

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
UnityComm, LLC
File No.: EB-IHD-15-00018959
NAL/Acct. No.: 201632080011
FRN: 0013349584

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 14, 2016

Released: September 14, 2016

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$100,000 against UnityComm, LLC (UnityComm or Company) for failing to timely file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC). Companies that provide interstate telecommunications services, and certain other providers of interstate telecommunications, are subject to the provisions of the Communications Act of 1934, as amended (the Act), and the Commission’s rules (Rules). UnityComm’s failures to timely file Worksheets precluded federal program administrators from fully invoicing UnityComm for its required payment obligations and has enabled the Company to temporarily avoid making full payments required of interstate and international telecommunications services providers for the Universal Service Fund (USF), Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP) and North American Numbering Plan (NANP) administration, and federal regulatory fees. The filing failures thus gave the Company an unfair economic advantage over its competitors who, because of UnityComm’s apparent filing violations, had to pay more than their fair share of the costs of these important federal regulatory fee programs.1 We view the Company’s apparent failures to timely file its Worksheets as serious derelictions of its responsibilities as a telecommunications services provider.

II. BACKGROUND

2. UnityComm is an Indiana limited liability corporation, which provides local reseller, toll reseller, interconnected voice over Internet protocol (VoIP), and interexchange carrier services in Indiana, Kentucky, Missouri, North Carolina, Ohio, Tennessee, and Texas.2 Following repeated, unsuccessful

1 Sixty days prior to the start of each quarter, USAC must provide the FCC with projections of funding requirements for the following quarter. See USAC, FCC Filings, http://www.usac.org/about/tools/fcc/filings/default.aspx (last visited Aug. 24, 2016). Based on USAC’s projection of the needs of the USF, and revenue projections from 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 FCC Managing Director, Contribution Factor & Quarterly Filings—Universal Service Fund (USF) Management Support, https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support (last visited Aug. 24, 2016). Thus, in cases where a telecommunications service provider, such as UnityComm, fails to file required Worksheets reporting its revenue projections in a timely fashion, its revenues are excluded from the contribution base from which universal service assessments are derived, and the economic burden of contributing falls disproportionately on telecommunications service providers that have satisfied their reporting obligations.

2 See UnityComm, LLC, April 2015 FCC Form 499-A (on file in EB-IHD-15-00018959) (2015 Form 499-A).

attempts by USAC to audit the accuracy of UnityComm's Worksheets,³ on May 28, 2014, USAC referred the Company to the Commission for potential enforcement action.⁴

3. On April 3, 2015, the Enforcement Bureau (Bureau) issued a Letter of Inquiry (LOI) to UnityComm to investigate whether the Company had violated provisions of the Act and Rules, including the failure to file required regulatory data.⁵ UnityComm responded to the LOI on July 29, 2015, after the Bureau granted the Company's extension requests.⁶

III. DISCUSSION

4. Based on the facts and circumstances before us, and as described more fully below, we find it is apparent that UnityComm willfully and repeatedly failed to timely file Worksheets in accordance with Section 54.711(a) of the Rules.⁷

5. The Act directs the Commission to establish, administer, and maintain programs to promote universal service, TRS, and numbering administration programs, among other mandates.⁸ To help accomplish these goals, the Commission has established the USF, the TRS Fund, and cost recovery mechanisms for LNP and NANP administration. As Congress has directed,⁹ the Commission funds these programs through assessments on telecommunications service providers. To gather the data necessary to calculate assessments, the Commission requires interstate telecommunications service providers, among others, to periodically file the FCC Form 499A (Annual Worksheet) reporting providers' actual revenues from the various types of services provided during the previous calendar year.¹⁰ Telecommunications service providers such as UnityComm must also periodically file the FCC Form 499Q (Quarterly Worksheet) projecting their revenue for the upcoming quarter.¹¹ USAC utilizes projected revenue data to calculate a company's required monthly USF contributions.¹² The FCC Form 499A and FCC Form 499Q filing obligations allow the Commission and the administrators of the USF, TRS Fund, LNP, NANP, and

³ USAC administers the USF program, *see* 47 CFR § 54.701, and contributors are obligated under the Rules to provide data to USAC in order to verify information reported in Worksheets. *See* 47 CFR § 54.711(a).

⁴ *See* Letter from Michelle Garber, Director, Financial Operations, USAC, to Terry Cavanaugh, Chief, Investigations and Hearings Division, FCC Enforcement Bureau (May 2, 2014) (on file in EB-IHD-15-00018959) (USAC Referral). Prior to USAC's referral, UnityComm failed to respond to two separate data requests from USAC. *Id.*

⁵ *See* Letter from Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Benjamin Plikerd, CEO, UnityComm, LLC (Apr. 3, 2015) (addressing Company's compliance with 47 U.S.C. §§ 159(a), 214, 222, 251(e)(2), 254(d); and 47 CFR §§ 1.1154, 1.1157, 52.17, 52.32, 63.18, 54.706, 54.711, 64.604, 64.1195, 64.2009(e)) (on file in EB-IHD-15-00018959) (LOI).

⁶ *See* Letter from Dawn R. Damschen, Kelley Drye & Warren LLP, Counsel to UnityComm, LLC, to Theodore Marcus, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jul. 29, 2015) (on file in EB-IHD-15-00018959) (LOI Response).

⁷ *See* 47 CFR § 54.711(a).

⁸ *See* 47 U.S.C. §§ 225(b)(1)–(2), 251(b)(2), (e), 254(a)(2).

⁹ *See* 47 U.S.C. §§ 225(d)(3), 251(e)(2), 254(d).

¹⁰ *See* 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

¹¹ *See* 47 CFR § 54.711(a); *Fed.-State Joint Bd. on Universal Serv.*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001). Carriers must report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). *See id.* at 5755, para. 19.

¹² *See Wireline Competition Bureau Releases 2015 Telecomms. Reporting Worksheets & Accompanying Instructions*, Public Notice, 29 FCC Rcd 16163, 16209 (Wireline Comp. Bur. 2014).

regulatory fee programs to determine the extent of a company's payment obligations for these federal programs.¹³

6. UnityComm apparently has not filed two Quarterly Worksheets, which were due May 1 and August 1, 2016.¹⁴ We therefore find it is apparent that UnityComm willfully and repeatedly violated Section 54.711(a) of the Rules by failing to timely file its Worksheets due by May 1 and August 1, 2016.

IV. PROPOSED FORFEITURE

7. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”¹⁵ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against UnityComm of up to \$189,361 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,893,610 for a single act or failure to act.¹⁶ In exercising our forfeiture authority, we must consider 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.”¹⁷ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁸ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁹ We may adjust a forfeiture downward under the guidelines for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.²⁰ The Commission's forfeiture guidelines specifically “are

¹³ See *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13277, 13283, para. 15 (2005), *forfeiture issued*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8691, para. 5 (2007).

¹⁴ See <https://efile.universalservice.org/form499/source/search.asp?optFilerID=824588> (last visited August 24, 2016) (search results on file in EB-IHD-15-00018959).

¹⁵ 47 U.S.C. § 503(b).

¹⁶ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation on June 9, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644, 2016 WL 3218781 (EB 2016); see also *Inflation Adjustment of Monetary Penalties*, 81 Fed. Reg. 42,554 (Jun. 30, 2016) (setting August 1, 2016 as the effective date for the increases). The DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect.” 28 U.S.C. § 2461 note (6). Maximum penalties for violations that occurred before August 1, 2016 are based on the Commission's previous inflation adjustment that became effective on September 13, 2013. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁹ *Id.* See also *The Comm'n's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²⁰ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”²¹

8. Pursuant to Commission precedent, we impose a forfeiture of \$50,000 for each failure to timely file a Telecommunications Reporting Worksheet.²² This forfeiture amount, as applied to UnityComm, is consistent with the statutory factors in the Act and the Commission’s forfeiture guidelines. We thus find that the Company is apparently liable for a forfeiture of one hundred thousand dollars (\$100,000) for its apparently willful and repeated failures to timely file two Worksheets due May 1, and August 1, 2016.

V. CONCLUSION

9. We have determined it is apparent that UnityComm willfully and repeatedly violated Section 54.711(a) of the Rules. As such, UnityComm is apparently liable for a forfeiture of \$100,000. We note this is a limited action that does not necessarily reflect the full extent of UnityComm’s potential forfeiture liability and that does not in any way preclude the Commission from imposing additional forfeitures against UnityComm in the future.

VI. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 1.80 of the Rules,²³ UnityComm, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$100,000 for willful and repeated violations of Section 54.711(a) of the Rules.²⁴

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, UnityComm, 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 paragraphs 14-15 below.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. UnityComm, LLC shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Erin Boone at Erin.Boone@fcc.gov, and David Janas at David.Janas@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be

²¹ *Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

²² *E.g.*, *Advanced Tel, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 833, 8441-42, paras. 27-28 (2015); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd. 838 (2009), *forfeiture issued*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006).

²³ 47 U.S.C. § 503(b); 47 CFR § 1.80.

²⁴ 47 CFR § 54.711(a).

²⁵ 47 CFR § 1.80.

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁷ 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.

14. 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 Rules.²⁸ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Erin Boone at Erin.Boone@fcc.gov, and David Janas at David.Janas@fcc.gov.

15. 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.

16. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 159(a), 251(e)(2), and 254(d) of the Act, and Sections 1.1154, 1.1156, 1.1157, 52.17, 52.32, 54.706, 54.711 and 64.604(c)(5)(iii) of the Rules,²⁹ within 60 days UnityComm, LLC **SHALL FILE** all overdue Telecommunications Reporting Worksheets, and by the due dates specified on subsequent federal program administrator invoices, **SHALL PAY** all overdue assessments for the Universal Service Fund, the Telecommunications Relay Service Fund, Local Number Portability and North American Numbering Plan administration, and federal regulatory fees.

²⁷ See 47 CFR § 1.1914.

²⁸ 47 CFR §§ 1.16, 1.80(f)(3).

²⁹ 47 U.S.C. §§ 154(i), 159(a), 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1156, 1.1157, 52.17, 52.32, 54.706, 54.711 and 64.604(c)(5)(iii).

17. **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 Steve Augustino, Esq., Counsel to UnityComm, LLC, Kelley Drye & Warren LLP, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau