

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

In the Matter of)
Blue Casa Telephone, LLC)
File No.: EB-IHD-20-00030538
NAL/Account No.: 202032080027
FRN: 0020552303

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 6, 2020

Released: July 6, 2020

By the Enforcement Bureau:

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, Blue Casa Telephone, LLC (Blue Casa or Company) apparently failed repeatedly to respond to directives from USAC, and to retain and provide to USAC records that justify financial and other information reported in its 2019 Telecommunications Reporting Worksheet (Worksheet). We therefore propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of \$75,000 against Blue Casa for its apparent failures to cooperate with verification functions performed by USAC on behalf of the Commission.

II. BACKGROUND

2. Legal Framework. 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

1 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.

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.”² In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the USF based upon their interstate and international end-user telecommunications revenues.³ The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.⁴ 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.⁵ 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.⁶ 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 our Commission’s rules, including being able to review documents that support the accuracy of information provided to USAC and the Commission.⁷ Thus, a service provider circumventing the vetting of its information or stonewalling reasonable 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.⁸

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),⁹ and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Telecommunications Reporting Worksheet (Quarterly Worksheet).¹⁰ USAC uses the revenue projections submitted on the

² 47 U.S.C. § 254(d).

³ 47 CFR § 54.706(b).

⁴ 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).

⁵ 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).

⁶ See *id.*

⁷ See 47 CFR § 54.711(a); see also *id.* at § 54.706(e).

⁸ See 47 U.S.C. § 254(d).

⁹ 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, Attachment 2, 2020 FCC Form 499-A Instructions, Table 2, Filing Schedule for One-Time Requirements, DA 20-164 (Wireline Competition Bureau Feb. 18, 2020) (*2020 Form 499 Public Notice*).

¹⁰ 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.¹¹ 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.¹² The Commission's rules also require that the information contained in the forms must be truthful and that the USF payments must be accurate.¹³

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.¹⁴ 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.¹⁵ The recordkeeping requirement is necessary to ensure that contributors report correct information on the Worksheets.¹⁶ 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.¹⁷

5. USAC, administrators of other programs arising under the Act, and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection

¹¹ Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheets. *See Federal-State Joint Board on Universal Service, Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748, 5752-53, para. 12 (2001); 47 CFR § 54.711.

¹² 47 CFR § 54.713.

¹³ *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 FCC Form 499-A, Line 605. While the Commission permits revisions to Worksheets in certain circumstances, *see 2020 Form 499 Public Notice*, 2020 Telecommunications Reporting Worksheet Instructions, Section III, Filing Requirements and General Instructions, Subsection D, Obligation to File Revisions, 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 2020 FCC Form 499-A*, Line 605.

¹⁴ *Id.* at § 54.711(a); *see also id.* at § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC).

¹⁵ *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 universal service Commission's 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).

¹⁶ *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*).

¹⁷ *See* 47 CFR § 54.711(a); *see also id.* at § 54.706(e).

of, payments for the USF, and other important federal regulatory mechanisms.¹⁸ 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 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.”¹⁹ 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.

6. *Factual Background.* Blue Casa and the Company's wholly owned subsidiary, Pacific Centrex Datavo, LLC (Pacific Centrex),²⁰ are based in Santa Barbara, California.²¹ Blue Casa began providing service in California in February 2012; Pacific Centrex began providing service in California in September 2016.²² Blue Casa is a competitive local exchange carrier (CLEC) and, pursuant to transfer of control applications, holds section 214 authorizations with the Commission to provide domestic and international services.²³ Blue Casa is a common carrier that provides resold local, intrastate, interstate, and international long distance calling; VoIP; and digital subscriber line (DSL) services.²⁴ Pacific Centrex is authorized as a VoIP service provider in California.²⁵ Pacific Centrex provides dedicated Internet connections; local, interstate, intrastate and international long distance calling services; call

¹⁸ 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.

¹⁹ 47 U.S.C. § 254(d).

²⁰ Blue Casa and the Company's subsidiary, Pacific Centrex, are referred to herein collectively as the “Company.”

²¹ Letter from Leon Nowalsky, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, FCC at 1 (March 3, 2020) (LOI Response) (on file in EB-IHD-20-00030538).

²² *Id.* at 4.

²³ *See id.* at 2. 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. *See also International Authorizations Granted*, Public Notice, 26 FCC Rcd 3744 (Mar. 10, 2011) (granting application for consent to assign international section 214 authorization from Blue Casa Communications, Inc., ITC-214-20030602-00265, to Blue Casa Telephone, LLC).

²⁴ LOI Response, *supra* note 20, at 3, 5.

²⁵ *Id.* at 2-3.

features; and premium options, including auto attendants, unified fax messaging, and voicemail speech to text.²⁶ In addition, Pacific Centrex has provided, but no longer provides, VoIP services.²⁷

7. Between March 26, 2019, and June 25, 2020, USAC and the Enforcement Bureau (Bureau) repeatedly tried to verify the accuracy of Blue Casa's 2019 Annual Worksheet for Lifeline disbursements paid in 2018 and for the allocation of pertinent revenue as interstate, international or intrastate (Worksheet). The Company, however, submitted incomplete responses or failed to respond at all during the approximately 15-month period. In so doing, Blue Casa has repeatedly prevented USAC from verifying the accuracy of the reported data in Blue Casa's Worksheet.

8. In the early months of the relevant period, Blue Casa fully or partially disregarded three separate USAC requests for clarification. *First*, on March 26, 2019, USAC directed Blue Casa to revise its Worksheet, and also provide to USAC the documentation that supported the allocation of pertinent revenue as interstate, international or intrastate.²⁸ The Company's deadline to file the revision and to respond was April 2, 2019, but Blue Casa failed to meet it.²⁹ *Second*, on May 2, 2019, USAC again directed Blue Casa to revise its Worksheet and provide supporting documentation, and gave the Company a new deadline of May 16, 2019.³⁰ Blue Casa also failed to meet that new deadline, but it eventually filed a revised Worksheet on June 12, 2019.³¹ The revised filing amended the amount of Lifeline disbursements paid in 2018, but the Company failed again to submit documentation supporting the jurisdictional allocation of pertinent revenue.³² Blue Casa's revision also decreased the Company's revenues, and Blue Casa failed to provide support for the decrease with data requested by USAC.³³ *Third*, on June 14, 2019, USAC directed the Company a final time to provide documentation supporting Blue Casa's jurisdictional allocation of pertinent revenue, with a third deadline—July 9, 2019—for the Company's response.³⁴ This time, USAC informed Blue Casa that it was "important to resolve the outstanding issue in order to avoid a referral of this issue to the FCC Enforcement Bureau."³⁵ Blue Casa yet again failed to respond.³⁶

²⁶ *Id.* at 3.

²⁷ *Id.*

²⁸ 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 (Jun. 29, 2020) (USAC June 29, 2020, Letter) (on file in EB-IHD-20-00030538). The Lifeline disbursements reported on Blue Casa's 2019 Annual Worksheet did not correspond to the Lifeline disbursements to Blue Casa that were reflected in USAC's records. *Id.* at 1.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* The jurisdictional allocation of revenue in this context refers to identifying the interstate, international or intrastate components of total revenue. *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

9. When several additional months passed without compliance, USAC referred the Company to the Bureau for investigation of the Company's apparent non-compliance with the rule that requires contributors to retain and, if requested by USAC, submit records necessary to justify the accuracy of their Worksheets.³⁷ On January 24, 2020, the Bureau issued a Letter of Inquiry (LOI) to Blue Casa concerning the Company's compliance with filing and contributions requirements arising under the Act and the Commission's rules.³⁸ Blue Casa responded on March 3, 2020,³⁹ claiming that it was unable to timely and adequately respond to USAC's three directives in 2019 because responses "required a level of detail that Blue Casa's accounting and billing systems could not readily provide and would therefore have to be obtained manually."⁴⁰ Blue Casa had never provided these explanations to USAC, however, nor did it request any deadline extensions from USAC.⁴¹

10. Blue Casa's LOI Response also was internally inconsistent. While claiming that its billing systems could not readily provide the detail USAC requested, Blue Casa also stated that it "was under the mistaken impression that it had responded to all of the questions proposed by USAC [and] did not realize the error until several months later."⁴² This claim is questionable because while Blue Casa late-filed a revised 2019 Annual Worksheet, the Company did not respond to USAC's clear directives on March 26, May 2, and June 14, 2019, to provide documentation to support Blue Casa's jurisdictional allocation of revenue.⁴³ Blue Casa also claimed that when it realized the error, it contacted its vendors for additional information and began compiling the necessary documentation.⁴⁴

11. Blue Casa contended that a spreadsheet of revenues accompanying its LOI Response, submitted nearly a year after USAC's initial request for supportive material, was fully responsive to USAC's directives.⁴⁵ USAC disagreed. On April 1, 2020, USAC informed the Company that the spreadsheet submitted to the Bureau still did not enable USAC to verify the accuracy of Blue Casa's Worksheet.⁴⁶ USAC directed Blue Casa to demonstrate how revenue reported in the Worksheet was derived from the Company's general ledger,⁴⁷ and to provide product descriptions for each general ledger

³⁷ *Id.* at 1-2. *See also* 47 CFR § 54.711(a).

³⁸ *See* Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Jeff Compton, President & Chief Financial Officer, Blue Casa Telephone, LLC (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-20-00030538).

³⁹ *See* LOI Response, *supra* note 20.

⁴⁰ *Id.* at 15 ("Blue Casa acquired several customer bases along with captive billing systems that were not fully integrated. ... Blue Casa engaged Smart Telecom to assist with analyzing Blue Casa's billing and taxing data to validate the accuracy of the information coming from the disparate billing systems.").

⁴¹ *See* USAC June 29, 2020, Letter, *supra* note 27, at 1.

⁴² LOI Response, *supra* note 20, at 19.

⁴³ *See* USAC June 29, 2020, Letter, *supra* note 27, at 1-2.

⁴⁴ LOI Response, *supra* note 20, at 19.

⁴⁵ *See id.*

⁴⁶ *See* USAC June 29, 2020, Letter, *supra* note 27, at 2.

⁴⁷ A general ledger "is a master accounting document providing a complete record of all the financial transactions of [a] business." <https://www.freshbooks.com/blog/general-ledger-101> (last accessed June 26, 2020).

item.⁴⁸ Also on April 1, 2020, USAC directed Pacific Centrex to provide documentation demonstrating how revenue reported in Pacific Centrex's own 2019 Annual Worksheet was derived from the Company's general ledger, and to provide product descriptions for each general ledger item.⁴⁹

12. USAC told the Company to respond on behalf of both entities by April 16, 2020, but the pattern of missing deadlines continued. One day after that deadline, Bureau staff directed Blue Casa and Pacific Centrex to provide a status report on their responses to USAC, along with copies of any responses and supporting documentation the two companies might have submitted to USAC at that time.⁵⁰ After receiving no immediate response, Bureau staff reminded Blue Casa and Pacific Centrex of the Company's continuing response obligations under the LOI and set an April 28, 2020, deadline.⁵¹ On April 24, 2020, Blue Casa and Pacific Centrex sought an indefinite extension of time "to provide tax mapping information" to the Bureau and USAC.⁵² The Company claimed that the "mapping"⁵³ required data that could be generated only from paper files located at the Company's offices, but access was difficult because Californians were under state government "stay at home orders" imposed because of COVID-19 pandemic conditions.⁵⁴ Bureau staff declined to grant an open-ended extension of time,⁵⁵ but it gave Blue Casa and Pacific Centrex an additional three weeks—to May 19, 2020—to respond.⁵⁶

⁴⁸ See USAC June 29, 2020, Letter, *supra* note 27, at 2 ("Although [Blue Casa's] spreadsheet of revenues billed by vendors breaks out revenues by intrastate, interstate, and international jurisdictions, it does not match any numbers reported on [Blue Casa's] 2019 FCC Form 499A.").

⁴⁹ *Id.*

⁵⁰ E-mail from David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau to Edward Gothard, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC (Apr. 17, 2020) (on file in EB-IHD-20-00030538).

⁵¹ E-mail from David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau to Edward Gothard, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC (Apr. 21, 2020) (Supplemental Inquiries) (on file in EB-IHD-20-00030538). The Supplemental Inquiries directed the Company to provide information and documentation (a) responsive to USAC's April 1, 2020 directive, and (b) concerning the consultant the Company engaged to help respond to USAC's directives. *Id.*

⁵² E-mail from Edward Gothard, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 24, 2020) (Company's April 24, 2020, E-mail) (on file in EB-IHD-20-00030538).

⁵³ The accounting term, "mapping" in this context referred to USAC's April 1, 2020 directive to demonstrate how revenues reported in the 2019 Annual Worksheets were derived from the Company's general ledger. USAC June 29, 2020, Letter, *supra* note 27, at 2.

⁵⁴ Company's April 24, 2020, E-mail, *supra* note 51.

⁵⁵ E-mail from David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau to Edward Gothard, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC (Apr. 28, 2020) ("Requests for extensions of time should include a proposed date certain for the response. Requests for extensions of time should also provide the Division adequate time to consider and respond to the request.") (on file in EB-IHD-20-00030538).

⁵⁶ *Id.* Bureau staff directed the Company to respond on April 28, 2020 to Bureau staff's supplemental inquiries concerning the consultant the Company engaged to help respond to USAC's directives. *Id.*

13. Yet again, the Company failed to meet its deadline. Two days later, Bureau staff informed the Company that it was in apparent violation of a Commission order.⁵⁷ Later on that day, on May 21, 2020, the Company provided an incomplete response to Bureau staff's supplemental inquiries.⁵⁸ The Company submitted information that it claimed showed how revenues reported in Blue Casa's Worksheet were derived from the Company's general ledger, but it provided nothing concerning Pacific Centrex.⁵⁹ USAC then informed the Company that the information provided on May 21, 2020, did not show how revenues reported on Blue Casa's Worksheet were derived from the general ledger.⁶⁰ On May 28, 2020, USAC repeated its directives to the Company to provide the requested information concerning Pacific Centrex's Worksheet and Blue Casa's Worksheet, and USAC set a new deadline of June 8, 2020,⁶¹ and this time the Company submitted some information and documentation to USAC on that date. USAC found, however, that the financial data the Company submitted did not appear to support the reported revenues in Blue Casa's Worksheet.⁶² On June 15, 2020, USAC again directed the Company to provide supporting information, and to respond by June 18, 2020.⁶³ Blue Casa again responded late, on June 28, 2020, and USAC is reviewing the response.⁶⁴

III. DISCUSSION

14. 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 and fully respond to USAC directives concerning verification of the Company's Worksheet.⁶⁵ Specifically, Blue Casa apparently failed to submit complete and timely responses to USAC verification directives on three separate occasions: April 2, May 16, and July 9, 2019.

15. USAC's ability to verify the accuracy of a Worksheet is fundamental to implementing the Congressional directive to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers. A USF contributor must timely respond to every directive by USAC to provide information and documentation supporting the information reported in its Worksheet. That USAC may follow up an inadequate response with additional directives and deadlines does not excuse

⁵⁷ E-mail from David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau to Edward Gothard, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC (May 21, 2020) (citing LOI at 2; 47 U.S.C. § 155(c)(3)) (on file in EB-IHD-20-00030538).

⁵⁸ E-mail from Leon Nowalsky, Nowalsky & Gothard, counsel to Blue Casa Telephone, LLC to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (May 21, 2020) (stating, "[w]e apologize for the delay; Mr. Gothard was called away on a family emergency.") (Company's May 21, 2020, E-mail) (on file in EB-IHD-20-00030538).

⁵⁹ See USAC June 29, 2020, Letter, *supra* note 27, at 2.

⁶⁰ See *id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* On June 25, 2020, USAC informed counsel for the Company and Bureau staff that USAC did not receive the supporting information by June 18, 2020. *Id.*

⁶⁴ *Id.* We reserve our authority to take enforcement action concerning USAC's June 15, 2020, directive, if after further investigation, we find that enforcement action is warranted.

⁶⁵ 47 CFR § 54.711(a).

any contributor from its obligation to timely, fully and accurately respond in every instance. More importantly, the Commission and USAC should not have to make multiple requests, or wait multiple months, to obtain the information and documentation we need to verify the accuracy of a Worksheet. We consider each individual failure to fully respond by a deadline a separate violation of section 54.711(a) of the Commission's rules.

16. The Company apparently failed repeatedly to respond to directives from USAC concerning the accuracy of Blue Casa's Worksheet. Blue Casa failed to file—by either the original April 2, 2019, deadline or the follow-up May 16, 2019, deadline—a revised Worksheet reporting accurate Lifeline disbursements paid in 2018. The Company apparently untimely filed a revised Worksheet on June 12, 2019, amending Lifeline disbursements paid in 2018. Blue Casa did not apparently provide any response to USAC concerning the directives to submit supporting documentation for the jurisdictional allocation of revenue reported in Blue Casa's Worksheet by the April 2, May 16, and July 9, 2019 deadlines.

17. The Company's claim that the necessary information was not ready for submission on the date the filing was due is unpersuasive.⁶⁶ All filers must possess the information and documentation that supports the accuracy of a Worksheet at the time of the filing and be able to 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.⁶⁷ After Bureau staff contacted the Company on May 21, 2020, concerning the failure to timely respond to Bureau staff's supplemental inquiries, the Company submitted data that purported to demonstrate how revenues reported in Blue Casa's Worksheet were derived from the Company's general ledger.⁶⁸ The Company submitted data on the basis of its "Federal Income Tax returns previously provided on March 4, 2020[,] in response to the original LOI . . ."⁶⁹ Contrary to its claim on April 24, 2020,⁷⁰ the Company provided data to demonstrate how revenues reported in Blue Casa's Worksheet were derived from the Company's general ledger, apparently without having to rely on paper files located in its office.

18. Moreover, the Company's claim that information was not ready for submission to USAC upon request contradicts its claim that the Company thought it had responded to USAC's directives.⁷¹ We find no merit in the defense that the Company thought it timely responded to USAC's three directives in 2019. The Company's only apparent response to these directives was to untimely file a revision to Blue Casa's Worksheet on June 12, 2019, amending Lifeline disbursements paid in 2018. The Company

⁶⁶ See LOI Response, *supra* note 20, at 15.

⁶⁷ See *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680 (Enforcement Bureau 2007) (*COI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 3969 (Enforcement Bureau 2008) (*COI Forfeiture Order*) (imposing forfeiture of \$50,000 for failing to maintain, and submit upon Commission demand, documentation supporting the Worksheets).

⁶⁸ See Company's May 21, 2020, E-mail, *supra* note 57.

⁶⁹ *Id.*, Attachment at 2.

⁷⁰ See Company's April 24, 2020, E-mail, *supra* note 51.

⁷¹ See LOI Response, *supra* note 20, at 19.

repeatedly failed to respond to USAC's clear directives on March 26, May 2, and June 14, 2019, to provide documentation that supported the jurisdictional allocation of revenue.⁷²

19. We thus find that the Company apparently, willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to timely and fully respond to USAC directives to provide information and documentation supporting the accuracy of the Blue Casa's Worksheet. Specifically, the Company failed to submit timely and complete responses to USAC directives by the April 2, May 16, and July 9, 2019, deadlines.

IV. PROPOSED FORFEITURE

20. 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."⁷³ 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.⁷⁴ 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."⁷⁵ 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.⁷⁶

21. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.⁷⁷ 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.⁷⁸ We may adjust a forfeiture downward for a minor violation, good faith or voluntary

⁷² See USAC June 29, 2020, Letter, *supra* note 27, at 1-2.

⁷³ 47 U.S.C. § 503(b)(1)(B).

⁷⁴ 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, DA 19-1325 (Enforcement Bureau Dec. 27, 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).

⁷⁵ 47 U.S.C. § 503(b)(2)(E).

⁷⁶ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8) (factors considered in determining the amount of the forfeiture penalty).

⁷⁷ 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).

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

(continued....)

disclosure, a history of overall compliance, or an inability to pay.⁷⁹ 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."⁸⁰ 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 information and documentation to support the accuracy of a contributor's Worksheets.

22. 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."⁸¹ 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 the July 9, 2019, deadline.

23. As the Commission observed in another USF enforcement action,⁸² "the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the 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."⁸³ To assist the Commission and USAC in this endeavor, the document retention and production rules were adopted to ensure the accuracy of each Worksheet and as a result ensure that compliance of USF contributions could be established.⁸⁴ 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.⁸⁵ 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 and complete response to USAC's directives within the last 12 months, *i.e.*, by the July 9, 2019, deadline.

24. 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.⁸⁶ USAC's verification of Worksheets is a

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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").

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

⁸⁰ *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

⁸¹ 47 U.S.C. § 503(b)(6)(B).

⁸² *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*).

⁸³ *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

⁸⁴ *See 2002 Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd at 25791, para. 34.

⁸⁵ *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).

⁸⁶ *See* 47 U.S.C. § 503(b)(2)(E).

vital component of ensuring the integrity of the USF. We have also considered the degree of the Company's culpability and the Company's ability to pay.⁸⁷ 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. A review of the Company's tax returns submitted with its LOI response supports the proposed forfeiture.

25. 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.⁸⁸ We apply an upward adjustment of \$25,000, 50 percent 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 information and documentation by the April 2, May 16, and July 9, 2019, deadlines. We thus propose a total forfeiture of \$75,000 against the Company, which includes a \$50,000 base forfeiture for failing to submit information and documentation in response to USAC's directives by July 9, 2019, and an upward adjustment of \$25,000 for the Company's repeated and ongoing failures to comply with USAC's directives, which continued during the course of the Bureau's investigation in 2020.

26. Consistent with the Act and the Commission's rules,⁸⁹ 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 willful and repeated failures to timely and fully respond to USAC's directives to provide information and documentation to verify Blue Casa's Annual Worksheet.

V. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and 1.80 of the Commission's rules,⁹⁰ Blue Casa Telephone, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR 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.⁹¹

28. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁹² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Blue Casa Telephone, 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 paragraph 31 below.

29. Blue Casa Telephone, LLC shall send electronic notification of payment to David Janas, Enforcement Bureau, Federal Communications Commission, at David.Janas@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing

⁸⁷ See *id.*

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

⁸⁹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

⁹⁰ 47 U.S.C. § 503(b); 47 CFR § 1.80.

⁹¹ 47 CFR § 54.711(a).

⁹² 47 CFR § 1.80.

House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),⁹³ 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:⁹⁴

- 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 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).⁹⁵ For additional 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.

30. 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 and e-mailed to Scott Radcliffe, Revenue & Receivables Operations Group, FCC Office of the Managing Director, at Scott.Radcliffe@fcc.gov.⁹⁶ 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.

⁹³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

⁹⁴ 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.

⁹⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁹⁶ See 47 CFR § 1.1914.

31. 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.⁹⁷ The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Act. No. referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and to David Janas at David.Janas@fcc.gov.

32. 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 (GAAP); 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.⁹⁸

33. **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 Edward Gothard, Counsel for Blue Casa Telephone, LLC, Nowalsky & Gothard, 1420 Veterans Memorial Blvd., Metairie, Louisiana 70005, and by E-mail to egothard@nbglaw.com and lnowalsky@nbglaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

⁹⁷ 47 CFR §§ 1.16, 1.80(f)(3).

⁹⁸ *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).