telecommunications Relay Service (“TRS”) Fund.¹ Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that ITE is apparently liable for a monetary forfeiture in the amount of \$28,062.

2. We order ITE to submit within thirty days, either as part of its response to this *NAL* or separately, a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, setting forth in detail its plan to come into compliance with the relevant payment and reporting rules that have been the subject of the Commission’s investigation.

II. BACKGROUND

3. ITE characterizes itself as a provider of residential and business long distance telephone services, international telephone services, and pre-paid phone card services.² ITE began providing telecommunications services in the United States in 2002.³

¹ 47 C.F.R. § 64.604(c)(5)(iii)(A).

² See <http://www.itetelecom.com> (accessed July 6, 2005).

³ Letter from Lance J.M. Steinhart, attorney for International Telecom Exchange, Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 19, 2005, Attachment at 4 (“September 19, 2005 LOI Response”). International Telecom Exchange, Inc. first provided telecommunications service in 2002, which ceased on May 31, 2003; International Telecom Exchange Group, Inc. commenced providing telecommunications service on June 1, 2003. *Id.*

4. On January 26, 2005, the Bureau sent ITE a Letter of Inquiry⁴ to obtain information concerning ITE's compliance with sections 1.1157, 52.17, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules, which require entities that provide interstate telecommunications services to pay annual regulatory fees; to contribute to the Universal Service Fund ("USF"), TRS Fund, and North American Numbering Plan Administration ("NANPA") Fund; and to file information as set forth on the Telecommunications Reporting Worksheets (*i.e.*, FCC Forms 499-A and 499-Q).⁵

5. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."⁶ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.⁷ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, every carrier that provides interstate telecommunications services, such as ITE, must contribute to the TRS Fund based upon its interstate end-user revenues.⁸ A carrier's contribution to the TRS Fund is based upon its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.⁹

6. The Bureau sent the January 26, 2005 LOI to ITE's office in Huntington Beach, California, by certified mail, return receipt requested, facsimile, and electronic mail.¹⁰ The January 26, 2005 LOI directed ITE to provide certain specified documents and information within twenty calendar days of the date of the letter, *i.e.*, by February 15, 2005.

⁴ Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Brian Jarrah, President/CEO, International Telecom Exchange, Inc., dated January 26, 2005 ("January 26, 2005 LOI").

⁵ See 47 C.F.R. §§ 1.1157, 52.17, 54.706, 54.711, 64.604, and 64.1195.

⁶ 47 U.S.C. § 225(b)(1).

⁷ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities. Such services provide telephone access to a significant number of Americans who, without it, might not be able to make or receive calls from others. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, ¶ 5 (2000).

⁸ 47 C.F.R. § 64.604(c)(5)(iii)(A). Each subject carrier must contribute at least \$25 per year. Carriers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. 47 C.F.R. § 64.604(c)(5)(iii)(B). Otherwise, carriers may divide their contributions into equal monthly payments. *Id.*

⁹ 47 C.F.R. § 64.604(c)(5)(iii)(B).

¹⁰ The Company confirmed receipt of the January 26, 2005 LOI on January 27, 2005. Electronic mail message from Shelly Dinley-Soderman, Vice President, International Telecom Exchange, Inc., to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 27, 2005 ("January 27, 2005 ITE Letter").

7. On February 7, 2005, ITE requested a 60-day extension.¹¹ On February 25, 2005, the Bureau granted ITE an extension of time to respond to March 25, 2005.¹² On March 24, 2005, the Bureau received a letter from Telecom Compliance Services (“TCS”), requesting another extension for ITE’s response until April 1, 2005.¹³

8. On June 27, 2005, the Bureau still had not received ITE’s response and the Bureau notified ITE that failure to respond fully to the January 26, 2005 LOI constitutes a violation of the Communications Act of 1934, as amended (the “Act”) and the Commission’s rules, and can, by itself, subject ITE to potential enforcement action, including forfeitures.¹⁴ The Bureau notified ITE that unless ITE provided a full response, supported by a properly executed affidavit or declaration, by July 11, 2005, the Bureau would commence enforcement action for ITE’s failure to respond to the Bureau’s inquiries.¹⁵ The Bureau did not receive a response from ITE by July 11, 2005.

9. On July 27, 2005, Ms. Charnel Hamilton, an accountant for ITE, advised Bureau staff by telephone that she was ITE’s new point of contact, that she did not have a full set of the Bureau’s correspondence, and that she thought the issue was resolved. Bureau staff provided the correspondence and advised her to submit an LOI response immediately.¹⁶ On July 29, 2005, Ms. Hamilton advised Bureau staff that ITE would submit a response by August 5, 2005. On August 8, 2005, Ms. Hamilton advised Bureau staff by telephone that ITE was waiting for information from its Chief Executive Officer. Bureau staff again advised ITE to submit a response immediately. On August 10, 2005, Ms. Hamilton advised Bureau staff by telephone that ITE hired an attorney and would respond by August 12, 2005. The Bureau did not receive ITE’s LOI Response on August 12, 2005.

¹¹ Letter from Bassam Jarrah, President/CEO, International Telecom Exchange, Inc. to David Janas, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated February 7, 2005.

¹² Letter from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Brian Jarrah, President, and Shelly Dinley-Soderman, Vice President, International Telecom Exchange, Inc., dated February 25, 2005.

¹³ Letter from Patrick Hardy, Regulatory Compliance Analyst, Telecom Compliance Services, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated March 24, 2005 (“March 24, 2005 ITE Letter”) (stating that TCS was providing regulatory and consulting services to ITE). The March 24, 2005 ITE Letter was not received in the Commission’s mailroom until April 4, 2005.

¹⁴ Letter from Hillary DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Bassam Jarrah, President/CEO, Shelly Dinley-Soderman, Vice President, International Telecom Exchange, Inc., and Patrick Hardy, Regulatory Compliance Analyst, Telecom Compliance Services, dated June 27, 2005 (“June 27, 2005 Bureau Letter”) (citing *SBC Communications, Inc.*, Order of Forfeiture, 17 FCC Rcd 7589, 7600, ¶ 28 (2002); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003); *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (Enf. Bur. 2004); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001)).

¹⁵ June 27, 2005 Bureau Letter at 2.

¹⁶ See Electronic mail message from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Charnel Hamilton, Accountant, International Telecom Exchange, Inc., dated July 27, 2005.

10. On August 23, 2005, Ms. Hamilton left Bureau staff a voice mail message stating that ITE's attorneys were still finalizing the LOI response and would submit it "soon." On August 24, 2005, an ITE employee identifying herself as Ms. Hamilton's assistant left Bureau staff a voice mail message stating that the LOI response was "on the way." On August 29, 2005, Bureau staff informed Ms. Hamilton that ITE's LOI response had still not been received.¹⁷ On August 30, 2005, Ms. Hamilton informed Bureau staff by telephone that she would check with ITE's attorneys to determine the reasons for the delay. On August 31, 2005, Ms. Hamilton left Bureau staff a voice mail message, requesting that Bureau staff call to discuss issues that ITE's attorney had with the January 26, 2005 LOI. Bureau staff returned the call but ITE did not respond.

11. On September 19, 2005, ITE submitted a response to the January 26, 2005 LOI.¹⁸ ITE submitted a supplemental response on September 27, 2005.¹⁹

12. Pursuant to Commission rules, ITE was obligated to contribute to the TRS Fund by July 26, 2005. As of March 13, 2006, ITE still had not satisfied this obligation. The fund administrator, the National Exchange Carriers Association ("NECA"), then transferred the debt to the Commission's Debt Collection Improvement Act "red light" group for collection action.²⁰ On April 26, 2006, the Commission sent ITE a demand for payment of the outstanding debt, which, including accrued interest, administrative costs, and penalties, amounted to \$6,124.49 as of April 26, 2006.²¹

III. DISCUSSION

13. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or

¹⁷ Electronic mail message from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Charnel Hamilton, Accountant, International Telecom Exchange, Inc., dated August 29, 2005.

¹⁸ September 19, 2005 LOI Response (stating that ITE would provide companies' certificates of good standing when they became available).

¹⁹ Letter from Lance J.M. Steinhart, attorney for International Telecom Exchange, Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated September 27, 2005 (providing companies' certificates of good standing).

²⁰ In 2004, the Commission adopted rules implementing the requirements of the Debt Collection Improvement Act of 1996, Pub. L.No. 104-134, 110 Stat. 1321, 1358 (1996) ("DCIA"). See *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540 (2004). The "red light" rule requires the Commission to withhold action on applications and other requests for benefits when the entity applying for or seeking benefits is delinquent in non-tax debts owed to the Commission, and to dismiss such applications or other request if the delinquency is not resolved. See 47 C.F.R. § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules*, 19 FCC Rcd at 6541-45 ¶¶ 3-15.

²¹ Letter from M. Washington, Credit Manager, Revenue and Receivables Operations Group, Office of Managing Director, Federal Communications Commission to International Telecom Exchange Group, Inc., dated April 26, 2006.

order issued by the Commission shall be liable to the United States for a forfeiture penalty.²² Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.²³ 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,²⁴ and the Commission has so interpreted the term in the section 503(b) context.²⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability 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.²⁸ 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.²⁹

14. Based on a preponderance of the evidence, we conclude that ITE is apparently liable for a forfeiture of \$28,062 for apparently willfully and repeatedly failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and apparently willfully and repeatedly failing to make its contribution to the TRS Fund. Specifically, we propose the following forfeitures for apparent violations within the last year: (1) \$15,000 for failure to respond on a timely basis to a directive of the Bureau to provide certain information and documents; and (2) \$13,062 for failure to make its TRS Fund contribution due on July 26, 2005. Although we propose forfeitures only for apparent violations within the last year, we discuss below the history of ITE’s noncompliance in prior years as useful background and to demonstrate the scope of ITE’s misconduct and the context of the misconduct that is within the statute of limitations period and thus covered by this NAL.³⁰

A. Failure to Provide Information to the Enforcement Bureau on a Timely Basis

15. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not

²² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²³ 47 U.S.C. § 312(f)(1).

²⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting Co.*”).

²⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage) (“*Callais Cablevision, Inc.*”).

²⁷ *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

²⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”) (forfeiture paid).

³⁰ See 47 U.S.C. § 503(b)(6).

inconsistent with this Act, as may be necessary in the execution of its functions,”³¹ and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”³² Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”³³ Section 403 likewise grants the Commission “full authority and power to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”³⁴

16. As indicated above, the Bureau directed ITE to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that ITE violated Commission rules.³⁵ ITE received the January 26, 2005 LOI, as evidenced by ITE’s confirmation of receipt on January 27, 2005.³⁶ Despite repeated requests for extensions, and repeated promises that ITE would submit a response promptly, ITE failed to respond to the Bureau LOI on a timely basis. Only after extraordinary efforts by Bureau staff did ITE respond to the Bureau’s inquiries -- approximately eight months after receiving the January 26, 2005 LOI. We conclude that ITE’s substantial and unwarranted delay in responding to the Bureau’s January 26, 2005 LOI constitutes an apparent willful and repeated violation of a Commission order.³⁷

³¹ 47 U.S.C. § 154(i).

³² 47 U.S.C. § 154(j).

³³ 47 U.S.C. § 218.

³⁴ 47 U.S.C. § 403. Section 403 provides, in part: “The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.”

³⁵ Commission rules specifically require ITE to maintain these documents and produce them upon the Commission’s request. Section 54.711 of the rules requires contributors to “maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet for three years and [to] provide such records and documentation to the Commission or the Administrator upon request.” 47 C.F.R. § 54.711.

³⁶ January 27, 2005 ITE Letter.

³⁷ See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7599-7600, ¶¶ 23-28 (2002) (\$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to LOI); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd, 19893, 19898 n. 36 (2003) (delayed response to an LOI considered dilatory behavior, which may result in sanctions in the future); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enforcement Bureau 2005) (\$20,000 forfeiture for failure of an entity to provide any response to a USF LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072 (2004) (\$3,000 forfeiture for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (2003) (\$10,000 forfeiture for a non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (2001) (\$4,000 forfeiture after individual refused to respond to an LOI).

B. Failure to Make Telecommunications Relay Service Fund Contributions

17. We also find that ITE apparently has violated section 64.604(c)(5)(iii)(A) of the Commission's rules by failing to make required contributions to the interstate TRS Fund.³⁸ As an interstate telecommunications carrier, ITE is obligated to contribute to the TRS Fund on the basis of its interstate and international end-user telecommunications revenues.³⁹ Subject carriers must make TRS contributions on an annual basis, with certain exceptions that are not applicable to ITE.⁴⁰

18. Although ITE has been providing telecommunications service since 2002, it has apparently never contributed to the TRS Fund. Within the last year, NECA's last invoice to ITE was due on July 26, 2005. Because ITE has failed to make any payments, on March 13, 2006, NECA transferred ITE's outstanding debt to the Commission for collection action, and on April 26, 2006, the Commission sent ITE a demand for payment of the outstanding debt of \$6,124.49. Based on a preponderance of the evidence, we therefore find that ITE apparently has violated section 64.604 of the Commission's rules by willfully and repeatedly failing to pay its TRS Fund contributions when due, including its failure to make the payment due on July 26, 2005.

C. Forfeiture Amount

19. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.⁴¹ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "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."⁴²

20. Section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.⁴³ ITE's failure to respond to the Bureau's inquiries for approximately eight months occurred following two extension requests by ITE of the required response deadline, repeated promises that a response would be submitted soon, and numerous attempts by Bureau staff to obtain a response from ITE.⁴⁴ We find that the substantial delay in

³⁸ 47 C.F.R. § 64.604(c)(5)(iii)(A).

³⁹ *See id.*

⁴⁰ *See id.*

⁴¹ 47 U.S.C. § 503(b)(2)(B). *See also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

⁴² 47 U.S.C. § 503(b)(2)(D).

⁴³ 47 C.F.R. § 1.80; *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, 17114 (1997) ("*Forfeiture Policy Statement*"); recon. denied 15 FCC Rcd 303 (1999).

⁴⁴ *See, e.g.*, June 27, 2005 Bureau Letter at 2.

responding to a Bureau LOI in the circumstances presented here warrants a substantial increase to the base amount. Misconduct of this type exhibits a blatant disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, the misconduct inhibits our ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission, *i.e.*, the reporting and contribution requirements for the Commission's regulatory programs. Prompt and full responses to Bureau inquiry letters are critical to the Commission's enforcement function. We therefore propose a forfeiture against ITE of \$15,000 for failing to respond to the Bureau's LOI on a timely basis.

21. This forfeiture amount is consistent with recent precedent in similar investigations involving the failures of companies to respond to Bureau inquiries concerning compliance with the reporting and contribution requirements for the Commission's regulatory programs, despite evidence that the LOIs had been received.⁴⁵ In those cases, the companies failed to provide any response to the LOIs at all after Bureau staff made repeated attempts to obtain responses. As a result, the Bureau imposed \$20,000 forfeitures. In this case, after the Bureau expended significant resources to obtain a response to the LOI, the carrier ultimately provided a full response. Therefore, we find a small downward adjustment in the proposed forfeiture amount from the earlier cases is warranted. ITE and other carriers are warned that they may not delay or resist the Bureau's direction to provide information in response to an LOI. Such conduct obstructs the enforcement process and will not be tolerated.

22. We also find that ITE apparently has failed to make any TRS contributions since it began providing telecommunications service in 2002. ITE's last TRS Fund invoice from NECA was due on July 26, 2005, and in spite of Bureau inquiries into ITE's compliance with its payment obligations, ITE has failed to make its required payments. Where a carrier fails to satisfy its TRS obligations for an extended period of time, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations -- to ensure that telecommunications relay services "are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."⁴⁶

23. The Commission has established a base forfeiture amount of \$10,000 for each instance in which a carrier fails to make required TRS contributions.⁴⁷ We find ITE apparently liable for a base forfeiture in the amount of \$10,000 for failing to make its TRS Fund contribution that was due on July 26, 2005. In the past the Commission has also imposed an upward adjustment to forfeitures for the failure to pay TRS Fund contributions based on half the company's unpaid contributions. As a result and given that ITE has apparently failed to make any TRS Fund contribution even though it has been providing telecommunications service since 2002, we find that an upward adjustment, in an amount approximately one-half of the carrier's unpaid TRS contributions (\$6,124) is appropriate for ITE's apparent failure to make TRS contributions. Taking into account the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that an upward adjustment of \$3,062 is reasonable. Consequently, we find ITE liable for a

⁴⁵ See *BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur., 2005) (imposing \$20,000 forfeiture); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

⁴⁶ 47 U.S.C. § 225(b)(1).

⁴⁷ See *Globcom, Inc.*, FCC 06-49, 2006 WL 1027131 (F.C.C.) at 12-15, ¶¶ 31-28 (released April 19, 2006).

total proposed forfeiture of \$13,062 for its willful and repeated violations of section 64.604(c)(5)(iii)(A) of the Commission's rules by failing to contribute to the TRS Fund.⁴⁸

D. Conclusion

24. We find that a proposed forfeiture in the amount of \$28,062 is warranted. As discussed above, this proposed forfeiture amount includes: (1) a total proposed penalty of \$15,000 for failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents; and (2) a proposed total penalty of \$13,062 for failing to make its TRS program contribution when due on July 26, 2005.⁴⁹

25. We caution that additional violations of the Act or the Commission's rules could subject ITE to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of ITE's operating authority, including disqualification of ITE's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁵⁰

IV. ORDERING CLAUSES

26. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁵¹ and section 1.80 of the Commission's rules,⁵² International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc., are hereby NOTIFIED of their APPARENT LIABILITY FOR FORFEITURE in the amount of \$28,062 for willfully and repeatedly violating a Commission order to provide certain information and documents on a timely basis, and willfully and repeatedly violating section 64.604(c)(5)(iii)(A) of the Commission's rules by failing to contribute to the TRS Fund.⁵³

27. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i) and 225(b)(1) of the Act,⁵⁴ and section 64.604(c)(5)(iii) of the Commission's rules,⁵⁵ within thirty days of the release of this NOTICE OF APPARENT LIABILITY AND ORDER, International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc., SHALL SUBMIT a report, supported by a sworn statement or declaration under penalty of perjury by a corporate officer, stating its plan promptly to come into

⁴⁸ 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁴⁹ We note that ITE is already subject to the Commission's "red light" rule. See 47 C.F.R. § 1.1910; *Amendment of Parts 0 and 1 of the Commission's Rules*, 19 FCC Rcd at 6541-45 ¶¶ 3-15.

⁵⁰ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁵¹ 47 U.S.C. § 503(b).

⁵² 47 C.F.R. § 1.80.

⁵³ 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁵⁴ 47 U.S.C. §§ 4(i), 225(b)(1).

⁵⁵ 47 C.F.R. § 64.604(c)(5)(iii).

compliance with the payment and reporting rules that have been the subject of the Commission's investigation.⁵⁶

28. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules,⁵⁷ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY AND ORDER, International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc., SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

29. 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1A625, Washington, DC 20554.⁵⁸

30. The response, if any, to this NOTICE OF APPARENT LIABILITY AND ORDER must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-A237, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

31. 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 (GAAP); 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.

32. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY AND ORDER shall be sent, by certified mail/return receipt requested to Ms. Charnel Hamilton, Accountant, International Telecom Exchange, Inc., 5061 Springdale Street, Suite 206, Huntington Beach, CA 92649; and Lance Steinhart, Esq., counsel to ITE, 1720 Windward Concourse, Suite 250, Alpharetta, GA 30005.

FEDERAL COMMUNICATIONS COMMISSION

⁵⁶ See 47 C.F.R. §§ 1.1157, 52.17, 54.706, 54.711, 64.604, and 64.1195.

⁵⁷ 47 C.F.R. § 1.80.

⁵⁸ See 47 C.F.R. § 1.1914.

Kris Anne Monteith
Chief, Enforcement Bureau