

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

In the Matter of
Etelix.com USA, LLC
File No.: EB-IHD-20-00031637
NAL/Acct. No.: 202232080088
FRN: 0023982077

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 20, 2022

Released: July 20, 2022

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Etelix.com USA, LLC (Etelix) apparently violated section 214 of the Communications Act of 1934, as amended (Act)1 and sections 1.65, 63.24(f), and 63.25(b) of the Commission’s rules by willfully or repeatedly operating without an authorization, failing to report several pro forma changes in Etelix’s ownership structure, and failing to update its pending application to reflect these ownership changes.2 Each of these violations is continuing in nature and thus falls within the applicable one-year statute of limitations.3 Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Etelix is apparently liable for a total forfeiture of \$20,000.

II. BACKGROUND

2. Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring or operating any line, and from engaging in transmission through any such line, “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” require, or will require, the construction, extension, or operation of the line.4 While the Commission has granted “blanket” authority to carriers providing domestic service,5 meaning that such carriers need not apply to the Commission for such authority before providing domestic service, the Commission has not done the same for providers of international telecommunications services.6 Rather, section 63.18 of the Commission’s rules requires that any carrier that seeks section 214 authority “for the provision of common carrier communication services between the United States, its territories or

1 47 U.S.C. § 214.

2 47 CFR §§ 1.65, 63.24(f), 63.25(b).

3 47 U.S.C. § 503(b)(6).

4 47 U.S.C. § 214(a).

5 47 CFR § 63.01(a).

6 Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion & Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11366, n.8 (1999) (grant of blanket authority is only for domestic services and does not extend to the provision of international services).

possessions, and a foreign point shall request such authority by formal application.”⁷ Through this process, the applicant provides the Commission with, among other things, contact information, ownership information, information on any affiliations it may have with foreign carriers, certification that it will comply with Commission rules, and certification that the applicant is not subject to denial of Federal benefits pursuant to the Anti-Drug Abuse Act of 1988.⁸ An international carrier may apply for Special Temporary Authority (STA) relating to temporary or emergency services under a section 214 authorization pursuant to section 63.25 of the Commission’s rules.⁹

3. Etelix is a Florida Limited Liability Company providing international long distance calling services to end-user consumers within the United States and internationally under its section 214 authorization, since 2010.¹⁰ Additionally, Etelix provides the following services in the state of Florida: Voice over Internet Protocol (VoIP), Voicemail, Private Branch Exchange (PBX), Centrex (Hosted/Managed PBX), Calling Card, Issue DID (Direct Inward Dial) Local Telephone Numbers, Local Toll Service, Interactive Voice Response, Conference Calling, and Mobile Top Up/Reload Services.¹¹

4. On June 9, 2016, Future Voice, LLC d/b/a Voyze (Future Voice) submitted an assignment application (Future Voice Application) with the International Bureau to assign its customer base to Etelix.¹² Because Etelix’s ownership consists of foreign nationals, the Future Voice Application was referred to the relevant Executive Branch agencies for review for national security, law enforcement, and public safety issues. On July 11, 2016, the U.S. Department of Justice, with the concurrence of the U.S. Department of Defense and the U.S. Department of Homeland Security, requested that the Commission defer action on the application while the agencies reviewed it for any national security, law

⁷ 47 CFR § 63.18. The Commission has explained that the International Section 214 review process enables the Commission to review applications for risks to competition, particularly in situations where the applicant has an affiliation with a foreign carrier with market power on the foreign end of the route that may be able to leverage that market power to discriminate against U.S. competitors to the detriment of U.S. consumers. *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket 97-142, 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*); Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000). The Commission also considers national security, law enforcement, foreign policy and trade policy concerns in its public interest review of an application and will seek input from the Executive Branch on these issues. *Id.* at 23918-21, paras. 61-66. *See also Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020).

⁸ *See* 47 CFR § 63.18.

⁹ 47 CFR § 63.25.

¹⁰ Etelix.com USA, LLC, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, IBFS File No. ITC-214-20090625-00303 (filed June 25, 2009) (Etelix 214 Application); *see also* Response to Letter of Inquiry, from Edward Maldonado, Esq., Counsel to Etelix.com USA, LLC to Georgina Feigen, Esq., Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau, at 13 (Jan. 8, 2021) (on file in EB-IHD-20-00031637) (LOI Response).

¹¹ *Id.* at 4.

¹² Future Voice, LLC, Application for Assignment of License, IBFS File No. ITC-ASG-20160609-00166 (filed June 9, 2016) (Future Voice Application). Future Voice hold an International Section 214 license for its operations as a facility-based international carrier and for reselling international services of authorized US common carriers. *See* IBFS File No. ITC-214-20040622-00236, Report No. TEL-00817, Public Notice, 19 FCC Rcd 14146 (IB 2004). The Note to Section 63.24(b) of the Commission’s rules provides that the sale of a customer base, or a portion of a customer base, is a sale of assets and shall be treated as an assignment requiring Commission approval. 47 CFR § 63.24(b), Note. The application was filed pursuant to a settlement stipulation reached in a civil action, *Future Voice, LLC, Assignor, v. John A. Moffa, Assignee*, Petition for Assignment for the Benefit of Creditors, Circuit Court of Eleventh Judicial Circuit in and for Miami-Dade County Florida, Case No. 2015-006909-CA-01 (Dec. 8, 2015).

enforcement, and public safety issues.¹³ On August 18, 2016, Etelix filed a request for Special Temporary Authority (STA) with the International Bureau so that it could provide service to Future Voice’s customers during the pendency of the Future Voice Application.¹⁴ This STA was granted on November 22, 2016, and expired on May 19, 2017. No further STA requests were filed by Etelix to continue providing service to Future Voice’s customers after the May 19, 2017 expiration. In its review of updated information provided by Etelix, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee)¹⁵ determined that Etelix’s current ownership information significantly differed from that in the 2016 Future Voice Application¹⁶ and Etelix’s original 2009 section 214 application.¹⁷ The Committee’s review indicated that Etelix was no longer wholly owned by Mr. Leandro Iglesias, rather, the Company was now a wholly owned subsidiary of iQSTEL, Inc.¹⁸ No reports, filings or applications have been made to the Commission to reflect any such changes in the ownership of Etelix. Accordingly, on September 30, 2020, the Committee returned the Future Voice application for further review by the Commission.¹⁹

5. On November 30, 2020, the Commission’s Enforcement Bureau (Bureau) issued a letter of inquiry (LOI), initiating an investigation into whether Etelix may have violated section 214 of the Act and the Commission’s rules pertaining to the ownership and operation of international telecommunications service and section 214 international authorizations.²⁰ Etelix responded to the LOI on January 8, 2021.²¹

III. DISCUSSION

6. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²² 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.²³ The legislative history of section 312(f)(1) of the Act

¹³ Letter from Bermel R. Paz, National Security Division, U.S. Department of Justice to Marlene H. Dortch, FCC (June 11, 2016) (on file in IBFS File No. ITC-ASG-20160609-00166).

¹⁴ Etelix.com USA, LLC, Application for Special Temporary Authority, IBFS File No. ITC-STA-20161020-00287 (filed August 18, 2016) (STA Request).

¹⁵ The Committee was established by Executive Order No. 13913 “to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector.” Ex. Ord. 13913, 85 Fed. Reg 19643 (Apr 8 2020) § 3(a). The Committee is comprised of the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, who serves as the Chair. *Id.* at § 3(b).

¹⁶ *See* Future Voice Application.

¹⁷ *See* Letter from Christine M. Quinn, Esq., Attorney Advisor, Telecommunications, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC (Sept. 30, 2020) (on file in IBFS File No. ITC-ASG-20160609-00166) (Committee Letter); *see also* Etelix 214 Application.

¹⁸ Committee Letter at 2-5.

¹⁹ *See generally*, Committee Letter.

²⁰ Letter of Inquiry from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Edward A. Maldonado, Esq., Counsel for Etelix.com USA, LLC (Nov. 30, 2020) (on file in EB-IHD-20-00031637).

²¹ *See* LOI Response.

²² *See* 47 U.S.C. § 503(b)(1)(B); 47 CFR § 1.80(a)(1).

²³ 47 U.S.C. § 312(f)(1).

clarifies that this definition applies to both sections 312 and 503(b) of the Act²⁴ and the Commission has so interpreted the term in the section 503(b) context.²⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.²⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁹

A. An STA to Operate Must be Current Prior to a Grant of Permanent Authorization

7. According to the June 9, 2016, Future Voice Application, the customers and assets of Future Voice were being assigned to Etelix pursuant to a Florida state court order in an Assignment for Benefit of Creditor action.³⁰ As the Future Voice Application was referred to the Executive Branch agencies for review, Etelix submitted an STA request so that it could provide service to Future Voice’s customers during the pendency of the Future Voice Application.³¹ This STA was granted on November 22, 2016, but was limited in time and expired on May 19, 2017. According to Etelix, however, although it currently continues to provide service to Future Voice’s 411 customers,³² “[n]o other authorizations have been applied for . . . since 2016.”³³

8. Section 63.25(b) of the Commission’s rules provides that “[a]pplicants seeking immediate authorization to provide temporary service. . . must file their request with the Commission.”³⁴ Temporary service is defined to mean “service for a period not exceeding 6 months.”³⁵ Thus, once the six-month period is over, if the underlying application remains pending, a new STA must be applied for and granted by the Commission. Otherwise, the applicant is providing service without Commission

²⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting Co.*).

²⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁷ 47 U.S.C. § 312(f)(2); see also *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

²⁸ 47 U.S.C. § 503(b); 47 CFR § 1.80(g).

²⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (forfeiture paid).

³⁰ *Id.* at Item 43. See also *Future Voice, LLC v. John A. Moffa*, Petition for Assignment for the Benefit of Creditors, Circuit Court of Eleventh Judicial Circuit in and for Miami-Dade County Florida, Case No. 2015-006909-CA-01 (Dec. 08, 2015).

³¹ STA Request.

³² Of Future Voice’s 411 customers, 386 are Residential customers and 25 are Enterprise customers. LOI Response at 13. Upon approval by the Commission of the Future Voice assignment application and the Miami-Dade County Circuit Court, these customers will be fully integrated into the overall network of Etelix. Presently, these customers are served by Etelix under management agreement approved by a Court Order issued when Future Voice closed under an Assignment for Benefit proceeding in Florida 2016. *Id.*

³³ LOI Response at 13.

³⁴ 47 CFR § 63.25(b); see also, 47 CFR § 1.10016.

³⁵ 47 CFR § 63.25(a).

authorization. If no such STA application is filed, then the temporary service must be discontinued upon the expiration of the STA.

9. During the pendency of the Future Voice Application, Etelix was required to maintain special temporary authority in order to continue providing international service to Future Voice's customers. While Etelix initially obtained special temporary authority to provide international service to Future Voice's customers while the Future Voice Assignment was pending, this STA expired on May 19, 2017, and Etelix failed to file for a new STA upon its expiration. Section 63.25(b) states that STA applicants "must file their request with the Commission," and therefore a new STA must be applied for and obtained if the Commission has not granted a 214 application prior to the expiration of an initial STA.³⁶ By Etelix's own admission, it did not file a new STA request but has continued to provide service to Future Voice's customers without any FCC authorization under section 214 while the Future Voice Application continues to remain pending before the Commission. We therefore conclude that Etelix apparently has willfully or repeatedly violated section 214 of the Act and section 63.25(b) of the rules by providing international telecommunications services without section 214 authority or special temporary authority from May 20, 2017 to the present.

B. The Commission Must be Notified of *Pro Forma* Changes in Ownership

10. In its 2009 original application for international section 214 authority, Etelix described its ownership as being solely held by Leandro Iglesias.³⁷ Similarly, in its 2016 Future Voice Application, Etelix described its ownership as being wholly owned by Mr. Iglesias.³⁸ Subsequently, several events occurred. First, on April 20, 2017, Mr. Iglesias' ownership interest in Etelix changed from 100% to 95.5%.³⁹ Second, on May 29, 2018, Mr. Iglesias' ownership interest in Etelix changed from 95.5% to 63.31%.⁴⁰ Neither of these events separately or collectively resulted in a *pro forma* transfer of control of Etelix.

11. Beginning in June 2018, however, Etelix engaged in several reorganizations which apparently resulted in two separate *pro forma* transfers of control of Etelix without the requisite FCC notification upon completion. A third *pro forma* transfer of control apparently occurred in December 2020 when a new Preferred Series A stock was issued for iQSTEL without the requisite FCC notification upon completion.

12. On June 25, 2018, PureSnax International, Inc. (PureSnax) entered into a Membership Interest Purchase Agreement with Etelix.com USA, LLC and the members of Etelix.⁴¹ As a result of the transaction, Etelix became a wholly owned subsidiary of PureSnax which subsequently changed its name by corporate resolution to iQSTEL, Inc (iQSTEL).⁴² Mr. Iglesias retained his control of Etelix by owning 55.02% of the total outstanding shares of iQSTEL and serving as the President, CEO and Director of both Etelix and iQSTEL.⁴³ As Mr. Iglesias maintained control of Etelix and its management decisions as well

³⁶ See *Mobile Radio of Kokomo, Inc.*, 27 FCC Rcd 15015, 15021, para. 17 (MD-WTB 2012) ("If Mobile Radio does not request additional special temporary authority, it will no longer be authorized to provide further service and shall cease any and all operations . . .").

³⁷ Etelix.com USA, LLC, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, IBFS File No. ITC-214-20090625-00303, p.2 (filed June 25, 2009).

³⁸ Future Voice Application, Assignment Petition at 5.

³⁹ LOI Response at 5.

⁴⁰ *Id.*

⁴¹ LOI Response at 3, 6, 8, and 16; *see also*, PureSnax International Inc., Current Report (Form 8K, Section 1) (June 25, 2018).

⁴² LOI Response at 3, 16; *see also*, iQSTEL, Inc., Current Report (Form 8K) (Aug. 30, 2018).

⁴³ LOI Response at 16-17.

as the Company's financial obligations, this transaction was *pro forma* in nature.⁴⁴ Moreover, the transfer of Etelix from Mr. Iglesias to iQSTEL, as owned and controlled by Mr. Iglesias, is an assignment from an individual owner to a corporation owned and controlled by that individual "without any substantial change in their relative interests" is presumptively *pro forma* in nature.⁴⁵

13. Additionally, according to Etelix's LOI Response, in August 2019 Mr. Iglesias' ownership in iQSTEL, and thus Etelix, further decreased to 11.84% of the common stock of iQSTEL.⁴⁶ However, according to Etelix's LOI Response, as part of this transaction, Mr. Iglesias was issued 70% Preferred Series A Stock in iQSTEL, thus giving Mr. Iglesias 70% voting rights in iQSTEL.⁴⁷ No other individual shareholder held more than 6% of iQSTEL's common stock. However, 76.27% of the common stock is publicly traded.⁴⁸ The remaining 30% of the Preferred Series A Stock was issued to Alvaro Quintana, a foreign national whose eligibility to hold an FCC license has not been approved by the FCC.⁴⁹ Subsequent review of iQSTEL's SEC filings, however, indicate that iQSTEL's Preferred Series A Stock was not issued until November 3, 2020⁵⁰ and was not distributed to Mr. Iglesias or Mr. Quintana until December 2, 2020.⁵¹ Only after several Bureau staff inquiries did Etelix correct the record and admit that the Preferred Series A Stock was not issued until November 3, 2020 and not distributed until December 2, 2020.⁵² Accordingly, from August 2019 until December 3, 2020, Mr. Iglesias held 11.84% of iQSTEL's common stock. Thus, Mr. Iglesias' interest in Etelix went from 55.02% in June 2018, to 11.84% in August 2019 – a 43.18% decrease in ownership and a change from 50% or more to less than 50% ownership, which is a transfer of control.⁵³

⁴⁴ Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*. 47 CFR § 63.24(d). Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to, but not limited to, the following factors: equity ownership, power to constitute or appoint more than 50% of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment. 47 CFR § 63.24(d), n.1.

⁴⁵ 47 CFR § 63.24(d), n.2 (Assignment from an individual to a corporation owned and controlled by such individual without any substantial change in their relative interests is presumably *pro forma*).

⁴⁶ LOI Response at 8.

⁴⁷ LOI Response at 8. The holders of Series A Preferred Stock, voting separately as a class, have the right to vote on all shareholder matters equal to fifty-one (51%) percent of the total vote (i.e., if there are 10,000 shares of the Corporation's common stock issued and outstanding at the time of a shareholder vote, the holders of the Series A Preferred Stock, voting separately as a class, will have the right to vote an aggregate of 10,410 shares, out of a total number of 20,410 shares voting). *Id.*

⁴⁸ LOI Response at 8.

⁴⁹ LOI Response at 8. As with Mr. Iglesias, Mr. Quintana's eligibility to hold an FCC license will need to be referred to the Committee for review as he is a foreign national. *See* 47 U.S.C. § 310(b).

⁵⁰ iQSTEL, Inc., Current Report (Form 8K) (Nov. 6, 2020).

⁵¹ iQSTEL, Inc., Current Report (Form 8K) (Dec. 10, 2020).

⁵² *See* E-mail from Edward Maldonado, Esq., counsel to Etelix.com USA, LLC to Georgina Feigen, Esq., Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 12, 2021, 21:03 EDT) (on file in EB-IHD-20-00031637); E-mail from Edward Maldonado, Esq., counsel to Etelix.com USA, LLC to Georgina Feigen, Esq., Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 16, 2021, 13:39 EDT) (on file in EB-IHD-20-00031637) (collectively Maldonado E-mails).

⁵³ Pursuant to section 63.24(c) of the Commission's rules, a change from 50% or more to less than 50% ownership, is always considered a transfer of control. 47 CFR § 63.24(c); *see Sandwich Isles Communications, Inc.*, 31 FCC

(continued....)

14. Because the issue of control inherently involves issues of fact, whether a transfer of control was substantial or *pro forma* must be determined on a case-by-case basis.⁵⁴ Here, although Mr. Iglesias' ownership interest in Etelix dropped to under 50%, he retained the position of President, CEO and member of the Board of Etelix, which he held since at least 2017. He also served as the President, CEO and Director of iQSTEL since June 25, 2018 and continued to control "all the business and affairs of the company."⁵⁵ The Commission has previously found that "control" can include situations of control "in fact" regardless of the amount of stock owned and determined that "the facts of a particular situation (e.g., who has the power to direct the company's operations; who determines the make-up of the Board of Directors), are relevant to determining where control is situated."⁵⁶ In this case, while Mr. Iglesias' ownership fell from 55.02% to 11.84% of iQSTEL, he still remained in control of Etelix as evidenced by his positions with both companies. His change in equity to less than 50% ownership of Etelix, however, apparently resulted in a second *pro forma* transfer of control.

15. Lastly, despite previous contrary claims to the Bureau, on December 2, 2020, Mr. Iglesias was issued 70% of the Preferred Series A Stock in iQSTEL.⁵⁷ This change increased Mr. Iglesias' interest in iQSTEL and Etelix from 11.84% to 70%. According to Etelix, "so long as any shares of the Series A Preferred Stock remain issued and outstanding, the holders thereof, voting separately as a class, shall have the right to vote on all shareholder matters equal to fifty-one (51%) percent of the total vote."⁵⁸ Thus, while Mr. Iglesias' remained in control of iQSTEL and Etelix, his change in equity from less than 50% ownership to more than 50% ownership, apparently resulted in a third *pro forma* transfer of control.

16. Section 63.24(f) of the Commission's rules provide that, for international section 214 authorizations "[i]n the case of a *pro forma* transfer of control, the carrier must file a notification with the Commission no later than 30 days after the transfer is completed."⁵⁹ It is the authorization holder's obligation to comply with the Commission's rules.⁶⁰ Although Etelix remained the licensee of its international section 214 authorization and Mr. Iglesias maintained control of Etelix – and subsequently iQSTEL – Etelix was obligated to comply with our rules and notify the Commission of the *pro forma* changes to its ownership.⁶¹ We therefore conclude that Etelix has apparently willfully or repeatedly violated section 214 of the Act and section 63.24(f) of the rules by consummating a *pro forma* transfer of control of Etelix on June 25, 2018 (at which time Etelix went from being held 63.13% by Mr. Iglesias, to being wholly-owned by PureSnax, which changed its name to iQSTEL, as owned 55.02% by Mr.

Rcd 12947, 12953, n.48 (2016). Transfers of control of International 214 authorizations that are not *pro forma* require the proposed assignee or transferee to apply to the Commission for authority prior to the transfer. 47 CFR § 63.24(e).

⁵⁴ 47 CFR § 63.24(d), n.1. The Commission defines control to include "actual working control in whatever manner exercised and is not limited to majority stock ownership." 47 CFR § 63.09(b).

⁵⁵ iQSTEL, Current Report (Form 8K), Exhibit 10.4 (June 28, 2018).

⁵⁶ *Applications of Metromedia*, 98 FCC 2d 300, 306, para.8 (1984).

⁵⁷ See E-mail from Edward Maldonado, counsel to Etelix, to Georgina Feigen, Attorney Adviser, Investigations & Hearings Division, FCC Enforcement Bureau (Mar. 16, 2021, 13:39 EDT) (on file in EB-IHD-20-00031637).

⁵⁸ To further explain this matter, Etelix provided, "if there are 10,000 shares of the Corporation's common stock issued and outstanding at the time of a shareholder vote, the holders of the Series A Preferred Stock, voting separately as a class, will have the right to vote an aggregate of 10,410 share out of a total of 20,410 shares voting. Etelix LOI Response, at 8-9.

⁵⁹ 47 CFR § 63.24(f); *One World Telecom, LLC*, Order and Consent Decree, 27 FCC Rcd 16663, 16667 (EB 2012).

⁶⁰ *Pacific Networks Corp.*, Order Instituting Proceeding on Revocation and Termination, FCC No. 21-38, 2021 WL 1116616, at *26, para. 60 (Mar. 19, 2021).

⁶¹ See *Skyport Global Communications, Inc.*, Apparent Liability for Forfeiture, 23 FCC Rcd 16455, 16460 (IHD, Nov. 5, 2008). To date, neither Etelix nor iQSTEL have reported any changes to Etelix's ownership.

Iglesias) without providing the Commission with the requisite notification.⁶² Secondly, Etelix has apparently willfully or repeatedly violated section 214 of the Act and section 63.24(f) of the rules by consummating a *pro forma* transfer of control in August 2019 (when Mr. Iglesias' interest in iQSTEL and thus Etelix, fell from 55.02% to 11.84%, resulting in a change in equity ownership to below 50%) without providing the Commission with the requisite notification.⁶³ Lastly, Etelix has apparently willfully or repeatedly violated section 214 of the Act and section 63.24(f) of the rules by consummating a *pro forma* transfer of control on December 2, 2020 (when Mr. Iglesias received 70% of newly issued Preferred Series A stock in iQSTEL, resulting in a change in Mr. Iglesias' equity ownership of iQSTEL and thus Etelix from 11.84% to 70%) without the requisite Commission notification. By failing to notify the Commission of each of these three *pro forma* transactions, Etelix failed in its obligations as an FCC licensee to comply with our rules. To date, the notifications required by section 63.24(f) of the Commission's rules for each of these *pro forma* transactions have not been provided to the Commission.

C. Applicants Are Responsible for the Continuing Accuracy of Their Pending Applications

17. As discussed previously, the 2016 Future Voice Application remains pending before the Commission and has never been updated. Section 1.65 of the Commission's rules provides that "[e]ach applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application . . . [W]henver the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, . . . amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate."⁶⁴

18. Etelix apparently engaged in three *pro forma* transfers of control resulting in an ownership structure that differed from that in its pending Future Voice Application. These changes in ownership caused Etelix's ownership information in the Future Voice Application to become inaccurate. Etelix failed to comply with its obligations under section 1.65 of the Commission's rules to amend the pending Future Voice Assignment application within 30 days of each *pro forma* transaction to reflect the changes to the Company's ownership structure. We therefore conclude that Etelix has apparently willfully or repeatedly violated section 1.65 of the Commission's rules by failing to amend its pending Future Voice Application to reflect its updated ownership structure.

D. Proposed Forfeiture

19. Section 503(b)(1) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply substantially with the terms and conditions of any license, permit, certificate or other instrument or authorization issued by the Commission"⁶⁵ as well as or against an 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."⁶⁶ Section 503(b)(2)(B) of the Act authorizes the Commission to assess common carriers, or applicants for common carrier authorizations (such as international 214 authorizations), a forfeiture of up to \$207,314 for each violation or each day of a

⁶² 47 U.S.C. § 214; 47 CFR § 63.24(f).

⁶³ 47 U.S.C. § 214; 47 CFR § 63.24(f).

⁶⁴ 47 CFR § 1.65(a). For purposes of section 1.65, "an application is 'pending' before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court." *Id.*

⁶⁵ 47 U.S.C. § 503(b)(1)(A).

⁶⁶ *Id.* § 503(b)(1)(B).

continuing violation, up to a statutory maximum of \$2,073,133 for a single act or failure to act.⁶⁷ In exercising the Commission's forfeiture authority, we must consider the "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."⁶⁸

20. We conclude that Etelix apparently failed to obtain special temporary authority to provide international telecommunications service to Future Voice's customers during the pendency of the 2016 Future Voice Application. A carrier's failure to obtain special temporary authority undermines the Commission's ability to accomplish Congress' objectives in section 214 of the Act.⁶⁹ Etelix has been providing international telecommunications service to Future Voice's customers without Commission authority since May 19, 2017. We therefore find that this apparent violation of the Act and the Commission's rules was repeated because it continued for more than four years. As a carrier providing international telecommunications service, Etelix was required by both the Act and the Commission's rules and decisions to obtain section 214 authority from the Commission to continue providing service after its STA expired.⁷⁰ Section 1.80(b)(10) provides that the base forfeiture for operating without an instrument of authorization for service is \$10,000.⁷¹ Accordingly, we propose a base forfeiture of \$10,000 for Etelix's continued provision of international telecommunications service to Future Voice's customers, without any FCC authorization or special temporary authority, during the pendency of the Future Voice Application.⁷²

21. Additionally, because Etelix failed to notify the Commission regarding its *pro forma* changes in ownership on three separate occasions, we find that this apparent violation of the Commission's rules was repeated. Section 1.80(b)(10) of the Commission's rules specifically provides a base forfeiture amount of \$1,000 for an unauthorized *pro forma* transfer of control.⁷³ We then multiply this amount by three for each of Etelix's unauthorized *pro forma* transfers of control, resulting in a proposed base forfeiture amount of \$3,000 for its apparent failure to notify the Commission of *pro forma* changes in ownership of Etelix.

22. Lastly, we find that Etelix repeatedly failed to update its pending Future Voice Application regarding the changes in the its ownership structure as required by section 1.65 of the Commission's rules. Section 1.80(b)(10) provides a base forfeiture amount of \$3,000 for failure to file required information with the Commission.⁷⁴ Accordingly, we propose a base forfeiture of \$3,000 for

⁶⁷ 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2); *see also Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA-21-1631 (EB Dec. 22, 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).

⁶⁸ 47 U.S.C. § 503(b)(2)(E).

⁶⁹ *See Unipoint Technologies, Inc.*, 29 FCC Rcd 1633, 1635, para. 7 (2014) (*Unipoint*); *RB Communications, Inc.*, 29 FCC Rcd 5668, 5670, para.8 (2014); *Teleplus, LLC*, Apparent Liability for Forfeiture, 24 FCC Rcd 7666, 7670 (EB 2009).

⁷⁰ 47 U.S.C. § 214(a). *See, e.g.*, 47 CFR §§ 63.18, 63.21, 63.24, 63.25; *see also Teleplus, LLC*, 24 FCC Rcd 7666 (EB 2009), *FTTH Communications, LLC*, Notice of Apparent Liability, 26 FCC Rcd 12890 (EB 2011), *Omniat International Telecom, LLC*, Notice of Apparent Liability 24 FCC Rcd 4254 (2009).

⁷¹ 47 CFR § 1.80(b)(10).

⁷² *See Unipoint*, 29 FCC Rcd at 1635, para. 7 (2014); *see also Pinebrooke Corporation*, 31 FCC Rcd 1176 (MB 2016).

⁷³ 47 CFR § 1.80(b)(10).

⁷⁴ 47 CFR § 1.80(b)(10).

Etelix's failure to amend its pending 2016 Future Voice Application to reflect the *pro forma* changes in ownership, in apparent violation of section 1.65 of the Commission's rules.

23. Based on the facts and record in this case, we have determined that Etelix apparently violated section 214 of the Act and sections 1.65, 63.21(a), 63.24(f) and 63.25(b) of the Commission's rules by: (1) failing to obtain special temporary authority to service Future Voice's customers; (2) failing to notify the Commission of three *pro forma* transfers of control of Etelix; and (3) failing to update its pending application to reflect the *pro forma* changes in ownership. In total, Etelix's apparent violations incur a proposed cumulative base forfeiture of \$16,000.

24. The Commission may also adjust the total proposed forfeiture by taking into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷⁵ We believe that an upward adjustment is warranted in this instance.

25. Although we are assessing the Commission's forfeitures for Etelix's conduct during the past year, these violations apparently occurred over several years and are continuing today. Carriers that hold Commission authorizations are expected to understand and comply with the requirements and obligations associated with the authorizations they are granted. Additionally, Etelix submitted an LOI Response with incorrect information regarding Mr. Iglesias' Preferred Series A stock distribution and ownership.⁷⁶ It was only after repeated attempts by Bureau staff to clarify the submission that Etelix provided the correct information regarding the issuance of Preferred Stock to Mr. Iglesias. Responses to FCC inquiries must be complete and reliable in order for the Commission to arrive at well-informed, accurate resolutions.⁷⁷ Etelix apparently violated section 1.17(a)(2) by providing factual information that was incorrect. Etelix apparently failed to conduct even minimal due diligence: Its own Securities and Exchange Commission filings revealed that the Preferred Series A stock was not issued to Mr. Iglesias until December of 2020, not August of 2019 as Etelix reported to the Bureau.⁷⁸ When a Commission regulatee submits misleading information in a Commission enforcement investigation, these efforts could be construed as willfully seeking to evade lawful enforcement actions.⁷⁹ Misconduct of this type warrants an upward adjustment because it exhibits a disregard for the Commission's authority and threatens to compromise the Commission's ability to investigate violations of its rules.⁸⁰ In this instance, the delay in providing accurate and reliable information in response to an LOI warrants an upward adjustment.⁸¹ Given the totality of the circumstances here, and consistent with the Forfeiture Policy Statement, we propose an upward adjustment of \$4,000, for a total forfeiture of \$20,000 for Etelix's apparent rule violations.⁸²

IV. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and 1.80 of the Commission's rules, Etelix.com USA, LLC **IS HEREBY NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for apparently

⁷⁵ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

⁷⁶ See *supra* para. 13.

⁷⁷ See *Barrier Communications Corporation*, 2020 WL 5346893 (Sept. 2, 2020) (*Barrier Communications*).

⁷⁸ See LOI Response at 8; see also Maldonado E-mails.

⁷⁹ See *Barrier Communications Corporation*, 2020 WL 5746893 at *11, para. 37.

⁸⁰ See *Carrera Communications, L.P.*, 20 FCC Rcd 13307, 13319, para. 31 (2005).

⁸¹ See *Global NAPS California, Inc.*, 24 FCC Rcd 13545, 13557, para. 29 (EB 2009); *ABC Fulfillment Services, LLC*, 33 FCC Rcd 5530, 5542 para. 25 (2018).

⁸² 47 CFR § 1.80.

willfully or repeatedly violating section 214 of the Act and sections 1.65, 63.21(a), 63.24(f) and 63.25(b) of the Commission's rules.

27. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁸³ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Etelix.com USA, LLC **SHALL PAY** the full amount of its proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 30 below.

28. Etelix shall send electronic notification of payment to Georgina Feigen, Enforcement Bureau, Federal Communications Commission, at Georgina.Feigen@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. 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:⁸⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁸⁵ or printed CORES form⁸⁶ 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 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, 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).⁸⁷ 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to 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" 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 CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs,

⁸³ 47 CFR § 1.80.

⁸⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

⁸⁵ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁸⁶ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

⁸⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 authorization to accept ACH transactions.

29. 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, D.C. 20554.⁸⁸ 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.

30. 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.⁸⁹ 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 and to Georgina Feigen at Georgina.Feigen@fcc.gov.

31. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years 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.⁹⁰

32. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by certified mail, return receipt requested, and first-class mail to Edward Maldonado, Esq., Counsel for Etelix.com, USA, LLC, Law Offices of Edward A. Maldonado PA, 2850 S. Douglas Rd., Suite 303, Coral Gables, FL 33134, and by e-mail to eam@maldonado-group.com.

FEDERAL COMMUNICATIONS COMMISSION



Keith V. Morgan
Deputy Chief
Enforcement Bureau

⁸⁸ See 47 CFR § 1.1914.

⁸⁹ 47 CFR §§ 1.16, 1.80(g)(3).

⁹⁰ *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).