

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-IHD-21-00031881
)	
MidwayNet, LLC)	NAL Acct. No.: 202132080019
)	
)	FRN: 0027768563

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2021

Released: February 25, 2021

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. MidwayNet, LLC (MidwayNet), a facilities-based broadband provider, apparently failed to file FCC Form 477 twenty-six times and apparently filed late four times. Taking into account MidwayNet's history of apparent Form 477 violations, we propose a penalty of \$10,000 against MidwayNet for apparently failing to timely file its broadband data.

II. BACKGROUND

2. To accomplish its broadband goals, the Federal Communications Commission (Commission or FCC) requires facilities-based broadband service providers to file FCC Form 477 twice each year. The March 1 filing reports data as of December 31 of the prior year, and the September 1 filing reports data as of June 30 of the current year.¹ Form 477 contains important information that assists the Commission in carrying out its statutory mandates, including the requirement that the Commission "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."² Form 477 filings contain service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.³ The Commission uses data obtained from FCC Form 477 to "describe the deployment of broadband infrastructure,"⁴ and the collected data enable the Commission to appropriately target universal service funds to unserved and underserved regions and to meet public safety obligations. Federal and state agencies and the general public also benefit from the data reported on Form 477.

¹ See 47 CFR §§ 1.7001, 1.7002; *FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions for Filing as of December 31, 2019 and Beyond* at 32 (*December 31, 2019 FCC Form 477 Instructions*). Section 1.7001 directs FCC Form 477 filers to make filings "in accordance with the Commission's rules and instructions to the FCC Form 477," and warns that "[f]ailure to file the FCC Form 477 in accordance with the Commission's rules and instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law." From time-to-time the Commission has issued a Public Notice shifting the filing data beyond March 1st or September 1st because those data coincide with a date that the Commission was officially closed (*e.g.*, due to a weekend of Federal holiday) or because of maintenance of the electronic filing system.

² 47 U.S.C. § 1302(a).

³ See *id.* § 1302(b).

⁴ *December 31, 2019 FCC Form 477 Instructions* at 4.

3. Since 2005, and beginning with the filing due September 1, 2005 for data as of June 30, 2005, the Commission has required “all facilities-based providers” of fixed and mobile broadband connections to end-users to submit counts of broadband connections in FCC Form 477.⁵ As explained in a related 2004 FCC news release, this includes facilities-based providers in rural areas, regardless of their size.⁶ Fixed wireless facilities-based broadband providers have been required to file both “deployment” and “subscription” data on their FCC Form 477 filings since 2014.⁷ The Commission has underscored the importance of timely and accurate FCC Form 477 filings through enforcement advisories and enforcement action.⁸

4. MidwayNet is a facilities-based provider of broadband connections to end users via terrestrial fixed wireless.⁹ MidwayNet holds several Commission licenses.¹⁰

5. Although it appears to have offered broadband services to end users since at least 2000,¹¹ MidwayNet apparently did not make its first Form 477 filings with the FCC until 2020. MidwayNet apparently made its first ever Form 477 filings on July 10, 2020.¹² One of these filings had been due on

⁵ *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22345, para. 8 (2004) (*2004 Broadband Reporting Order*) (emphasis in original); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, Public Notice, 20 FCC Rcd 10454, 10456 (WCB 2005) (*OMB-Approved Form 477 Public Notice*).

⁶ See News Release, FCC, FCC Improves Data Collection to Monitor Nationwide Broadband Rollout, Agency Also to Collect Better Information About Rural and Underserved Areas (Nov. 9, 2004), <https://www.fcc.gov/document/fcc-improves-data-collection-monitor-nationwide-broadband-rollout>; see also *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8.

⁷ See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9888, 9896-97, 9902-08, 9913-18, paras. 3, 20, 32-41, 56-68 (2013); *Additional Information for Form 477 Filers on New Data Submission Interface*, WC Docket No. 11-10, Public Notice, 29 FCC Rcd 3174 (WCB 2014); *Wireline Competition Bureau Releases Data Specifications for Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, 28 FCC Rcd 12665 (WCB 2013).

⁸ See *Barrier Communications Corporation d/b/a BarrierFree*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186 (2020) (*BarrierFree NAL*); *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB 2015) (*Rio Verde Wireless NAL*), cancelled by Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty); *FCC Enforcement Advisory – Providers Must File a Complete and Accurate Form 477 Report Every Six Months*, Public Notice, 30 FCC Rcd 10853 (EB 2015); *FCC Enforcement Advisory – Providers Are Reminded that They Must File Complete and Accurate Form 477 Reports Every Six Months*, Public Notice, 26 FCC Rcd 16769 (EB 2011).

⁹ FCC Form 477 Filed for data as of June 30, 2020 for MidwayNet, LLC (filed July 10, 2020 at 13:58:12) (FCC Form 477 Filed for data as of June 30, 2020); see also MidwayNet, *About Us*, <https://www.midwaynet.net/about-us/> (last visited Feb. 16, 2021).

¹⁰ See, e.g., FCC, Universal Licensing System, Microwave Industrial/Business Pool License – WRCT554 – MidwayNet LLC, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=4114148> (last visited Feb. 16, 2021); FCC, Universal Licensing System, Microwave Industrial/Business Pool License – WRCS933 – MidwayNet, LLC, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=4112993> (last visited Feb. 16, 2021); FCC, Universal Licensing System, Microwave Industrial/Business Pool License – WRCT553 – MidwayNet LLC, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=4114147> (last visited Feb. 16, 2021). The FCC Universal Licensing System (ULS) is a free to use and publicly available database, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system> (last visited Feb. 16, 2021).

¹¹ See MidwayNet, *supra* note 9 (stating that MidwayNet was established “in 2000 to bring quality internet service to businesses, government entities and residences in the Rensselaer region”).

¹² FCC Form 477 Filed for data as of June 30, 2020; FCC Form 477 Filed for data as of December 31, 2019 for MidwayNet, LLC (filed July 10, 2020 at 13:43:56) (FCC Form 477 Filed for data as of December 31, 2019).

March 2, 2020, over four months earlier. Subsequently, on July 14, 2020, MidwayNet filed the Forms 477 that had been due on September 4, 2018, March 8, 2019 and September 3, 2019.¹³

III. DISCUSSION

6. Violations of the FCC Form 477 filing requirements are significant because FCC Form 477 is a critical fact-gathering instrument that informs the Commission's efforts to advance broadband availability. Moreover, in many instances service providers submitting FCC Form 477 data have the best, if not the only, reliable data about where their facilities are located and which areas they can serve. Timely data is essential to the mission of fostering the availability of broadband services across the United States, and failing to provide it materially impairs the Commission's ability to assess broadband deployment and to measure the subscribership upon which Commission policy is based.

A. MidwayNet Apparently Violated Sections 1.7001 and 1.7002 of the Commission's Rules

7. We conclude that MidwayNet apparently violated sections 1.7001 and 1.7002 of the Commission's rules by failing to make twenty-six required Form 477 filings – beginning in September 2005, twice each year from 2006-2017, and once again in 2018, and by failing to timely file four Forms 477, which were due on September 4, 2018, March 8, 2019, September 3, 2019, and March 2, 2020.¹⁴

8. Even though MidwayNet has been providing facilities-based broadband service to end users for at least twenty years¹⁵ and therefore has been required to file FCC Forms 477 twice every year for at least fifteen years,¹⁶ it apparently never made a required filing until 2020. Specifically, MidwayNet apparently failed to file FCC Form 477 twenty-six times: once in 2005, twice every year since then through 2017, and once in 2018. In addition, MidwayNet apparently late-filed four Forms 477 that were due on September 4, 2018, March 8, 2019, September 3, 2019, and March 2, 2020.¹⁷ Of these, only the filing due on March 2, 2020 is within our one-year statute of limitations for proposing a forfeiture.¹⁸

B. Proposed Forfeiture

9. 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.”¹⁹ For the type of violation at issue here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$20,731 for each violation or each day

¹³ FCC Form 477 Filed for data as of June 30, 2018 for MidwayNet, LLC (filed July 14, 2020 at 11:38:42) (FCC Form 477 Filed for data as of June 30, 2018); FCC Form 477 Filed for data as of December 31, 2018 for MidwayNet, LLC (filed July 14, 2020 at 11:32:41) (FCC Form 477 Filed for data as of December 31, 2018); FCC Form 477 Filed for data as of June 30, 2019 for MidwayNet, LLC (filed July 14, 2020 at 11:20:23) (FCC Form 477 Filed for data as of June 30, 2019).

¹⁴ See 47 CFR §§ 1.7001, 1.7002.

¹⁵ See MidwayNet, *supra* note 9.

¹⁶ 2004 *Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8; *OMB-Approved Form 477 Public Notice*, 20 FCC Rcd at 10456.

¹⁷ FCC Form 477 Filed for data as of June 30, 2018; Form 477 Filed for data as of December 31, 2018; FCC Form 477 Filed for data as of June 30, 2019; FCC Form 477 Filed for data as of December 31, 2019.

¹⁸ Section 503(b)(6) of the Communications Act of 1934, as amended (Act), prohibits the Commission from proposing a forfeiture penalty if the violation charged occurred more than one year prior to the date of the issuance of the notice of apparent liability. 47 U.S.C. § 503(b)(6).

¹⁹ 47 U.S.C. § 503(b)(1)(B).

of a continuing violation, up to a statutory maximum of \$155,485 for a single act or failure to act.²⁰ 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.”²¹

10. In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.²² Section 1.80(b) of the Commission’s rules establishes a base forfeiture of \$3,000 for failure to file a required form or information, for each violation or each day of a continuing violation. We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.²³

11. Given the critical need to ensure accurate broadband services data and the fundamental role that FCC Form 477 data plays in policymaking and broadband subsidy funding decision-making, including accurate targeting of such subsidies only to areas in need of them, violations of FCC Form 477 filing obligations are especially serious.²⁴ Here, MidwayNet apparently has missed twenty-six filings in total. All twenty-six are violations of our rules. In addition, in July 2020, MidwayNet late filed four Forms 477: one filing due in September 2018, both filings due in 2019, and one filing due in March 2020.²⁵ The March 2020 filing was over four months late. Even though the statute of limitations for assessing a forfeiture has run on all but the most recent violation,²⁶ this is compelling evidence of a history of disregard for the Commission’s filing requirements.

12. Considering that MidwayNet has an apparent history of prior offenses that fall outside the statute of limitations, an upward adjustment of the \$3,000 base forfeiture is justified. As a result of its four late-filed and twenty-six never-filed Forms 477, MidwayNet’s data were not included in Commission reports and analysis, which distorted the actual broadband deployment and subscription figures for the United States. Thus, based on these factors, as well as the gravity of impact that such missing data have on guiding broadband policy and monetary decision-making, we propose an upward adjustment of \$7,000 for MidwayNet’s apparently late March 2020 filing, which takes into account the circumstances surrounding the apparent violation and MidwayNet’s history of apparently failing to file, and to timely file, Form 477.²⁷

²⁰ 47 U.S.C. § 503(b)(2)(D); *see generally* *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020); *see also* Federal Communications Commission, *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 86 Fed. Reg. 3830 (Jan. 15, 2021).

²¹ 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(9).

²² 47 CFR § 1.80(b)(9), Note to paragraph (b)(8).

²³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 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.”).

²⁴ *See BarrierFree NAL*, 35 FCC Rcd at 10202, para. 41.

²⁵ *See supra* para. 5.

²⁶ *See supra* para. 8 and note 18 (noting the statute of limitations has run on all but one of the late filings).

²⁷ *See BarrierFree NAL*, 35 FCC Rcd at 10187 n.1 (the Commission may use a history of violations, including expired violations, as a basis for upwardly adjusting a proposed forfeiture, under section 503(b)(2)(E)); *Rio Verde Wireless NAL*, 30 FCC Rcd at 2201, para. 18 (same).

13. Therefore, after applying section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$10,000, for which MidwayNet is apparently liable.²⁸

IV. CONCLUSION

14. We have determined that MidwayNet apparently willfully or repeatedly violated sections 1.7001 and 1.7002 of the Commission's rules. Accordingly, MidwayNet is apparently liable for a \$10,000 forfeiture.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act and section 1.80 of the Rules,²⁹ MidwayNet, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of ten thousand dollars (\$10,000) for apparently willfully and repeatedly violating sections 1.7001 and 1.7002 of the Commission's rules.³⁰

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,³¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, MidwayNet, 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 19 below.

17. MidwayNet, LLC, shall send electronic notification of payment to Conor O'Donovan, Enforcement Bureau, Federal Communications Commission, at Conor.O'Donovan@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),³² 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.³³

- 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).³⁴ For additional

²⁸ 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.

²⁹ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³⁰ 47 CFR §§ 1.7001, 1.7002.

³¹ 47 CFR § 1.80.

³² Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³³ 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.

³⁴ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

detail and wire transfer instructions go to <https://www.fcc.gov/licensing-databases/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.

18. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554 and e-mailed to Scott Radcliffe, Revenue & Receivables Operations Group, FCC Office of the Managing Director, at Scott.Radcliffe@fcc.gov.³⁵ If you have any questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRES@fcc.gov.

19. 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.³⁶ The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 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 and to Conor O’Donovan at Conor.O'Donovan@fcc.gov.

20. 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.³⁷

³⁵ See 47 CFR § 1.1914.

³⁶ 47 CFR §§ 1.16, 1.80(f)(3).

³⁷ *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to: MidwayNet, LLC c/o Derich Schultz, Manager, 1250 N McKinley Ave, Rensselaer, IN 47978.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau