

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

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

FORFEITURE ORDER

Adopted: December 19, 2017

Released: December 19, 2017

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$100,000 against UnityComm, Inc. (UnityComm or Company) for failing to timely file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC). In the *UnityComm NAL*, we found that UnityComm's failure to timely file Worksheets allowed the Company to avoid making full payments to important federal programs, which gave it an unfair economic advantage over competing companies that complied with the Rules. The Company has not responded to the *NAL*. We assess the \$100,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. The underlying facts and circumstances for this Forfeiture Order are set forth in the *UnityComm NAL*, and need not be reiterated here at length.¹ 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

3. On September 14, 2016, we released the *UnityComm NAL*, which proposed a forfeiture of \$100,000 against UnityComm for its violations of Section 54.711(a) of the Rules by willfully and repeatedly failing to timely file Worksheets with USAC.³ 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

¹ See *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 9746 (EB 2016) (*UnityComm NAL* or *NAL*).

² See *id.* at 9746, para. 2 (citing UnityComm, LLC, April 2015 FCC Form 499-A (on file in EB-IHD-15-00018959) (2015 Form 499-A)).

³ See *UnityComm NAL*, *supra* note 1; 47 CFR § 54.711(a).

Numbering Plan (NANP) administration, and federal regulatory fees. The filing failures gave the Company an unfair economic advantage over its competitors who, because of UnityComm's filing violations, had to pay more than their fair share of the costs of these important federal programs.⁴

4. On September 14, 2016, the Bureau sent the *UnityComm NAL* by first class mail and certified mail, return receipt requested, to counsel to UnityComm.⁵ On September 26, 2016, counsel to UnityComm withdrew as UnityComm's counsel.⁶ On September 27, 2016, the Bureau sent the *UnityComm NAL* to the Company by certified mail, return receipt requested. UnityComm signed the certified mail receipt on October 3, 2016.⁷ The Company has not responded to the *NAL*.

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁸ Section 1.80 of the Rules,⁹ and the Commission's *Forfeiture Policy Statement*.¹⁰ Under Section 503(b)(2)(E) of the Act, the Bureau considered 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."¹¹ UnityComm has not responded to the *NAL*. We therefore affirm the \$100,000 forfeiture proposed in the *NAL*.

6. We find that UnityComm failed to file two Worksheets, which were due May 1 and August 1, 2016. We thus conclude 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. Consistent with Commission precedent, we impose a forfeiture of \$50,000 for each failure to timely file a Worksheet.¹² This forfeiture amount, as applied to UnityComm, is consistent with the statutory factors in the Act and the Commission's forfeiture guidelines. The failure to timely file accurate Worksheets is an egregious violation and warrants a substantial upward adjustment from the \$3,000 base forfeiture under Section 1.80

⁴ See *UnityComm NAL*, *supra* note 1, at 9746, para. 1 & n.1.

⁵ See *id.* at 9751, para. 17.

⁶ See Letter to Marlene H. Dortch, Secretary, FCC from Steven A. Augustino, Kelley Drye & Warren, LLP, File No. EB-IHD-15-00018959 (Sept. 26, 2017) (on file in EB-IHD-15-00018959).

⁷ See United States Post Office Form 3811, Certified Mail Receipt (Delivery Date Oct. 3, 2016) (on file in EB-IHD-15-00018959). The *UnityComm NAL* was delivered to UnityComm at 1:39 p.m. on October 3, 2016. See United States Post Office, Product and Tracking Information (Oct. 3, 2016) (on file in EB-IHD-15-00018959).

⁸ 47 U.S.C. § 503(b).

⁹ 47 CFR § 1.80.

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *E.g.*, *Advanced Tel, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 833, 8441-42, paras. 27-28 (2015) (\$50,000 forfeiture for late Worksheet filing), *forfeiture issued*, Forfeiture Order, 2017 WL 2501742 (2017) (forfeiture reduced for inability to pay); *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) (\$150,000 forfeiture for three Worksheet filing failures); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006) (\$200,000 forfeiture for one inaccurate Worksheet and three other Worksheet filing failures).

of the Rules for failure to file required forms.¹³ A violator's failure to timely submit the necessary data hinders the administrator of the USF from determining the violator's required contributions to the USF. This results in substantial economic gain to the violator, which is not paying its share for the administration of important USF programs, and substantially harms the violator's competitors, which as a result of the violator's filing failures, must pay a greater share to fund USF programs.¹⁴ Non-compliance with the filing requirement is thus a matter of grave concern to the "equitable and nondiscriminatory" implementation of Congressionally-mandated programs that are vital to all Americans.¹⁵ UnityComm's degree of culpability is demonstrated through its history of substantial and repeated non-compliance. In its response to the Commission's Letter of Inquiry, the Company admitted it did not timely file its 2013 or 2014 Annual Worksheets, and it did not file four Quarterly Worksheets in 2014 or its Quarterly Worksheets due in February or May 2015.¹⁶ UnityComm has not raised an ability to pay argument, and the Company's tax returns demonstrate that the forfeiture imposed here is consistent with the Commission's ability to pay precedent.¹⁷ Accordingly, the Company is liable for a forfeiture of one hundred thousand dollars (\$100,000) for its willful and repeated failures to timely file two Worksheets due May 1, and August 1, 2016.

IV. CONCLUSION

7. We have determined that UnityComm willfully and repeatedly violated Section 54.711(a) of the Rules. As such, UnityComm is 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 it does not preclude the Commission from imposing additional forfeitures against UnityComm in the future.

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹⁸ and Section 1.80 of the Rules,¹⁹ UnityComm, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$100,000 for willfully and repeatedly violating Section 54.711(a) of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.

10. 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 Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@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.

¹³ See, e.g., *Globcom NAL*, 18 FCC Rcd at 19905, paras. 31-32.

¹⁴ See *UnityComm NAL*, *supra* note 1, at 9746, para. 1 & n.1.

¹⁵ See 47 U.S.C. § 254(d).

¹⁶ 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, at 4 (Jul. 29, 2015) (on file in EB-IHD-15-00018959) (LOI Response).

¹⁷ See, e.g., *Advanced Tel, Inc.*, 32 FCC Rcd 5151, 5154 & n.35 (2017) (showing that under FCC precedent, forfeitures that represent approximately two to eight percent of a violator's gross revenues are reasonable).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 CFR § 1.80.

When completing the 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 completed Form 159) must be mailed to the 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.

11. 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. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that copies of this Forfeiture Order shall be sent to Benjamin M. Plikerd, UnityComm, LLC by first class mail to P.O. Box 250, Syracuse, IN 46567, and certified mail, return receipt requested to 100 E. Main Street, Syracuse, IN 46567.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau