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

In the Matter of	)	File No. EB-06-IH-3060
	)	
	)	NAL/Acct. No. 200832080083
Compass Global, Inc.	)	
	)	FRN No. 0009690256
	)	
Apparent Liability for Forfeiture	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 8, 2008 Released: April 9, 2008

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find that Compass Global, Inc. ("Compass") apparently violated sections 9, 225, 251(e)(2), and 254 of the Communications Act of 1934, as amended (the "Act"),[1] and sections 1.1154, 1.1157, 52.17(a), 52.32(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules,[2] by willfully or repeatedly failing to make the required regulatory payments as well as to contribute fully and timely to the Universal Service Fund ("USF"), Telecommunications Relay Service ("TRS") Fund, and cost recovery mechanisms for the North American Numbering Plan ("NANP") administration and Local Number Portability ("LNP"). Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Compass is apparently liable for a total forfeiture of $828,613.44.

II. BACKGROUND

2. The Act 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.[3] 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."[4] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to register with the Commission, comply with annual and quarterly filing requirements and contribute to the universal

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[1] 47 U.S.C. §§ 159, 225, 251(e)(2), 254.

[2] 47 C.F.R. §§ 1.1154, 1.1157, 52.17(a), 52.32(a), 54.706(a), 64.604(c)(5)(iii)(A).

[3] *See* 47 U.S.C. § 254. The Telecommunications Act of 1996 amended the Communications Act of 1934. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[4] 47 U.S.C. § 254(d).

service fund based upon their interstate and international end-user telecommunications revenues.[5] The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.[6] Failure by some providers to pay their share into the USF skews the playing field by giving non-paying providers an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the universal service fund. The Universal Service Administrative Company ("USAC") currently administers the USF.[7] USAC bills carriers each month, including Compass, based on their quarterly contribution amount.[8] The National Exchange Carrier Association ("NECA"), which administers the TRS fund, bills carriers each July based upon their annual revenue**.**[9] Consistent with the Debt Collection Improvement Act of 1996 ("DCIA"),[10] USF or TRS contributions that have become over 90 days delinquent are transferred to the Commission for further action to collect the outstanding debt.[11]

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[5] 47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier's projected, rather than historical, revenues. *Id.* *See also 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, 24969-74, ¶¶ 29-39 (2002) ("*Interim Contribution Order*").

[6] *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) ("*2006 Contribution Methodology Order*"), *petition for review denied, and vacated in part on other grounds*, *Vonage Holding Corp. v. FCC*, 489 F.3d 1232, (D.C. Cir. 2007).

[7] 47 C.F.R. § 54.701(a).

[8] *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); *Interim Contribution Order*, 17 FCC Rcd at 24971-72, ¶ 35; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Board on Universal Service*, Second Order on Reconsideration, 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 dates by which payments must be made.") *See, e.g.*, "Proposed Second Quarter 2006 Universal Service Contribution Factor," Public Notice, 21 FCC Rcd 2379, 2381 (Wireline Comp. Bur. 2006) ("Contribution payments are due on the date shown on the [administrator] invoice.").

[9] *See* "TRS Resources," online available: http://www.neca.org/source/NECA_Resources_216.asp. 17 July 2007.

[10] *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). In 2004, the Commission adopted rules implementing the DCIA requirements. *See Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540 (2004) ("*DCIA Order*"). In its Order, the Commission codified procedures at 47 C.F.R. § 1.1910, the "red light rule," to extend and clarify existing policies in the management of the Commission's accounts, and to withhold action on applications or other requests for benefits by delinquent debtors, and ultimately to dismiss such applications or other requests if the delinquency is not resolved. *See* 47 C.F.R. § 1.1910; *DCIA Order*, 19 FCC Rcd at 6541-45 ¶¶ 3-15. The DCIA rules specify that the term "Commission" includes the USF, TRS Fund, "and any other reporting components of the Commission." *See* 47 C.F.R. § 1.1901(b). Thus, the Commission has determined that unpaid obligations to the USF, TRS, and the cost recovery mechanisms for NANP administration are subject to the DCIA.

[11] Effective July 1, 2003, USAC implemented new collection procedures as required by the DCIA and the Commission. Pursuant to those procedures, invoices for USF contributions that become over (continued)

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.[12] The Commission also has been charged by Congress to establish, administer and maintain various telecommunications regulatory programs, 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 qualified, do not engage in fraud, and do not evade oversight.[13] Commission rules require that, upon entry or anticipated entry into interstate telecommunications markets, telecommunications carriers register by submitting information on FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet ("annual Worksheets").[14]

4. Additionally, the Commission has established specific procedures to administer the universal service program. A carrier is required to file the FCC Form 499-A, for the purpose of determining its USF payments,[15] and, with certain exceptions, to file quarterly short-form Worksheets ("quarterly 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.[16] The Commission's rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.[17]

5. Title IV of the Americans with Disabilities Act of 1990, codified at 47 U.S.C. § 225, directs the Commission to ensure that interstate and intrastate TRS are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech impaired individuals in the United

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(continued from previous page) 90 days delinquent are transferred to the Commission for further collection. *See* Universal Service Administrative Company, "Important Invoicing Deadlines," http://www.universalservice.org/fund-administration/contributors/understanding-your-invoice/important-invoicing-deadlines.aspx (last visited July 16, 2007). Debt collection procedures may include further administrative efforts both by the Commission and the United States Treasury or, as appropriate, the Commission may refer the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917. Collection efforts may result in additional charges, to include interest and penalties, as provided under 31 U.S.C. § 3717, and administrative charges pursuant to 47 C.F.R. §§ 1.1940 and 54.713, 31 C.F.R. § 285.12(j).

[12] *See, e.g.,* 47 U.S.C. § 151.

[13] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16024-26 (2000) ("*Carrier Selection Order*").

[14] 47 C.F.R. § 64.1195.

[15] Upon 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 is used to track the carrier's contributions and invoices.

[16] Individual 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). As of April 1, 2003, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historic gross-billed revenue. *See Interim Contribution Order*, 17 FCC Rcd at 24969-74, ¶¶ 29-39.

[17] 47 C.F.R. § 54.713.

States.[18] The Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.[19] TRS enables persons with hearing and speech disabilities to communicate by telephone with voice telephone users. TRS provides telephone access to a significant number of Americans who, without it, might not be able to make or receive calls.[20] Pursuant to section 64.604 of the Commission's rules, every carrier providing interstate telecommunications services must contribute to the TRS fund.[21] As discussed above, NECA invoices common carriers each year for their contribution based on their interstate revenues,[22] and like USF contributions, outstanding TRS obligations are subject to the DCIA.[23]

6. In addition, section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.[24] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements . . . shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[25] In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.[26] The Commission also adopted section 52.32 of its rules, which requires that all telecommunications carriers contribute toward the costs of local number portability on the basis of their end-user telecommunications revenues for the prior calendar year.[27] Similar to USF and TRS, outstanding NANP administration payments and LNP payments are also subject to the DCIA.[28]

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[18] Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Act).

[19] *See Telecommunications Relay Services and the Americans with Disabilities Act of 1990,* Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993) (*TRS III Order*).

[20] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, ¶ 5 (2000).

[21] *See* 47 C.F.R. § 64.604(c)(5)(iii).

[22] All carriers providing interstate telecommunications services (including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service, access, alternative access and special access, packet-switched, WATS, 800, 900, message telephone, private line, telex, telegraph, video, satellite, international, intraLATA, and resale services) must contribute to the TRS Fund on the basis of their interstate end-user telecommunications revenues. *See 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,* Report and Order, 14 FCC Rcd 16602, 16630-34, ¶¶ 59-67; 47 C.F.R. § 64.604(c)(5)(iii).

[23] *See supra* para. 2, note 10. Any entity owing money to the TRS Fund will be considered delinquent if payment is not made by the due date specified on the annual or monthly invoice. NECA notifies the Commission of all TRS delinquencies. *See* National Exchange Carrier Association, "Red Light Rule Notice- October 2004," http://www.neca.org/SOURCE/NECA_RESOURCES_3430.ASP (last visited July 16, 2007).

[24] 47 U.S.C. § 251(e)(1).

[25] 47 U.S.C. § 251(e)(2).

[26] 47 C.F.R. § 52.17(a).

[27] 47 C.F.R. § 52.32.

[28] *See* 47 C.F.R. § 1.1901 *et seq*.

7. 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.[29] 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.[30] Such fees must be paid on an annual basis,[31] and failure to do so subjects a carrier to late payment penalties, as well as possible revocation of its operating authority.[32] 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.[33]

8. Compass, a New Jersey-based company, has provided telecommunications services since 1998.[34] Compass currently provides telecommunications services as a toll reseller and a prepaid card provider.[35] On May 7, 2007, the Bureau issued a letter of inquiry ("LOI"), initiating an investigation into whether Compass may have violated, the Act and the Commission's rules.[36] After receiving two extensions of time, Compass responded to the LOI on June 29, 2007.[37] Compass filed supplemental materials on July 30, 2007.[38] Among other services, Compass provides unaffiliated companies with toll-free access to its PIN-accessible, prepaid calling-card switching platform.[39] Compass provides these companies with platform access and switching capabilities for delivery of their private label prepaid calling cards.[40] While Compass argues that it is not obligated to contribute to universal service based on most of the services it provides,[41] it admits in its initial response that it is a provider and/or consumer of

[29]Section 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.

[30]*See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

[31]47 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.

[32]*See* 47 U.S.C. §§ 159(c)(1), (c)(3).

[33]47 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).

[34] *See* Letter from Jonathan S. Marashlin, Counsel for Compass, to Brian Hendricks, Attorney Advisor, Investigations & Hearings Division, Enforcement Bureau, FCC, dated June 29, 2007, at 1 and Attachment 1 ("LOI Response").

[35]*See* Compass' 2005 FCC Form 499-A Telecommunications Reporting Worksheet, *LOI Response* at Attachment 6-B; Compass' 2006 FCC Form 499-A Telecommunications Reporting Worksheet, *Id*. at Attachment 6-B; Compass' 2007 FCC Form 499-A Telecommunications Reporting Worksheet, *Id.* at Attachment 6-E.

[36] Letter from Trent Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Mr. Dean Cary, President and Chief Executive Officer, Compass Global, Inc., dated May 7, 2007 ("LOI").

[37] *See LOI Response*.

[38] Letter from Jonathan S. Marashlian, Counsel for Compass, to Brian Hendricks, Attorney Advisor, Investigations and Hearings Division, and Trent Harkrader, Deputy Division Chief, Investigations and Hearings Division, July 30, 2007. ("*Supplemental Response*").

[39] *LOI Response* at 2 Inquiries 1 and 2.

[40] *Id.* at 1-2.

[41] *See LOI Response* at 2 inquiry 2.

"telecommunications services," with regard to its "switched toll free inbound service that is integrated with Compass' PIN accessible switching platform service."[42] In its Supplemental Response, however, Compass argues it is not providing a telecommunications service, and is thus not required to report revenue on a Form 499-A. Compass explains that consumers purchase prepaid calling cards from its business customers and may place interstate and international calls by dialing a toll-free number accessing Compass' network. Compass sells this access to its network only to other companies, not directly to consumers, and the prepaid calling cards sold to consumers by Compass' business customers do not identify Compass as either the calling card provider or the network services provider.[43] Compass argues it does not provide a telecommunications service because it does not sell or market prepaid calling card directly to consumers. In addition, Compass states it provides an "Enhanced Wholesale Service" by reselling network capacity to communications companies who transmit their international voice and data calls over the Compass Internet Protocol network. Compass contends this service is not a telecommunications service because it is only offered wholesale and, as an exclusively IP-enabled service, it is only characterized as an information service.[44]

9. Compass has a history of failing to comply with the Commission's rules. On December 27, 2006, prior to the initiation of the current investigation, the Commission proposed a forfeiture against Compass for apparent violations of the Commission's payphone compensation rules. The Commission determined that Compass, among other apparent violations, had apparently violated our rules and the Act by failing to establish on a timely basis a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion; failing to have that call tracking system audited; and failing to compensate payphone service providers for calls or provide compliant call data reports. The Commission also found that Compass failed to respond on a timely basis to a directive of the Enforcement Bureau to provide information and documents.[45] Compass' compliance problems did not end with its payphone compensation obligations. Compass also concedes that it did not register or file any of the required Form 499s until September 2006 when it filed its Form 499-A reporting revenue for the year 2005, five months late.[46] Compass then timely filed a 2007 Form 499-A reporting revenue for 2006 on March 27, 2007.

10. On July 30, 2007, however, Compass submitted to the Bureau two Form 499s purportedly revising the 2007 and 2006 Form 499-As. Compass provided the Form 499s at the same time it provided its Supplemental Response, arguing that neither the prepaid calling card service nor the IP transport service was a telecommunications service. Compass explains that it revised the Form 499-As to correct its previous, mistaken filings that reported what they now argue is non-telecommunications revenue as telecommunications revenue. Compass also explains in the Supplemental Response that the revised 499-As account for the retail revenue it derives from the prepaid calling card service as ordinary long distance out of an abundance of caution.[47] The revenue Compass reported on the revised 2006 and 2007 forms dated July 30, 2007 was significantly less than initially reported on the original Form 499s. Compass has yet to submit the revised Form 499-As to USAC. One day after submitting its Supplemental Response and revised Form 499-As to the Bureau, however, Compass did file with USAC

[42] *LOI Response* at 3 inquiry 5.

[43] *Supplemental Response* at 3.

[44] Supplemental Response at 2.

[45] *Compass, Inc. D/B/A Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 15132 (2006).

[46] LOI Response at 3 inquiry 5.

[47] *Supplemental Response* at 5. Compass further represents it will continue to report and pay contributions on the revenue from the prepaid card service out of abundance of caution.

another version of the revised 2007 Form 499-A. This filing reported revenues far greater than that reported on the revised Forms submitted to Bureau, but less than originally reported on the Form 499-A dated March 27, 2007.

III. DISCUSSION

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.[48] 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.[49] 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[50] and the Commission has so interpreted the term in the section 503(b) context.[51] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[52] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[53] 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.[54] 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.[55]

12. The fundamental issues in this case are whether Compass Is a telecommunications carrier and therefore apparently violated the Act and the Commission's rules by: (1) failing to timely pay in full USF contributions; (2) failing to timely pay in full TRS Fund contributions; (3) failing to timely pay contributions to NANP administration cost recovery mechanisms; (4) failing to timely pay LNP contributions; and (5) willfully or repeatedly failing to pay regulatory fees to the Commission. We answer this/these questions affirmatively. Based on a preponderance of the evidence, we therefore conclude that Compass is apparently liable for a forfeiture of $828,613.44 for apparently willfully and

[48] 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); s*ee also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

[49] 47 U.S.C. § 312(f)(1).

[50] H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503). . . . As defined . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . . .").

[51] *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

[52] *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, Inc.*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

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

[54] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[55] *See, e.g., SBC Communications, Inc*., Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

repeatedly violating sections 9, 225, 251(e)(2), and 254 of the Act and sections 1.1154, 1.1157, 52.17(a), 52.32(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules.[56]

A. Compass Provides Telecommunications Services

13. Compass argues that that the services at issue are "IP-in-the-middle" wholesale services, and that they, as well as prepaid calling card services, are not "telecommunications services." As discussed below, we find these services are telecommunications services subject to our regulations and, upon reviewing Compass' compliance with our rules, conclude that Compass apparently violated the Act and our rules by failing to timely pay in full contributions toward the Universal Service, TRS Funds, cost recovery mechanisms for NANP administration and LNP, and required regulatory fees.

14. We conclude that the wholesale services Compass sells to prepaid calling card providers are telecommunications services under our rules and the Act. "Telecommunications service" is defined as "the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of the facilities used."[57] "Telecommunications" means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[58] Compass explains that consumers purchase prepaid calling cards from its business customers and are able to place interstate and international calls by dialing a toll-free number accessing Compass' network – *i.e.*, "switched toll free inbound service that is integrated with Compass' PIN accessible switching platform service."[59] Compass sells this access to its network only to other companies, not directly to consumers, and the prepaid calling cards sold to consumers by Compass' business customers do not identify Compass as either the calling card provider or the network services provider. Compass does not dispute that its provision of prepaid calling cards constitutes "the offering of telecommunications." Indeed, Compass has admitted the telecommunications nature of this service.[60] Rather, the sole basis for Compass' argument is that its provision of this service is on a wholesale basis and thus does not constitute a "telecommunications service" because Compass does not provide this service to the public.[61]

15. Compass' reliance on the wholesale nature of this service is misplaced. As we have previously stated, "[t]he definition of 'telecommunications services' long has been held to include both retail and wholesale services under Commission precedent."[62] The Commission has previously held that the phrase "to the public" in the definition of "telecommunications service" does not mean a service must be offered to the entire public to qualify as a telecommunications service. A service offered to a defined class of potential customers is a telecommunications service as long as the service provider "holds itself out indiscriminately to serve all within that class."[63] To qualify as a telecommunications carrier,

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[56] 47 U.S.C. § 159, 225, 251(e)(2), and 254; 47 C.F.R. § 1.1154, 1.1157, 52.17(a), 52.32, 54.706(a), 64.604(c)(5)(iii)(A).

[57] 47 U.S.C. § 153(46).

[58] 47 U.S.C. § 153(43).

[59] *LOI Response* at 3 inquiry 5.

[60] *See supra*. para. 8,

[61] *Supplemental Response* at 3-4.

[62] *See, e.g., Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 22033, para. 264 (1996) (subsequent history omitted) (*Non-Accounting Safeguards Order*)

[63] *Iowa v. FCC*, 218 F.3d 756, 759 (D.C. Cir. 2000).

companies only need to offer indiscriminate service to whatever public their services may legally and practically be of use.[64] Thus, the focus of the inquiry is on whether the carrier offers its telecommunications in such a manner as to make it a common carrier,[65] *i.e.*, by "hold[ing itself] out to serve indifferently all potential users."[66] Compass has provided no evidence that the wholesale services provided to prepaid calling card companies are not available indiscriminately to all companies seeking to provide prepaid card services. We therefore conclude that Compass' offering of wholesale service to prepaid calling card providers is a telecommunications service.

16. We are also not persuaded that Compass' invocation of an Enforcement Bureau Order resolving a formal complaint compels a finding that Compass is not providing telecommunications services. *APCC Services, Inc. v. Network IP, LLC* involved a section 208 formal complaint against Network IP, a telecommunications carrier offering other companies a package of services enabling those companies to provide prepaid calling cards to end-user customers.[67] The complainants alleged that Network IP failed to pay compensation required by the Commission's payphone compensation rules, and the Bureau ultimately agreed.[68] Compass contends that its wholesale platform providing voice, information, call routing and account management services is similar to Network IP's platform, but Compass fails to explain how this supports a finding that Compass is not a telecommunications service provider. Like Network IP, Compass offers other companies this wholesale services package which is used to provide prepaid calling cards to consumers.[69] *APCC* finds that Network IP — not the business customers to whom Network IP provides wholesale service — was obligated to make payphone compensation payments, and the Order repeatedly describes the wholesale service package provided by Network IP as "telecommunications services," enabling Network IP's business customers to offer prepaid calling card services to the public.[70] Our determination that Compass' provision of wholesale service to prepaid calling card providers is a telecommunications service is therefore consistent with the treatment of Network IP's wholesale package.

17. We also conclude that the services Compass calls "Enhanced Wholesale Service" are also telecommunications services. Compass resells network capacity to communications companies who transmit international voice calls and data over Compass' IP network. Compass claims it mistakenly reported revenue derived from this service on the Form 499-As originally filed in 2006 and 2007 as "telecommunications."[71] Compass argues this service is not a telecommunications service because it is an "enhanced/information service" that receives and transmits communications exclusively in Internet

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[64] *NARUC v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976). *Non-Accounting Safeguards Order,* 11 FCC Rcd at 22033, para. 265 (finding that the inclusion of the term "to the public" reflected the distinction between common and private carriage, and thus did not limit "telecommunications service" to services offered to retail, and not wholesale, customers).

[65] *Time Warner Cable Request for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act Of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517-18, ¶¶ 11-12 (2007).

[66] *NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976).

[67] *APCC Services, Inc. et al. v. Network IP, LLC et al., LLP.*, Memorandum Opinion and Order, 20 FCC Rcd 2073 (Enf. Bur. 2005).

[68] *See* 47 C.F.R. § 64.1300.

[69] *Supplemental Response* at 4.

[70] *See APCC Services v. Network IP*, 20 FCC Rcd at 2074 ¶ 2, 2077 ¶ 10.

[71] *Supplemental Response* at 3.

Protocol.[72] Compass argues that its service must be an information service because it utilizes only IP and does not transmit voice traffic using traditional methods.[73]

18. We reject Compass' argument. The Act says the term "information service" means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[74] The Commission has said that the definitions of "telecommunications service" and "information service" do not hinge on the particular type of facilities used, but on the functions available.[75] Thus, the fact that Internet Protocol is used exclusively as transport for the traffic has no bearing on whether these voice and data services are appropriately considered telecommunications service. The Commission has also said that services that are not so inextricably linked with information-processing capabilities, but are utilized by end-users of the service for basic transmission purposes, are telecommunications services and subject to Title II requirements.[76] We cannot conclude Compass' services are inextricably linked with the information-processing capabilities. Compass' services, including the offering of network access for basic voice services, are used by end users for basic transmission purposes, and thus we find the services are telecommunications services subject to Title II requirements.

19. We also reject Compass' contention that its wholesale access transport service is not a telecommunications service because it differs from the telecommunications service in the *AT&T IP Telephony Services Order*.[77] In that Order, the Commission found AT&T's service, which transported voice traffic by utilizing Internet Protocol in some parts, was a telecommunications service for which AT&T was obligated to pay interstate access charges.[78] The Commission expressly limited its decision to AT&T's interexchange service. This service was found to enable end users to place calls using ordinary customer premises equipment with no enhanced functionality that originated and terminated on the public switched telephone network. The service also underwent no net protocol conversion and provided no enhanced functionality to end users due to the use of the IP technology.[79] Compass claims the

[72] *Supplemental Response* at 2-3.

[73] *Supplemental Response* at 3.

[74] 47 U.S.C. § 153(20).

[75] *Inquiry Concerning High-Speed Access To The Internet Over Cable And Other Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4821 ¶35 (2002) (subsequent history omitted) (*Cable Modem Declaratory Ruling and NPRM*).

[76] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements; Conditional Petition of Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160 (C) With Regard to Broadband Services Provided via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided via Fiber to the Premises; Consumer Protection in the Broadband Era*; Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14860-61, ¶ 9 (2005).

[77] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7460 (2004) ("*AT&T IP Telephony Services*") (citations omitted).

[78] *Id.*

[79] *Id.* at 7465.

Commission's holding was limited only to retail, end-to-end service offerings, arguing that its service is not a telecommunications service because it is not an end-to-end retail service.[80]

20. We do not agree with Compass' narrow reading. Compass describes the services it provides as international wholesale services, provided to other communications companies, who then in turn use the service to transmit voice and data.[81] Compass does not claim its service undergoes any net protocol conversion nor does it claim its service enables end users a "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information," which, according to *AT&T IP Telephony Services*, would be required to characterize it as an information service.[82] Compass also does not claim end users place or receive voice calls any differently because of the IP portion of the service than they would if using traditional circuit-switched service. If anything, much like the service at issue in the *AT&T IP Telephony Services Order*, any use of IP services appears to be for transport only and similar to "internetworking conversions" which the Commission has found to be telecommunications services.[83] Additionally, a finding that the services Compass provides are telecommunications services regardless of the fact that IP is used for the entirety of the transmission service is consistent with the Commission's prior ruling in the *2006 Prepaid Calling Card Order*. In that case, AT&T had stated that it developed a new prepaid calling card that used IP technology to transport part or all of the call, and the Commission ultimately determined that these calling card services were "telecommunications service."[84] The Commission has for many years recognized that packet switched interstate transmission services may appropriately be classified as telecommunications services.[85] We therefore conclude that Compass' wholesale access service is a telecommunication service. Having found that Compass' wholesale access services are telecommunications services, it follows that the revenue Compass derives from its wholesale prepaid calling card services and its wholesale access services must reported on the FCC Form 499-A.

B. Compass Apparently Failed To Make Universal Service Fund Contributions

21. Section 54.706(a) unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support mechanisms."[86] Compass has demonstrated a pattern of failing to fulfill its contribution obligations by making insufficient payments to the USF. The record is clear that between May 2005 and December 2005 as well as between January 2006 and December 2006, Compass failed to make any payments to

[80] *Supplemental Response* at 3. For the reasons discussed above, we determine the fact that Compass provides wholesale rather than retail service does not determine if the service is a telecommunications service.

[81] *Supplemental Response* at 2.

[82] *AT&T IP Telephony Services,* 19 FCC Rcd at 7465.

[83] *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21957 ¶ 106. Although the term "internetworking conversions" as used by the Commission in the *Non-Accounting Safeguards Order* and the *AT&T IP Telephony Services Order* refers to conversions occurring solely within a carrier's network to facilitate the provision of a basic network service, we find it equally applicable to the arrangement Compass describes involving multiple carriers on a single call path.

[84] *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 ("*2006 Prepaid Calling Card Order*").

[85] *Deployment of Wireline Services Offering Advanced Telecommunications Capacity*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012.

[86] 47 C.F.R. § 54.706(a).

USAC.[87] Additionally, in 2007 Compass failed to make January and March payments. As a result of these failures, Compass has consistently maintained large outstanding USF balances with USAC, particularly over the past three years. Compass has accrued $159,005 in overdue payments. 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.[88]

22. Based on the preponderance of the evidence, we find that Compass has apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by willfully or repeatedly failing to contribute fully and timely to the USF.

C. Compass Apparently Failed to Make TRS Contributions

23. As an interstate telecommunications carrier, Compass was obligated to contribute to the TRS fund on the basis of its interstate end-user telecommunications revenues.[89] A carrier's contribution to the TRS Fund is based upon its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.[90] Subject carriers must make TRS contributions on an annual basis, with certain exceptions that are not applicable to Compass.[91] The record indicates that to date Compass has failed to make any payments towards its TRS Fund obligation.[92] We therefore conclude that Compass has apparently violated section 225 of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully or repeatedly failing to make full and timely TRS contributions.[93]

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[87] *LOI Response* at Attachment 7 shows no payments in 2006. USAC did not receive payments from Compass prior to February 16, 2007. *See* Email from Tracey Beaver, USAC, to Elizabeth Mumaw, Investigations and Hearings Division, FCC, July 13, 2007.

[88] *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893,19903, ¶ 26 (2003) ("*Globcom NAL*"); *See e.g.*, *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4724, ¶ 37 (2006) ("*Globcom Forfeiture Order*").

[89] 47 C.F.R. § 64.604(c)(5)(iii)(B).

[90] *Id*.

[91] *Id*. Under the Commission's rules, each subject carrier must contribute at least $25 per year, and carriers whose annual contributions are less than $1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, carriers may divide their contributions into equal monthly payments. *Id*.

[92] *See* Marina Aparicio, NECA, Email to Evelyn Lombardo, Investigations and Hearings Division, Enforcement Bureau, FCC, 16 July 2007.

[93] Despite the fact that Compass consistently failed to remit full and timely payments for monthly TRS invoices, we exercise our discretion in finding that Compass apparently violated section 225 of the Act and section 64.604 of the Commission's rules only twice because the TRS obligation is an annual assessment which can, and was in the instant matter, divided into equal monthly payments for the 2005 and 2006 billing cycles. *See e.g., Globcom Forfeiture Order*, 21 FCC Rcd at 4721, ¶ 31 (assessing forfeiture based on carrier's failure to pay monthly invoices for USF and TRS).

D. Compass Apparently Failed to Make Timely NANP Administration Contributions

24. As a telecommunications carrier, Compass was obligated to contribute to NANP administration cost recovery mechanisms on the basis of its end-user telecommunications revenues.[94] The record demonstrates that Compass has failed to make timely NANP payments in 2005 and 2006. Compass failed to make a payment until April 12, 2007[95] We therefore conclude that Compass has apparently violated section 251(e)(2) of the Act and section 52.17(a) of the Commission's rules by willfully or repeatedly failing to make timely NANP administration contributions.

E. Compass Apparently Failed to Make Timely LNP Contributions

25. As a telecommunications carrier, Compass was obligated to contribute to the LNP cost recovery mechanisms on the basis of its end-user telecommunications revenues.[96] The record demonstrates that Compass has repeatedly failed to make timely LNP payments since 2005.[97] The first payment was made by Compass on April 9, 2007 and even then Compass failed to make a full payment.[98] We therefore conclude that Compass has apparently violated section 252(e)(2) of the Act and section 52.32(a) of the Commission's rules by willfully or repeatedly failing to make timely LNP contributions.

F. Compass Apparently Failed to Pay Its Regulatory Fees

26. As an interstate telephone service provider, Compass was required to pay regulatory fees on the basis of its interstate and international end-user revenues.[99] Compass admits that to the best of its knowledge it has never paid FCC regulatory fees.[100] For these reasons, we find that Compass 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 in 2005 and 2006.

G. Proposed Forfeiture Amount

27. Section 503(b)(1) 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.[101] 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

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[94] 47 C.F.R. § 52.17(a). In particular, contributions to support numbering administration are based upon a carrier's end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the Chief of the Wireline Competition Bureau, but in no event will be less than $25. NANP administration contributions are due on an annual basis, with certain exceptions.

[95] Email from Heather Bambrough, Welch and Company, to Elizabeth Mumaw, Investigations and Hearings Division, July 17, 2007.

[96] 47 C.F.R. 52.32(a).

[97] *LOI Response* at Exh. 7. The NANP Administrator confirms this record of non-compliance. *See* Email from Ahita Vessali, Neustar, to Elizabeth Mumaw, Investigations and Hearings Division, July 19, 2007.

[98] Email from Ahita Vessali, Neustar, to Elizabeth Mumaw, Investigations and Hearings Division, FCC, July 23, 2007.

[99] *See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1). Regulatory fees are paid in arrears for the previous calendar year.

[100] *LOI Response* at 7 inquiry 11.

[101] 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

violation, up to a statutory maximum of $1,325,000 for a single act or failure to act.[102] In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) 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."[103]

28. We note that although Compass has been providing telecommunications service since at least 2005, it failed to file FCC Form 499 Worksheets until September 7, 2007. A carrier's obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, LNP and regulatory fee programs. By failing to report its revenue, Compass has avoided making full payment into these programs and has unilaterally shifted to compliant carriers and their customers the economic costs associated with the programs.

29. Compass should have filed Worksheets when it first began providing telecommunications service in the United States. Although the Worksheets were due on specific dates, Compass' failure to report revenue had a continued, harmful impact on various programs because the relevant fund administrators could not assess Compass' payment obligations. Based on this conclusion, we therefore reconsider our previous position, as stated in the *Globcom Forfeiture Order*, that the statute of limitations under section 503(b)(2)(B) bars a forfeiture for the failure to file a Worksheet more than one year beyond the filing deadline.[104] Rather, Compass' failures to file constitute continuing violations for which the statute of limitations for forfeiture is tolled until the violation is cured. Because of our previous position, however, we exercise our prosecutorial discretion here and decline to propose forfeitures for Compass' failures to file Worksheets more than one year prior to the date of the NAL. We caution Compass and other carriers that future enforcement actions may consider all failures to file Worksheets as continuing violations subject to forfeiture action.

30. Based on the facts above, Compass apparently has consistently failed to make timely and full payments to the USF in 2005, 2006 and into 2007. 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.[105]

31. Generally, the Commission has established a base forfeiture amount of $10,000 or $20,000 for each month in which a carrier has failed to fully pay required universal service contributions,[106] plus an upward adjustment based on one-half of the company's approximate unpaid

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[102] 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,* Order, 19 FCC Rcd 10945 (2004).

[103] 47 U.S.C. § 503(b)(2)(E).

[104] *Globcom Forfeiture Order,* 21 FCC Rcd at 4721 n.83 ("[W]e imposed an admonishment rather than a proposed forfeiture regarding the [Globcom's failure to file its Year] 2000 revenue information because the statute of limitations for a forfeiture action had already elapsed."). *See also Globcom NAL,* 18 FCC Rcd at 19902 n.63 ("Under section 503(b)(6) of the Act and section 1.80(c)(3) of the Commission's rules, the statute of limitations for this violation [the failure to file an annual Worksheet] is one year.").

[105] *See* 47 U.S.C. § 254(d).

[106] *See OCMC, Inc*., Order of Forfeiture, 21 FCC Rcd 10479, 10482, ¶ 10 (2006) ("*OCMC Forfeiture Order*"); *Globcom NAL,* 18 FCC Rcd at 19903-19904, ¶¶ 25-27; *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-4724, ¶ 31-38.

contributions.[107] Although we have stated that each failure to make a full monthly payment to the USF constitutes a separate, continuing violation until the carrier pays its outstanding contributions,[108] we have not sought to propose forfeitures on that basis. Instead, we have proposed forfeitures based solely on violations that began in the previous twelve month period. We have placed carriers on notice, however, that they face potential liability of as much as the statutory maximum for each continuing violation of our USF contribution requirements.[109] Most recently, in the *Globcom Forfeiture Order,* we warned that "if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them."[110] Based on the facts of this case, as well as the accumulating record of non-compliance by other carriers, we find that it is now appropriate to impose such penalties.

32. Clearly, our previous forfeiture calculation methodology has not deterred companies from attempting to avoid universal service contributions. The Commission has imposed increasingly larger forfeitures for USF violations because of the scope and scale of violations in this area.[111] Since January 1, 2006, the Commission has issued orders regarding more than $3.15 million in proposed forfeitures and voluntary contributions for the nonpayment of contributions to USF and other programs.[112]

[107] *See*, *e.g.*, *Globcom Forfeiture Order*, 21 FCC Rcd at 4722, ¶ 33; *OCMC Forfeiture Order*, 21 FCC Rcd at 10482, ¶ 10. For similar reasons, we also apply an upward adjustment for TRS payments based on half of a company's unpaid contributions. *Globcom NAL*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27.

[108] *Globcom Forfeiture Order*, 21 FCC Rcd 4723 ¶ 35.

[109] *See, e.g., Globcom Forfeiture Order*, 21 FCC Rcd at 4723, ¶ 35 (stating under the then-applicable maximum forfeiture amount "the carrier had full notice under the APA that the maximum potential forfeiture for *each* violation could be as high as $1,200,000") (emphasis in original).

[110] *Id.* at 4724, ¶ 38.

[111] *See, e.g., id.* at 4723-24, ¶¶ 36-37.

[112] *See e.g., Telus Communications, Inc.*, Order, 22 FCC Rcd 17251 (2007) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $450,000); *Verizon Business Global LLC f/k/a MCI, LLC*, Order, 22 FCC Rcd 12097 (2007) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $500,000); *Carrera Communication LP*, Order of Forfeiture, 22 FCC Rcd 9585 (2007) (imposing a $345,900 forfeiture for, *inter alia*, failing to make required universal service contributions); *Teletronics, Inc*., Order, 22 FCC Rcd 8681 (2007) (*Teletronics Consent Decree*) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $250,000); *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689 (2007) (proposing a new forfeiture of $100,000 as part of the *Further Notice of Apparent Liability for Forfeiture* for apparent violations of the Act and the Commission's rules); *Intelecom Solutions, Inc*., Order, 21 FCC Rcd 14327 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $150,000); *Telecom House, Inc*., Order, 21 FCC Rcd 10883 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $170,000); *Communication Services Integrated, Inc.*, Order, 21 FCC Rcd 10462 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $250,000); *Local Phone Services Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006) (proposing forfeiture of $529,000 for apparent violations of USF related requirements); *FPL FiberNet*, *LLC*, Order, 21 FCC Rcd 8530 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $150,000); *Clear World Communications Corp*., Order, 21 FCC Rcd 5304 (2006) (order adopting a Consent Decree in which the carrier agreed to make a voluntary contribution to the United States Treasury in the amount of $290,000).

Despite that aggressive enforcement, nonpayment into those programs remains a serious concern as demands on the USF have increased.[113]

33. Accordingly, consistent with our previous statements that nonpayment of USF, TRS, and other obligations constitute continuing violations, and to effectively deter companies like Compass from violating our rules governing payment into the USF, TRS, and other programs, our forfeiture calculations will reflect not only the violations that began within the last twelve months, but all such continuing violations. By including such violations in our forfeiture calculations, our enforcement actions now will provide increased deterrence and better reflect the full scope of the misconduct committed. As in previous orders, we warn carriers that if the forfeiture calculation methodology described here does not adequately deter violations of our rules, we will consider larger penalties within the scope of our authority, including substantially higher forfeitures and revocation of carriers' operating authority.[114]

34. Applying this methodology to the instant case, we find that Compass is apparently liable for 22 continuing violations for failure to make timely and full monthly payments to the USF.[115] We propose a $20,000 base amount for each of the 22 months in which Compass failed to remit any contribution toward its outstanding USF obligation. Thus, we find Compass apparently liable for a base forfeiture of $440,000 for its willful or repeated failure to contribute fully and timely to the USF on 22 occasions between May 2005 and December 2005 as well as between January 2006 and December 2006 and again in January and March 2007. Consistent with our approach for assessing liability for apparent USF violations, and taking into account all the factors enumerated in section 503(b)(2)(E) of the Act, we also propose an upward adjustment of $79,503, approximately one-half of Compass' untimely paid USF contributions, to our proposed base forfeiture.[116] We therefore issue a total proposed forfeiture of $519,503 against Compass for its apparent willful or repeated failures to contribute fully and timely to the USF.[117]

35. We also find that Compass has failed to make timely TRS contributions in 2005, 2006 and 2007.[118] Where a carrier fails to satisfy its TRS obligations for an extended period of time, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations

[113] *See, e.g., High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45,* Notice of Proposed Rulemaking, 22 FCC Rcd 9705 (2007) (seeking comment on Federal-State Joint Board's recommendation that the Commission take immediate action regarding increasing demand for USF monies for high-cost support); Written Statement of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Commerce, Science & Transportation, U.S. Senate, February 1, 2007 at 7 (describing increasing pressure on the stability of the USF due to "[c]hanges in technology and increases in the number of carriers who are receiving universal service support").

[114] *See Globcom Forfeiture Order,* 21 FCC Rcd at 4724, ¶ 38 & n.105.

[115] *See supra* para. 22.

[116] In light of our determination here that Compass' services are telecommunications services and concerns with the accuracy of the recently submitted revised Form 499-As (see paragraph 9), we are calculating the upward adjustment based on revenue reported on Compass' 2007 FCC Form 499-A filed March 27, 2007, reporting revenue realized in 2006, and Compass' 2006 FCC Form 499-A filed September 7, 2006, reporting 2005 revenue. If it is determined that the revenue reported on any revised Forms causes an adjustment to Compass' contribution amount, we will adjust the forfeiture amount accordingly.

[117] As noted previously, we could propose as much as $1,325,000 for each continuing violation. Thus, if we proposed the maximum forfeiture permitted under the Act, Compass could face a forfeiture of more than $34,450,000 for its failures to contribute to the USF.

[118] *See LOI Response* at 4 and attachment 7 (shows one invoice dated 11-5-7).

-- to ensure that telecommunications relay services "are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."[119]

36. The Commission has established a base forfeiture amount of $10,000 for each instance in which a carrier fails to make required TRS contributions.[120] In light of Compass' failure to timely pay its TRS obligations for the 2005, 2006 and 2007 funding periods, we find it apparently liable for a base forfeiture in the amount of $30,000. For the reasons discussed above regarding Compass' failure to make universal service contributions and consistent with Commission precedent,[121] we find that an upward adjustment in an amount of approximately one half of the carrier's estimated unpaid TRS contributions (approximately $438,340.89) is appropriate for Compass' apparent failure to make TRS contributions. Taking into account the factors enumerated in section 503(b)(2)(E) of the Act, we conclude that a $219,110.44 upward adjustment is reasonable. Consequently, we find Compass is liable for a total proposed forfeiture of $249,110.44 for its willful and repeated failure to satisfy its TRS obligations for the 2005, 2006 and 2007 funding periods.

37. We also conclude that Compass apparently failed to make timely contributions toward NANP administration and LNP cost recovery mechanisms on the basis of its actual end-user telecommunications revenues since 2005. For the same reasons that failures to make USF and TRS contributions are continuing violations, we find the failure to make NANP administration and LNP contributions to be continuing violations until they are cured by payment of all monies due. As with universal service and TRS, the failure of carriers to make required NANP administration and LNP contributions for an extended period of time severely hampers the Commission's ability to ensure that the cost of establishing telecommunications numbering administration arrangements is "borne by all telecommunications carriers on a competitively neutral basis" as Congress envisioned.[122] Consequently, and consistent with precedent,[123] we find that Compass is apparently liable for the base forfeiture of $20,000 for failing to timely pay contributions toward NANP administration cost recovery mechanisms for 2005 and 2006.[124] With respect to Compass' failure to make its LNP contributions, we find that this violation is sufficiently analogous to the failure to pay NANP administration contributions and establish the same base forfeiture amount -- $10,000. Accordingly, we find that Compass is apparently liable for a forfeiture of $20,000 for failing to timely pay LNP contributions for 2005 and 2006.

38. Finally, we conclude that Compass has apparently failed to make any regulatory fee payments to the Commission in 2005 or 2006. 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. As with failure to make universal service, TRS, NANP administration and LNP contributions, we find failures to make regulatory fee payments to be continuing until they are cured by the payment of all monies owed. In recent orders, the Commission has established a base forfeiture amount of $10,000 for

[119] 47 U.S.C. § 225(b)(1).

[120] *See Globcom NAL,* 18 FCC Rcd at 19904, ¶ 29.

[121] *See supra* para. 31.

[122] 47 U.S.C. § 251(e)(2).

[123] *See e.g.*, *Teletronics,Inc*., Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291, 13303, ¶ 35 (2005) (*Teletronics NAL*) (finding that the carrier was apparently liable for a forfeiture of $10,000 for the carrier's failure to make its NANP administration contribution).

[124] *Id*.

failure to timely make required regulatory fee payments for one calendar year.[125] Therefore, we find Compass apparently liable for a $20,000 forfeiture for its apparent violation of sections 1.1154 and 1.1157 of the Commission's rules.

IV. ORDERING CLAUSES

39. 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 Compass Global, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of $828,613.44 for willfully and repeatedly violating the Act and the Commission's rules.

40. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,[126] within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Compass Global, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

41. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[**s**] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

42. 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. A response should also be sent via email to Hillary.DeNigro@fcc.gov.

43. 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.

[125] *See Telecom Management Inc.,* Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd. 14151, 14158 ¶ 22 (rel. Aug. 12, 2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291, 13304, ¶ 36 (rel. Jul. 25, 2005); *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13318 ¶ 36 (rel. Jul. 25, 2005).

[126] *See* 47 C.F.R. § 1.80.

44. 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 Jonathan S. Marashlin, Counsel for Compass Global, Inc., Helien and Marashlian, LLC, 1483 Chain Bridge Road, Suite 301, McLean, Virginia 22101.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary