

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

In the Matter of )
US South Communications, Inc. ) File No.: EB-IHD-20-00030537
d/b/a US South & IWCOMM ) NAL/Account No.: 202132080010
) FRN: 0003747490

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 2, 2020

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By the Enforcement Bureau:

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I. INTRODUCTION

1. The Universal Service Fund (USF) is a key component of the Federal Communications Commission’s efforts to promote universal service to all Americans. The Federal Communications Commission (FCC or Commission) has directed the Universal Service Administrative Company (USAC) to administer the collection and disbursement of the USF. USAC, in turn, relies on information filed by telecommunications service providers and certain telecommunications providers (collectively, service providers) to fairly and accurately determine service providers’ contributions responsibilities. To ensure that the information submitted to USAC by service providers is complete, timely, and accurate, the Commission’s rules grant USAC the authority to verify any such information and require service providers to maintain records to allow such verification. Service providers also are required to submit those records to USAC and the Commission upon demand. Failure to submit required information, or failure to maintain and provide the records needed to verify that information, undermines the Commission’s efforts to fairly and effectively maintain the USF. In this case, US South Communications, Inc. d/b/a US South & IWCOMM (US South or Company) apparently failed repeatedly to timely respond to directives from USAC to provide records that justify financial and other information reported in its 2018 and 2019 Telecommunications Reporting Worksheets (Worksheets). We therefore

propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of \$75,000 against US South for its apparent failure to timely provide the supporting documentation.

## II. BACKGROUND

### A. Legal Framework

2. The Communications Act of 1934, as amended (Act), codifies Congress's historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, 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."<sup>1</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF based upon their interstate and international end-user telecommunications revenues.<sup>2</sup> When service providers fail to pay their share of obligations to the USF, they undermine the Congressional mandates embodied in section 254(d) of the Act.<sup>3</sup> Delinquent contributors also obtain an unfair competitive advantage over companies that comply with the universal service provisions of the Act and the Commission's rules.<sup>4</sup> Because an equitable contribution scheme relies on accurate information, the Commission, through USAC, must be able to verify that each service provider is compliant with the Commission's rules, including being able to review documents that support the accuracy of information provided to USAC and the Commission.<sup>5</sup> Thus, a service provider failing to comply with reasonable information requests from the Commission or USAC frustrates Congress's policy objective to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers.<sup>6</sup>

3. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Telecommunications Reporting Worksheet (Annual Worksheet),<sup>7</sup> and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Telecommunications Reporting Worksheet (Quarterly Worksheet).<sup>8</sup> USAC uses the revenue projections submitted on the

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<sup>1</sup> 47 U.S.C. § 254(d).

<sup>2</sup> 47 CFR § 54.706(b); *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 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF), *petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

<sup>3</sup> *See Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1629 (2016).

<sup>4</sup> *See id.*

<sup>5</sup> *See* 47 CFR § 54.711(a); *see also id.* at § 54.706(e).

<sup>6</sup> *See* 47 U.S.C. § 254(d).

<sup>7</sup> *See* 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2. Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC registration number (FRN) from the Commission registration system (CORES) and obtaining a Filer ID from USAC's E-File system. *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1372 (WCB 2020) (*2020 Form 499 Public Notice*).

<sup>8</sup> *See* 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

Quarterly Worksheets to determine each service provider's monthly universal service contribution amount.<sup>9</sup> The Commission's rules explicitly warn service providers that failure to timely file forms or submit timely USF payments potentially subjects them to enforcement action.<sup>10</sup> The Commission's rules also require that the information contained in the forms must be truthful and that the USF payments must be accurate.<sup>11</sup>

4. In order to further the goals of truthfulness and accuracy, section 54.711(a) of the Commission's rules provides that USAC has the authority to verify any information contained in Annual and Quarterly Worksheets.<sup>12</sup> Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years and to provide it to the Commission or USAC upon request.<sup>13</sup> The recordkeeping requirement is necessary to ensure that contributors report correct information on the Worksheets.<sup>14</sup> The Commission and USAC may review records and documentation underlying revenue reported on a contributor's Worksheets to determine whether the contributor is properly reporting revenue, and thus contributing its fair share to the costs of the universal service program.<sup>15</sup>

5. USAC, administrators of other programs governed by the Act, and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection of, payments for the USF and other important federal payment mechanisms arising out of the Act.<sup>16</sup> The accuracy of the Worksheets is therefore vital. The Commission or USAC can verify the accuracy of a service provider's Worksheet by analyzing supporting documents in the service provider's files. The failure of a service provider to maintain, and provide to the Commission or USAC upon request, records and documentation supporting its Worksheets thwarts the Commission's ability to verify reported revenue, which could result in a smaller base of USF contributions revenues than would otherwise have

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<sup>9</sup> Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheets. *See* 47 CFR § 54.711; *Federal-State Joint Board on Universal Service, Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

<sup>10</sup> 47 CFR § 54.713.

<sup>11</sup> *Id.* at §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *2020 Form 499 Public Notice*, 35 FCC Rcd at 1350. While the Commission permits revisions to Worksheets in certain circumstances, *see id.* at 1373-74, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See id.* at 1350.

<sup>12</sup> 47 CFR at § 54.711(a); *see also id.* at § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC).

<sup>13</sup> *Id.* at § 54.711(a). Additionally, under section 54.706(e) of the Commission's rules, any entity required to contribute to the USF shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. *Id.* at § 54.706(e).

<sup>14</sup> *Matter of Federal-State Board on Universal Service, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952, 25791, para. 34 (2002) (*2002 Report and Order and Second Further Notice of Proposed Rulemaking*).

<sup>15</sup> *See* 47 CFR § 54.711(a); *see also id.* at § 54.706(e).

<sup>16</sup> The effective administration of Telecommunications Relay Service, *see* 47 CFR § 64.604; Local Number Portability, *see* 47 CFR § 52.32; the North American Numbering Plan, *see* 47 CFR § 52.17; and federal regulatory fees, *see* 47 CFR §§ 1.1154, 1.1157, rely on the accuracy of the Worksheets.

been reported. Responding to USAC verification directives and maintaining and submitting documentation to USAC upon request is therefore necessary to ensure the integrity of the USF, and a contributor's failure to comply with these verification functions can impede the very purpose for which Congress enacted section 254(d) – to ensure that every required contributor to the USF “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>17</sup> The effect on other programs arising under the Act that rely on assessments of the Worksheets is similar. Indeed, a service provider that impedes the Commission and USAC from verifying the revenue information submitted in its Worksheets can evade its federal obligations to fully contribute toward the vital programs linked to the reporting obligations. As a consequence of this evasion, other service providers shoulder an unfair burden of the USF and other federal regulatory programs arising under the Act.

## B. Factual Background

6. US South was formed as a Georgia corporation in 1994 and re-domesticated in Colorado in 2009.<sup>18</sup> The Company is a wholly owned subsidiary of HI Technology Corp. (f/k/a InComm Holdings, Inc.).<sup>19</sup> US South is based in Atlanta, Georgia and is authorized to do business in all 50 states and the District of Columbia.<sup>20</sup> US South has Commission authority under section 214 of the Act to provide facilities-based and resold domestic and international telecommunications services.<sup>21</sup> The Company is registered with the Commission as a toll reseller and “provides wholesale long distance calling services to telecommunications carrier customers (domestic and international termination for carrier customers).”<sup>22</sup>

7. After originally filing its 2018 Annual Worksheet on March 30, 2018, US South filed a revised Worksheet on March 28, 2019, making substantial changes to its reported revenues for the 2017 calendar year.<sup>23</sup> Between April 15, 2019, and June 4, 2020, USAC repeatedly directed US South to submit documentation supporting the Company's reported revenues, initially to support US South's

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<sup>17</sup> 47 U.S.C. § 254(d).

<sup>18</sup> Letter from Jacqueline Neff, Marshalian & Donahue, PLLC, Counsel to US South Communications, Inc. d/b/a US South & IWCOMM to Marlene Dortch, Secretary, FCC at 1 (Mar. 10, 2020) (LOI Response) (on file in EB-IHD-20-00030537).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1-2 (stating US South “is in good standing in the District of Columbia and all states, with the exception of Delaware, Georgia, Maryland, North Carolina, and Rhode Island” and “US South is working diligently to return its status to good standing in these states.”).

<sup>21</sup> See *International Authorizations Granted*, Public Notice, 23 FCC Rcd 10421 (2008) (granting consent to transfer control of the Commission's international section 214 authorization held by US South from InComm Holdings, Inc. (InComm) to First Data Corporation (First Data), consistent with an April 2008 merger agreement). Under the merger, InComm apparently became a wholly owned subsidiary, and U.S. South became an indirect, wholly owned subsidiary, of First Data Merchant Services Corporation, an indirect, wholly owned subsidiary of First Data, which is in turn a wholly owned subsidiary of First Data Holdings, Inc. *Id.* at 10423. Domestic section 214 authorization is deemed granted for a domestic interstate communications common carrier under section 63.01 of the Commission's rules, 47 CFR § 63.01.

<sup>22</sup> LOI Response at 3. An affiliate of US South, NuAccess Networks, Inc., is also registered with the Commission as a non-interconnected VoIP provider. *Id.* The Company provides its wholesale services pursuant to individually negotiated contracts with carrier customers. *Id.* “Prior to 2016, US South provided residential and commercial long-distance calling services on a common carriage basis to individual consumers and enterprise customers.” *Id.*

<sup>23</sup> See Letter from Tracey Pilsch, Manager of Contributor Operations, 499 Team, Finance, Universal Services Administrative Company to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Oct. 21, 2020) (USAC October 21, 2020 Letter) (on file in EB-IHD-20-00030537).

revision to the 2018 Annual Worksheet, and later for US South's 2019 Annual Worksheet. USAC's directives were communicated to both US South employees and a US South consultant.<sup>24</sup>

8. *First*, on April 15, 2019, USAC informed US South that the projection of revenue in the Quarterly Worksheets due November 1, 2016, and February 1, May 1, and August 1, 2017 substantially varied from revenue reported in the revised 2018 Annual Worksheet and there was a large change in the revenues reported in the revised 2018 Annual Worksheet.<sup>25</sup> USAC therefore directed US South to submit documentation that supported these revisions to the 2018 Annual Worksheet.<sup>26</sup> The deadline for US South to respond was April 22, 2019.<sup>27</sup> US South did not respond by the deadline.<sup>28</sup>

9. *Second*, on July 1, 2019, USAC directed US South to provide reseller documentation supporting the Company's 2018 Annual Worksheet.<sup>29</sup> On September 5, 2019, after US South did not respond to USAC's July 1 directive, USAC again instructed US South to provide the documentation, and in a separate communication on the same date also directed US South to provide supporting reseller documentation for the 2019 Annual Worksheet.<sup>30</sup> USAC informed US South that "the failure to resolve the outstanding issues concerning the 2018 Annual Worksheet may result in a referral to the FCC Enforcement Bureau."<sup>31</sup> With regard to the 2019 Annual Worksheet, USAC informed US South that the projection of revenue in the Quarterly Worksheets due November 1, 2017, and February 1, May 1, and August 1, 2018 substantially varied from revenue reported on the 2019 Annual Worksheet, and USAC directed US South to provide documentation supporting the projection of revenues in the Quarterly Worksheets.<sup>32</sup> The deadline to respond to these directives was September 12, 2019, but again the Company did not respond by the deadline.<sup>33</sup>

10. *Third*, in light of that failure to respond, on October 23, 2019, USAC informed US South that the Company had still not provided the documentation supporting the 2018 or 2019 Annual Worksheets.<sup>34</sup> USAC provided US South another deadline, November 5, 2019, for US South to provide the supporting documentation for the 2019 Annual Worksheet, and informed US South it was "important

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<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* On May 6, 2019, US South's representative replied to USAC, stating that the projected revenues were "based on a forecast that was not accurate" and the revenues reported in the revised 2018 Annual Worksheet "reflect the true traffic." *Id.* The Company did not, however, provide the documentation supporting the revisions to their revenue. *See id.*

<sup>29</sup> *Id.* USAC reviews reseller documentation because a "wholesale service provider should exclude revenues from its contribution base only if it has 'affirmative knowledge' or a 'reasonable expectation' that its customer is contributing to the [USF]." *Universal Service Contribution Methodology*, 27 FCC Rcd 13780, 13786, para. 12 (2012), *recon. in part on other grounds*, 29 FCC Rcd 9715 (2014).

<sup>30</sup> *See* USAC October 21, 2020 Letter, *supra* note 23, at 1.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 1-2.

<sup>33</sup> *Id.* at 2.

<sup>34</sup> *Id.*

to resolve the outstanding issue in order to avoid a referral of [the 2019 Annual Worksheet] to the FCC Enforcement Bureau.”<sup>35</sup> Again, US South did not respond by the deadline.<sup>36</sup>

11. On November 6, 2019, USAC referred US South to the Bureau for investigation into the Company’s apparent non-compliance with section 54.711(a) of the Commission’s rules, which requires contributors to “maintain records and documentation to justify information reported in the [Worksheets], including the methodology used to determine projections, . . . and shall provide such records and documentation to . . . the Administrator upon request.”<sup>37</sup> The Bureau issued an LOI to US South concerning the Company’s compliance with these filing requirements arising under the Act and the Commission’s rules on January 24, 2020.<sup>38</sup>

12. US South responded to the LOI on March 10, 2020.<sup>39</sup> US South stated that it relied on a consultant to respond on its behalf to USAC’s directives concerning the 2018 and 2019 Annual Worksheets.<sup>40</sup> US South acknowledged that the consultant failed to respond on US South’s behalf to “a number” of USAC directives and US South acknowledged it “should have taken a more active role” and “regrets that it was overly reliant on [its consultant’s] guidance pertaining to USAC’s inquiries.”<sup>41</sup> With respect to USAC’s repeated directions to US South to provide supporting documentation for the 2018 and 2019 Annual Worksheets, US South stated that its consultant “apparently failed to realize that it has failed to address” those directives, and thus US South’s representative “did not take any action in response to USAC’s follow-up notices.”<sup>42</sup> Between April 6 and June 4, 2020, USAC requested additional documentation supporting the Worksheets, and US South provided the requested documentation.<sup>43</sup>

### III. DISCUSSION

#### A. US South Apparently Violated a Commission Rule Repeatedly by Failing to Timely Provide USAC Documents Supporting the Company’s Worksheets

13. Based on evidence developed through the Bureau’s investigation, the Company apparently, willfully and repeatedly violated section 54.711(a) of the Commission’s rules by failing to timely respond to USAC directives concerning verification of the Company’s Worksheets.<sup>44</sup> Specifically, US South apparently failed to submit timely responses to USAC verification directives by three separate due dates: April 22, September 12, and November 5, 2019.

14. As the Commission observed in another USF enforcement action,<sup>45</sup> “the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*; 47 CFR 54.711(a).

<sup>38</sup> See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Scott Meyerhoff, Chief Financial Officer, US South Communications, Inc. d/b/a US South & IWCOMM (Jan. 24, 2020) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, 64.2009(e)) (LOI) (on file in EB-IHD-20-00030537).

<sup>39</sup> See LOI Response.

<sup>40</sup> See *id.* at 16-17, 19.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 17.

<sup>43</sup> See USAC October 21, 2020 Letter, *supra* note 23, at 3-4.

<sup>44</sup> 47 CFR § 54.711(a).

<sup>45</sup> *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 (2006) (*Globcom Forfeiture Order*).

Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers' compliance with our rules."<sup>46</sup> To assist the Commission and USAC in this endeavor, the document retention and production rules were adopted to ensure the accuracy of Worksheets and as a result ensure that compliance with USF contributions requirements could be established.<sup>47</sup> USAC's ability to promptly verify the accuracy of Worksheets is fundamental to implementing the Congressional directive to ensure timely administration of the Commission's responsibility for the equitable and non-discriminatory distribution of universal service costs among all service providers. Prompt compliance with the document production requirements is necessary to ensure that Worksheets and that USF contributions based on the Worksheets are accurate, and that other contributors are not unfairly paying higher contributions to the USF. A USF contributor must timely respond to every directive by USAC to provide documentation supporting the information reported in its Worksheets. That USAC may follow up an inadequate response with additional directives and deadlines does not excuse any contributor from its obligation to timely, fully and accurately respond in every instance.<sup>48</sup> More importantly, the Commission and USAC should not have to make multiple requests, or wait multiple months, to obtain the documentation we need to verify the accuracy of Worksheets. We consider each individual failure to fully respond by a deadline a separate violation of section 54.711(a) of the Commission's rules.<sup>49</sup>

**B. US South is Responsible for the Failures of its Agent to Provide Documentation Supporting the Company's Worksheets**

15. The Company's defense that its consultant failed to respond on a timely basis to USAC's repeated directives is unpersuasive. Ultimately, the responsibility to timely respond to USAC inquiries rests with the Company. USAC clearly informed both US South and its consultant on multiple occasions that the Company had failed to provide USAC with the documentation needed to verify the 2018 and 2019 Annual Worksheets.<sup>50</sup> All filers must possess the documentation to support the accuracy of Worksheets at the time of the filing, and provide the information to the Commission and USAC when directed. This obligation is clearly stated in the Commission's rules and orders, and in the instructions to the Worksheets, and has been the subject of prior enforcement efforts.<sup>51</sup> The Act provides, and the Commission has held, that licensees and other entities regulated by the Commission are responsible for the acts or omissions of their agents.<sup>52</sup> Although USAC could have chosen to send its directives only to

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<sup>46</sup> *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

<sup>47</sup> See *2002 Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd at 25791, para. 34.

<sup>48</sup> See *Blue Casa Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333, 6340, para. 15 (EB 2020) (forfeiture paid) (*Blue Casa NAL*); *Compu-Phone Voice & Data, Inc.*, Notice of Apparent Liability for Forfeiture, *LLC*, 35 FCC Rcd 6573, 6580, para. 14 (EB 2020) (forfeiture paid) (*Compu-Phone NAL*).

<sup>49</sup> See *id.*.

<sup>50</sup> See USAC October 21, 2020 Letter, *supra* note 23, at 3.

<sup>51</sup> See *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680 (EB 2007) (*COI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 3969 (EB 2008) (*COI Forfeiture Order*) (imposing forfeiture of \$50,000 for failing to maintain, and submit upon Commission demand, documentation supporting Worksheets). The Bureau recently issued \$75,000 NALs against two companies that repeatedly failed to comply with USAC requests for supporting documentation under 47 CFR § 54.711(a). See *Blue Casa NAL*, 35 FCC Rcd 6333; *Compu-Phone NAL*, 35 FCC Rcd 6573.

<sup>52</sup> See 47 U.S.C. § 217; *Telecom Mgmt., Inc.*, Order of Forfeiture, 21 FCC Rcd 10470, 10474, para. 11 (2006) (finding telecommunications provider liable for failure of its designated agent to comply with USF payment obligations on its behalf); *Eure Family LP*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21864, para. 7 (2002) ("Further, the Commission has explained that under long established principles of common law, statutory duties are nondelegable and that employers are routinely held liable for breach of statutory duties by their

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US South's consultant, who was identified to USAC as US South's representative with regards to the Company's Worksheets, USAC's directives were addressed to US South's consultant and to employees or officers of US South. Whether US South chooses to respond to USAC's directives to submit supporting documentation through an officer or employee of the Company, or through its outside consultant, it is irrelevant to assessing US South's compliance with section 54.711(a) of the Commission's rules.

16. We thus find that the Company apparently, willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to timely respond to USAC directives to provide documentation supporting the accuracy of the Company's Worksheets. Specifically, US South failed to submit timely responses to USAC directives due on three separate occasions: April 22, September 12, and November 5, 2019.

### C. Proposed Forfeiture

17. 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."<sup>53</sup> For the violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against a telecommunications carrier such as the Company of up to \$204,892 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,048,915 for a single act or failure to act.<sup>54</sup> 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."<sup>55</sup> In addition, the Commission has established forfeiture guidelines, which establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.<sup>56</sup>

18. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>57</sup> Under section 1.80 of the Commission's rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.<sup>58</sup> We may adjust a forfeiture downward for a minor violation, good faith or voluntary

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independent contractors"). See also *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 34, para. 5 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361, 361-62, para. 3 (1972) (both cases stating that responsibility is not lessened when independent contractors are used).

<sup>53</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>54</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and a statutory maximum of \$1,000,000 for a single act or failure to act). See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020) (setting January 15, 2020, as the effective date for the increases).

<sup>55</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>56</sup> 47 CFR § 1.80(b)(9), Note to paragraph (b)(9) (factors considered in determining the amount of the forfeiture penalty).

<sup>57</sup> See *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>58</sup> 47 CFR § 1.80(b)(9), Note to paragraph (b)(9). See also *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a

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disclosure, a history of overall compliance, or an inability to pay.<sup>59</sup> The forfeiture guidelines listed in section 1.80 of the Commission's rules specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."<sup>60</sup> Section 1.80 of the Commission's rules does not specify base forfeitures for the failure to timely, fully and accurately respond to USAC directives to submit documentation to support the accuracy of a contributor's Worksheets.

19. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if "the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability."<sup>61</sup> In this case, we propose a forfeiture for the Company's apparent failure to submit a timely and complete response to USAC's directives by November 5, 2019.

20. The Bureau has previously imposed a \$50,000 forfeiture for a contributor's failure under section 54.711(a) of the Commission's rules to maintain documentation that supports revenues reported on Worksheets, and provide it to the Commission upon request.<sup>62</sup> As we have recently found in similar enforcement actions,<sup>63</sup> we find the violations in this case to be analogous, and propose a \$50,000 base forfeiture against the Company for its failure to submit a timely response to USAC's directives by November 5, 2019.

21. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with USAC verification functions to be very serious.<sup>64</sup> USAC's verification of Worksheets is a vital component of ensuring the integrity of the USF. We have also considered the degree of the Company's culpability.<sup>65</sup> Contributors have an important obligation to comply with USAC verification functions, and the Company is thus highly culpable for the apparent failures to respond to USAC verification directives, which were repeated in this case.

22. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements and for repeated or continuous violations.<sup>66</sup> We apply an upward adjustment of \$25,000, 50% of the proposed base forfeiture, because of the repeated nature of the Company's apparent violations, including the Company's apparent failures to respond to USAC's directives to provide documentation by the April 22, September 12, and November 5, 2019, deadlines.<sup>67</sup> We thus propose a total forfeiture of \$75,000 against the Company, which includes a \$50,000 base forfeiture for failing to submit supporting documentation in response to USAC's directives

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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").

<sup>59</sup> 47 CFR § 1.80(b)(9), Note to paragraph (b)(9).

<sup>60</sup> *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

<sup>61</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>62</sup> See *COI Forfeiture Order*, 23 FCC Rcd at 3972, para. 7. The Bureau found that a section 54.711(a) document retention and production failure is "similarly egregious in nature" to the failure to timely file accurate Annual and Quarterly Worksheets, also pursuant to section 54.711(a) of the Commission's rules, which has a \$50,000 forfeiture under Commission precedent. *COI NAL*, 22 FCC Rcd at 13687, para. 18; *COI Forfeiture Order* 23 FCC Rcd at 3972, para. 7 (citing *Globcom Forfeiture Order*, 21 FCC Rcd 4721-24, paras. 29-38; *Globcom NAL*, 18 FCC Rcd at 19904-05, paras. 30-32).

<sup>63</sup> See *Blue Casa NAL*, 35 FCC Rcd at 6343, para 23; *Compu-Phone NAL*, 35 FCC Rcd at 6582, para 21.

<sup>64</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>65</sup> See *id.*

<sup>66</sup> 47 CFR § 1.80(b)(9), Note to paragraph (b)(9).

<sup>67</sup> See *Blue Casa NAL*, 35 FCC Rcd at 6344, para. 25; *Compu-Phone NAL*, 35 FCC Rcd at 6583, para. 23.

by November 5, 2019, and an upward adjustment of \$25,000 for the Company's repeated failures to comply with USAC's directives.

23. Consistent with the Act and the Commission's rules,<sup>68</sup> we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we therefore find the Company apparently liable for a forfeiture of seventy-five thousand dollars (\$75,000) for its apparent, willful and repeated failures to timely and fully respond to USAC's directives to provide documentation to verify the Company's Annual Worksheets.<sup>69</sup>

#### IV. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and section 1.80 of the Commission's rules,<sup>70</sup> US South Communications, Inc. d/b/a US South & IWCOMM is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventy-five thousand dollars (\$75,000) for apparently, willfully and repeatedly violating section 54.711(a) of the Commission's rules.<sup>71</sup>

25. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>72</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, US South Communications, Inc. d/b/a US South & IWCOMM **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 paragraph 28 below.

26. US South Communications, Inc. d/b/a US South & IWCOMM shall send electronic notification of payment to David Janas, Enforcement Bureau, Federal Communications Commission, at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),<sup>73</sup> or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>74</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>75</sup> For additional

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<sup>68</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(9), note to paragraph (b)(9).

<sup>69</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>70</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>71</sup> 47 CFR § 54.711(a).

<sup>72</sup> 47 CFR § 1.80.

<sup>73</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>74</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>75</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

detail and wire transfer instructions, go to <https://www.fcc.gov/licensingdatabases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

27. Any request for making full payment over time under an installment plan should be sent to Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, and e-mailed to Scott Radcliffe, Revenue & Receivables Operations Group, FCC Office of the Managing Director, at [Scott.Radcliffe@fcc.gov](mailto:Scott.Radcliffe@fcc.gov).<sup>76</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

28. 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 Commission’s rules.<sup>77</sup> The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov) and to David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov).

29. 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 principles; 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. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>78</sup>

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<sup>76</sup> See 47 CFR § 1.1914.

<sup>77</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>78</sup> *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

30. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by certified mail, return receipt requested, and first-class mail to Jacqueline Neff, Marashlian & Donahue, PLLC, Counsel to US South Communications, Inc. d/b/a US South & IWCOMM, 1420 Spring Hill Road, Suite 401, McLean, Virginia 22102, and by e-mail to [jrn@commlawgroup.com](mailto:jrn@commlawgroup.com).

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau