

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Momentum Telecom, Inc.) File No.: EB-IHD-15-00018669
) FRN: 0005075403
)

ADMONISHMENT ORDER

Adopted: July 21, 2016

Released: July 22, 2016

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We hereby admonish Momentum Telecom, Inc. (Momentum or Company) for failing to timely and fully contribute to the Universal Service Fund (USF) for over 12 months. Momentum's failure to timely and fully contribute to the USF deprived the USF of the funds necessary to carry out important regulatory objectives, and gave Momentum an economic advantage relative to competitors who timely and fully made USF contributions. An admonishment is appropriate in this case because the relevant statute of limitations has expired for all but a de minimis amount of the USF debt at issue. Nevertheless, Momentum's habitual late payments to the USF must still be sanctioned.

II. BACKGROUND

2. Momentum first came to the attention of the Enforcement Bureau (Bureau) on January 23, 2013, when the Bureau received a referral for enforcement action from the Universal Service Administrative Company (USAC, the administrator for the USF) alleging that the Company had failed to respond to various requests for documents and information over a six month period. This initial referral led to a broader investigation, and on April 3, 2015, the Bureau issued a Letter of Inquiry (LOI) to Momentum, requesting information and documents regarding the Company's potential violation of the Communications Act of 1934, as amended (Act) and the Commission's rules (Rules). The Company filed an initial response to the LOI on May 4, 2015, and filed supplemental responses over the next several months. Throughout this

1 Momentum is a Delaware corporation headquartered in Alabama. The Company provides interconnected VoIP services and common carrier local exchange and interexchange services. Response to Letter of Inquiry from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 1, 4-7 (May 4, 2015) (on file in EB-IHD-15-00018669) (LOI Response).

2 Letter from Michelle Garber, Director of Financial Operations, USAC, to Terry Cavanaugh, Chief, Investigations and Hearings Division, FCC Enforcement Bureau at 1 (Jan. 23, 2013) (on file in EB-IHD-15-00018669).

3 Letter of Inquiry from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Momentum Telecom, Inc. (April 2, 2015) (on file in EB-IHD-15-00018669).

4 LOI Response.

5 First Supplemental Response to Letter of Inquiry from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 27, 2015) (on file in EB- IHD-15-00018669); Second Supplemental Response to Letter of Inquiry from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 27, 2015) (on file in EB-IHD-15-00018669); Third Supplemental Response to Letter of Inquiry from Paul Hudson, Davis Wright Tremaine,

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period and until release of this Order, the Bureau has continued its review of the evidence and consideration of appropriate enforcement alternatives.

III. DISCUSSION

3. We find that Momentum violated Section 254(d) of the Act,⁶ and Sections 54.706 and 54.713 of the Rules⁷ by failing to fully and timely contribute to the universal service support mechanisms. These provisions require that “entities that provide interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support mechanisms.”⁸ The Commission may “pursue enforcement action against delinquent contributors.”⁹

4. FCC rules require Momentum to contribute to the universal service support mechanisms based on its end-user telecommunications revenues.¹⁰ The record reflects that beginning September 2013, Momentum failed to fully and timely contribute to the USF.¹¹ Momentum did not fully correct its delinquency until October 2015, but was essentially current by July 20, 2015.¹² In addition to being delinquent for approximately two years, Momentum habitually paid late its share of contributions to USAC. In August 2014, for example, Momentum owed more than \$100,000 in past-due contributions.¹³ Momentum was continually behind in its contributions by at least \$100,000 between August 2014 and July 2015.¹⁴

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Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (July 17, 2015) (on file in EB-IHD-15-00018669); Fourth Supplemental Response to Letter of Inquiry from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Aug. 3, 2015) (on file in EB-IHD-15-00018669).

⁶ 47 U.S.C. § 254(d).

⁷ 47 CFR §§ 54.706, 54.713.

⁸ 47 CFR § 54.706(a).

⁹ 47 CFR § 54.713(c).

¹⁰ 47 CFR § 54.706(b).

¹¹ See Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000646357 (Sept. 20, 2013) (on file in EB-IHD-15-00018669); see generally Letter from Mike Pond, Manager of Financial Operations, USAC, to Gregory Haledjian, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (June 15, 2016) (June 15, 2016 USAC Letter) (on file in EB-IHD-15-00018669).

¹² Following two payments made in July 2015, Momentum was current in its USF obligations except for a *de minimis* amount (less than \$200). See Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000783299 (July 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000789236 (Aug. 21, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000795166 (Sept. 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000801139 (Oct. 22, 2015) (all invoices on file in EB-IHD-15-00018669); see generally June 15, 2016 USAC Letter.

¹³ Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000712322 (Aug. 22, 2014) (on file in EB-IHD-15-00018669).

¹⁴ See Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000712322 (Aug. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000718309 (Sept. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000724285 (Oct. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000730263 (Nov. 21, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000736310 (Dec. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000742314 (Jan. 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000748309 (Feb. 20, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000754271 (Mar. 20, 2015); Universal

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5. Momentum has argued, however, that its debts do not indicate willful, long-term avoidance of payment obligations.¹⁵ Rather, Momentum states that the \$100,000 debt from August 2014 to July 2015 was the result of a single missed invoice and observes that, despite the size of the missed payment, the Company was never placed on “red light” status¹⁶ nor were its debts referred to the Treasury for collection under the Debt Collection Improvement Act (DCIA).¹⁷ We disagree with Momentum that its actions are not worthy of enforcement action. Both the magnitude of the debts at issue, and the duration of the delinquency are significant, and moreover deprived the USF of the funds necessary to carry out important regulatory objectives.¹⁸

6. The record indicates that Momentum made payments to USAC totaling \$1,538,596 during the period from September 2013 through October 2015.¹⁹ Despite making payments, Momentum continued

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Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000762219 (April 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000771244 (May 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000777238 (June 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000783299 (July 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000789236 (Aug. 21, 2015) (all invoices on file in EB-IHD-15-00018669); *see also* June 15, 2016 USAC Letter.

¹⁵ Letter from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 1 (Jan. 14, 2016) (Davis Wright Tremaine Jan. 14 Letter); Letter from Paul Hudson, Davis Wright Tremaine, Counsel for Momentum Telecom, Inc., to Joseph Schlingbaum, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 2 (Dec. 3, 2015) (letters on file in EB-IHD-15-00018669).

¹⁶ Davis Wright Tremaine Jan. 14 Letter at 1. Under the Commission's “red light” policy, the Commission withholds action on applications from any entity that is delinquent in its regulatory fees or debts owed to the Commission. *See* 47 CFR § 1.1910 (“An application . . . will be examined to determine if the applicant has paid the appropriate application fee, appropriate regulatory fees, is delinquent in its debts owed to the Commission. . . . Action will be withheld on applications . . . by any entity found to be delinquent in its debt to the Commission.”).

¹⁷ Davis Wright Tremaine Jan. 14 Letter at 1; *see also* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321.

¹⁸ *Telseven, LLC*, Forfeiture Order, 31 FCC Rcd 1629, para. 1 (2016).

¹⁹ *See* Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000646357 (Sept. 20, 2013); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000652339 (Oct. 22, 2013); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000658331 (Nov. 22, 2013); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000664324 (Dec. 20, 2013); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000670329 (Jan. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000676317 (Feb. 21, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000682319 (March 21, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000688294 (April 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000694283 (May 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000700268 (June 20, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000706329 (July 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000712322 (Aug. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000718309 (Sept. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000724285 (Oct. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000730263 (Nov. 21, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000736310 (Dec. 22, 2014); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000742314 (Jan. 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000748309 (Feb. 20, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000754271 (March 20, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000762219 (April 22,

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to be in arrears to the USF, and thus was not in full regulatory compliance. This was largely because the Commission and USAC are obligated to apply the “American Rule” of accounting, “whereby payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal. In applying the payment to outstanding principal, [USAC] shall apply such payment to the contributor’s oldest past due amounts first.”²⁰ Thus, Momentum’s debt payments were applied to its oldest arrearages and its invoices continued to fall into delinquency.

7. Based on our thorough investigation, we have determined that, as of July 1, 2015, Momentum had been delinquent in its USF contributions for nearly two years.²¹ As of that date, the Company’s delinquent debts to the USF totaled \$107,555.25.²² These debts were invoiced to Momentum and were not paid by the deadlines specified in the invoices that Momentum received every month. Were we to assess a forfeiture penalty for Momentum’s delinquency as of July 1, 2015, we would be guided by the *2015 Forfeiture Policy Statement*, which provides for the use of a treble damages methodology, when appropriate, to calculate a company’s base forfeiture liability to the USF.²³ In this matter, trebling Momentum’s delinquent debts would have resulted in a base forfeiture of \$322,665.75.²⁴

8. While the statute of limitations forecloses the Bureau’s ability to take monetary enforcement action here, Momentum’s pattern of delinquency merits an admonishment. Long-term failures to timely and fully contribute to the USF deprive the fund of the monies necessary to carry out important regulatory objectives, and give delinquent contributors like Momentum an economic advantage relative to

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2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000771244 (May 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000777238 (June 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000783299 (July 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000789236 (Aug. 21, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000795166 (Sept. 22, 2015); Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000801139 (Oct. 22, 2015) (all invoices on file in EB-IHD-15-00018669).

²⁰ 47 CFR § 54.713(e).

²¹ See Letter from Mike Pond, Manager of Financial Operations, USAC, to Gregory Haledjian, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 31, 2016) (May 31, 2016 USAC Letter) (on file in EB-IHD-15-00018669).

²² See Universal Service Administrative Company, Invoice to Momentum Telecom, Inc., No. UBDI0000777238 (June 22, 2015) (on file in EB-IHD-15-00018669); see also May 31, 2016 USAC Letter.

²³ See, e.g., *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Policy Statement, 30 FCC Rcd 1622, para. 1 (2015) (*2015 Forfeiture Policy Statement*). A Petition for Reconsideration and a Stay Request of the *Forfeiture Policy Statement* were filed on March 6, 2015. See Petition for Stay by CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL, *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, FCC 15-15 (filed Mar. 6, 2015) (Joint Petition for Reconsideration); Petition for Stay by CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTEL, *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, FCC 15-15 (filed Mar. 6, 2015) (Joint Petition for Stay). The issuance of this Admonishment has no impact on the Commission’s consideration of either the Joint Petition for Reconsideration or the Joint Petition for Stay, which remain pending, and in no way indicates that the Commission has prejudged the resolution of either filing.

²⁴ Under the Commission’s guidelines, we would next have considered whether any downward adjustments would be appropriate in light of Momentum’s compliance efforts. Under the Commission’s 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. 47 CFR § 1.80(b)(8), Note to paragraph (b)(8). We may also 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. *Id.*

competitors who timely and fully made USF contributions.²⁵ In this case, an admonishment is necessary and appropriate; though the relevant statute of limitations for all but a *de minimis* amount has expired for Momentum's delinquent USF debt, the Bureau cannot leave Momentum's habitual late-payment of regulatory obligations unsanctioned.²⁶

IV. CONCLUSION

9. We hereby admonish Momentum for its violation of Section 254(d) of the Act, and Sections 54.706 and 54.713 of the Rules. We expect the Company to conform its conduct to comply with the requirements of the Act and Rules, and caution Momentum that future violations may subject it to substantial monetary forfeitures.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that Momentum Telecom, Inc. **IS ADMONISHED** for its failure to timely and fully contribute to the Universal Service Fund for over 12 months, in violation of the Commission's Contribution Rules, including Section 254(d) of the Act,²⁷ and Sections 54.706 and 54.713 of the Rules.²⁸

11. **IT IS FURTHER ORDERED** that a copy of this Admonishment Order shall be sent by first class and certified mail, return receipt requested, to William Fox, CEO, Momentum Telecom, Inc., 880 Montclair Road, Suite 400, Birmingham, Alabama 35213, and Paul Hudson, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, NW, Washington D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

William Davenport
Deputy Chief
Enforcement Bureau

²⁵ The treble damages calculation is appropriate because service providers such as Momentum that fail to timely and fully contribute to the federal regulatory programs, including the USF, "undermine the efficiency and effectiveness of these federal programs" and "obtain an unfair advantage over companies that comply" with the Act and the Rules. *2015 Forfeiture Policy Statement*, 30 FCC Rcd at 1622, para. 1.

²⁶ 47 CFR § 1.80(c)(4) ("[N]o penalty shall be imposed if the violation occurred more than 1 year prior to the date on which the appropriate notice is issued.").

²⁷ 47 U.S.C. § 254(d).

²⁸ 47 CFR §§ 54.706, 54.713.