

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

In the Matter of)	File No. EB-04-IH-0587
)	
Telecom Management, Inc.)	NAL/Acct. No. 200532080142
)	
Apparent Liability for Forfeiture)	FRN No. 0005-8591-11
)	

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE**

Adopted: August 12, 2005

Released: August 12, 2005

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Telecom Management, Inc. (“Telecom Management” or “TMI”), d/b/a Pioneer Telephone, a telecommunications carrier that has been operating since 2002 and at least indirectly benefiting from federal programs supporting the telecommunications industry since that time, apparently failed to meet its statutory and regulatory obligations related to those programs. Based upon the facts and circumstances surrounding this matter, we conclude that TMI is apparently liable for a total forfeiture of \$280,000.

2. Specifically, we find that TMI has apparently violated sections 254(d) of the Communications Act of 1934, as amended (the “Act”),¹ and section 54.706(a) of the Commission’s rules by willfully and repeatedly failing to contribute to the Universal Service Fund (“USF”).² We further find that TMI has apparently violated sections 1.1154 and 1.1157(b)(1) of the Commission’s rules³ by failing to pay regulatory fees to the Commission.

II. BACKGROUND

3. The Commission is charged by Congress with regulating interstate and international telecommunications and ensuring that providers of such telecommunications comply with the requirements imposed on them by the Act and our rules.⁴ The Commission also has been charged by Congress to establish, administer and maintain various telecommunications regulatory programs, which are described in more detail below, and to fund these programs through assessments on the telecommunications providers that benefit from them. To accomplish these goals, the Commission established “a central repository of key facts about carriers” through which it could monitor the entry and operation of interstate telecommunications providers to ensure, among other things, that they are

¹47 U.S.C. § 254(d).

²47 C.F.R. § 54.706(a).

³47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁴See, e.g., 47 U.S.C. § 151.

qualified, do not engage in fraud, and do not evade oversight.⁵ First, Commission rules require that, upon entry or anticipated entry into interstate telecommunications markets, telecommunications carriers must register by submitting information on an FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet (“Worksheet”).⁶ The Commission also requires telecommunications providers to submit financial information on their annual and, with certain exceptions not applicable to TMI, quarterly short-form Worksheets to enable the Commission to determine and collect the statutorily mandated program assessments.⁷

4. The Telecommunications Act of 1996 codified 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.⁸ 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.”⁹ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the Universal Service Fund based upon their interstate and international end-user telecommunications revenues.¹⁰ Failure by some providers to pay their share into the Fund skews the playing field by providing non-paying providers an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the Fund.

5. Pursuant to section 9(a)(1) of the Act and section 1.1151 of the Commission’s rules, interstate telecommunications and other providers must pay regulatory fees to the Commission to cover the costs of certain regulatory activities.¹¹ In particular, sections 1.1154 and 1.1157(b)(1) of the Commission’s rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.¹² Such fees must be paid on an annual basis,¹³ and failure to do so subjects a carrier to late payment penalties, as well as possible revocation of its operating

⁵See *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024 (2000) (“*Carrier Selection Order*”).

⁶47 C.F.R. § 64.1195.

⁷See 47 U.S.C. §§ 159(a),(b); 225(d)(3); 251(e)(2); 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026.

⁸The Telecommunications Act of 1996 amended the Communications Act of 1934. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”).

⁹47 U.S.C. § 254(d).

¹⁰47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.*

¹¹Section 9(a)(1) of the Act directs the Commission to “assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1); see also 47 C.F.R. § 1.1151.

¹²See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

¹³47 C.F.R. § 1.1157(b)(1). Section 1.1154 of the Commission’s rules sets forth the schedule of annual regulatory charges and filing locations for common carrier services. See 47 C.F.R. § 1.1154.

authority.¹⁴ Further, under the Commission's "red light rule," action will be withheld on any application to the Commission or request for authorization made by any entity that has failed to pay when due its regulatory fees or any other program payment, such as USF contributions, and if payment or payment arrangements are not made within thirty days from notice to the applicant, such applications or requests will be dismissed.¹⁵

6. The Commission has established specific procedures to administer the programs for universal service and regulatory fees. In addition to its obligation to register, a carrier is required to file Worksheets for the purpose of determining its USF and regulatory fee program payments,¹⁶ and, with certain exceptions, to file quarterly short-form Worksheets to determine monthly universal service contribution amounts. These periodic filings trigger a determination of liability, if any, and subsequent billing and collection, by the entities that administer the regulatory programs. For example, USAC uses the revenue projections submitted on the quarterly filings to determine each carrier's universal service contribution amount.¹⁷ Carriers are required to pay their monthly USF contribution by the date shown on their invoice.¹⁸ The Commission's rules explicitly warn contributors that failure to file their forms or submit their payments potentially subjects them to enforcement action.¹⁹

7. Telecom Management is a Maine-based telecommunications service provider of, among other services, long distance plans, toll free numbers, and phone cards.²⁰ TMI provides these by reselling interstate, interexchange services purchased from Global Crossing Bandwidth, Inc. ("Global Crossing").²¹ TMI has provided telecommunications services since 2002.²²

¹⁴See 47 U.S.C. §§ 159(c)(1), (c)(3).

¹⁵47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. See "FCC Announces Brief Delay in Enforcement of Red Light Rule," *Public Notice*, 19 FCC Rcd 19452 (2004).

¹⁶Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC, which is then associated with further filings by the company and used to track the carrier's contributions and invoices.

¹⁷Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) ("*Quarterly Reporting Order*"); 47 C.F.R. § 54.709(a).

¹⁸See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896 (2003) ("*Globcom*"); 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made."). See, e.g., "Proposed Third Quarter 2003 Contribution Factor," *Public Notice*, 18 FCC Rcd 11442 (Wir. Comp. Bur. 2003) ("Contribution payments are due on the date shown on the [USAC] invoice.") The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC. See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimus*. The instructions for the Telecommunications Reporting Worksheet include tables for carriers to determine their annual contributions.

¹⁹47 C.F.R. § 54.713.

²⁰See Letter from Leon L. Nowalsky, Nowalsky, Bronston & Gothard, Counsel for Telecom Management, Inc., to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 20, 2004 ("TMI December 20, 2004 Letter"), Response to Inquiry 5.

²¹See, e.g., <http://support.pioneertelephone.com/test/support.asp?kb=42> (providing evidence that TMI utilizes the underlying network of Frontier/Global Crossing) (last accessed on July 11, 2005).

²²TMI December 20, 2004 Letter, Response to Inquiry 4. TMI's website states, however, that it is a long-distance service provider founded in 1989. See <http://support.pioneertelephone.com/test/support.asp?kb=42> (last accessed July 11, 2005).

8. In 2004, the Enforcement Bureau (“Bureau”) audit staff sought to identify resellers of telecommunications service that may have failed to register as telecommunications service providers with the Commission and, thus, may also have failed to satisfy various Commission program requirements.²³ To identify such resellers, the Bureau audit staff compared lists of resellers provided by wholesale service providers against the Commission’s central repository of registered telecommunications service providers with filer identification numbers. If a reseller did not appear to have an identification number, the audit staff sent an inquiry to that reseller. On March 30, 2004²⁴ and June 18, 2004,²⁵ the Bureau’s audit staff sent letters to TMI at the address provided by its telecommunications wholesale service provider, Global Crossing, requesting information pertaining to TMI’s compliance with the Commission’s registration requirement. After receiving no response, the Bureau issued a letter of inquiry (“LOI”) on November 18, 2004, directing TMI, among other things, to submit a sworn written response to a series of questions relating to TMI’s alleged failure to satisfy its registration, filing and payment obligations.²⁶ TMI filed its response, which included documents and information required by the LOI, on December 20, 2004,²⁷ and supplemented that response on January 17, 2005.²⁸

9. TMI’s responses confirmed that the carrier had not met its contribution requirements to the aforementioned programs supporting the telecommunications industry despite operating as an interstate telecom carrier for more than two years.²⁹ TMI made its first payments to the USF and FCC regulatory fees program more than two years after it began providing interstate telecommunications services.

III. DISCUSSION

10. Under section 503(b)(1)(B) 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.³⁰ To impose

²³See 47 C.F.R. § 64.1195(a).

²⁴See Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Telecom Management, Inc., dated March 30, 2004 (requesting confirmation that Telecom Management had filed registration information pursuant to section 64.1195(a) of the Commission’s rules) (“March 30, 2004 Audit Letter”).

²⁵See Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Telecom Management, Inc., dated June 18, 2004 (requesting confirmation that Telecom Management had filed registration information pursuant to section 64.1195(a) of the Commission’s rules) (“June 18, 2004 Audit Letter”).

²⁶Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Sue Bouchard, Telecom Management, Inc., dated November 18, 2004 (“November 18, 2004 LOI”).

²⁷See TMI December 20, 2004 Letter. On December 8, 2004, TMI requested an extension of time to file its response to the LOI. The Division granted TMI’s request on December 9, 2004 by extending the deadline to December 20, 2004. See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Leon Nowalsky, Counsel for TMI, Nowalsky, Bronston & Gothard, APLLC, dated December 9, 2004.

²⁸See Letter from Leon L. Nowalsky, Counsel for TMI, Nowalsky, Bronston & Gothard, APLLC, to Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated January 17, 2005 (“TMI January 17, 2005 Supplemental Letter”).

²⁹The record shows that TMI filed its registration in April 2004 and back-filed Worksheets in December 2004 only after we initiated our audit inquiry. See TMI December 20, 2004 Letter.

³⁰47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). 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. 47 U.S.C. § 312(f)(1). 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, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California*

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.³¹ 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.³² As set forth below, we conclude under this standard that TMI is apparently liable for forfeiture for its apparent willful and repeated violations of section 254(d) of the Act³³ and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission's rules.³⁴

11. The fundamental issues in this case are whether TMI apparently violated the Act and the Commission's rules by: (1) willfully or repeatedly failing to make requisite contributions toward the Universal Service Fund; and (2) willfully or repeatedly failing to pay regulatory fees to the Commission. We answer these questions in the affirmative. Based on a preponderance of the evidence, we conclude that TMI is apparently liable for a forfeiture of \$280,000 for apparently willfully and repeatedly violating section 254(d) of the Act³⁵ and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission's rules.³⁶

12. Specifically, we propose the following forfeitures for apparent violations within the last year: (1) \$270,000 for failure to make USF contributions for the months August through October, 2004; and (2) \$10,000 for failure to make its 2004 FCC regulatory fee payment when due on August 19, 2004 until December 2004. Although we propose forfeitures only for apparent violations within the last year, we discuss below the history of TMI's noncompliance in prior years to demonstrate the scope of TMI's misconduct and to provide sufficient context for the misconduct that is within the statute of limitations period and thus covered by this NAL.

A. Universal Service Contributions

13. We conclude that TMI has apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by failing to contribute to universal service support mechanisms.³⁷ Section 54.706(c) unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."³⁸ "Interstate telecommunications" include, among other things, "resale of interstate services" such as those provided

Broadcasting Co.). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

³¹47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³²See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

³³47 U.S.C. § 254(d).

³⁴47 C.F.R. §§ 54.706(a), 1.1154, and 1.1157(b)(1).

³⁵47 U.S.C. § 254(d).

³⁶47 C.F.R. §§ 54.706(a), 1.1154, and 1.1157(b)(1).

³⁷47 U.S.C. § 254(d); 47 C.F.R. § 54.706(c).

³⁸47 C.F.R. § 54.706(c).

by TMI.³⁹ Although TMI has been providing interstate telecommunications services since 2002,⁴⁰ TMI made no universal service contributions until November 8, 2004.⁴¹ As we previously have stated,

[c]arrier nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules. We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission's primary responsibilities.⁴²

Based on the preponderance of the evidence, we find that TMI has apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by willfully and repeatedly failing to make any universal service contributions from 2002 to October 2004.

B. Payment of Regulatory Fees

14. We also conclude that TMI apparently has violated sections 1.1154 and 1.1157(b)(1) of the Commission's rules by failing to pay, and untimely paying, required regulatory fees to the Commission for two years.⁴³ As an interstate telephone service provider, TMI was apparently required as early as 2003 to pay regulatory fees on the basis of its interstate and international end-user revenues.⁴⁴ TMI, however, made its first fee payment, covering the 2004 fiscal year, on December 28, 2004 – nine months after the Bureau's compliance review identified TMI as a non-filer and over four months past the August 19, 2004 filing deadline for 2004 regulatory fee payments.⁴⁵ For these reasons, we find that TMI apparently has violated sections 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to pay regulatory fees program payments when due, including one such failure in the past year.

³⁹See 47 C.F.R. § 54.706(a)(16).

⁴⁰TMI December 20, 2004 Letter, Response to Inquiry 4.

⁴¹See TMI December 20, 2004 Letter, Response to Inquiry 10, attaching USAC's November 2004 billing to TMI, which shows TMI's full payment of its first (October 2004) USF billing. We note also that TMI began making USF payments only after receiving the Bureau's letters and it still owes a significant unpaid past due balance. See March 30, 2004 Audit Letter; June 18, 2004 Audit Letter; November 18, 2004 LOI. The Commission has repeatedly stated that post-investigative corrective measures to address a violation do not eliminate a licensee's responsibility for the period during which the violation occurred. See *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, ¶ 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, ¶ 8 (2000).

⁴²*Globcom, Inc.*, 18 FCC Rcd at 19903 ¶ 26.

⁴³47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157. Payments of standard regulatory fees applicable to common carrier services must be filed in full on an annual basis. *Id.* § 1.1157(b)(1).

⁴⁴See 47 C.F.R. §§ 1.1154, 1.1157(b)(1). Regulatory fees are paid in arrears for the previous calendar year. Thus, TMI failed to pay any regulatory fees in 2003, and made an untimely payment on December 28, 2004 for fiscal year 2004.

⁴⁵TMI's regulatory fees were due on August 19, 2004. See FCC Form 159-W (Interstate Telephone Service Provider Regulatory Fee Bill); <http://www.fcc.gov/fees/regfees.html>. On December 28, 2004, TMI made an FCC regulatory fee payment of \$5,339.24. See TMI January 17, 2005 Supplemental Letter.

C. Proposed Forfeiture

15. Section 503(b)(1)(B) of the Act provides that any person that willfully or repeatedly fails 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.⁴⁶ For the apparent violations in this case, section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.2 million for a single act or failure to act for violations occurring before September 7, 2004, and up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act for violations occurring on or after September 7, 2004.⁴⁷ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including “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.”⁴⁸

16. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that accrued within one year of the date of this NAL.⁴⁹ Nevertheless, section 503(b) does not bar us from assessing whether TMI’s conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.⁵⁰ Therefore, although we find that TMI apparently violated the Act and our rules for over two years, we propose forfeitures here only for violations that occurred within the last year.

17. Based on the facts above, it appears that TMI has failed to make the requisite contributions into the Universal Service Fund for a period of over two years. Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier’s failure to make required universal service contributions hampers realization of Congress’ policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.⁵¹ The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.⁵² Consequently, we initially find that TMI is apparently liable for a base forfeiture of \$60,000 for its failure to make universal service contributions for three months within the last year.⁵³ That base amount is, however, subject to an upward adjustment.

⁴⁶47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

⁴⁷47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). The Commission recently amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. *See Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000). However, the new rates apply to violations that occur or continue after September 7, 2004. *See Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

⁴⁸47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶ 27; 47 C.F.R. § 1.80(b).

⁴⁹47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

⁵⁰*See, e.g., Globcom, Inc.*, 18 FCC Rcd at 19903; *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

⁵¹*See* 47 U.S.C. § 254(d).

⁵²*See Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27.

⁵³As noted above, TMI made no universal service payments until November 2004. Thus, TMI’s failure to make required universal service contributions within the one-year statute of limitations occurred in August, September, and October 2004.

18. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on one-half of the company's unpaid contributions.⁵⁴ During the course of this investigation, TMI has back-filed the necessary Worksheets for USAC to determine TMI's USF contribution assessments, and USAC has completed billing for those back-payments. Based on those bills, TMI had an unpaid USF obligation of approximately \$420,000 at the time this investigation began. Therefore, taking into account all the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of \$210,000 for TMI's apparent nonpayment violations. We thus find TMI liable for a total proposed forfeiture of \$270,000 for its apparent willful and repeated failure to make contributions into the Universal Service Fund.

19. We also conclude that TMI has apparently failed to make any regulatory fee payments to the Commission in 2003, and untimely paid the regulatory fee payments for the 2004 fiscal year on December 28, 2004, long after its August 19, 2004 due date and only after receiving the Bureau's inquiries. A carrier's failure to contribute toward the costs of certain regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program and accomplishment of Congress' objectives in section 9(a)(1) of the Act. In recent orders, the Commission has established a base forfeiture amount of \$10,000 for failure to timely make required regulatory fee payments.⁵⁵ We, therefore, find TMI apparently liable for a \$10,000 forfeiture for its apparent violation of sections 1.1154 and 1.1157 of the Commission's rules.

IV. CONCLUSION

20. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as TMI does not consider the proposed forfeiture merely "an affordable cost of doing business,"⁵⁶ we find that a proposed forfeiture of \$280,000 is warranted. As discussed, this proposed forfeiture amount includes (1) a total proposed penalty of \$270,000 for TMI's apparent failure to make required universal service contributions for three months in 2004; and (2) a total proposed penalty of \$10,000 for TMI's apparent failure to timely make 2004 regulatory fee payments.

21. We caution that additional violations of the Act or the Commission's rules could subject TMI to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of TMI's operating authority, including disqualification of TMI's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁵⁷ In addition, we note that, to the extent TMI is delinquent on any debt owed to the Commission (e.g., has failed to pay all of its USF contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by TMI, in accordance with the agency's red light rules.⁵⁸

V. ORDERING CLAUSES

22. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Telecom Management, Inc. is hereby NOTIFIED of its APPARENT

⁵⁴See, e.g., *Globcom, Inc.*, 18 FCC Rcd at 19904.

⁵⁵See *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-146, ¶ 36 (rel. Jul. 25, 2005); *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, FCC 05-147, ¶ 30 (rel. Jul. 25, 2005).

⁵⁶*Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also 47 C.F.R. § 1.80(b)(4).

⁵⁷See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁵⁸See *supra* n. 15.

LIABILITY FOR A FORFEITURE in the amount of \$280,000 for willfully and repeatedly violating the Act and the Commission's rules.

23. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁵⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Telecom Management, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

24. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

25. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

26. 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 practices (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.

27. Requests for payment of the full amount of this NAL under an installment plan should be sent to Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁶⁰

28. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY shall be sent by certified mail, return receipt requested, to Sue Bouchard, Telecom Management, Inc., 583 Warren Avenue, Portland, ME 04103, and Leon Nowalsky, Counsel for Telecom Management, Inc., Nowalsky, Bronston & Gothard, APLLC, 3500 N. Causeway Blvd, Suite 1442, Metairie, LA 70002.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁹See 47 C.F.R. § 1.80(f)(3).

⁶⁰See 47 C.F.R. § 1.1914.