

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

In the Matter of)	File No. EB-07-IH-3985
)	
VCI Company)	NAL/Acct. No. 200732080033
)	
Apparent Liability for Forfeiture)	FRN No. 0015783004
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: August 14, 2007

Released: August 15, 2007

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that VCI Company (“VCI”) apparently violated sections 54.407(c) and 54.413(b) of the rules of the Federal Communications Commission (“Commission”) by willingly or repeatedly failing to keep and provide to the Universal Service Administrative Company (“USAC”) accurate records of the revenues it was forgoing in providing Lifeline and Link Up service.¹ In addition, we find that VCI apparently violated sections 54.407(b) and 54.413(a) of the Commission’s rules by willfully or repeatedly receiving duplicate reimbursement for qualifying low-income consumers served.² Based on our review of the facts and circumstances surrounding this matter, we find that VCI is apparently liable for a total forfeiture of \$1,047,500. Furthermore, we order VCI to submit within 30 days to USAC revised Form 497s excluding all requests for duplicate universal service reimbursement for qualifying low-income customers served from August 2004 to August 2007.³

II. BACKGROUND

2. Under section 254 of the Communications Act of 1934, as amended (the “Act”), Congress promoted access to telecommunications service for all consumers and required the Commission to establish rules governing the services to be supported by the Federal universal service fund support mechanisms.⁴ Section 254(b) establishes principles upon which the Commission must base its policies for the preservation and advancement of universal service. One of these principles states that “consumers in all regions of the Nation, including low-income consumers..., should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in

¹ 47 C.F.R. §§ 54.407(c) and 54.413(b).

² 47 C.F.R. §§ 54.407(b) and 54.413(a).

³ Section 54.417 of the Commission’s rules requires that eligible telecommunications carriers maintain records to document compliance with all federal and state requirements governing Lifeline and Link Up for three years. *See* 47 C.F.R. § 54.417(a).

⁴ 47 U.S.C. § 254(a)(2).

urban areas.”⁵ As we have stated previously, “these principles also recognize that ensuring rates are affordable is a national priority.”⁶

3. The Commission implemented Part 54 of its rules in response to this statutory mandate and promulgated various universal service support mechanisms, including mechanisms providing financial support to schools and libraries, rural healthcare providers, and carriers providing service to high cost and low-income users.⁷ Under the low-income support mechanism, the Lifeline Assistance (“Lifeline”) and Lifeline Connection Assistance (“Link Up”) programs provide discounts to qualifying low-income consumers for basic telephone service.⁸ Lifeline provides low-income consumers with discounts off the monthly cost of telephone service for a single telephone line in their principal residence.⁹ In addition, qualifying low-income consumers have the option to elect at the initiation of service Toll Limitation Service (“TLS”) to be included as part of Lifeline at no extra charge.¹⁰ Link Up provides qualifying low-income consumers with discounts from the initial costs of installing telephone service.¹¹ The low-income mechanism allows an eligible telecommunications carrier (“ETC”) providing services to qualifying low-income consumers to seek and receive reimbursement for revenues it forgoes as a result.¹² In order for a carrier to receive low-income support, the carrier first must be designated as an ETC.¹³

4. As part of the framework for these programs, the Commission established explicit requirements that ETCs must meet to receive federal low-income support. Under sections 54.407 and 54.413 of the Commission’s rules, an ETC may receive universal service support directly from USAC based on the number of qualifying low-income consumers it serves in the form of a reimbursement of the revenues it forgoes in providing Lifeline and Link Up services.¹⁴ Moreover, the Commission has established that low-income consumers may receive support only for “a single telephone line in their principal residence.”¹⁵ In order to receive reimbursement for such support, an ETC “must keep accurate

⁵ 47 U.S.C. § 254(b)(3).

⁶ *Lifeline and Link Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305, ¶ 3 (2004) (“2004 Lifeline Order”).

⁷ See generally *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (1997) (“1997 Universal Service Order”).

⁸ The Commission adopted Lifeline and Link Up prior to the passage of the Telecommunications Act of 1996 pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Act. See *1997 Universal Service Order*, 12 FCC Rcd 8952-53, ¶ 341; *2004 Lifeline Order*, 19 FCC Rcd at 8306, ¶ 4. See also *Telecommunications Act of 1996*, Pub.L. No., 104-104, 110 Stat. 56 (1996).

⁹ 47 C.F.R. § 54.401(a)(2); *1997 Universal Service Order*, 12 FCC Rcd at 8957, ¶ 341; *2004 Lifeline Order*, 19 FCC Rcd at 8306, ¶ 4.

¹⁰ 47 C.F.R. § 54.401(a)(3); *1997 Universal Service Order*, 12 FCC Rcd at 8980, ¶ 385.

¹¹ See 47 C.F.R. § 54.411(a)(1).

¹² See 47 C.F.R. §§ 54.407, 54.413.

¹³ 47 U.S.C. § 254(e) (providing that only ETCs designated pursuant section 214(e) of the Act, 47, C.F.R. § 214(e), are eligible to receive specific Federal universal service support); see also 47 U.S.C. § 214(e) (setting forth the requirements for ETC designation).

¹⁴ 47 C.F.R. §§ 54.407 and 54.413.

¹⁵ See *1997 Universal Service Order*, 12 FCC Rcd at 8957, ¶ 341; *2004 Lifeline Order*, 19 FCC Rcd at 8306, ¶ 4 (specifying that support for Lifeline subscribers is for “a single telephone line in their principal residence”). See also 47 C.F.R. § 54.411(a)(1) (stating that Link Up support is for “commencing telecommunications service for a single telecommunications connection at a [qualified low-income] consumer’s principal place of residence”); 47

(continued...)

records of the revenues it forgoes in providing Lifeline....”¹⁶ The Commission’s rules further require that “[s]uch records shall be kept in the form directed by [USAC] and provided to [USAC] at intervals as directed....”¹⁷ As a result, an ETC seeks reimbursement from USAC for the revenues it forgoes in provisioning Lifeline to qualifying low-income consumers by submitting a Form 497 for each state in which it seeks reimbursement and for each month in which it has forgone revenues.¹⁸

5. The Commission’s rules governing reimbursement for Link Up services are very similar to those governing the Lifeline program. That is, to receive reimbursement for Link Up, an ETC must keep accurate records of the revenues it forgoes in reducing the customary charge for commencing telecommunications service and its records must be kept in the form directed by and provided to USAC.¹⁹ As with the Lifeline program, an ETC thus seeks reimbursement from USAC for the revenues it forgoes in provisioning Link Up by submitting a Form 497 for each state and month.²⁰

6. VCI is a privately held company that provides telecommunications services predominantly to low-income consumers.²¹ The company was incorporated in the State of Washington on November 24, 2003 and has operated or obtained authority to operate in 15 states.²² VCI has been certified as an ETC in all 15 states and thus qualifies for the receipt of low-income support directly from USAC. VCI currently provides Lifeline, Link Up and TLS services in twelve states, including Minnesota.²³ VCI relinquished ETC status and ceased all telecommunications service operations in Washington on January 11, 2007 and in Oregon on February 1, 2007.²⁴ VCI provides services directly to end users using its own facilities as well as by reselling service initially provided by other carriers.²⁵

7. In addition to federal low-income support, VCI is also eligible to receive state low-income support in states such as Minnesota, Oregon, and Washington that established their own programs providing additional support to low-income consumers in their states.²⁶ Oregon and Washington have established their own state eligibility criteria for qualifying low-income consumers that resemble the

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C.F.R. § 54.411(c) (limiting Link Up support to qualified low-income consumers “for a second or subsequent time only for a principal place of residence with an address different from the one which Link Up support was provided previously”).

¹⁶ 47 C.F.R. § 54.407(c). The Commission has selected USAC as the Administrator of the universal service fund, including the disbursement of low-income support.

¹⁷ *Id.*

¹⁸ *See* Form 497 and Instructions.

¹⁹ 47 C.F.R. § 54.413(b).

²⁰ *See* Form 497 and Instructions.

²¹ First LOI Response to Inquiry 3; Letter from Stacey A. Klinzman, Regulatory Attorney, VCI Company, to Secretary, Federal Communications Commission dated January 16, 2007 (“VCI is a competitive local exchange provider that service[s] primarily low-income, residential customers with federal and state subsidized Lifeline and Link Up services.”).

²² First LOI Response at Exhibits A and B.

²³ *Id.*

²⁴ *Id.*

²⁵ Section 54.201(d)(1) states that an ETC must offer services using its own facilities or a combination of its own facilities and resale of another company’s service. 47 C.F.R. § 54.201(d)(1).

²⁶ *See 2004 Lifeline Order*, 19 FCC Rcd at 8306-7, ¶¶ 5-6.

federal low-income program, while Minnesota has adopted the federal criteria.²⁷ ETCs such as VCI may participate in both the federal and state programs.

8. In June 2006, USAC began an audit review of VCI's December 2005 claims for federal low-income support in Oregon.²⁸ During the audit, USAC informed VCI that it believed VCI was submitting duplicate requests for reimbursement of low-income support.²⁹ VCI did not dispute USAC's finding or the Lifeline and Link Up duplicate line data underlying that finding. USAC ultimately found at the conclusion of the audit that in December 2005 VCI submitted a request for reimbursement for duplicate telephone numbers and addresses in Oregon for which it was not eligible.³⁰

9. In or about August 2006, the Oregon Telephone Assistance Program ("OTAP"), the administrator of the Oregon state low-income programs, conducted an audit into VCI's submissions seeking Oregon state low-income support. The OTAP found that VCI submitted telephone numbers twice or even three times on the same monthly form seeking low-income support. In total, OTAP determined that VCI had submitted more than 1,800 duplicate requests for support in Oregon from June 2004 through March 2006. As a result, OTAP denied the duplicate requests submitted by VCI.³¹ The OTAP administrator informed VCI of these findings by e-mail in August 2006³² and again in a November 2006 Staff Report.³³ Following the OTAP inquiry, on December 8, 2006, the Oregon Public Utility Commission ("OPUC") opened a formal investigation into, among other things, VCI's duplicate billings for Oregon state low-income support.³⁴ These duplicate billings apparently were also included in VCI's claims for federal low-income support.³⁵ Despite the multiple inquiries from state and federal regulatory agencies seeking information about its submissions for low-income support, particularly its submission of duplicate requests for support to state and federal agencies, VCI has failed to revise any of the Form 497s filed with USAC to account for its duplicate low-income support requests.

²⁷ See *id.*, 19 FCC Rcd at 8355, Appendix G (providing that Minnesota has adopted federal eligibility criteria).

²⁸ See Letter from Karen Majcher, Vice President, High Cost & Low Income Division, USAC to Stan Johnson, VCI Company, dated May 30, 2007 ("USAC Recovery Letter").

²⁹ See First LOI Response at Exhibit I, E-Mail from Michael Desrocher, Staff Auditor, USAC to Stanley Johnson, VCI, August 25, 2006, (attaching December 2005 duplicate Lifeline and Link Up line data); see also E-mail from Stanley Johnson, VCI, to Michael Desrocher, Audit Staff, USAC, August 14, 2006, 4:26 PM (admitted that "two of the phone numbers on [the audit] sample list were for the same [Lifeline] consumers").

³⁰ See USAC Recovery Letter. USAC has subsequently recovered from VCI's recent reimbursement the overpayment applied to VCI's December 2005 ineligible lines. See *Id.*

³¹ See E-mail from Julie Thompson, OTAP to Stanley Johnson, VCI, dated August 30, 2006 ("August 30, 2006 OTAP Billing Email").

³² *Id.*

³³ Public Utility Commission of Oregon Staff Report from Vicki McLean, Central Services Administrator, to the Public Utilities Commission, Residential Service Protection Fund: Request to Open a Formal Investigation of Vilaire Company Incorporated dba VCI, dated November 27, 2006 ("OTAP Staff Report"). VCI did not appeal the duplicate telephone numbers findings in the company's response to the OTAP staff report. See Letter from VCI to the OPUC dated December 1, 2006 in response to the OTAP Staff Report.

³⁴ See *Vilaire Company Incorporated, dba VCI, Investigation Into Oregon Telephone Assistance Program Billings, As Well As Revenue And Remittance Reporting*, Order (OTAP Dec. 8, 2006). ETCs such as VCI are eligible to participate in both the federal and state programs.

³⁵ First LOI Response at Exhibit J. The number of duplicate telephone numbers found by OTAP in Oregon matched the total number of duplicate numbers that VCI reported in its LOI response each month from September 2005 through March 2006. Based on these facts, we conclude there is a preponderance of the evidence that VCI submitted the same duplicate requests to USAC.

10. On May 25, 2007 and July 3, 2007, the Enforcement Bureau (“Bureau”) sent Letters of Inquiry to VCI inquiring into the company’s claims for low-income support, primarily in Minnesota, Oregon, and Washington.³⁶ VCI submitted its responses to the Bureau inquiry letters on June 13, 2007,³⁷ June 21, 2007³⁸ and July 12, 2007.³⁹ VCI’s responses demonstrate that in Minnesota, Oregon and Washington the company received reimbursement to which it was not entitled by including duplicate telephone numbers and addresses in the total line counts for Lifeline, Link Up, and TLS support on Form 497s submitted to USAC.

11. 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.⁴⁰ 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.⁴¹ 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 Act⁴² and the Commission has so interpreted the term in the section 503(b) context.⁴³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁴⁴ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁴⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴⁶

³⁶ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Stanley Johnson, VCI Company, dated May 25, 2007 (“May 25th LOI”); Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Stanley Johnson, VCI Company, dated July 3, 2007 (“July 3rd LOI”).

³⁷ Letter from B. Lynn F. Ratnavale, Lukas, Nace, Gutierrez & Sachs, Chartered, Counsel for VCI Company, to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 13, 2007 (Response to Inquiries 1-5 and 6-10) (“First LOI Response”).

³⁸ Letter from B. Lynn F. Ratnavale, Lukas, Nace, Gutierrez & Sachs, Chartered, Counsel for VCI Company, to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 27, 2007 (Response to Inquiry 6) (“Second LOI Response”).

³⁹ Letter from B. Lynn F. Ratnavale, Lukas, Nace, Gutierrez & Sachs, Chartered, Counsel for VCI Company, to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 12, 2007 (“Third LOI Response”).

⁴⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

⁴¹ 47 U.S.C. § 312(f)(1).

⁴² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴³ *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.*”).

⁴⁴ *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).

⁴⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

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

The Commission will then issue forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁷

12. We conclude under this standard that VCI is apparently liable for a forfeiture for its apparent willful or repeated violations of sections 54.407(b), 54.407(c), 54.413(b) and 54.413(a) of the Commission's rules by filing inaccurate Form 497s with USAC seeking duplicate low-income support reimbursement and as a result receiving low-income support to which it was not entitled. Based on a preponderance of the evidence, we find that VCI engaged in a consistent and sustained practice of submitting duplicate requests for reimbursement to USAC and that it consequently received significant support to which it was not entitled. We therefore propose a forfeiture in the amount of \$1,047,500 against VCI for these apparent violations.

III. DISCUSSION

A. VCI Apparently Violated Sections 54.407(c) and 54.413(b) of the Commission's Rules By Submitting Inaccurate Information To USAC

13. The record establishes that VCI failed to maintain accurate records of revenues it was forgoing, as evidenced by its repeated submission of Form 497s that contained duplicate ineligible requests for reimbursement. Moreover, based on the evidence developed in this investigation, we determine that VCI included thousands of duplicate entries in the total line counts for Lifeline, Link Up, and TLS support on its Form 497 submissions from October 2005 through March 2007 to USAC for service provided in Minnesota, Oregon, and Washington.⁴⁸ Consequently, VCI received excessive monthly low-income reimbursements continuing from November 2005 until April 2007.⁴⁹

14. VCI does not dispute the violative, erroneous submissions, but instead merely blames them on a faulty computer system.⁵⁰ Specifically, VCI claims that when culling data for submissions to USAC, its system captured only the low-income customer's social security number and failed to eliminate any duplicate customer telephone numbers or addresses. As a result, when VCI collected information about its eligible consumers for its Form 497 submissions to USAC, it included duplicate requests for reimbursement.⁵¹ Because reimbursement of low-income support is limited to revenues that VCI was forgoing in provisioning a single telephone line per principal residence for each qualified low-income consumer, VCI is required to eliminate duplicate entries, including duplicate telephone numbers or addresses, in seeking full reimbursement for the qualified customer on each Form 497. VCI admits that

⁴⁷ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁴⁸ See First LOI Response, Exhibit J; First LOI Response, Response to Inquiry 15(d); Third LOI Response, Response to Inquiries 44-45.

⁴⁹ First LOI Response, Exhibit J; Third LOI Response at Exhibit R. USAC transmits monthly low-income payment to VCI one month after VCI submits the Form 497. USAC thus disbursed monthly low-income reimbursements to VCI for service provided from September 2005 through February 2007 in each of the respective months from November 2005 through April 2007. See *id.*

⁵⁰ VCI admitted that it initially designed a computer system that extracted data using only the customer's social security number. VCI updated the system to "utilize two additional customer identifiers, telephone number and address," in May 2007 "to ensure that customer data is collected and submitted correctly." First LOI Response, Response to Inquiry 15(d); see also Third LOI Response, Response to Inquiry 44.

⁵¹ VCI used this system to support its reimbursement requests in all states it provided service. Thus, in addition to submitting claims for reimbursement for duplicate telephone numbers and addresses in Minnesota, Oregon, and Washington, VCI also presumably did the same in other states for which it sought reimbursement for support. We will review VCI's actions in these other states in a separate investigation.

“utilizing two additional customer identifiers, telephone number and address”⁵² in the system in addition to the social security number would allow the company to identify these inaccuracies. VCI failed to implement such a compliance measure, however, and continued its conduct in spite of the State of Oregon’s and USAC’s investigations beginning in or around August 2006 of its practices, and actions by both regulatory authorities to disallow or require repayment of low-income support.⁵³ VCI did not correct this faulty system until May 2007.⁵⁴ Accordingly, we conclude that VCI apparently willfully or repeatedly violated sections 54.407(c) and 54.413(b) by filing inaccurate Form 497s with USAC between October 2005 and November 2006 for its service in Oregon and Washington and by filing inaccurate Form 497s with USAC between December 2005 and March 2007 for its service in Minnesota.

B. VCI Apparently Violated Sections 54.407(b) and 54.413(a) By Collecting Lifeline and Link Up Support To Which It Was Not Entitled

15. VCI admits that it received duplicate reimbursement from November 2005 through April 2007⁵⁵ for the same telephone number or address on thousands of lines provisioned in Minnesota, Oregon, and Washington. From November 2005 through December 2006, VCI received support for 8,217 Lifeline and 2,050 Link Up duplicate telephone numbers or addresses for service in these states.⁵⁶ After VCI ceased providing service in Oregon and Washington, VCI continued to receive reimbursement of Lifeline support for another 448 duplicate telephone numbers or addresses from January 2007 through April 2007 for service in Minnesota alone.⁵⁷ VCI has neither attempted to return the excess reimbursements to USAC, nor explained its failure to do so. Accordingly, we conclude that VCI apparently willfully or repeatedly violated section 54.407(b) by collecting reimbursements each month from November 2005 through December 2006 for Lifeline support in Oregon and Washington and by collecting reimbursements each month from January 2006 through April 2007 for Lifeline support in Minnesota. We also conclude that VCI apparently willfully or repeatedly violated section 54.413(a) by collecting reimbursements for Link Up support each month from November 2005 through December 2006 in Oregon and Washington and each month from January 2006 through December 2006 in Minnesota to which it was not entitled under our rules.

C. Proposed Forfeiture

16. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.⁵⁸ 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.”

17. The Commission has not established a base forfeiture amount for the submission of inaccurate requests for universal service support in violation of sections 54.407(c) or 54.413(b) of our rules. We find that a significant forfeiture amount is appropriate. Administering the low-income program

⁵² First LOI Response, Response to Inquiry 15(d).

⁵³ See First LOI Response at Exhibit I.

⁵⁴ Third LOI Response, Response to Inquiry 44.

⁵⁵ See *supra* at n.49.

⁵⁶ First LOI Response at Exhibit J.

⁵⁷ VCI ceased providing service in Washington in January 11, 2007 and in Oregon on February 1, 2007.

⁵⁸ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); see also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

is an intensive undertaking that requires determining that each carrier seeking low-income reimbursement has met all of the Commission's requirements and submitted complete and accurate submissions. If an ETC ignores our rules and submits information that is consistently inaccurate, it undermines the low-income reimbursement mechanism and the universal service program altogether.

18. In this respect, an ETC's filing of inaccurate requests for low-income reimbursement is similar to a carrier's failure to provide accurate revenue information to USAC for the assessment of the carrier's universal service fund contributions. As with the universal service fund contributions cases, we set base forfeiture amounts here that reflect USAC's need to receive consistently accurate and reliable information from carriers. We have established \$50,000 as the base forfeiture amount for a carrier's failure to file accurate revenue information with USAC.⁵⁹ Carriers provide that information in most cases on a quarterly basis via FCC Form 499.⁶⁰ A comparable amount should apply to the filing of inaccurate low-income reimbursement requests, adjusted to reflect the fact that ETCs file FCC Form 497 on a monthly basis. Accordingly, we establish \$20,000 per form as the base forfeiture amount for the filing of inaccurate requests for reimbursement under the low-income program, in violation of sections 54.407(c) and 54.413(b) of the Commission's rules.

19. VCI admits it filed inaccurate Form 497s seeking reimbursement in Oregon and Washington from October 2005 through November 2006, and filed inaccurate forms seeking reimbursement in Minnesota from December 2005 through March 2007.⁶¹ VCI continued to submit these inaccurate reports in spite of state and federal regulatory investigations of its practices and regulatory actions to disallow or require repayment of low-income support. Moreover, VCI has steadfastly refused to refile or file revised requests for support that did not contain duplications.

20. The Commission has not previously determined whether an ETC's failure to file an accurate Form 497 is a continuing violation under section 503(b)(2)(B). We find that a carrier's failure to file an accurate form (or failure to file a form) has a continuing harmful impact on the Universal Service Fund and other related regulatory obligations. In this instance, VCI received and continued to benefit from excessive funds that USAC disbursed as a direct result of VCI's inaccurate form. We therefore conclude that VCI's failure to file accurate Form 497s constitutes a continuing violation as to which the one year statute of limitations for forfeiture in section 503(b)(6)(B) does not begin to run until the violation is cured. We recognize that the Globcom Order suggested that the statute of limitations begins to run on the date a form was filed (or due) and bars a forfeiture issued more than one year later.⁶² We disagree with that finding. Nevertheless, because we are changing course in this order by finding a continuing violation for the failure to file accurate Form 497s, we exercise our prosecutorial discretion here and decline to propose forfeitures for VCI's failures to file Form 497s more than one year prior to the date of the NAL. We caution VCI and other carriers that future enforcement actions may consider all failures to file forms with USAC, including Telecommunications Reporting Worksheets, as continuing violations subject to forfeiture action.

21. For the reasons discussed above, we conclude that VCI is apparently liable for a \$20,000 forfeiture for each inaccurate Form 497 filed within the past year. VCI submitted to USAC sixteen

⁵⁹ See, e.g., *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9979, ¶ 14 (2006) ("*Local Phone Services NAL*").

⁶⁰ Carriers must also file once per year a Form 499-A reporting the previous year's annual revenues.

⁶¹ See *supra* at n.49.

⁶² See, e.g., *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19905, ¶ 34 (2003) (admonishing for failure to file Form 499 more than one year prior to the NAL date).

inaccurate Form 497s from August 2006 through March 2007.⁶³ Accordingly, we propose a \$320,000 forfeiture for VCI's sixteen apparent violations of sections 54.407(c) and 54.413(b) of the Commission's rules.

22. As with the provision of inaccurate information in requests for low-income reimbursements, the Commission has not established a base forfeiture for the unlawful receipt of Lifeline and TLS reimbursements in violation of section 54.407(b) of our rules. Once again, we find that a significant forfeiture amount is justified. Congress explicitly designated the provision of service to low-income consumers one of the key principles upon which the Commission should base its universal service policies.⁶⁴ When an ETC receives Lifeline support to which it is not entitled, however, it undermines this national priority and ultimately threatens to deprive low-income consumers of the essential telecommunications and information services to which they are entitled.

23. In another context, when addressing carriers that fail to comply with recurring universal service contribution obligations, we have imposed significant forfeitures. Specifically, we have proposed a base forfeiture of \$20,000 for each month in which a carrier has failed to pay its USF contribution.⁶⁵ We believe a similar approach is warranted here. In both cases, a carrier has unlawfully deprived the USF of funds at the expense of innocent third parties.⁶⁶ We therefore find it appropriate to impose a \$20,000 base forfeiture for each month in which an ETC, in violation of section 54.407(b), receives Lifeline support to which it is not entitled.

24. From November 2005 through April 2007, VCI admits that it received duplicate Lifeline and TLS reimbursement for 8,665 lines as a result of submitting duplicate telephone numbers, duplicate addresses and, in some cases, both.⁶⁷ The Commission's rules allow an ETC to seek reimbursement from USAC for revenues it forgoes in providing services to low-income consumers but section 54.407(b) limits the amount of Lifeline support to "reimbursement for each qualifying low-income consumer served."⁶⁸ VCI was thus precluded from obtaining reimbursement for a qualifying consumer more than once a month. Despite this restriction, as explained above, VCI received about \$114,000 in Lifeline and TLS support as reimbursement for services it did not provide. Each monthly receipt of excess support constitutes a continuing violation that continues until the ETC has returned the funds to USAC.⁶⁹ VCI received excessive support in eighteen months from November 2005 continuing until April 2007. We propose a base forfeiture of \$360,000 for VCI's eighteen apparent violations of section 54.407(b).

⁶³ As mentioned above, USAC requires an ETC seeking low-income reimbursement to file a Form 497 for each state and month. VCI filed eight inaccurate Form 497s from August 2006 through November 2006 for Oregon and Washington, and eight inaccurate Form 497s from August 2006 through March 2007 for service in Minnesota.

⁶⁴ 47 U.S.C. § 254(b)(3).

⁶⁵ See, e.g., *Local Phone Services NAL*, 21 FCC Rcd at 9980, ¶ 15.

⁶⁶ "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." *Local Phone Services NAL*, 21 FCC Rcd at 9979, ¶ 15.

⁶⁷ First LOI Response at Exhibit J; Third LOI Response at Exhibit R.

⁶⁸ 47 C.F.R. § 54.407(b).

⁶⁹ In this respect, the unlawful receipt of USF monies resembles the failure to pay USF contributions. See *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4723, ¶ 35 n.105 (2006) ("*Globcom Forfeiture Order*") ("Each failure to pay the amount due each month constituted a violation that continued for more than 10 days); *Matrix Telecom, Inc.*, Notice of Apparent Liability, 15 FCC Rcd 13544 (2000); *Conquest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12525, ¶ 16 (1999). Moreover, USAC permits carriers seeking low-income support up to 27 months to revise any Form 497s.

25. Additionally, given the gravity of the harm here, we also find an upward adjustment is appropriate. In our USF contribution enforcement items, we upwardly adjust the forfeiture by one-half of the carrier's balance due to USAC.⁷⁰ We conclude that imposing such an upward adjustment in this situation would adequately punish VCI for its actions at issue here as well as deter other ETCs from seeking excessive support. As we have repeatedly observed, such an upward adjustment of the forfeiture "illustrate[s] that a delinquent carrier's culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contribution it fails to make."⁷¹ We find that it is equally important to consider the damage caused by an ETC's receipt of excessive support. Accordingly, we find that an upward adjustment representing one-half the excessive funds received is proper. Beginning November 2005 and continuing through the receipt of its reimbursement support from USAC in April 2007, VCI received \$114,000 in low-income Lifeline and TLS support to which it was not entitled as a result of seeking reimbursement for duplicate telephone numbers, addresses or both. Adding half of that amount to the proposed base forfeiture amount results in a total proposed forfeiture of \$417,000 for VCI's apparent violation of section 54.407(b).

26. Finally, the Commission has also yet to establish a base forfeiture for the unlawful receipt of Link Up reimbursements in violation of section 54.413(a) of our rules. As above, we find that a significant forfeiture amount is justified. In another context, when addressing carriers that fail to comply with regulatory contribution obligations, we have imposed significant forfeitures. Specifically, we have proposed a base forfeiture of \$20,000 for each month in which a carrier has failed to pay its USF contribution.⁷² We believe a similar approach is warranted here. In both cases, a carrier has unlawfully deprived the USF of funds, at the expense of innocent third parties. We therefore find it appropriate to impose a \$20,000 base forfeiture for each month in which an ETC, in violation of section 54.413(a), receives Link Up support to which it is not entitled.

27. From November 2005 through December 2006, VCI admits that it received duplicate Link Up reimbursement for 2,050 lines as a result of submitting duplicate telephone numbers, duplicate addresses and, in some cases, both.⁷³ The Commission's rules allow an ETC to seek reimbursement from USAC for revenues it forgoes in providing services to low-income consumers but section 54.413(a) limits the amount of Link Up support to "the difference between the carrier's customary connection or interest charges and the charges actually assessed to the participating low-income consumer."⁷⁴ Moreover, our rules and orders have explicitly stated that low-income consumers may receive support only for a single telephone line in their principal residence.⁷⁵ VCI was thus precluded from obtaining reimbursement for a qualifying consumer more than once. Despite this restriction, as explained above, VCI received about \$61,000 in Link Up support as reimbursement for services it did not provide. Each monthly receipt of excess support constitutes a continuing violation that continues until the ETC has returned the funds to USAC.⁷⁶ VCI received excessive Link Up support for fourteen months from November 2005 continuing

⁷⁰ See, e.g., *Local Phone Services NAL*, 21 FCC Rcd at 9980, ¶ 16.

⁷¹ *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, FCC 07-58 at ¶ 28 & n.87 (rel. May 3, 2007) (citing cases).

⁷² See, e.g., *Local Phone Services NAL*, 21 FCC Rcd at 9980, ¶ 15.

⁷³ First LOI Response at Exhibit J; Third LOI Response at Exhibit R.

⁷⁴ 47 C.F.R. § 54.413(b).

⁷⁵ See *1997 Universal Service Order*, 12 FCC Rcd at 8957, ¶ 341; *2004 Lifeline Order*, 19 FCC Rcd at 8306, ¶ 4; See also C.F.R. §§ 54.411(a)(1), (c).

⁷⁶ See *supra* n.69.

through December 2006. We therefore propose a base forfeiture of \$280,000 for VCI's fourteen apparent violations of section 54.413(a).

28. For the reasons stated in our discussion of VCI's apparent violations of section 54.407(b), we also propose an upward adjustment of one-half the amount of excess Link Up support received by VCI. Beginning November 2005 and continuing through the receipt of its reimbursement support from USAC in December 2006, VCI received approximately \$61,000 in Link Up support to which it was not entitled as a result of seeking reimbursement for duplicate telephone numbers, addresses or both. Adding half of that amount to the proposed base forfeiture amount results in a total proposed forfeiture of \$310,500 for VCI's apparent violation of section 54.413(a).

IV. CONCLUSION

29. We conclude that VCI is apparently liable for the following proposed forfeitures: (1) \$320,000 for failure to file accurate form 497s of the revenues it was forgoing in providing low-income service; (2) \$417,000 for unlawful receipt of excessive reimbursement for Lifeline support; and (3) \$310,500 for unlawful receipt of excessive reimbursement for Link Up support. In sum, we hold that VCI is apparently liable for a total forfeiture of \$1,047,500. Further violations of the Commission's rules governing the filing of accurate information seeking reimbursement and receipt of low-income support will constitute additional violations subjecting VCI to possible increased enforcement action. Such enforcement action could take the form of higher forfeitures. In addition, the Commission may suspend support disbursements to an ETC or revoke the carrier's designation as an ETC upon evidence that indicates the carrier is no longer in compliance with the Commission's criteria for ETC designation.⁷⁷

30. We warn carriers that if the forfeiture methodologies described herein are not adequate to deter violations of our USF rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them as circumstances require.

V. ORDERING CLAUSES

31. 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 VCI is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$1,047,000 for willfully or repeatedly violating the Commission's rules.

32. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁷⁸ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, VCI SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

33. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i) of the Act,⁷⁹ and sections 54.407(c) and 54.413(b) of the Commission's rules,⁸⁰ within thirty days of the release of this NOTICE OF APPARENT LIABILITY AND ORDER, VCI SHALL SUBMIT to USAC revised FCC Form 497s excluding all requests for duplicate universal service reimbursement for qualifying low-income customers served from August 2004 to August 2007.

34. 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

⁷⁷ See, e.g., *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 6371, 6402, ¶ 72 (2005).

⁷⁸ See 47 C.F.R. § 1.1914.

⁷⁹ 47 U.S.C. § 4(i).

⁸⁰ 47 C.F.R. §§ 54.407(c) and 54.413(b).

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 9116229.

35. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

36. 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.

37. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Deputy Chief Financial Officer, Federal Communications Commission, Room 1-A637, 445 12th Street, S.W., Washington, D.C. 20554.⁸¹

38. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to B. Lynn F. Ratnavale, Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Boulevard, Suite 1500, McLean, Virginia, 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸¹ See 47 C.F.R. § 1.1914.