# FEDERAL COMMUNICATIONS COMMISSION
## WASHINGTON, D.C. 20554

May 21, 2010

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**
**AND FACSIMILE TO (406) 585-9645**

Jeff Tarbert
Vice President of Operations/General Manager
TransAria, Inc.
7330 Shedhorn Drive
Bozeman, MT 59718

Re: File No. EB-08-IH-1161

Dear Mr. Tarbert:

This letter is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 503(b)(5), for failure to make certain regulatory filings and associated payments in violation of sections 52.17, 52.32, 54.706, 54.708, 54.711, 64.604 and 64.1195 of the Commission's rules,[1] and failing to comply with section 9.5(e)(3), one of the Commission's rules relating to the provision of E911 capabilities to its customers.[2] As explained below, future violations of the Commission's rules and requirements in this regard may subject your company to monetary forfeitures.

By letter of inquiry ("LOI") dated July 30, 2008, the Investigations and Hearings Division of the Commission's Enforcement Bureau ("the Division") initiated an investigation into whether TransAria, Inc. ("TransAria") violated the Commission's rules and orders requiring interconnected Voice over Internet Protocol ("VoIP") providers to make certain regulatory filings and associated payments.[3] TransAria responded to the LOI on September 2, 2008.[4] After reviewing the various responses to the LOI, the Division issued a supplemental letter of inquiry on March 27, 2009,[5] to which TransAria responded on April 3, 2009.[6] The Division issued an additional supplemental letter of inquiry on July 23, 2009,[7] to which TransAria responded on August 6, 2009.[8]

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[1] 47 C.F.R. §§ 52.17, 52.32, 54.706, 54.708, 54.711, 64.604 and 64.1195.

[2] 47 C.F.R. § 9.5(e)(3).

[3] *See* Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Jeff Tarbert, TransAria, dated July 30, 2008.

[4] *See* TransAria Response to LOI, dated September 2, 2008, and attachments thereto ("LOI Response").

[5] *See* Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Jeff Tarbert, TransAria, dated March 27, 2009 ("March 27, 2009 Supplemental LOI").

[6] *See* TransAria Response to Supplemental LOI, dated April 3, 2009 ("April 3, 2009 Supp. LOI Response").

[7] *See* Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Jeff Tarbert, TransAria, dated July 23, 2009 ("July 23, 2009 Supplemental LOI").

[8] *See* TransAria Response to Supplemental LOI, dated Aug. 6, 2009 ("Aug. 6, 2009 Supp. LOI Response").

In its response to the LOI, TransAria stated it began providing interstate telecommunications in 2004 and, in 2006, it began providing Internet Protocol data networking services for businesses, government and residences in Montana, as well as VoIP service over the public switched telephone network and/or the Internet.[9] However, TransAria states that it does not offer traditional local and long distance voice services.[10] The company stated that it filed its registration in June 2008.[11] TransAria filed its first FCC Form 499-A, which reported revenue information for 2007, on June 20, 2008, and it asserted in the certification section of the reporting worksheet that it is not a common carrier.[12] In its response to the March 27, 2009, Supplemental LOI, TransAria asserted that it does not fit the definition of common carrier because, among other things, it does not provide service to the general public, it is limited by its service platform's capacity as well as by geographic limitations, and it uniquely engineers its services to meet the specific requirements of each customer.[13] TransAria further asserted that it qualified for the *de minimis* exemption from contributing to the universal service mechanisms for 2005 and 2006,[14] but its 2008 FCC Form 499-A indicates it did not qualify for the exemption for 2007.[15] In addition, TransAria made no contributions to the Universal Service Fund (USF) until August 21, 2008, after the Division initiated this investigation.[16] It made a second payment on October 15, 2008, and thereafter made no additional payments into the USF. Neither of these payments was sufficient to satisfy TransAria's outstanding USF balance at the time each payment was made. Moreover, during the period from July 2008 to April 2009, TransAria failed to pay the full amount it was invoiced by the Universal Service Administrative Company ("USAC") for its USF obligations.

Section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[17] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based upon their interstate and international end-user telecommunications revenues.[18] The Commission also requires certain providers of interstate telecommunications, including providers of interconnected VoIP services,[19] to contribute to the USF.[20] In extending USF contribution requirements to providers of

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[9] *See* LOI Response at 1-2, and Attachment 3.

[10] *See* LOI Response at Attachment 3. TransAria states that it does not have any of its own network outside of Montana. *See* LOI Response at 2. It notes that any operations it has in other states result from a Montana-based customer that has requested connection with those locations, which entails TransAria purchasing an out-of-state circuit from another vendor. *Id.*

[11] *See* LOI Response at 3.

[12] *See* TransAria 2008 FCC Form 499-A at Block 6 (accepted by USAC on June 20, 2008). On September 9, 2008, TransAria filed FCC Forms 499-Q for November 2007, February 2008, May 2008, and August 2008. In addition, TransAria subsequently filed a 2009 FCC Form 499-A and FCC Forms 499-Q for May and August 2009 in a timely manner.

[13] *See* Supp. LOI Response. TransAria states that it has no standard pricing or terms of service. *Id.*

[14] *See* LOI Response at 3.

[15] *Id.* at Attachment 6.

[16] *Id.* at 3.

[17] 47 U.S.C. § 254(d).

[18] 47 C.F.R. § 54.706(b). *See also Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24969-74, ¶¶ 29-39 (2002) ("*Interim Contribution Order*").

[19] The Commission's rules define "interconnected VoIP" service as a service that:

(1) Enables real-time two-way voice communications;
(2) Requires a broadband connection from the user's location;

interconnected VoIP services, the Commission also required every interconnected VoIP provider that had not already registered with the Commission to do so through submission of FCC Form 499-A prior to August 1, 2006 in order to facilitate enforcement of the obligations imposed in the *2006 Contribution Methodology Order*.[21] The Commission requires USF contributors, including interconnected VoIP providers, to provide certain revenue information on the FCC Form 499-A and the FCC Form 499-Q ("Telecommunications Reporting Worksheet" or "Worksheet") on a periodic basis.[22] USAC currently administers the USF.[23] USAC bills carriers, including TransAria, each month based on their projected quarterly revenues, and payment is due by the date shown on the invoice.[24] The failure of a carrier such as TransAria to abide by its federal filing obligation thus has a direct impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the federal universal service program.[25] Consequently, a carrier's failure to file required Worksheets in a timely manner frustrates the very purpose for which Congress enacted section 254(d) – to ensure that every interstate carrier "contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[26] Viewed in this context, the

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(3) Requires Internet protocol-compatible customer premises equipment (CPE); and
(4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

47 C.F.R. § 9.3.

[20] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, ¶¶ 38-49 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) ("*2006 Contribution Methodology Order*"), aff'd in part, vacated in part *sub nom, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007); *Federal-State Joint Board on Universal Service; IP-Enabled Services*, Final Rule, 71 FR 38781 (2006).

[21] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7548-49, ¶¶ 60-61. The *2006 Contribution Methodology Order* also required that interconnected VoIP providers file a FCC Form 499-Q reporting projected revenues for the fourth quarter of 2006 by August 1, 2006. *See id.* However, TransAria apparently did not begin providing service until after the August 1, 2006 499-Qs were due.

[22] 47 C.F.R. § 54.711. Carriers subject to the rule must file the Quarterly Worksheet to show projected revenues. *See* Quarterly Worksheet at 1. Carriers, including interconnected VoIP providers, must submit their annual Worksheets no later than April 1 of each year. *See* Annual Worksheet at 1.

[23] 47 C.F.R. § 54.701(a).

[24] 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.") *See, e.g.*, "Proposed Second Quarter 2006 Contribution Factor," Public Notice, 21 FCC Rcd 2379 (Wireline Comp. Bur. 2006) ("Contribution payments are due on the date shown on the administrator invoice.").

[25] Sixty days prior to the start of each quarter, USAC is required to provide the Commission with a projection of the high cost, low income, schools and libraries, and rural health care funding requirements for the following quarter. *See* www.universalservice.org/overview/filings. Based on USAC's projection of the needs of the USF, and revenue projections from the registered carriers subject to universal service requirements, the Commission establishes a specific percentage of interstate and international end-user revenues that each subject telecommunications provider must contribute toward the USF. This percentage is called the contribution factor. The contribution factor, and, consequently, the amount owed to the USF by each affected telecommunications company, changes each quarter, depending on the needs of the USF and carrier-provided revenue projections. *See* www.fcc.gov/wcb/universal_service/quarter. Thus, in cases where a carrier, such as TransAria, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution base from which universal assessments are derived, and the economic burden of contributing falls disproportionately on carriers that have satisfied their reporting obligations.

[26] 47 U.S.C. § 254(d).

Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's Universal Service program.

Title IV of the Americans with Disabilities Act of 1990, codified at 47 U.S.C. § 225, 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.[27] The Commission established the Telecommunications Relay Service ("TRS") Fund, currently administered by the National Exchange Carrier Association ("NECA"), to reimburse TRS providers for the costs of providing interstate TRS.[28] Pursuant to section 64.604 of the Commission's rules, every carrier providing interstate telecommunications services must contribute to the TRS fund.[29] The Commission extended the requirement to contribute to the interstate TRS Fund to interconnected VoIP providers such as TransAria "consistent with [the Commission's] obligation to ensure the availability of TRS 'to the extent possible and in the most efficient manner' to persons with hearing or speech disabilities."[30] This requirement became effective October 5, 2007,[31] and NECA began issuing invoices to interconnected VoIP providers in March 2008 for their 2007 TRS contribution based on 2006 4th quarter revenue.

In addition, section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[32] Section 251(e)(2) of the Act provides that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[33] In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.[34] The Commission also adopted section 52.32 of its rules, which requires that telecommunications carriers contribute to the shared costs of long-term number portability as provided in the Commission's rules.[35] Effective March 24, 2008, the Commission extended the North American Numbering Plan ("NANP") administration and local number portability ("LNP") contribution requirements to interconnected VoIP providers such as TransAria.[36] Welch LLP ("Welch"), the NANP administrator, began invoicing interconnected VoIP providers in June

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[27] Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Act).

[28] *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993) (*TRS III Order*).

[29] *See* 47 C.F.R. § 64.604(c)(5)(iii).

[30] *See IP-Enabled Services*, Report and Order, 22 FCC Rcd 11275, 11294 ¶ 36 (2007).

[31] *IP-Enabled* Services, Final Rule, 72 FR 43546 (2007), quoting 47 U.S.C. § 225(b)(1).

[32] 47 U.S.C. § 251(e)(1).

[33] 47 U.S.C. § 251(e)(2).

[34] 47 C.F.R. § 52.17(a).

[35] 47 C.F.R. § 52.32. Unlike universal service, TRS and the cost recovery mechanism for the North American Numbering Plan, there is no "fund" for Local Number Portability. Neustar, which acts as the Local Number Portability Administrator, recovers the costs of implementing the Act's requirements for local number portability from telecommunications carriers. *See, e.g.,* http://www.npac.com/home/lnpoverview.shtml; http://www.neustar.biz/interoperability/lnp.cfm (providing general information concerning LNP administration).

[36] *See Matter of Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, Final Regulatory Flexibility Analysis Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19532 ¶ 1 (2007); *Matter of IP-Enabled Services, Telephone Number Portability, Numbering Resource Optimization*, Final Rule, 73 FR 9463 (2008).

2008. Neustar, Inc. ("Neustar"), the LNP administrator, began invoicing interconnected VoIP providers in March 2008.

We conclude that TransAria did not comply with the Commission's rules and orders requiring interconnected VoIP providers to make certain regulatory filings and associated payments. As a provider of interconnected VoIP services with interstate revenues for the period from late 2006 through the present, TransAria was required to register with the Commission, file annual Telecommunications Reporting Worksheets with USAC, contribute to the USF and the TRS fund, and contribute to the shared costs of numbering administration and local number portability. The *2006 Contribution Methodology Order* required that interconnected VoIP providers file FCC Form 499-Q reporting projected revenues for the fourth quarter of 2006 by August 1, 2006, and file FCC Forms 499-A beginning on April 1, 2007.[37] Even if TransAria was not required to contribute to the USF for one or more years or file Quarterly Worksheets, either because it had not begun to offer interconnected VoIP service or because it qualified for the *de minimis* exemption to the rule,[38] section 54.708 of the Commission's rules requires that all providers of interconnected VoIP service must file the annual Telecommunications Reporting Worksheet.[39] The record in our inquiry demonstrates that, although TransAria began operating as an interconnected VoIP provider during 2006,[40] it did not register or file its first FCC Form 499-A until June 20, 2008, approximately six months after USAC advised TransAria of its universal service obligations,[41] and almost two years after the mandated filing date set forth in the *2006 Contribution Methodology Order*. In addition, TransAria never filed a 2007 FCC Form 499-A.

Based upon its June 20, 2008 filing, TransAria received an invoice from USAC in July 2008, with payment due by August 15, 2008. TransAria paid the July 2008 invoice late, on August 21, 2008. TransAria subsequently made a partial payment on October 15, 2008, and then ceased contributing to the USF, despite continuing to receive invoices from USAC. As a result, TransAria has failed to discharge its USF payment obligations, at a minimum, for a 28-month period, from February 2007 to April 2009.[42] NECA confirms that it sent an invoice to TransAria for its TRS obligations on July 5, 2009, with payment due by July 27, 2009. NECA further confirms that TransAria failed to pay this invoice and the debt was transferred to the FCC for collection. NECA further confirms an outstanding balance from 2008 was not paid until April 23, 2010. Welch confirms that it sent TransAria an invoice for payment of NANP fees dated June 17, 2009, with payment due July 13, 2009. Welch further confirms that TransAria paid the NANP invoice approximately three months late. Finally, Neustar confirms that it sent TransAria monthly invoices for payment of LNP fees from July 2008 to April 30, 2010, with payments due 45 days from the dates of the invoices. Neustar further confirms that TransAria paid the LNP invoices from July 2008 to June 2009, September to November 2009, and January 2010 more than a full month late.

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[37] *2006 Contribution Methodology Order*, 21 FCC Rcd at 7548, ¶ 60.

[38] *See* 47 C.F.R. § 54.708; Instructions to the Telecommunications Reporting Worksheet, FCC 499-A, at 5, 32 (Nov. 2007) (a provider of interstate and international telecommunications whose annual universal service contribution is expected to be less than $10,000 is not required to contribute to the USF; however, interconnected VoIP providers that meet the *de minimis* standard must file FCC Forms 499-A).

[39] *Id.*

[40] *See* LOI Response at 3.

[41] *See* Letter from Tarig Rahamtalla, USAC, to TransAria, dated December 31, 2007.

[42] TransAria failed to register with USAC in a timely manner and therefore was never issued invoices for the months of January 2007 through June 2008. The fact that TransAria did not receive invoices during this time period is irrelevant. Indeed, TransAria did not receive any invoices prior to July 2008 because of its failure to comply with the Commission's directive in the *2006 Contribution Methodology Order* to register. *See supra* note 24. The Act and our rules do not condition payment on receipt of an invoice or other notice from the NANP administrator. *See Globcom, Inc.,* Notice of Apparent Liability, 18 FCC Rcd 19893, 19896, ¶ 5, n.22 (2003).

In response to the July 23, 2009 Supplemental LOI, TransAria indicated it does not distribute warning stickers or labels to customers of its interconnected VoIP service, warning them that E911 service may be limited or not available, as required by section 9.5(e)(3) of Commission's rules.[43] In addition to requiring distribution of the stickers, the rule directs providers of interconnected VoIP services to instruct subscribers to place the stickers or labels on or near the customer premises equipment used in conjunction with the service.[44] Interconnected VoIP providers are required to distribute such warning stickers to each new subscriber prior to the initiation of that subscriber's service.[45] Based on TransAria's response to the July 23, 2009 Supplemental LOI, we find that the company did not comply with the provisions of the Commission's E911 customer notification requirements applicable to providers of interconnected VoIP service.

We, therefore, conclude that TransAria apparently violated sections 52.17, 52.32, 54.706, 54.708, 54.711, 64.604 and 64.1195 of the Commission's rules[46] by failing to file a registration statement and then meet the mandated filing and payment obligations imposed upon interconnected VoIP providers. Furthermore, we conclude that TransAria apparently violated section 9.5(e)(3) of the Commission's rules[47] by failing to properly distribute to its subscribers warning stickers or labels concerning limitations upon E911 availability associated with its interconnected VoIP service, and by failing to instruct subscribers as to their use.

**If, after receipt of this citation, TransAria violates the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed $16,000 for each such violation or each day of a continuing violation up to $112,500 for a single continuing violation.[48]**

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, (2) a written statement, or (3) a teleconference interview with the Commission's Investigations & Hearings Division in Washington, D.C. Your response should specify the actions that you are taking to ensure that you do not violate the Commission's rules governing regulatory filings and associated payments, as described above.

Please contact Mindy Littell at (202) 418-0789 to arrange a teleconference interview or an interview at the closest field office, if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Mindy Littell
Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W., Rm. 4-C330
Washington, D.C. 20554

Reference EB-08-IH-1161 when corresponding with the Commission.

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[43] *See* Aug. 6, 2009 Supp. LOI Response at 2; 47 C.F.R. § 9.5(e)(3).

[44] 47 C.F.R. § 9.5(e)(3).

[45] *Id.*

[46] 47 C.F.R. §§ 52.17, 52.32, 54.706, 54.708, 54.711, 64.604 and 64.1195.

[47] 47 C.F.R. § 9.5(e)(3).

[48] *See* 47 C.F.R. § 1.80(b)(3).

Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Hillary S. DeNigro

Hillary S. DeNigro
Chief, Investigations & Hearings Division
Enforcement Bureau