

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

In the Matter of )
Pacific Data Systems ) File No.: EB-IHD-22-00033164
) NAL/Acct. No.: 202332080003
) FRN: 0008295321

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2023

Released: January 25, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Under the rules and orders of the Federal Communications Commission (FCC or Commission), telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of important regulatory programs implemented by the Commission pursuant to the Communications Act of 1934, as amended (Act). USAC and the administrators of Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in Commission rules, each service provider’s equitable and accurate contributions responsibilities for the Universal Service Fund (USF) and these other federal funding mechanisms, consistent with the Communications Act and our rules.1 Likewise, the Commission relies on the information filed in Worksheets to assess equitable accurate federal regulatory fees owed by each service provider.

2. Failure to file timely, complete, and accurate Worksheets undermines the Commission’s efforts to maintain the USF and these other federal programs arising under the Act. The equitable administration of each of these federal payment requirements depends on the timely filing of Worksheets. In this case, Pacific Data Systems (Pacific or Company) failed repeatedly to file a total of 13 Worksheets between August 1, 2019, and February 1, 2022. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of \$100,000 against Pacific for its willful failure to comply with its obligations to file the Worksheet due on February 1, 2022, in apparent violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission’s rules, and a Commission order.2

II. BACKGROUND

A. Legal Framework

3. The Act codifies Congress’s historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established

1 See, e.g., 47 U.S.C. § 254(d); 47 CFR § 64.604(c)(5)(iii).

2 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions, Public Notice, 36 FCC Rcd 14176, Attach. B, Tbl. 3 (WCB 2021) (2022 Annual Worksheet Instructions).

by the Commission to preserve and advance universal service.”<sup>3</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>4</sup> The Commission also requires certain providers of interstate telecommunications to contribute to the USF.<sup>5</sup> When a service provider fails to pay its share of obligations to the USF, it undermines the Congressional mandates embodied in section 254(d) of the Act.<sup>6</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>7</sup>

4. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Worksheet,<sup>8</sup> and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.<sup>9</sup> 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>10</sup> A service provider must timely 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>11</sup> The Commission’s rules explicitly warn service providers that failure to file timely forms or submit timely USF payments potentially subjects them to enforcement action.<sup>12</sup> The Commission’s rules also require that the information contained in the forms must be truthful and that the USF payments must be accurate.<sup>13</sup> The Commission’s equitable contribution scheme relies on the timely, complete, and accurate filing of Annual and Quarterly Worksheets by all service

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<sup>3</sup> 47 U.S.C. § 254(d).

<sup>4</sup> 47 CFR § 54.706(b).

<sup>5</sup> *Id.* § 54.706(a) (“Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms.”). According to its 2022 Annual Worksheet filing, Pacific provides CLEC services. See <https://apps.fcc.gov/cgb/form499/499a.cfm> (last accessed Dec. 7, 2022). A CLEC is a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user. See 47 CFR § 61.26(a)(1).

<sup>6</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) (*Telseven Forfeiture Order*).

<sup>7</sup> See *id.*

<sup>8</sup> See, e.g., 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., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>9</sup> See, e.g., 47 CFR § 54.711; *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>10</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, e.g., 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>11</sup> See, e.g., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>12</sup> 47 CFR § 54.713(c).

<sup>13</sup> *Id.* §§ 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.” *2022 Annual Worksheet Instructions*, 36 Rcd at 14186, Attach. 1. While the Commission permits revisions to Worksheets in certain circumstances, see *id.* at 14199-14200, 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 14186.

providers.<sup>14</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>15</sup> A service provider shirking its Worksheet filing obligations therefore frustrates Congress's policy objective to ensure the equitable and non-discriminatory distribution of universal service costs among all service providers.<sup>16</sup>

5. USAC, administrators of other programs arising under the Act, and the Commission rely on the Worksheets service providers file to determine liability for, and subsequent billing and collection of, payments for important federal regulatory cost recovery requirements implemented under the Act.<sup>17</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 negative effects on other programs arising under the Act that rely on assessments of the Worksheets are similar. Indeed, a service provider that neglects to submit the most current, accurate revenue information in its Worksheets can evade its federal obligations to contribute fully towards the vital programs linked to the reporting obligations.<sup>18</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>19</sup>

#### **B. Factual Background**

6. Pacific is a private corporation that is incorporated and headquartered in Guam.<sup>20</sup> The Company has offered telecommunications services in Guam, the Commonwealth of the Northern Marianas (CNMI), and Hawaii since 2004.<sup>21</sup> In 2003, the Commission approved the Company's application for authority to provide international telecommunications resale service under section 214 of

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<sup>14</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 is properly reporting revenue, and thus contributing its fair share to the costs of the universal service program. *See id.* § 54.711(a); *see also id.* § 54.706(e).

<sup>15</sup> *See, e.g.*, 47 CFR § 54.711; *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14237; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>16</sup> *See* 47 U.S.C. § 254(d).

<sup>17</sup> The effective administration of the TRS Fund, *see* 47 CFR § 64.604; LNP; *see id.* § 52.32, NANP; *see id.* § 52.17, and federal regulatory fees, *see id.* §§ 1.1154, 1.1157, also rely on the accuracy of the Worksheets.

<sup>18</sup> *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted*, Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (proposed forfeiture reduced to account for updated revenue information provided to USAC).

<sup>19</sup> *See, e.g.*, *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

<sup>20</sup> Response to Letter of Inquiry, from John Day, President, Chief Operating Officer, Pacific Data Systems, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 1, Responses to Questions 1 and 3 (Apr. 6, 2022) (on file in EB-IHD-22-00033164) (LOI Response).

<sup>21</sup> Pacific provides private line, interstate telecommunications services in Guam, CNMI, and Hawaii, and offers long distance and local exchange interstate telecommunications services (voice and data services) in Guam. These services are offered on a standalone basis. *See* LOI Response at 3, Response to Question 15(b-c). In addition to telecommunications services, Pacific provides information technology equipment sales, infrastructure construction, maintenance and support services, and information and business services. *See* LOI Response at 2, Response to Question 13.

the Act.<sup>22</sup> On September 23, 2005, the Guam Public Utilities Commission granted a Certificate of Authority (COA) to Pacific Systems to be a service provider in Guam and provide local exchange services.<sup>23</sup>

7. Pacific filed its first Annual Worksheet in 2003.<sup>24</sup> Between 2003 and 2018, Pacific consistently filed its Annual and Quarterly Worksheets on time.<sup>25</sup> However, between August 1, 2019, and, February 1, 2022, Pacific failed to file any of the 13 Worksheets required by the Commission's rules.<sup>26</sup> Although USAC repeatedly contacted Pacific concerning the Company's missing Worksheet filings, the Company nonetheless failed to comply with its filing requirements.<sup>27</sup>

8. On September 13, 2021, USAC referred this matter to the Enforcement Bureau (Bureau) for investigation of Pacific's repeated failures to file Worksheets.<sup>28</sup> On March 7, 2022, the Bureau issued an LOI to Pacific concerning the Company's compliance with requirements arising under the Act and the Commission's rules.<sup>29</sup> On April 5, 2022, the Company filed its 2020 and 2021 Annual Worksheets, which were respectively due on April 1 of 2020 and 2021.<sup>30</sup> The Company responded to the Bureau's LOI on April 6, 2022.<sup>31</sup> In its LOI Response, Pacific acknowledged the Company's failures to file required Worksheets, but claimed it was impeded by "staff shortages and COVID-19 issues."<sup>32</sup>

### III. DISCUSSION

9. Based on evidence developed through the Bureau's investigation, the Company apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by willfully and repeatedly failing to file the Company's Worksheets due

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<sup>22</sup> *Id.* at 1, Response to Question 8; *International Authorizations Granted*, Public Notice, 18 FCC Rcd 1857, Rep. No. TEL-00636 (IB Feb. 13, 2003).

<sup>23</sup> LOI Response at 2, Response to Question 10(a); *Application of Pacific Data Systems for Certificate of Authority under 12 GCA 12103*, Public Utilities Commission of Guam, Certificate of Authority, Docket 05-06 (Sept. 23, 2005).

<sup>24</sup> See Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (Jan. 17, 2023) (on file in EB-IHD-22-00033164) (USAC Letter).

<sup>25</sup> See *id.*

<sup>26</sup> Pacific failed to file Quarterly Worksheets due on August 1 and November 1, 2019, all Worksheets due in 2020 and 2021, and its Quarterly Worksheet due on February 1, 2022. After the Bureau issued a Letter of Inquiry (LOI), Pacific filed its 2020 and 2021 Annual Worksheets on April 5, 2022, and revised these Annual Worksheets on April 29, 2022. *Id.*

<sup>27</sup> *Id.* USAC reached out to Pacific, for example: on August 23, 2019, regarding the August 2019 Quarterly Worksheet; on December 10, 2019, regarding the November 2019 Quarterly Worksheet; on May 29, 2020, regarding the May 2020 Quarterly Worksheet; on June 26, 2020, regarding the 2020 Annual Worksheet; on August 20, 2020, regarding the August 2020 Quarterly Worksheet; on November 18, 2020, regarding the November 2020 Quarterly Worksheet; and on February 26, 2021, regarding the February 2021 Quarterly Worksheet. *Id.*

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

<sup>29</sup> See Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to John Day, President & Chief Operating Officer, Pacific Data Systems (Mar. 7, 2022) (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, 64.604, 64.2009(e), 64.2115) (on file in EB-IHD-22-00033164) (LOI).

<sup>30</sup> USAC Letter; LOI Response at 3, Response to Question 16.

<sup>31</sup> LOI Response at 1.

<sup>32</sup> See *id.* at 11, Response to Question 41(a). Pacific also indicated in its LOI response that it has retained consultants to correct the Company's Worksheet filing compliance issues. See LOI Response at 9, Response to Question 37.

between August 1, 2019, and February 1, 2022.<sup>33</sup> We propose a forfeiture of \$100,000 for Pacific's failure to file its Quarterly Worksheet due on February 1, 2022.

10. Service providers, including local exchange carriers like Pacific, must file Annual Worksheets by April 1 of each year, and Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year.<sup>34</sup> Pacific failed to file 13 Worksheets as follows: the Quarterly Worksheets due on August 1 and November 1, 2019, all 10 Worksheets due in 2020 and 2021, and the Quarterly Worksheet due on February 1, 2022. The Company claimed in its LOI response it was "unable to complete the filings due to staff shortages and COVID-19 issues that existed at the time."<sup>35</sup> However, the Company did not describe in its LOI response the precise circumstances, severity, or duration of the "staff shortages and COVID-19 issues" it allegedly experienced, and why they consequently were unable to file the required Worksheets on time.<sup>36</sup> Pacific has provided no basis to assess whether any alleged COVID-19 issues were severe enough to impede the Company's Worksheet filing compliance for several years. But even if this was the case, the proper course of action was to seek a waiver of the filing deadlines to obtain a deadline extension, not to ignore major regulatory requirements repeatedly.<sup>37</sup> When USAC repeatedly contacted Pacific to remind the Company of the Worksheet filing requirements, Pacific did not raise any need for extensions of the filing deadlines.<sup>38</sup> Instead, Pacific simply did not file the required Worksheets for several years.

11. We consider each individual failure to file a Worksheet by each filing deadline a separate violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders.<sup>39</sup> We find that the Company apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders 13 separate times by willfully failing to file each Worksheet due between August 1, 2019, and February 1, 2022.<sup>40</sup>

#### IV. PROPOSED FORFEITURE

12. 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>41</sup> For the violations at issue here, section 503(b)(2)(B) of

<sup>33</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350 (WCB 2020) (*2020 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 33 FCC Rcd 1801 (WCB 2019) (*2019 Annual Worksheet Instructions*).

<sup>34</sup> E.g., *2022 Annual Worksheet Instructions*, 36 FCC Rcd at 14199, Attach. 2, Tbl. 2.

<sup>35</sup> LOI Response at 11, Response to Question 41(a).

<sup>36</sup> See *id.*

<sup>37</sup> See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, 36 FCC Rcd 7497, 7525 (WCB 2021) (granting request for waiver of Annual Worksheet filing deadline due to Coronavirus); *Schools and Libraries Universal Support Mechanism*, 32 FCC Rcd 7456, 7461-63, paras. 17-21 (WCB 2017) (finding good cause to waive certain rules and deadlines for contributors whose operations were substantially impacted by hurricanes and thus prevented from meeting filing deadlines).

<sup>38</sup> See USAC Letter.

<sup>39</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, 33 FCC Rcd 1801.

<sup>40</sup> As explained further below, we propose a forfeiture for only one apparent violation because the other apparent violations occurred outside of the applicable statute of limitations.

<sup>41</sup> 47 U.S.C. § 503(b)(1)(B).

the Act authorizes us to assess a forfeiture against a service provider such as Pacific of up to \$237,268 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,372,677 for a single act or failure to act.<sup>42</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>43</sup> In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.<sup>44</sup>

13. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>45</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>46</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>47</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>48</sup>

14. 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>49</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>50</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>51</sup> We therefore find that the Company’s failures to file a total of 13 Worksheets required between August 1, 2019, and, February 1, 2022, were willful. Given that the Company failed to file 13 Worksheets between August 1, 2019, and, February 1, 2022, we also find that the Company’s apparent filing violations were

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<sup>42</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 22-1356 (EB Dec. 23, 2022); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases).

<sup>43</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

<sup>44</sup> 47 CFR § 1.80(b)(10), Tbl. 1 to para. (b)(10).

<sup>45</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>46</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (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>47</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10).

<sup>48</sup> *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

<sup>49</sup> 47 U.S.C. § 312(f)(1).

<sup>50</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>51</sup> See, e.g., *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

repeated.<sup>52</sup> Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability.”<sup>53</sup> We therefore propose a forfeiture for the Company’s failure to file its Quarterly Worksheet due on February 1, 2022.

15. Section 1.80 of the Commission’s rules specifies a base forfeiture of \$3,000 for failure to file required forms or information.<sup>54</sup> Given the importance of the Worksheet filing requirements, the Commission has consistently applied an upward adjustment and proposed a forfeiture of \$50,000 for each failure of a service provider to file timely or accurate Worksheets.<sup>55</sup> However, given the accumulating record of non-compliance with the requirements to file accurate Worksheets by each filing deadline, service providers failing to comply with these requirements have been provided notice that the Commission could impose substantially higher upward adjustments for prior violations and for repeated or continuous violations.<sup>56</sup> Enforcement actions for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act.<sup>57</sup>

16. 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>58</sup> The Commission, USAC, and the administrators of the TRS Fund, LNP, and NANP rely on the data reported in Worksheets to determine respectively the accurate amounts that service providers owe for regulatory fees, the USF, and these other important funding mechanisms arising under the Act.<sup>59</sup> When a service provider fails to report its revenues accurately in its Worksheets by each filing deadline, the service provider could prevent the USF, TRS, LNP and NANP administrators and the Commission from fully invoicing the service provider for federal payment obligations implemented under the Act.<sup>60</sup> Pacific’s failure to file its Worksheets between August 1, 2019, and February 1, 2022, had serious implications for the administration of these funding mechanisms. The Commission and the administrators acting on its behalf to assess accurate regulatory fees, and contributions for the USF, TRS Fund, LNP, and NANP, depend on every service provider’s compliance with the periodic Worksheet filing requirements. A service provider’s failure to file its Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and

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<sup>52</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>53</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>54</sup> 47 CFR § 1.80(b)(10), Tbl. 1 to para. (b)(10).

<sup>55</sup> E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015) (*PTT Forfeiture Order*); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011) (*ADMA Forfeiture Order*); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006) (*Globcom Forfeiture Order*).

<sup>56</sup> E.g., *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385, at \*8, para. 26 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (providing notice of future upward adjustments to \$100,000 or more); *PayG, LLC b/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, FCC 22-69, at 13, para. 41 (Sept. 14, 2022) (*PayG NAL*) (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations).

<sup>57</sup> See 47 U.S.C. § 503(b)(2); *PayG NAL* at para. 41.

<sup>58</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>59</sup> See 47 CFR §§ 1.1154, 1.1157, 52.17(a), 52.32, 54.711, 64.604(c)(5)(iii).

<sup>60</sup> See *id.* §§ 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B); *Telseven NAL*, 27 FCC Rcd at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, 31 FCC Rcd at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008) (*Telrite NAL*), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

nondiscriminatory basis to the USF,<sup>61</sup> and to these other important funding mechanisms arising under the Act. We have also considered the degree of the Company's culpability and repeated violations.<sup>62</sup> The Company has an important obligation to file accurate Worksheets by the filing deadlines every year, and Pacific has apparently failed to comply for nearly three years. The Company is thus highly culpable for its repeated filing failures.

17. 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>63</sup> Consistent with Commission precedent,<sup>64</sup> we apply an upward adjustment for the repeated nature of the Company's violations, including the Company's failures to file a total of 13 Worksheets between August 1, 2019, and February 1, 2022.<sup>65</sup> We thus apply an upward adjustment to the base forfeiture that not only reflects the extent and gravity of the violation, and the substantial harm to federal cost recovery requirements by not filing Worksheets,<sup>66</sup> but also reflects the repeated violations in this case.<sup>67</sup> We thus propose a total forfeiture of \$100,000.

18. Consistent with the Act and the Commission's rules,<sup>68</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 willfully and repeatedly failing to comply with the Commission's Worksheet filing requirements.<sup>69</sup>

## V. CONCLUSION

19. We have determined that Pacific apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by willfully and repeatedly failing to file its Worksheets between August 1, 2019, and February 1, 2022.<sup>70</sup> We therefore find that Pacific is apparently liable for a forfeiture of \$100,000.

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<sup>61</sup> See 47 U.S.C. § 254(d).

<sup>62</sup> See *id.* § 503(b)(2)(E); 47 CFR § 1.80, Note to para. (b)(10).

<sup>63</sup> 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10).

<sup>64</sup> *E.g.*, *Correct Solutions NAL* at para. 26 (providing notice of future upward adjustments to \$100,000 or higher forfeitures); *PayG NAL* at para. 41 (providing notice of future upward adjustments up to statutory maximum forfeitures).

<sup>65</sup> See USAC Letter.

<sup>66</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *PTT Forfeiture Order*, 30 FCC Rcd at 14707, para. 19; *ADMA Forfeiture Order*, 26 FCC Rcd at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, 21 FCC Rcd at 4720-21, 4727, paras. 26-28, 31, 45.

<sup>67</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *Correct Solutions NAL* at para. 26; *PayG NAL* at para. 41.

<sup>68</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2 to para. (b)(10).

<sup>69</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>70</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176; *2021 Annual Worksheet Instructions*, 35 FCC Rcd 13671; *2020 Annual Worksheet Instructions*, 35 FCC Rcd 1350; *2019 Annual Worksheet Instructions*, 33 FCC Rcd 1801.



**VI. ORDERING CLAUSES**

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>71</sup> and section 1.80 of the Commission's rules,<sup>72</sup> Pacific Data Systems is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for its willful violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and a Commission order.<sup>73</sup>

21. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>74</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Pacific Data Systems **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 24 below.

22. In order for Pacific Data Systems to pay the proposed forfeiture, Pacific Data Systems shall notify Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Pacific Data Systems shall send electronic notification of payment to Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card using 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 forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>75</sup>

- 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 159<sup>76</sup> or printed CORES form<sup>77</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 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).<sup>78</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>71</sup> 47 U.S.C. § 503(b).

<sup>72</sup> 47 CFR § 1.80.

<sup>73</sup> See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2022 Annual Worksheet Instructions*, 36 FCC Rcd 14176.

<sup>74</sup> 47 CFR § 1.80.

<sup>75</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>76</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>77</sup> 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>.

<sup>78</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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, 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.

23. 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.<sup>79</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.<sup>80</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and Jeffrey Brown at [Jeffrey.Brown@fcc.gov](mailto:Jeffrey.Brown@fcc.gov).

25. 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 practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>81</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

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<sup>79</sup> See 47 CFR § 1.1914.

<sup>80</sup> *Id.* §§ 1.16, 1.80(f)(3).

<sup>81</sup> 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>82</sup>

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to John Day, President, Chief Operating Officer, Pacific Data Systems, 121 Robat St, Suite 101, Maite, GU 96910, and by e-mail to [john@pdsguam.com](mailto:john@pdsguam.com).

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal  
Chief  
Enforcement Bureau

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<sup>82</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).