

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

ORDER OF FORFEITURE

Adopted: September 14, 2006

Released: September 15, 2006

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$237,992 against Telecom Management, Inc. ("TMI") for willful and repeated violations of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules. For the reasons set forth below, we find that TMI willfully and repeatedly violated the Act and the Commission's rules by failing to contribute to the Universal Service Fund ("USF") and failing to pay its regulatory fees.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in more detail in the Notice of Apparent Liability and Order ("NAL" or "TMI NAL") previously issued by the Commission and need not be repeated here at length. TMI is a Maine-based telecommunications provider that offers long distance plans, toll free numbers, and phone cards. In 2002, it began providing these services by reselling intrastate, interstate, and international long-distance services purchased from Global Crossing Bandwidth, Inc. ("Global Crossing"). As such, TMI is subject to the obligations of section 254(d) of the Act and sections 54.706, 1.1154, and 1.1157(a)(1) of our rules. 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." Section 54.706

1 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

2 47 C.F.R. §§ 1154, 1157(b)(1).

3 Telecom Management Inc., Notice of Apparent Liability and Order, 20 FCC Rcd 14151 (2005) ("TMI NAL").

4 See http://support.pioneertelephone.com/test/support.asp?kb=42 (last accessed November 25, 2005).

5 See id.; 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.

6 47 U.S.C. § 254(d).

of the Commission's rules requires all telecommunications carriers that provide interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the USF based on their projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.⁷ Sections 1.1154 and 1.1157 require that interstate telecommunications carriers pay regulatory fees on the basis of interstate and international end-user revenue.⁸

3. The Universal Service Administrative Company ("USAC") administers the universal service support mechanisms and performs billing and collection functions.⁹ The Commission requires carriers to provide revenue information to USAC on FCC Form 499 ("Telecommunications Reporting Worksheet") on a quarterly and annual basis,¹⁰ and USAC uses that information to determine the amount of each carrier's universal service contributions on a quarterly basis, with a yearly true-up using the Annual Worksheet.¹¹ USAC bills carriers, including TMI, each month based on their quarterly contribution amount.¹²

4. In 2004, the Enforcement Bureau ("Bureau") sought to identify resellers of telecommunications service that had failed to register as telecommunications service providers with the Commission as well as satisfy various other Commission program requirements.¹³ To this end, on March 30, 2004 and June 18, 2004, the Bureau's audit staff sent letters to TMI requesting information pertaining to its compliance with the Commission's registration requirement.¹⁴ After receiving no response, the

⁷ 47 C.F.R. §§ 54.706, 54.709.

⁸ 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

⁹ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18415, ¶ 25 (1997) ("*NECA Changes Order*"); 47 C.F.R. § 54.702(b).

¹⁰ 47 C.F.R. § 54.711.

¹¹ See 47 C.F.R. § 54.709(a).

¹² See, e.g., *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration (in CC Docket No. 96-45), Eighth Report and Order (in CC Docket No. 96-45), and Sixth Report and Order (in CC Docket No. 96-262), 15 FCC Rcd 1679, 1687, ¶ 18 (1999); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Federal-State Joint Board on Universal Service*, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971-72, ¶ 35 (2002); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Board on Universal Service*, Second Order on Reconsideration (in CC Docket No. 97-21), 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Carriers must pay by the date shown on the invoice from the Administrator. 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 (Wireline Comp. Bur. 2003) ("Contribution payments are due on the date shown on the administrator invoice.").

¹³ See 47 C.F.R. § 64.1195(a).

¹⁴ See 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 TMI had filed registration information pursuant to section 64.1195(a) of the Commission's rules); Letter from Hugh L. Boyle, Chief Auditor, (continued....)

Bureau issued a letter of inquiry (“LOI”) on November 18, 2004.¹⁵ The December 20, 2004 LOI response¹⁶ and January 17, 2005 supplemental response¹⁷ filed by TMI confirmed that the carrier failed to contribute to the USF and pay regulatory fees while operating as an interstate telecommunications carrier for more than two years despite having collected several hundred thousand dollars in USF fees from its customers.¹⁸

5. On August 12, 2005, the Commission issued an *NAL* against TMI proposing a forfeiture of \$280,000 for the apparent willful and repeated failure to pay universal service contributions on three occasions from August to October 2004 and failure to timely make a regulatory fee payment in August 2004. TMI submitted a response to the *NAL* on August 24, 2005.¹⁹

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.²⁰ 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.²¹ 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,²² and the Commission has so interpreted the term in the section 503(b) context.²³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁴ “Repeated” means that the act was committed or omitted more than once, or lasted more than one day.²⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been

(Continued from previous page) _____

Investigations and Hearings Division, Enforcement Bureau, FCC, to Telecom Management, Inc., dated June 18, 2004 (again requesting confirmation that TMI had filed registration information pursuant to section 64.1195(a) of the Commission’s rules) (together “Audit Letters”).

¹⁵ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Sue Bouchard, Telecom Management Inc., dated November 18, 2004.

¹⁶ See *TMI December 20, 2004 Letter*.

¹⁷ 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 January 17, 2005 (“*TMI Supplemental Response*”).

¹⁸ TMI filed its registration on April 15, 2004 and a 499-Q due August 1, 2004. TMI then received its first bill from the Universal Service Administrative Company (“USAC”) in October 2004 and, in December 2004, back-filed its 2002, 2003 and 2004 annual worksheets and its February 1 and May 1 quarterly worksheets.

¹⁹ Letter from Leon L. Nowalsky, Attorney for Telecom Management, Inc., to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 24, 2005 (“*TMI NAL Response*”).

²⁰ 47 U.S.C. § 503(b)(1)(B).

²¹ 47 U.S.C. § 312(f)(1).

²² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²³ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

²⁴ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

²⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁶ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.²⁷

7. 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, 2004.²⁸ 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.”²⁹

III. DISCUSSION

8. As set forth below, we find by a preponderance of the evidence that TMI violated section 254(d) of the Act and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission’s rules by willfully and repeatedly failing to make contributions toward the Universal Service Fund and failing to pay regulatory fees to the Commission.³⁰

9. In the *TMI NAL*, we proposed a forfeiture of \$280,000 for TMI’s apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a), 1.1154, and 1.1157(b)(1) of the Commission’s rules.³¹ We calculated this amount, consistent with Commission precedent, as follows. For TMI’s apparent failure to pay universal service contributions, we applied a base forfeiture amount of \$20,000 for each of three months of nonpayment. We then added one-half of the approximately \$420,000 in unpaid universal service contributions, or \$210,000, to the base forfeiture for a proposed forfeiture of \$270,000. For TMI’s apparent failure to pay regulatory fees, we applied a \$10,000 forfeiture. As explained below, we reduce the forfeiture amount by \$42,008 based on an USAC amendment to TMI’s unpaid USF balance but otherwise reject TMI’s various arguments to eliminate or reduce the forfeiture further. We therefore impose a forfeiture of \$237,992 against TMI.

²⁶ See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (“*SBC Forfeiture Order*”).

²⁸ 47 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, 19 FCC Rcd 10945 (2004).

²⁹ 47 U.S.C. § 503(b)(2)(D); See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission’s Rules*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

³⁰ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(a), 1.1154, 1.1157(b)(1).

³¹ *TMI NAL*, 20 FCC Rcd at 14155-58, ¶¶ 11-19.

A. TMI's Violations Were Willful and Repeated

10. In the *TMI NAL Response*, TMI admits it failed to make USF contributions and pay regulatory fees prior to November 2004 but claims that its failures were neither willful nor repeated.³² Based on a preponderance of the evidence, and as discussed in more detail below, we reject TMI's claims. We find that it violated section 254(d) of the Act and sections 54.706, 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to make any of its monthly universal service contribution payments for more than two years, including three such failures within the year prior to our issuing the *TMI NAL*, and by failing to pay any regulatory fees until December 2004.

11. TMI argues that it used a third-party vendor to handle all compliance obligations and it assumed all filings and payments, including the USF contributions and regulatory fee payments, were being made by the third-party vendor.³³ TMI thus contends it cannot be held "solely liable" for these failures because the third party vendor, not TMI, failed to make the payments.³⁴ TMI's attempt to hold this vendor liable for its own failure to live up to its regulatory obligations is misplaced given the Act's express provision holding that the actions of a common carrier's agent are attributable to the carrier. Specifically, section 217 of the Act states that "the act, omission, or failure of any...agent or other person acting...for any common carrier...shall in every case be also deemed to be the act, omission, or failure of such carrier."³⁵ TMI, as a common carrier, is responsible pursuant to section 217 for any failures to comply with our rules by the third-party vendor acting as its agent. Accordingly, TMI is responsible for knowing and ultimately complying with its regulatory obligations and the failure of its agent does not exculpate TMI.³⁶

12. TMI also contends that its violations were not willful, as defined in section 312(f) of the Act, because it did not knowingly or deliberately fail to satisfy its regulatory obligations when its third-party vendor failed to pay the USF contributions and regulatory fees. As stated above, however, willfulness in the context of section 503(b) does not require that an entity know it is acting unlawfully, but merely that it knows it is engaged in the conduct constituting the rule violations.³⁷ Therefore, TMI (acting through its vendor) willfully failed to pay USF contributions and regulatory fees. As discussed above, TMI's use of a third-party vendor to satisfy its regulatory obligations does not shelter it from a finding of willfulness.

13. Similarly, we reject TMI's position that its actions were not willful based on factual distinctions between this case and the Commission's *Globcom* decision.³⁸ TMI claims the Commission relied on *Globcom* in finding TMI willfully failed to make USF contributions and pay regulatory fees.³⁹ Unlike *Globcom*, TMI states it filed some worksheets, and began making USF payments before it

³² See *TMI NAL Response* at 3.

³³ See *TMI NAL Response* at 3.

³⁴ See *id.*

³⁵ See 47 U.S.C. § 217.

³⁶ See, e.g., *All American Telephone Inc.*, Order of Forfeiture, 16, FCC Rcd 16601, 16604 (2001) (noting that carrier is liable under section 217 for forgeries by agent without carrier's knowledge).

³⁷ 47 U.S.C. § 312(f)(1); 47 U.S.C. § 503(b).

³⁸ See *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896 (2003) ("*Globcom*"); see also *Globcom, Inc.*, Order of Forfeiture, FCC 06-49 (rel. April 19, 2006).

³⁹ See *TMI NAL Response* at 4.

received notice from the Commission.⁴⁰ We reject TMI's position. In the *TMI NAL*, the Commission cited to *Globcom* for various propositions (such as identifying the serious, negative impact failure to pay USF contributions has on the program and the forfeiture methodology), but did not rely on *Globcom* to establish that TMI acted willfully under the Act. TMI's attempt therefore to establish its lack of willfulness by distinguishing *Globcom* is wholly unpersuasive.

14. TMI also generally claims that its violations were not repeated.⁴¹ TMI however fails to provide any specific argument or cite to any legal rationale supporting this claim, discussing only its belief that its actions were not willful.⁴² As discussed above, "repeated" means the "commission or omission" of an act "more than once or...for more than one day."⁴³ No evidence is offered to counter the *TMI NAL*'s apparent finding that TMI's violations were repeated. TMI failed to remit USF fees to USAC and to pay regulatory fees for more than two years. Therefore, we find that TMI's failures were repeated.

15. Finally, TMI argues it should not be held liable for forfeiture because it claims it never received the Audit Letters and TMI contends the Commission based its *NAL* findings on TMI's failure to respond to those letters.⁴⁴ TMI's assertion is incorrect. TMI's failure to respond to those specific letters had no bearing on the Commission's decision to propose, or its calculation of, the forfeiture. As discussed herein and in the *TMI NAL*, we based the TMI forfeiture on TMI's failures to make required payments to the USF and the FCC and calculated the forfeiture based on Commission precedent unrelated to any failure to respond to Commission inquiries. No forfeiture was proposed in the *NAL* for TMI's failure to respond to any Commission communication.

B. Forfeiture Amount

16. In its response to the Commission's *TMI NAL*, TMI does not dispute the amount of the forfeiture assigned for failure to timely pay its regulatory fees.⁴⁵ TMI does argue that the Commission should eliminate or reduce the portion of the forfeiture amount attributable to its USF violations because the amount of the forfeiture is in error and because TMI is unable to pay the \$280,000 forfeiture amount. After full consideration of all TMI's assertions, we reject TMI's claim that it is unable to pay the proposed forfeiture but, in light of new information provided by TMI, we find that the forfeiture amount should be reduced.

17. TMI first argues that the forfeiture amount is not warranted because the violations were committed by its vendor and therefore were not intentional or deliberate on TMI's part.⁴⁶ TMI asserts "no justice will be served by tacking an upward adjustment or penalty based upon past occurrences which were non-deliberate, unintentional, and of which TMI was completely unaware."⁴⁷ This argument merely re-packages TMI's already rejected position that it cannot be held liable for the actions of its vendor. As discussed above, TMI's failures were in fact both willful and repeated under the Act and Commission

⁴⁰ *See id.*

⁴¹ *See id.*

⁴² *See id.* at 2-4.

⁴³ *Southern California Broadcasting*, 6 FCC at 4388, ¶ 5.

⁴⁴ *TMI NAL Response* at 2.

⁴⁵ *See TMI NAL Response* at 7.

⁴⁶ *See TMI NAL Response* at 5-6.

⁴⁷ *See TMI NAL Response* at 6.

precedent and the proposed forfeiture was premised on these willful and repeated actions.⁴⁸ Therefore, we reject TMI's attempt to have the USF forfeiture rescinded on this basis.

18. TMI also suggests it would be inappropriate to adjust the forfeiture upward given its efforts to come into compliance before it received the LOI.⁴⁹ Initially, we note that our forfeiture methodology already takes into account any effort by TMI to pay down its balance because the upward adjustment is dependent on the outstanding USF balance. TMI's attempt to reduce or eliminate the upward adjustment because of its compliance efforts is misguided, however, considering the totality of its non-compliance. Specifically, the Commission based the upward adjustment on the seriousness, extensive period, and scope of TMI's universal service nonpayment violations.⁵⁰ Prior to TMI's purported efforts to comply, it collected several hundred thousand dollars for USF from its end users, yet withheld USF payments for a period of over two years.⁵¹ Moreover, only after the Bureau's investigation began did TMI back-file all of the required forms that would permit USAC to calculate TMI's outstanding balance. Thus, regardless of TMI's purported pre-investigation efforts, there were significant and long-standing problems with TMI's compliance.⁵² TMI's conduct threatens the integrity and the viability of the universal service program. Based on the totality of the factors under consideration, we deny TMI's request to reduce the USF upward adjustment amount on this basis.

19. Finally, we conclude, notwithstanding the foregoing, that the amount of the forfeiture should be reduced by \$42,008 based on a revision to TMI's outstanding debt. TMI points out that the \$210,000 upward adjustment in the proposed forfeiture is incorrect because the USF past-due debt upon which it was based has been revised.⁵³ As explained in the *TMI NAL* and consistent with the Commission precedent, the upward adjustment was based on one-half of the company's unpaid contributions, in this case determined by the past-due debt as of the date the investigation began.⁵⁴ In support of its argument, TMI submitted with its response a Contribution Letter of Appeal it filed with USAC claiming that USAC overcharged TMI for USF past-due debt by \$77,773.81.⁵⁵ On December 30, 2005, USAC acknowledged that TMI's past due debt should be reduced and determined it would credit TMI for overcharges of \$84,017.03.⁵⁶ In light of USAC's decision to credit TMI for these overcharges, the USF outstanding

⁴⁸ See *supra*, ¶¶ 6-8.

⁴⁹ TMI argues that the Commission used TMI's back filing and payment of past due amounts, presumably something for which it should be given credit, to "levy an upward adjustment." See *TMI NAL Response* at 5. This position misinterprets the Commission's action. We estimated TMI's liability from filed forms because that was the best evidence available at the time of the outstanding overdue debt to USAC. If TMI had not made the filing, we would have estimated the amount from the other financial information produced during the investigation. See, e.g., *Carrera Communications, Inc.*, 2005 WL 1750417 (F.C.C.) at ¶ 27; *Telectronics, Inc.*, 2005 WL 1750420 (F.C.C.) at ¶ 33; *Communication Services Integrated, Inc.*, 2005 WL 2861527 (F.C.C.) at ¶ 27. The source of the estimate is not the cause of the upward adjustment.

⁵⁰ See *TMI NAL*, 20 FCC Rcd at 14157-58, ¶¶ 15-18.

⁵¹ See *id.*, 20 FCC Rcd at 14157-58, ¶¶ 17-18.

⁵² See *id.*

⁵³ See Letter from Leon L. Nowalsky, Attorney for Telecom Management, Inc., to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated January 30, 2006, 1 ("Supplemental *NAL Response*"); *TMI NAL Response* at 4.

⁵⁴ See *TMI NAL* 20 FCC Rcd at 14158, ¶ 18.

⁵⁵ See *TMI NAL Response*, Exhibit B.

⁵⁶ Letter from Universal Service Administrative Company, to Kevin Photiades, Compliance Specialist, Telecom Management, Inc. d/b/a Pioneer Telephone, dated December 30, 2005 ("USAC Letter").

balance is revised from \$420,000 to \$335,983, and, as a result, we revise the upward adjustment for TMI's failure to pay USF contributions to \$167,992 (one-half of \$335,983).⁵⁷

C. Ability to Pay

20. We finally address TMI's claim that it is unable to pay a \$280,000 forfeiture.⁵⁸ In particular, TMI states that the forfeiture would increase its net loss for 2002, cause an overall net loss for 2003, and eliminate its reported profits for 2004.⁵⁹

21. Although ability to pay is a statutory factor that we must consider in setting a forfeiture amount, the Commission has repeatedly held that a company's gross revenues are the best indicator of its ability to pay assessed forfeitures.⁶⁰ After reviewing the 2002-2004 tax returns submitted by TMI in support of its claim, we find that TMI's gross revenues are sufficiently large relative to the adjusted forfeiture amount, and that the forfeiture amount represents a smaller percentage of TMI's gross revenues than that deemed not to be excessive by the Commission in other cases.⁶¹ We therefore reject TMI's contention that it would be unable to pay the proposed forfeiture and decline to reduce the forfeiture amount on that basis.

IV. CONCLUSION

22. The facts show TMI withheld payments to Congressionally-mandated telecommunications programs for over two years despite collecting hundreds of thousands of dollars from its customers in USF charges. TMI also failed to timely pay its regulatory fees. In light of the seriousness, duration and scope of TMI's violations, we find that a forfeiture of \$237,992 is warranted. The forfeiture amount is composed of (1) a penalty of \$227,992 (the \$270,000 proposed in the NAL, less \$42,008 associated with adjustments to CSII's USF debt) for failing to make three monthly universal service contributions within one-year prior to the release of the *TMI NAL* and (2) a penalty of \$10,000 for failing to timely make its 2004 regulatory fee program payment.

23. We note that TMI is subject to the Commission's "red light rule" as a result of any non-payment detailed above and the Commission will not act on, and may dismiss, any application or request for authorization filed by TMI in accordance with the Commission's rules.⁶²

⁵⁷ TMI also argues that the successful appeal effectively removes the basis for the \$60,000 base forfeiture and the upward adjustment. See *Supplemental NAL Response* at 1; USAC Letter. We reject this argument because the successful appeal does not alter the fact that TMI failed to pay USF fees during the months August, September, and October of 2004, the period upon which the base forfeiture was premised, or the seriousness of TMI's withholding substantial USF payments for over two years, on which the upward adjustment was based.

⁵⁸ See *TMI NAL Response* at 6-7.

⁵⁹ See *id.*

⁶⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17106, ¶ 43 (1997), recon denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089, ¶ 8 (1992); *Independent Communications, Inc.*, 15 FCC Rcd 16060, 16060, ¶ 2 (2000).

⁶¹ See *Alpha Ambulance, Inc.*, 19 FCC Rcd at 2548 n. 15; *Local Long Distance, Inc.*, 15 FCC Rcd 24385 (2000), recon. denied, 16 FCC Rcd 10023 (2001); *Hoosier Broadcasting Corp.*, 14 FCC Rcd 3356 (CIB 1999), recon. denied, 15 FCC Rcd 8640 (Enf. Bur. 2002); *PJB Communications of Virginia*, 7 FCC Rcd 2088 (1992). In this case, the forfeiture represents a smaller percentage of the violator's gross revenues than those issued in the *Local Long Distance, Inc.* (7.9 percent), and *Hoosier Broadcasting Corp.* (7.6 percent) cases.

⁶² 47 C.F.R. § 1.1910.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, TMI SHALL FORFEIT to the United States government the sum of \$237,992 for willfully and repeatedly violating the Act and Commission's rules.

25. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.⁶³ 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 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C., 20554.⁶⁴

26. IT IS FURTHER ORDERED that a copy of this FOREITURE ORDER 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

⁶³ 47 U.S.C § 504(a).

⁶⁴ See 47 C.F.R. § 1.1914.