

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

In the Matter of )
Telnexus, LLC ) File No.: EB-IHD-20-00031698
) NAL Account No.: 202232080006
) FRN: 0022720304

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 9, 2022

Released: March 9, 2022

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$100,000 against Telnexus, LLC (Telnexus or Company) for failing to file its Annual Telecommunications Reporting Worksheet (Annual Worksheet) by the April 1, 2021 deadline, as required by section 54.711 of the Commission’s rules, and the Company’s failure to respond to a Commission order in the form of a Letter of Inquiry (LOI) issued by the Enforcement Bureau (Bureau) on February 9, 2021. The Commission relies on the information filed in Annual Worksheets to determine, in a fair and accurate manner, each service provider’s responsibilities to the Universal Service Fund (USF). We therefore view the requirement to file Annual Worksheets by each deadline as an important obligation for service providers such as Telnexus.

II. BACKGROUND

A. Legal Framework

2. The Communications Act of 1934, as amended (Act) codifies Congress’s historical commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>1</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based upon their interstate and international end-user telecommunications revenues.<sup>2</sup> The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.<sup>3</sup> When telecommunications service providers and telecommunications providers subject to the Commission’s USF contribution requirements (service providers) fail to pay their share of obligations to the USF, they undermine the Congressional mandates

<sup>1</sup> 47 U.S.C. § 254(d).

<sup>2</sup> 47 CFR § 54.706(b).

<sup>3</sup> 47 CFR § 54.706(a); 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).

embodied in section 254(d) of the Act.<sup>4</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>5</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, *i.e.*, the Annual Worksheet,<sup>6</sup> and with certain exceptions, also to file quarterly an FCC Form 499-Q, also known as the Quarterly Telecommunications Reporting Worksheet (Quarterly Worksheet).<sup>7</sup> The Universal Service Administration Company (USAC) uses the revenue projections submitted in the Quarterly Worksheets to determine each service provider's monthly universal service contribution obligation, pursuant to the methodology prescribed by Commission rules.<sup>8</sup> A service provider must file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.<sup>9</sup> The Commission's rules warn service providers that failure to file forms or submit USF payments subjects them to enforcement action.<sup>10</sup> The Commission's rules also require that the information contained in the forms must be truthful and that the USF payments must be accurate.<sup>11</sup> The Commission's equitable contribution scheme relies on the complete and accurate filing of Annual and Quarterly Worksheets (collectively, the Worksheets) by all contributors.<sup>12</sup> A service provider must provide USAC the Worksheets by each filing deadline so that USAC can issue monthly invoices assessing correct USF contribution amounts pursuant to the Commission's rules and orders.<sup>13</sup> A service provider shirking its Worksheet filing obligations therefore frustrates Congress's policy objective to

---

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

<sup>6</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. See, e.g., *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1372, Attach. 2, 2020 FCC Form 499-A Instructions, Tbl. 2, Filing Schedule for One-Time Requirements (WCB 2020) (*2020 Form 499 Public Notice*).

<sup>7</sup> See 47 CFR § 54.711; *2020 Form 499 Public Notice*, 35 FCC Rcd at 1372; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>8</sup> Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheets. See 47 CFR § 54.711; *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

<sup>9</sup> See *2020 Form 499 Public Notice*, 35 FCC Rcd at 1372.

<sup>10</sup> 47 CFR § 54.713(c).

<sup>11</sup> 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *2020 Form 499 Public Notice*, 35 Rcd at 1360, Attach. 1, 2020 Form 499-A. While the Commission permits revisions to Worksheets in certain circumstances, see *id.* at 1373-74, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information, and belief. See *id.* at 1350.

<sup>12</sup> See 47 CFR § 54.711. The Commission and USAC may review records and documentation underlying revenue reported on a contributor's Worksheets to determine whether the contributor reported proper revenue, and thus contributing its fair share to the costs of the universal service program. See *id.* at § 54.711(a); see also *id.* at § 54.706(e).

<sup>13</sup> 47 CFR § 54.711; *2020 Form 499 Public Notice*, 35 FCC Rcd at 1367, n.17; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

ensure the equitable and non-discriminatory distribution of universal service costs among all service providers.<sup>14</sup>

4. Pursuant to methodologies set forth in our rules and established by the Commission, USAC; the administrators of Telecommunications Relay Service, Local Number Portability, and the North American Numbering Plan; and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection of, payments for important federal regulatory mechanisms implemented under the Act.<sup>15</sup> The failure of a service provider to file every Quarterly and Annual Worksheet by each filing deadline could result in USAC relying on a smaller base of USF contributions revenues than would otherwise have been reported. The Worksheet filing obligations are therefore necessary to ensure the integrity of the USF. Furthermore, a contributor's failure to comply with these filing requirements can impede the very purpose for which Congress enacted section 254(d) – to ensure that service providers contribute to USF on an equitable and nondiscriminatory basis. The effect on other programs arising under the Act that rely on assessments of the Worksheets is similar. Indeed, a service provider that neglects to submit accurate and current revenue information in its Worksheets can evade its federal obligations to contribute fully towards the vital programs linked to the reporting obligations.<sup>16</sup> As a consequence of this failure, other service providers might shoulder an unfair burden of the USF and other federal regulatory programs implemented under the Act.<sup>17</sup>

5. All entities subject to Commission jurisdiction are responsible for knowing and abiding by the Commission's rules. If they do not, they may be subject to investigation and enforcement action.<sup>18</sup> Section 403 of the Act grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.<sup>19</sup> Section 0.111(a)(17) of the

---

<sup>14</sup> See 47 U.S.C. § 254(d).

<sup>15</sup> The effective administration of Telecommunications Relay Service, see 47 CFR § 64.604; Local Number Portability, 47 CFR § 52.32; the North American Numbering Plan, 47 CFR § 52.17; and federal regulatory fees, see 47 CFR §§ 1.1154, 1.1157, requires the timely filing of accurate Worksheets by service providers.

<sup>16</sup> See, e.g., *Unipoint Tech., Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12753, para. 5 (2012), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 1633 (2014) (*Unipoint Forfeiture Order*); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 846-47, para. 17 (2009), *forfeiture issued*, Forfeiture Order, 26 FCC Rcd 4152 (2011) (*ADMA Forfeiture Order*); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (proposed forfeiture reduced from \$529,000 to \$436,765 to account for updated revenue information provided to USAC by the service provider).

<sup>17</sup> See *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>18</sup> It is well settled that ignorance of a rule does not excuse a violation. See, e.g., *Adrian Abramovitch*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not ‘claim ignorance of the law as a defense’” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6662, para. 5 & note 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal citations omitted).

<sup>19</sup> 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.”).

Commission's rules delegates authority to the Bureau to "conduct investigations ... on its own initiative" of potential violations of the Act and of the Commission's rules.<sup>20</sup> A letter of inquiry issued to an entity under investigation by the Enforcement Bureau constitutes a Commission order, and a failure to respond to such a letter of inquiry constitutes a violation of a Commission order<sup>21</sup> that can give rise to a forfeiture penalty under section 503 of the Act.<sup>22</sup>

## B. Factual Background

6. Telnex is an interconnected VoIP provider based in Berkeley, California.<sup>23</sup> Telnex began offering telecommunications services in 2013 and provides "VoIP solutions to small and medium sized enterprises around the Bay Area."<sup>24</sup> Telnex was granted international section 214 authority on March 20, 2014.<sup>25</sup>

7. Telnex failed to file its Quarterly Worksheets due on November 1, 2013, and February 1, 2014.<sup>26</sup> Telnex failed to file its February 2017 Quarterly Worksheet by the February 1, 2017, deadline.<sup>27</sup> Between August 1, 2017, and February 1, 2022, Telnex failed to file any of the required Annual or Quarterly Worksheets by the filing deadlines.<sup>28</sup> To summarize, the Company failed to file four Annual Worksheets that were due on April 1 of 2018, 2019, 2020, and 2021.<sup>29</sup>

---

<sup>20</sup> 47 CFR § 0.111(a)(17).

<sup>21</sup> See, e.g., *Aura Holdings of Wisconsin, Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018) (*Aura Holdings NAL*) ("An LOI issued by the [Enforcement] Bureau constitutes a Commission order, and it is well established that a failure to respond to a Bureau LOI constitutes a violation of a Commission Order.") (internal citations omitted), Forfeiture Order, 34 FCC Rcd 2540 (2019).

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B) (any person who is found, in accordance with procedures set forth in section 503, to have willfully or repeatedly failed to comply with provisions of the Act or "any rule, regulation, or order issued by the Commission" shall be liable for a forfeiture penalty).

<sup>23</sup> FCC Form 499 Filer Database, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=830115> (last visited Mar. 1, 2022).

<sup>24</sup> Telnex, *Why Telnex*, <https://telnex.com/why-telnex/> (last visited Mar. 1, 2022).

<sup>25</sup> *International Authorizations Granted*, Public Notice, 29 FCC Rcd 2930 (IB 2014).

<sup>26</sup> Letter from Joseph DiPeppe, Manager of Contributor Operations, 499 Team, Finance, Universal Services Administrative Company, to Conor O'Donovan, Attorney-Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (Mar. 2, 2022) (on file in EB-IHD-20-00031698) (USAC March Letter).

<sup>27</sup> *Id.* at 1. The Company filed its February 2017 Quarterly Worksheet on April 7, 2017, which is 66 days after the due date. *Id.* USAC did not accept the April 7, 2017, Quarterly Worksheet filing because it was filed outside of the 45-day deadline for Quarterly Worksheet revisions. *Id.* at 1 n.1. See also <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited Mar. 2, 2022).

<sup>28</sup> USAC March Letter, *supra* note 26, at 1. Telnex filed its February 2018 Quarterly Worksheet, due February 1, 2018, on June 5, 2018. However, USAC did not accept the June 5, 2018, Quarterly Worksheet filing because it was filed outside of the 45-day deadline for Quarterly Worksheet revisions. *Id.* at 1 n.1. See also <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited Mar. 2, 2022).

<sup>29</sup> Service providers are considered *de minimis*, and do not need to file Quarterly Worksheets or make USF contributions, if a the service provider's contribution to universal service in any given year is less than \$10,000. See 47 CFR § 54.708. Given Telnex's repeated failures to comply with the Worksheet filing requirements since 2017, USAC could not determine whether Telnex qualified as *de minimis* under section 54.708 of the Commission's rules. Based on the Worksheets that the Company did file with USAC, the Company did not appear to qualify for the *de minimis* exception, and it appears that the Company failed to file 22 Quarterly Worksheets by the filing deadlines between November 1, 2013, and February 1, 2022.

8. Although USAC contacted Telnexus repeatedly concerning the Company's missing Worksheets, the Company nonetheless failed to comply with these important filing requirements.<sup>30</sup> Accordingly, on October 23, 2020, USAC referred Telnexus to the Bureau for an investigation into the Company's failures to comply with section 54.711 of the Commission's rules, which requires service providers to file Annual and Quarterly Worksheets by the deadlines established by the Commission.<sup>31</sup>

9. Following USAC's referral, on February 9, 2021, the Bureau issued an LOI to Telnexus with questions about the Company's compliance with filing and contribution requirements arising under the Act and the Commission's rules.<sup>32</sup> The Company's response to the LOI was due on March 11, 2021, 30 days after the LOI was issued. The LOI was sent by certified mail to the address the Company submitted to CORES, the Commission Registration System,<sup>33</sup> and the same address published by Telnexus on its website.<sup>34</sup> Further, on February 26, 2021, the LOI was e-mailed to Telnexus' Chief Executive Officer (CEO).<sup>35</sup> On March 3, 2021, the LOI sent via certified mail was returned to the Bureau due to an incorrect mailing address.<sup>36</sup> Telnexus did not respond to the Bureau's LOI.

### III. DISCUSSION

10. Based on evidence developed through the Bureau's investigation, we find that the Company apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711 and 64.604(c)(5)(iii)(B) of the Commission's rules by failing to file the Company's Annual Worksheets for 2018, 2019, 2020, and 2021, and apparently and willfully violated a Commission order by failing to respond to a Bureau LOI.<sup>37</sup> We propose a forfeiture of \$100,000 for Telnexus' failure to file its Annual Worksheet due on April 1, 2021, and its failure to respond to a Bureau LOI by March 11, 2021.

#### A. Telnexus Apparently Violated Commission Rules By Failing to Timely File its Annual Worksheets

11. Telnexus failed to file all four Annual Worksheets due between April 1, 2018, and April 1, 2021.<sup>38</sup> As noted above, service providers like Telnexus must file Annual Worksheets by April 1 of

---

<sup>30</sup> 47 CFR § 54.708.

<sup>31</sup> See *id.* See also 47 CFR § 54.711; 2020 Form 499 Public Notice, 35 FCC Rcd at 1372; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>32</sup> Letter of Inquiry from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Vern Keenan, Chief Executive Officer, Telnexus, LLC, (Feb. 9, 2021) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 54.713, 64.604, 64.2009(e), 64.2115) (on file in EB-IHD-20-00031698) (LOI).

<sup>33</sup> FCC CORES Database, <https://apps.fcc.gov/cores/searchDetail.do?fm=0022720304&csrfToken=> (last visited Mar. 1, 2022).

<sup>34</sup> Telnexus, *Why Telnexus*, <https://telnexus.com/why-telnexus/> (last visited Mar. 1, 2022).

<sup>35</sup> See E-mail from Conor O'Donovan, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, to Vern Keenan, CEO, Telnexus, LLC (Feb. 26, 2021, at 15:34 EDT) (on file in EB-IHD-20-00031698).

<sup>36</sup> Email from FCC Digital Mail, to Conor O'Donovan, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 3, 2021, at 14:53 EDT) (*FCC Mail Email*) (on file in EB-IHD-20-00031698).

<sup>37</sup> See, e.g., *See GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2530, para. 20 (2015) (*GPSPS NAL*), Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 2 (2015) (*GPSPS Forfeiture Order*); *Net One Int'l, Net One, LLC, Farrahrtel Int'l, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493, 16494, para. 5 (EB 2011) (*Net One NAL*), Order of Forfeiture, 29 FCC Rcd 264 (EB 2014) (*Net One Forfeiture Order*).

<sup>38</sup> USAC March Letter, *supra* note 26, at 1.

each year.<sup>39</sup> Between April 1, 2018, and April 1, 2021, Telnexus failed to file any of the four required Annual Worksheets. We consider each individual failure to file a timely Annual Worksheet a separate violation of section 54.711 of the Commission's rules. We find that the Company also apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), and 64.604(c)(5)(iii)(B) of the Commission's rules by failing to file its Annual Worksheets by April 1 of 2018, 2019, 2020, and 2021.<sup>40</sup> As explained further below, however, we propose a forfeiture for only one of these apparent violations because the other violations occurred outside of the applicable statute of limitations.

**B. Telnexus Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI**

12. Sections 4(i), 218, and 403 of the Act give the Commission broad power to compel carriers such as Telnexus to provide information and documents concerning compliance with the Act and the Commission's rules and orders.<sup>41</sup> When an entity subject to Commission jurisdiction fails to respond to a Bureau LOI, the entity violates a Commission order.<sup>42</sup>

13. In the LOI, we directed Telnexus to provide, by March 11, 2021, information related to its compliance with the Commission's rules regarding filing and contributions requirements.<sup>43</sup> Telnexus did not respond by the March 11, 2021 deadline. Accordingly, we find Telnexus' failure to respond to the LOI constitutes an apparent and willful violation of a Commission order.

**IV. PROPOSED FORFEITURE**

14. 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>44</sup> For the violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against a service provider such as Telnexus of up to \$220,213 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,202,123 for a single act or failure to act.<sup>45</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>46</sup> In addition, the Commission has established forfeiture guidelines, which establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.<sup>47</sup>

---

<sup>39</sup> *E.g.*, 2020 Form 499 Public Notice, 35 FCC Rcd at 1372.

<sup>40</sup> See 47 CFR §§ 52.17(b), 52.32(b), and 64.604(c)(5)(iii)(B).

<sup>41</sup> 47 U.S.C. §§ 154(i), 218, 403.

<sup>42</sup> See *GPSPS NAL*, 30 FCC Rcd at 2530, para. 20, *GPSPS Forfeiture Order*, 30 FCC Rcd at 7814, para. 2; *Net One NAL*, 26 FCC Rcd at 16494, para. 5, *Net One Forfeiture Order*, 29 FCC Rcd 264.

<sup>43</sup> See 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 54.713, 64.604, 64.2009(e), and 64.2115.

<sup>44</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>45</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 21-1631 (EB 2021); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 87 Fed. Reg. 396 (Jan. 5, 2022) (setting January 5, 2022, as the effective date for the increases).

<sup>46</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>47</sup> 47 CFR § 1.80(b)(10), Table 1 to Paragraph (b)(10).

15. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>48</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>49</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>50</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>51</sup>

16. Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>52</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,<sup>53</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>54</sup> We therefore find that the Company's failures to file Annual Worksheets required between April 1, 2018, and April 1, 2021, and to respond to the Bureau's LOI by March 11, 2021, were willful. Given that the Company failed to file four Annual Worksheets between April 1, 2018, and April 1, 2021, we also find that the Company's filing violations were repeated.<sup>55</sup> 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>56</sup> We therefore propose a forfeiture for the Company's failure to file its Annual Worksheet due April 1, 2021, and its failure to respond to a Bureau LOI due March 11, 2021.

---

<sup>48</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>49</sup> 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10). 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>50</sup> 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10).

<sup>51</sup> *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

<sup>52</sup> 47 U.S.C. § 312(f)(1).

<sup>53</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

<sup>54</sup> See, e.g., *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>55</sup> Under the Act, 47 U.S.C. § 503(b)(1)(B), any service provider that "willfully or repeatedly" fails to comply with provisions of the Act or Commission rules or orders issued pursuant to the Act shall be liable for a forfeiture penalty.

<sup>56</sup> 47 U.S.C. § 503(b)(6)(B).

### A. Proposed Forfeiture for Apparent Failure to File Annual Worksheets

17. Section 1.80 of the Commission's rules specifies a base forfeiture of \$3,000 for a failure to file required forms or information.<sup>57</sup> However, as the Commission observed in another USF enforcement action,<sup>58</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>59</sup> USAC relies on the timely filing of Worksheets in order to calculate the correct monthly USF contributions owed by each service provider. The timely filing of accurate Worksheets is crucial to implementing Commission contribution rules based on the Congressional directive to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers. Thus, the Commission has consistently proposed a forfeiture of \$50,000 for each failure of a service provider to file an Annual Worksheet, and we do so here for the Company's failure to file the Annual Worksheet due on April 1, 2021.<sup>60</sup> We further propose an upward adjustment of \$25,000 for the reasons discussed below.

18. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the Worksheet filing requirements to be very serious.<sup>61</sup> The Commission, USAC, and the administrators of Telecommunications Relay Service, Local Number Portability, and the North American Numbering Plan rely on the data reported in Annual Worksheets to determine the accurate amounts that service providers owe for regulatory fees, the USF, and these other important funding mechanisms arising under the Act.<sup>62</sup> Telnexus' failure to file its Annual Worksheets between April 1, 2018, and April 1, 2021, had serious implications for the administration of these funding mechanisms. We have also considered the degree of the Company's culpability and repeated violations.<sup>63</sup> The Company has an important obligation to file an Annual Worksheet every year. Telnexus failed to comply with its obligation for four years. The Company is thus highly culpable for the apparent filing violations, which were repeated over several years.

19. 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>64</sup> We apply an upward adjustment of \$25,000 (50% of the \$50,000 forfeiture assessed for Worksheet filing violations in previous decisions, and proposed here)<sup>65</sup> because of the repeated nature of the Company's violations, including the Company's failures to file four Annual Worksheets on April 1 of 2018, 2019,

---

<sup>57</sup> 47 CFR § 1.80(b)(10), Table 1 to Paragraph (b)(10).

<sup>58</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>59</sup> *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

<sup>60</sup> *E.g.*, *PTT Phone Cards NAL*, 29 FCC Rcd at 11543, para. 30 (citing *Unipoint Forfeiture Order*, 29 FCC Rcd at 1643, para. 32; *ADMA Forfeiture Order*, 26 FCC Rcd at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45); *PTT Phone Cards Forfeiture Order*, 30 FCC Rcd at 14707, para. 19.

<sup>61</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>62</sup> See 47 CFR §§ 1.1154, 1.1157, 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B).

<sup>63</sup> See *id.* at § 503(b)(2)(E); 47 CFR § 1.80, Note to Paragraph (b)(10).

<sup>64</sup> 47 CFR § 1.80(b)(10), Table 3 to Paragraph (b)(10).

<sup>65</sup> *E.g.*, *PTT Phone Cards NAL*, 29 FCC Rcd at 11543, para. 30 (citing *Unipoint Forfeiture Order*, 29 FCC Rcd at 1643, para. 32; *ADMA Forfeiture Order*, 26 FCC Rcd at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45); *PTT Phone Cards Forfeiture Order*, 30 FCC Rcd at 14707, para. 19.



2020, and 2021.<sup>66</sup> Consistent with prior precedent, we thus propose a forfeiture of \$75,000, which includes a \$50,000 forfeiture for failing to file its Annual Worksheet by April 1, 2021, and an upward adjustment of \$25,000 for the Company's repeated failures to file its Annual Worksheets.<sup>67</sup>

**B. Proposed Forfeiture for Apparent Failure to Respond to a Bureau LOI**

20. Section 1.80 of the Commission's rules establishes a base forfeiture of \$4,000 for failure to respond to Commission communications.<sup>68</sup> Section 1.80 of the Commission's rules also provides for an upward adjustment to forfeiture amounts for egregious misconduct and intentional violations.<sup>69</sup> Telnexus did not respond to the LOI the Bureau mailed on February 9, 2021. The Company's failure to respond to the LOI threatens to compromise the Commission's ability to investigate violations of its rules.<sup>70</sup> An upward adjustment is appropriate given the egregiousness of Telnexus' apparent violation.<sup>71</sup> Given the critical importance of LOI's to the Commission's investigatory and regulatory functions, in prior cases involving investigation targets that failed to respond to Bureau LOI's, we have imposed forfeitures of \$25,000.<sup>72</sup> Consistent with this precedent, we therefore propose a forfeiture of \$25,000 for the Company's failure to respond to the Bureau's LOI.

21. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to respond to the Bureau's LOI.<sup>73</sup> Telnexus' failure to respond to the LOI had serious implications on the Commission's ability to investigate the Company to ensure compliance with the Commission's requirements to file Worksheets and to comply with contribution obligations consistent with the data reported in the Worksheets. The Company has an important obligation to respond to a Bureau LOI and is thus culpable for its failure to comply.

22. Consistent with the Act and the Commission's rules,<sup>74</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 total proposed forfeiture of one hundred thousand dollars (\$100,000) for apparently, willfully and repeatedly failing to comply with the

---

<sup>66</sup> See USAC March Letter at 1.

<sup>67</sup> See *IK Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 22-161, 2022 WL 543648 (EB Feb. 17, 2022); *Peace Communications, LLC*, Notice of Apparent Liability for Forfeiture, DA 21-875, 2021 WL 3266176, at \*5-6 (EB Jul. 29, 2021); *US South Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 12668, 12676, para. 22 (EB 2020) (forfeiture paid); *Compu-Phone Voice & Data, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6573, 6583, para. 23 (EB 2020) (forfeiture paid); *Blue Casa Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333, 6344, para. 25 (EB 2020) (forfeiture paid).

<sup>68</sup> 47 CFR § 1.80(b)(10), Table 1 to Paragraph (b)(10).

<sup>69</sup> *Id.*

<sup>70</sup> See *Neon Phone Service, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7974, para. 24 (2017) (*Neon Phone NAL*).

<sup>71</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2 to Paragraph (b)(10).

<sup>72</sup> *GPSPS NAL*, 30 FCC Rcd at para. 28 (proposing a \$25,000 forfeiture for failure to respond to an LOI) (forfeiture paid); *Net One NAL*, 26 FCC Rcd at 16496, para. 8 (proposing a \$25,000 forfeiture for failure to respond to an LOI).

<sup>73</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>74</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2 to Paragraph (b)(10).

Commission's Worksheet filing requirements and apparently willfully failing to respond to a Bureau LOI.<sup>75</sup>

## V. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and section 1.80 of the Commission's rules,<sup>76</sup> Telnexus, LLC is **HEREBY NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for apparently willfully and repeatedly violating section 54.711 of the Commission's rules and willfully violating a Commission order issued under sections 4(i), 218, and 403 of the Act.<sup>77</sup>

24. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>78</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Telnexus, 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 27 below.

25. Telnexus, LLC shall send electronic notification of payment to Jeffrey J. Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Rizwan Chowdhry at [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Conor O'Donovan at [Conor.O'Donovan@fcc.gov](mailto: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, or by wire transfer using the Commission's Registration System (the Commission's FRN Management and Financial system).<sup>79</sup> The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>80</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.<sup>81</sup> Failure to provide all required information in Form 159 may result in the 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>82</sup> For additional 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log in using the FCC Username associated with the FRN captioned above. If payment must be split across FRNs, complete this

---

<sup>75</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

<sup>76</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>77</sup> 47 U.S.C. §§ 154(i), 218, 403.

<sup>78</sup> 47 CFR § 1.80.

<sup>79</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>80</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>81</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>82</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, 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 Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated with the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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 the authorization to accept ACH transactions.

26. Any request for making a 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, D.C. 20554 and e-mailed to Scott Radcliffe, Revenue & Receivables Operations Group, FCC Office of the Managing Director, at [Scott.Radcliffe@fcc.gov](mailto:Scott.Radcliffe@fcc.gov).<sup>83</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).

27. 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(g)(3) of the Commission’s rules.<sup>84</sup> 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, 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), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Rizwan Chowdhry at [Rizwan.Chowdhry@fcc.gov](mailto:Rizwan.Chowdhry@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Conor O’Donovan at [Conor.O'Donovan@fcc.gov](mailto:Conor.O'Donovan@fcc.gov).

28. 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 reflects accurately the petitioner’s current financial status. Any claim of inability to pay must identify specifically 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>85</sup>

---

<sup>83</sup> See 47 CFR § 1.1914.

<sup>84</sup> 47 CFR §§ 1.16, 1.80(g)(3).

<sup>85</sup> *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

29. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, and first-class mail to Vernon Keenan, Chief Executive Officer, Telnexus, LLC, 2809 Telegraph Avenue, Suite 202, Berkeley, CA 94705, and by e-mail to [vern@telnexus.com](mailto:vern@telnexus.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Acting Chief  
Enforcement Bureau