

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

In the Matter of )
)
Compu-Phone Voice & Data, Inc. ) File No.: EB-IHD-20-00030536
) NAL/Account No.: 202032080028
) FRN: 0002097103

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, Compu-Phone Voice & Data, Inc. (Compu-Phone 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 Compu-Phone for its apparent failures to cooperate with verification functions performed by USAC on behalf of the Commission.1

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.”<sup>2</sup> 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.<sup>3</sup> The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.<sup>4</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>5</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>6</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 our Commission’s rules, including being able to review documents that support the accuracy of information provided to USAC and the Commission.<sup>7</sup> 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.<sup>8</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>9</sup> and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Telecommunications Reporting Worksheet (Quarterly Worksheet).<sup>10</sup> USAC uses the revenue projections submitted on the

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<sup>2</sup> 47 U.S.C. § 254(d).

<sup>3</sup> 47 CFR § 54.706(b).

<sup>4</sup> 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>5</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>6</sup> See *id.*

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

<sup>8</sup> See 47 U.S.C. § 254(d).

<sup>9</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, 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*).

<sup>10</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>11</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>12</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>13</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>14</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>15</sup> The recordkeeping requirement is necessary to ensure that contributors report correct information on the Worksheets.<sup>16</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>17</sup>

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

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<sup>11</sup> Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheet. *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.

<sup>12</sup> 47 CFR § 54.713.

<sup>13</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 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.

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

<sup>15</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 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).

<sup>16</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>17</sup> *See* 47 CFR § 54.711(a); *see also id.* at § 54.706(e).

of, payments for the USF, and other important federal regulatory mechanisms.<sup>18</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 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>19</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.

6. *Factual Background.* Compu-Phone is a “private business corporation that was incorporated in the State of New York on March 29, 1991.”<sup>20</sup> The Company is headquartered in Brooklyn, NY.<sup>21</sup> Compu-Phone began providing telecommunications services to end user customers in “approximately August, 2010.”<sup>22</sup> From 2017 to the present, Compu-Phone has provided telecommunications and non-telecommunications services in New York and New Jersey.<sup>23</sup>

7. Between March 20, 2019, and June 19, 2020, USAC and the Enforcement Bureau (Bureau) repeatedly tried to verify the accuracy of Compu-Phone's 2019 Annual Worksheet for Lifeline disbursements paid in 2018 and for the allocation of pertinent revenue as derived from interstate, international or intrastate service.<sup>24</sup> The Company, however, submitted incomplete responses or failed to respond at all during the approximately 15-month period.<sup>25</sup> In so doing, Compu-Phone has repeatedly

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<sup>18</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.

<sup>19</sup> 47 U.S.C. § 254(d).

<sup>20</sup> See Response to Letter of Inquiry, from Leon Nowalsky, Counsel to Compu-Phone Voice & Data, Inc., to Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at 1 (Feb 24, 2020) (on file in EB-IHD-20-00030536) (LOI Response).

<sup>21</sup> *Id.*.

<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.*

<sup>24</sup> See Letter from Tracey Pilsch, Manager of Contributor Operations, 499 Team, Finance, Universal Services Administrative Company to Pam Slipakoff, Investigations & Hearings Division, FCC Enforcement Bureau (June 30, 2020) (USAC June 30, 2020, Letter) (on file in EB-IHD-20-00030536).

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

prevented USAC from verifying the accuracy of the reported data in Compu-Phone's 2019 Annual Worksheet.

8. In the early months of the relevant period, Compu-Phone fully disregarded three separate USAC requests for clarification. *First*, on March 20, 2019, USAC directed Compu-Phone to submit information and documentation supporting its 2019 Annual Worksheet.<sup>26</sup> Specifically, USAC directed the Company to provide a listing (including a brief service description for each item listed) for each of the individual products, services, or bundles for certain revenue reported on Compu-Phone's 2019 Annual Worksheet.<sup>27</sup> USAC also directed the Company to provide, for each unique product, service, or bundle listed, the amount of revenue associated with it.<sup>28</sup> In addition, USAC directed Compu-Phone to provide copies of customer invoices associated with the months of March and October 2018 for the three customers with the highest values of billed revenues associated with certain services that Compu-Phone provided.<sup>29</sup> For each of these six invoices, USAC also directed Compu-Phone to identify the specific lines on the Company's 2019 Annual Worksheet where Compu-Phone reported each of the individual line item amounts contained on the invoices.<sup>30</sup> The Company's deadline to respond was March 27, 2019, but Compu-Phone failed to submit a response to USAC by this date.<sup>31</sup> *Second*, on May 1, 2019, USAC again directed Compu-Phone to submit the requested information and documentation and gave the Company a new deadline of May 15, 2019.<sup>32</sup> Compu-Phone also failed to submit a response to this directive. *Third*, on June 4, 2019, USAC directed the Company a final time to provide the information and documentation, with a third deadline— July 8, 2019—for the Company's response.<sup>33</sup> This time, USAC informed the Company that it was "important to resolve the outstanding issue in order to avoid a referral of this issue to the FCC Enforcement Bureau."<sup>34</sup> Compu-Phone yet again failed to respond at all to USAC's directive.

9. In the ensuing months, Compu-Phone remained unresponsive to USAC's continuing directives. On September 9, 2019, USAC informed Compu-Phone that the Company had still not provided sufficient information and documentation to enable USAC to verify the accuracy of Compu-Phone's 2019 Annual Worksheet.<sup>35</sup> On September 30, 2019, Compu-Phone filed a late and incomplete response to USAC's directives.<sup>36</sup> Compu-Phone's September 30, 2019 response, however, failed to provide (a) a brief service description for each of the individual products, services, or bundles for certain revenue reported on Compu-Phone's 2019 Annual Worksheet; (b) the amount of revenue associated with

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<sup>26</sup> *Id.* at 1.

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

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

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

<sup>32</sup> *Id.*

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

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

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

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

each unique product, service, or bundle listed; (c) copies of invoices for the months of March and October 2018 for the three customers with the highest values of billed revenues associated with certain services that Compu-Phone provided; and (d) for each of these six invoices, the specific lines on the Company's 2019 Annual Worksheet where Compu-Phone reported each of the individual line item amounts contained on the invoices.<sup>37</sup> The omission of the aforementioned information impeded USAC's ability to discharge its duties, and Compu-Phone's response remains incomplete.

10. After its submission of the incomplete September 30, 2019 response, 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 Worksheet.<sup>38</sup> On January 24, 2020, the Bureau issued a Letter of Inquiry (LOI) to Compu-Phone concerning the Company's compliance with requirements arising under the Act and the Commission's rules.<sup>39</sup> Compu-Phone responded on February 24, 2020,<sup>40</sup> stating that it responded to USAC's directives to provide information on September 30, 2019.<sup>41</sup> Compu-Phone also claimed that it failed to timely respond to USAC's three directives in 2019 because it is a small company and the directives from USAC coincided with a time period when state sales tax reporting, state regulatory reporting, and billing were due.<sup>42</sup> Compu-Phone also stated that it sought outside assistance to respond to USAC's directives.<sup>43</sup> Compu-Phone had never provided these explanations to USAC, however, nor did it request any deadline extensions from USAC.<sup>44</sup> On March 12, 2020, Compu-Phone sent USAC a copy of its February 24, 2020, response to the LOI.<sup>45</sup>

11. Despite Compu-Phone's claims to the Bureau that the Company had responded to USAC, Compu-Phone still did not submit a complete response to USAC's directives. On June 2, 2020, USAC again directed the Company to provide (a) a brief service description for each of the individual products, services, or bundles for certain revenue reported on Compu-Phone's 2019 Annual Worksheet, and the amount of revenue associated with each unique product, service, or bundle listed;<sup>46</sup> (b) copies of customer invoices for the months of March and October 2018 for the three customers with the highest billed

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<sup>37</sup> *Id.* at 1-2.

<sup>38</sup> *Id.* at 2.

<sup>39</sup> See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Rebecca Lemmer, Vice President, Compu-Phone Voice and Data, Inc. (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-20-00030536).

<sup>40</sup> See LOI Response, *supra* note 19.

<sup>41</sup> See *id.* at 18.

<sup>42</sup> See *id.* at 15, 18-19.

<sup>43</sup> See *id.*

<sup>44</sup> See USAC June 30, 2020, Letter, *supra* note 23, at 1.

<sup>45</sup> *Id.* at 2

<sup>46</sup> *Id.* USAC advised Compu-Phone that the total of the revenue amounts listed for each of the identified products, services and bundles must equal the total revenue reported on a particular line of the Company's 2019 Annual Worksheet, and USAC required the revenues associated with each of the services reported on the same line of the Worksheet. *Id.*

revenues, and for each of these six invoices, the revenue reporting lines and revenue jurisdictions of the Company's 2019 Annual Worksheet where Compu-Phone reported the individual line item amounts contained on the invoices;<sup>47</sup> and (c) information and documentation separating telecommunications from non-telecommunications services, as referenced in the Company's February 24, 2020, LOI Response to the Bureau.<sup>48</sup> USAC's deadline for Compu-Phone to submit the response was June 10, 2020.<sup>49</sup>

12. Compu-Phone submitted an incomplete response to USAC's June 2, 2020 directive on June 8, 2020.<sup>50</sup> Compu-Phone's response included the first two items that USAC requested on June 2, 2020, and a clarification of the Company's relationship with its wholesale service provider, Coredial, but omitted the data on the Company's separation of telecommunications and non-telecommunications services that USAC had specifically requested.<sup>51</sup> Compu-Phone's omission frustrated USAC's ability to verify Compu-Phone's Worksheet. In addition, the invoices submitted by the Company on June 8, 2020, showed inconsistencies in the methodology in applying the Contribution Factor.<sup>52</sup> There were also discrepancies between the telecommunications revenue reported on the 2019 Annual Worksheet and the Company's Profit and Loss statements.<sup>53</sup> Thus, on June 19, 2020, USAC directed Compu-Phone to provide the following clarification and supporting documentation: (1) the Coredial aggregate invoice to the Company, which was referenced in Compu-Phone's response to Inquiry 44 of the LOI, and (2) if any other telecommunications services were included in certain categories for the Cost of Goods Sold<sup>54</sup> on Compu-Phone's Profit and Loss statements, then for 2017 and 2018, descriptions of the telecommunications service, the telecommunications service providers, and the dollar amounts paid by

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<sup>47</sup> *Id.* at 2-3. For every monetary charge on each customer invoice, USAC specifically directed the Company to identify the 2019 Annual Worksheet reporting line, by specifying immediately to the right of each amount shown on the invoice, the associated Annual Worksheet line number and whether each amount was reported as local, interstate, or international revenue. *Id.* USAC also observed that the information Compu-Phone untimely provided on September 30, 2020, did "not appear to be the three largest by revenue" and USAC advised Compu-Phone that the invoices do not need to be for telecommunications services provided by the Company, but "simply the largest customers' invoices." *Id.*

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* Coredial provides telecommunications services to Compu-Phone, and Compu-Phone resells these services to its own customers.

<sup>52</sup> *Id.* Contributions to the federal universal service support mechanisms are determined using a quarterly contribution factor calculated by the Commission. 47 CFR § 54.709(a). The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. *Id.* at 54.709(a)(2).

<sup>53</sup> See USAC June 30, 2020, Letter, *supra* note 23, at 3. A Profit and Loss statement "is a financial report that provides a summary of a company's revenues, expenses, and profits/losses over a given period of time." <https://corporatefinanceinstitute.com/resources/knowledge/accounting/profit-and-loss-statement-pl/> (last accessed July 1, 2020).

<sup>54</sup> The "Cost of Goods Sold" refers to "the accumulated total of all costs used to create a product or service, which has been sold." <https://www.accountingtools.com/articles/2017/5/4/cost-of-goods-sold> (last accessed July 1, 2020).

Compu-Phone for each telecommunications service.<sup>55</sup> USAC provided a June 26, 2020 deadline to respond.<sup>56</sup> As of June 30, 2020, the Company had not responded to USAC's June 19, 2020 directive.<sup>57</sup>

### III. DISCUSSION

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 and fully respond to USAC directives to submit information and documentation supporting the Company's Worksheet.<sup>58</sup> Specifically, Compu-Phone apparently failed to submit complete and timely responses to USAC directives to provide information and documentation by March 27, May 15, and July 8, 2019.

14. 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 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.

15. Compu-Phone failed to provide any response to USAC's directives to submit information and documentation supporting the Company's 2019 Annual Worksheet by the March 27, May 15, and July 8, 2019, response deadlines. USAC did not receive a response until September 30, 2019, and that response was incomplete.<sup>59</sup> Compu-Phone did not attempt to more fully respond to USAC's directives until after it received the Bureau's LOI, when the Company submitted its LOI Response to the Bureau on February 24, 2020,<sup>60</sup> more than 11 months after USAC's March 20, 2019, directive. In Compu-Phone's LOI Response, however, the Company again failed to fully address USAC's prior, repeated directives to provide information and documentation supporting the accuracy of Compu-Phone's 2019 Annual Worksheet. Thus, Compu-Phone's failures to submit information and documentation precluded USAC from verifying the accuracy of the Company's 2019 Annual Worksheet for more than 15 months since USAC's March 20, 2019 directives to Compu-Phone, and USAC has still not received all of the information and documentation that USAC needs to verify the accuracy of Compu-Phone's Annual Worksheet.

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<sup>55</sup> See USAC June 30, 2020, Letter, *supra* note 23, at 3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> 47 CFR § 54.711(a).

<sup>59</sup> See USAC June 30, 2020, Letter, *supra* note 23, at 1.

<sup>60</sup> See LOI Response, *supra* note 19, at 18.



16. The Company's excuses in its LOI Response that it is a small company and that USAC's directives came at a busy time and therefore it the Company could not comply is unpersuasive.<sup>61</sup> 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.<sup>62</sup> Additionally, Compu-Phone's claim that it responded to USAC's March 20, 2019, directive on September 30, 2019, is unavailing.<sup>63</sup> The Company's September 30, 2019, submission was largely incomplete and nonresponsive to USAC's prior directives and did not enable USAC to verify the accuracy of Compu-Phone's 2019 Annual Worksheet.

17. 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 Compu-Phone's Worksheet. Specifically, the Company failed to submit timely and complete responses to USAC's directives by the March 27, May 15, and July 8, 2019, deadlines.

#### IV. PROPOSED FORFEITURE

18. 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>64</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>65</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>66</sup> In addition, the Commission has established forfeiture guidelines, which establish base penalties for

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<sup>61</sup> See LOI Response, *supra* note 19 at 15, 18-19.

<sup>62</sup> 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).

<sup>63</sup> See LOI Response, *supra* note 19, at 18

<sup>64</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>65</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, 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).

<sup>66</sup> 47 U.S.C. § 503(b)(2)(E).

certain violations and identify criteria to consider when determining the appropriate penalty in any given case.<sup>67</sup>

19. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>68</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>69</sup> We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.<sup>70</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>71</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 information and documentation to support the accuracy of a contributor's Worksheets.

20. 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>72</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 the July 8, 2019, deadline.

21. As the Commission observed in another USF enforcement action,<sup>73</sup> "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."<sup>74</sup> To assist the Commission and USAC in this endeavor, the document retention and production Commission's rules were adopted to ensure the accuracy of each Worksheet and as a result ensure that compliance of USF contributions could be established.<sup>75</sup> The Bureau has

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<sup>67</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8) (factors considered in determining the amount of the forfeiture penalty).

<sup>68</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>69</sup> 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 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>70</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>71</sup> *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

<sup>72</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>73</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*).

<sup>74</sup> *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

<sup>75</sup> See *2002 Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd at 24971, para. 34.

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>76</sup> We find the violations in this case to be analogous, and thus 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 8, 2019, deadline.

22. 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>77</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 and the Company's ability to pay.<sup>78</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. A review of the Company's tax returns submitted with its LOI response supports the proposed forfeiture.

23. 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>79</sup> 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 March 27, May 15, and July 8, 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 8, 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.

24. Consistent with the Act and the Commission's rules,<sup>80</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 willful and repeated failures to timely and fully respond to USAC's directives to provide information and documentation to support the accuracy of the Compu-Phone's Annual Worksheet.

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<sup>76</sup> *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 base forfeiture. *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>77</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>78</sup> See *id.*

<sup>79</sup> 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

<sup>80</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8), note to paragraph (b)(8).

## V. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the Commission's rules,<sup>81</sup> Compu-Phone Voice & Data, Inc. 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.<sup>82</sup>

26. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>83</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Compu-Phone Voice & Data, Inc. **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 29 below.

27. Compu-Phone Voice & Data, Inc. shall send electronic notification of payment to Pam Slipakoff, Enforcement Bureau, Federal Communications Commission, at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@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>84</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>85</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>86</sup> 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

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<sup>81</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>82</sup> 47 CFR § 54.711(a).

<sup>83</sup> 47 CFR § 1.80.

<sup>84</sup> Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

<sup>85</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>86</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

28. 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](mailto:Scott.Radcliffe@fcc.gov).<sup>87</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).

29. 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>88</sup> The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., 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 Pam Slipakoff at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov).

30. 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.<sup>89</sup>

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<sup>87</sup> See 47 CFR § 1.1914.

<sup>88</sup> 47 CFR §§ 1.16, 1.80(f)(3).

<sup>89</sup> *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

31. **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 Leon Nowalsky, Counsel for Compu-Phone Voice & Data, Inc., Nowalsky & Gothard, 1420 Veterans Memorial Blvd., Metairie, Louisiana 70005, and by e-mail to [egothard@nbglaw.com](mailto:egothard@nbglaw.com) and [lnowalsky@nbglaw.com](mailto:lnowalsky@nbglaw.com).

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau