

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

In the Matter of)	File No. EB-06-IH-2110
)	
ADMA Telecom, Inc.)	NAL/Acct. No. 200932080022
)	
Apparent Liability for Forfeiture)	FRN No. 0015301732
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 14, 2009

Released: January 14, 2009

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that ADMA Telecom, Inc. (“ADMA”) apparently violated sections 214, 225, 251(e)(2), and 254 of the Communications Act of 1934, as amended (the “Act”),¹ and sections 1.1157, 52.17(a), 54.706(a), 54.711(a), 63.18, 64.604(c)(5)(iii)(A)-(B), and 64.1195 of the Commission’s rules by willfully or repeatedly failing to register with the Commission, failing to make the required regulatory filings, as well as failing to contribute fully and timely to the Universal Service Fund (“USF”), Telecommunications Relay Service (“TRS”) Fund, cost recovery mechanisms for the North American Numbering Plan (“NANP”) administration and failing to obtain an international section 214 authorization.² Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that ADMA is apparently liable for a total forfeiture of \$672,541.

II. BACKGROUND

2. 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.³ 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 to provide telecommunications service, do not engage in

¹ 47 U.S.C. §§ 214, 225, 251(e)(2), 254.

² See 47 U.S.C. § 214; see also 47 C.F.R. §§ 1.1157, 52.17(a), 54.706(a), 54.711(a), 63.18, 64.604(c)(5)(iii)(A)-(B), 64.1195.

³ See, e.g., 47 U.S.C. § 151.

fraud, and do not evade oversight.⁴ 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 Worksheet” or “Form 499-A”).⁵

3. The Commission has established specific procedures for the administration of the universal service, TRS, and other associated federal regulatory programs. All telecommunications carriers and certain other providers of telecommunications are required to file FCC Form 499-A, reporting revenue information for the purpose of determining their USF, TRS, Local Number Portability (“LNP”), NANP administration and regulatory fee payments, and, with certain exceptions, to file Quarterly Telecommunications Reporting Worksheets (“quarterly Worksheet” or “Form 499-Q”) to determine their monthly universal service contribution amounts.⁶ These periodic filings trigger a determination of contribution amounts owed, if any, and subsequent billing and collection, by the entities that administer the regulatory programs.⁷ For example, the Universal Service Administrative Company (“USAC”), the administrator of the USF,⁸ uses the revenue projections submitted on the quarterly filings to determine each contributor’s monthly universal service contribution obligations.⁹ Similarly, the National Exchange

⁴ 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 ¶¶ 59-62 (2000) (“*Carrier Selection Order*”).

⁵ See *FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf> (February 2008); see also 47 C.F.R. § 64.1195.

⁶ 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*”). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, contributors report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). See *Quarterly Reporting Order*, 16 FCC Rcd at 5755 ¶ 19 & n.32. See also *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, available at <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (February 2008) (“*Quarterly Worksheet*”). Upon submission of a Form 499-A registration, the contributor is issued a filer identification number by USAC, which is then associated with further filings by the company and is used to track the provider’s contributions and invoices.

⁷ See 47 U.S.C. §§ 225(d)(3), 254(d). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with the Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, 14 FCC Rcd 16602 (1999). The next year, the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Carrier Selection Order*, 15 FCC Rcd at 16026 ¶¶ 63-64.

⁸ 47 C.F.R. § 54.701(a).

⁹ See 47 C.F.R. § 54.709(a); “Telecommunications Carrier Registration Information Now Available Online,” Public Notice, DA 01-2465 (rel. Oct. 29, 2001). The Commission modified its rules on contributions to the universal service fund. See *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*

(continued...)

Carriers Association (“NECA”) is the TRS Fund administrator, and it uses the annual filings to determine each contributor’s TRS Fund contribution amount.¹⁰ USAC bills carriers (including ADMA) each month based on their quarterly contribution amount.¹¹ NECA bills carriers each July based upon their annual revenue.¹² Contributors must timely pay their contribution invoices,¹³ and the Commission’s rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.¹⁴

4. The Act codified Congress’s historic commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹⁵ In implementing this Congressional mandate,

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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 (2002) (“*Interim Contribution Order*”). As of April 1, 2003, USAC bases a contributor’s universal service obligation on the contributors’ projected collected revenue rather than its historic gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-74 ¶¶ 29-39. Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *See Quarterly Reporting Order*, 16 FCC Rcd 5748 (2001); 47 C.F.R. § 54.709(a).

¹⁰ 47 C.F.R. § 64.604(c)(5)(iii)(B).

¹¹ *See, e.g., Interim Contribution Order*, 17 FCC Rcd at 24971-72 ¶ 35; *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954 ¶ 17 (2000); *Federal-State Joint Board on Universal Service*, 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); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Board on Universal Service*, Second Order on Reconsideration in CC Docket No. 97-21, 12 FCC Rcd 22423, 22425 ¶ 3 (1997). Contributors must pay by the date shown on the invoice from the Administrator. 47 C.F.R. § 54.711(a). *See, e.g., “Proposed Second Quarter 2006 Universal Service Contribution Factor,”* Public Notice, 21 FCC Rcd 2379 (Wireline Comp. Bur. 2006) (“Contribution payments are due on the date shown on the invoice.”). *See also* 47 C.F.R. § 54.713(b) (noting that if a USF “contributor fails to make full payment on or before the date due date of . . . the monthly invoice provided by the Administrator, the payment is delinquent”).

¹² *See* “TRS Resources,” available at: http://www.neca.org/source/NECA_Resources_216.asp. 17 July 2007.

¹³ *See* 47 C.F.R. § 54.711(a) (“The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.”). *See, e.g., “Proposed Third Quarter 2003 Universal Service Contribution Factor,”* Public Notice, 18 FCC Rcd 11442, 11445 (Wir. Comp. Bur. 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”). The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC or NECA. *See* 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(b) and 64.604(c)(5)(iii)(A). A provider that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*. *See Globcom, Inc.*, Notice of Apparent Liability, 18 FCC Rcd 19893, 19896 ¶ 5 n. 22 (2003) (“*Globcom NAL*”) (subsequent history omitted). The instructions for the Worksheet include tables for contributors to determine their annual contributions. Providers whose annual contribution is less than \$10,000 are considered to be *de minimis* and exempted from contributing to the USF. 47 C.F.R. § 54.708.

¹⁴ *See* 47 C.F.R. § 54.713.

¹⁵ 47 U.S.C. § 254(d).

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 service fund based upon their interstate and international end-user telecommunications revenues.¹⁶ The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol (VoIP) providers, to contribute to the USF.¹⁷ Failure by some providers to pay their share into the USF skews the playing field by giving them an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the universal service fund.

5. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to “ensure that interstate and intrastate 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.”¹⁸ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.¹⁹ Pursuant to section 64.604(c)(5)(iii)(A) and section 64.601(b) of the Commission’s rules, every provider of interstate telecommunications services and certain other providers of telecommunications must contribute to the TRS Fund based upon its end-user revenues.²⁰

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.²¹ 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.”²² In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers and interconnected VoIP providers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.²³

¹⁶ 47 C.F.R. § 54.706(b). Since April 1, 2003, contributions have been based on a contributor’s projected, rather than historical, revenues. *Id.* See also *Interim Contribution Order*, 17 FCC Rcd at 24969-74 ¶¶ 29-39.

¹⁷ 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.”).

¹⁸ 47 U.S.C. § 225(b)(1).

¹⁹ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 ¶ 7 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users. Such services provide telephone access to a significant number of Americans who, without it, might not be able to make calls to or receive calls from voice-telephone users. 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).

²⁰ 47 C.F.R. §§ 64.604(c)(5)(iii)(A), 64.601(b).

²¹ 47 U.S.C. § 251(e)(1).

²² *Id.*

²³ 47 C.F.R. § 52.17(a). See *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) (*VoIP LNP Order*).

7. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” require, or will require, the construction, extension, or operation of the line.²⁴ While the Commission has granted “blanket” authority to carriers providing domestic service,²⁵ meaning that such carriers need not apply to the Commission for such authority before providing domestic service, the Commission has not done the same for providers of international telecommunications services.²⁶ Rather, section 63.18 of the Commission’s rules requires that any carrier that seeks section 214 authority “for provision of common carrier communication services between the United States, its territories or possessions, and a foreign point shall request such authority by application.”²⁷ Through this process the applicant provides the Commission with, among other things, contact information, ownership information, information on any affiliations it may have with foreign carriers, certification that it will comply with Commission rules, and certification that the applicant is not subject to denial of Federal benefits pursuant to the Anti-Drug Abuse Act of 1988.²⁸ The application requirement applies to carriers that resell the service of another authorized carrier,²⁹ and to domestic providers of wireless telecommunications service that also provide international telecommunications service.³⁰

8. ADMA is a Florida-based company that has provided telecommunications services since 2001.³¹ ADMA currently provides telecommunications services as a provider of prepaid calling cards for calling to international destinations.³² ADMA also sells the telecommunications services of a related entity, Business Telecommunications Services, Inc. (“BTS”), owned by ADMA’s two shareholders.³³

²⁴ 47 U.S.C. § 214(a).

²⁵ 47 C.F.R. § 63.01(a) (“Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.”).

²⁶ *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion & Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11366 n. 8 (1999) (grant of blanket authority is only for domestic services and does not extend to the provision of international services).

²⁷ 47 C.F.R. § 63.18.

²⁸ *See id.*

²⁹ *See id.* § 63.18(e)(2).

³⁰ *1998 International Biennial Regulatory -- Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909, 4926-27 ¶¶ 38-39 (1999) (“1998 International Biennial Review Order”). *See also Personal Communications Indus. Ass’n’s Broadband Personal Communications Servs. Alliance’s Pet. for Forbearance for Broadband Personal Communications Servs.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16881-84 ¶¶ 45-54 (1998) (declining PCIA’s request to forbear from requiring section 214 authority for a broadband PCS carrier to provide international services) (“*PCIA Forbearance Order*”); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Servs.*, Second Report and Order, 9 FCC Rcd 1411, 1481 ¶ 182 n.369 (1994) (declining to forbear from application of section 214 to CMRS carriers’ provision of international services).

³¹ *See Response of ADMA Telecom, Inc. to the Enforcement Bureau’s June 2, 2006 Letter of Inquiry*, dated July 13, 2006, at 3 ¶ 4 (“LOI Response”).

³² *See id.* at 1.

³³ *See id.*

ADMA obtains telecommunications switching capacity from BTS, and also receives administrative support from BTS.³⁴

9. On June 2, 2006, the Bureau issued a letter of inquiry (“LOI”), initiating an investigation into whether ADMA may have violated the Act and the Commission’s rules pertaining to registration, payment of regulatory obligations, and other related requirements.³⁵ The LOI directed ADMA to provide certain specified documents and information. In its response to the LOI, ADMA admits that it failed to register with the Commission.³⁶ ADMA’s response also demonstrated that it failed to timely file quarterly and annual worksheets due in February 2006, April 2006, and May 2006.³⁷ Similarly, the carrier states it failed to contribute to the USF despite exceeding the *de minimis* threshold³⁸ from January 2006 through October 2006.³⁹ ADMA similarly failed to timely and fully remit its TRS obligation in 2005 and 2006 as well as contributions to the NANP administration cost recovery mechanisms.⁴⁰ Finally, ADMA provides no evidence that it held an international section 214 authorization before providing international telecommunications services.

10. Two months after receiving the LOI, in August 2006, ADMA for the first time began to comply with the Commission’s contribution and revenue filing regulations by filing a Form 499. ADMA filed its Form 499-A for 2005 revenue on August 1, 2006, four months after the due date of April 1, 2006. ADMA then filed two 499-Qs on August 2, 2006 that were due on May 1, 2006 and August 1, 2006. ADMA eventually paid its USF, TRS, and NANP debts. Shortly after filing its forms, ADMA requested that the Commission consider settling the investigation with a consent agreement, and on December 8, 2006, ADMA and the Bureau executed an agreement to toll the statute of limitations for any potential violations related to the Bureau’s investigation.⁴¹ The Bureau and ADMA met in person and had numerous telephone conversations, but were unable to agree on a settlement. ADMA insists the violations are small infractions of the rules and regulations that warrant only a small voluntary contribution. As discussed below, however, we find that the violations are serious, egregious, and warrant a significant forfeiture.

³⁴ *Id.*

³⁵ See Letter from Hillary DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Mr. Raphael Olloqui, Chief Executive Officer, ADMA Telecom, Inc., dated June 2, 2006 (“LOI”).

³⁶ See *Supplemental Response of ADMA Telecom, Inc. to the Enforcement Bureau’s June 2, 2006 Letter of Inquiry*, dated August 1, 2006, at 3 (“*Supplemental LOI Response*”).

³⁷ *Supplemental LOI Response* at 3.

³⁸ See *Supplemental LOI Response* at 4.

³⁹ See email from Michelle Tilton, USAC, to Elizabeth Mumaw, Assistant Division Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated February 26, 2007 (“Tilton Email”).

⁴⁰ TRS contributions are due annually on July 26. NANPA payment is due annually on July 12.

⁴¹ December 8, 2006, Tolling Agreement between Andres Proano, Chief Financial Officer, ADMA, and Kris Anne Monteith, Chief, Enforcement Bureau, Federal Communications Commission. ADMA and the Bureau have since extended the termination date of the Tolling Agreement through January 15, 2009. See November 21, 2008 Tolling Agreement between Andres Proano, Chief Financial Officer, ADMA, and Hillary, S. DeNigro, Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission.

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.⁴² 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.⁴³ The legislative history of section 312(f)(1) of the Act clarifies that this definition applies to both sections 312 and 503(b) of the Act⁴⁴ and the Commission has so interpreted the term in the section 503(b) context.⁴⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁴⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁴⁷ 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.⁴⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁹

12. The fundamental issues in this case are whether ADMA apparently violated the Act and the Commission’s rules by willfully or repeatedly (1) failing to register and submit annual and quarterly worksheets pursuant to sections 54.711 and 64.1195 of the Commission’s rules; (2) failing to timely and fully remit payments to the Universal Service Fund, TRS Fund, and cost recovery mechanism for NANP administration; and (3) failing to obtain an international section 214 authorization to provide international telecommunications services pursuant to section 63.18 of the Commission’s rules. We answer these questions affirmatively. Based on the preponderance of the evidence, we conclude that ADMA is apparently liable for a forfeiture of \$672,541 for apparently willfully or repeatedly violating sections 214, 225, 251(e)(2), and 254 of the Act and sections 1.1157, 52.17(a), 54.706(a), 54.711(a), 63.18, 64.604(c)(5)(iii)(A)-(B), and 64.1195 of the Commission’s rules.⁵⁰

⁴² See 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).

⁴³ 47 U.S.C. § 312(f)(1).

⁴⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁴⁵ 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.*”).

⁴⁶ 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).

⁴⁷ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

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

⁴⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

⁵⁰ 47 U.S.C. §§ 214, 225, 251(e)(2), 254(d); 47 C.F.R. §§ 1.1157, 52.17(a), 54.706(a), 54.711(a), 63.18, 64.604(c)(5)(iii)(A)-(B), 64.1195.

A. ADMA Apparently Failed to Register with the Commission

13. We conclude that ADMA has apparently violated section 64.1195(a) of our rules by failing to register with the Commission from the time it began providing telecommunications services until August 1, 2006.⁵¹ ADMA's failure to register constitutes an apparent violation of a vital Commission rule. Section 64.1195(a) unambiguously requires that all carriers that provide, or plan to provide, interstate telecommunications services register with the Commission by submitting specified information.⁵² Although ADMA has provided interstate telecommunications services for several years, it failed to register in accordance with section 64.1195(a) until August 1, 2006, when it filed a Form 499-A reporting 2005 revenue. As a result of its misconduct, ADMA operated for a significant period of time without participation in any of the programs tied to registration. As an interstate telecommunications carrier, ADMA had a clear and affirmative duty to satisfy this federal obligation.⁵³

14. We view ADMA's apparent failure to register for a significant period as a serious dereliction of its responsibilities under the Act and our rules. A carrier's compliance with the Commission's registration requirement is critical to the administration of the USF and other programs, and to fulfilling Congress' objectives in section 254(d) of the Act. As we noted above, a carrier's duty to register upon entry, or anticipated entry, into interstate telecommunications markets is essential to the fulfillment of the USF and other regulatory program missions because registration identifies the company to the various program administrators and brings the company within the purview and oversight of those administrators. If a carrier never identifies itself as a telecommunications provider by properly registering under the Commission's rules, then neither the Commission nor the various program administrators can ascertain whether that carrier has fulfilled its regulatory obligations, including the requirement that carriers file Worksheets and contribute to USF and other regulatory programs. Moreover, the program administrators have no basis upon which to invoice the carrier for contributions. A telecommunications carrier that fails to register thus can operate outside of the Commission's oversight and evade its federal obligations to contribute toward the vital programs linked to registration.

⁵¹ The Commission has stated that calling card services are telecommunications services. See *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4826 ¶ 4(2005). Prepaid card providers are compelled to contribute based upon reported interstate and international calling revenue. See *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7304 ¶ 39 (2006)(asserting that each prepaid calling card provider must certify the percentages of total prepaid calling card revenue that are interstate and international, and therefore subject to federal universal service assessments). Thus, providers of prepaid calling card services are obligated to contribute to the same funds as other telecommunications providers. The failures both to report revenues from prepaid calling cards and to contribute based upon interstate and international revenues from prepaid calling cards, would constitute a violation of our rules.

⁵² 47 C.F.R. § 64.1195. The Commission adopted the registration requirement in section 64.1195(a) after finding that such a requirement would enable it to better monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming activity, and, among other things, would enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming. See *Carrier Selection Order*, 15 FCC Rcd at 16024 ¶ 62.

⁵³ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17099 ¶ 22 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999) ("The Commission expects, and it is each licensee's obligation, to know and comply with all of the Commission's rules.").

15. The impact of a carrier's failure to register is no less severe where, as here, that carrier ultimately registers with the Commission. Although ADMA registered on August 1, 2006, ADMA delayed its registration for a substantial period of time and took no action until receiving a letter of inquiry from the Bureau. The Commission has repeatedly stated that post-investigative corrective measures to address a violation do not eliminate a licensee's responsibility for the period during which the violation occurred.⁵⁴ Based on a preponderance of the evidence, therefore, we find that ADMA apparently has violated section 64.1195(a) of the Commission's rules by willfully failing to register until August 1, 2006.

B. ADMA Apparently Failed to Submit Telecommunications Reporting Worksheets

16. We also conclude that ADMA apparently has violated sections 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules⁵⁵ by willfully and repeatedly failing to file certain Telecommunications Reporting Worksheets, on a timely basis, until August 1, 2006. As discussed in the previous section, ADMA did not file its 2006 Form 499-A until August 1, 2006, four months after it was due. The Bureau's review of ADMA's various late-filed Form 499s shows that until late in 2005, ADMA's annual USF contributions would qualify it for the *de minimis* exemption because its annual contribution amounts would have been less than \$10,000. ADMA should have begun filing quarterly Worksheets when it determined its projected or actual revenues would no longer qualify it as *de minimis* in late 2005.⁵⁶ Accordingly, ADMA's first failure to file a quarterly Worksheet for purposes of the USF occurred on February 2006, when it should have reported projected collected revenue for the second quarter of 2006.⁵⁷ ADMA did not, however, file any quarterly Worksheets until August 2, 2006, when ADMA filed its late report for the May 2006 quarterly report in response to our investigation. ADMA also filed its August 2006 quarterly worksheet one day late and has never filed its February 2006 quarterly worksheet.

17. Sections 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules clearly establish a carrier's obligation to file periodic Telecommunications Reporting Worksheets. A carrier's failure to file these Worksheets as required has serious implications for the USF and other programs. As discussed above, the filing of a Telecommunications Reporting Worksheet prompts a determination of liability for, and subsequent billing and collection of, payments by the administrators of the Universal Service Fund and other regulatory programs. With regard to the federal universal service program in particular, the failure of a carrier such as ADMA to abide by its federal filing obligation has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers additional economic burdens associated with the

⁵⁴ *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71 ¶¶ 12-14 (2002); *America's Tele-network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355 ¶ 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388 ¶ 8 (2000).

⁵⁵ 47 C.F.R. §§ 54.711(a), 64.604(c)(5)(iii)(B).

⁵⁶ 47 C.F.R. § 54.708. See Form 499-Q Instructions at 4 (available at <http://www.fcc.gov/Forms/Form499-Q/499q.pdf>) ("Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. . . . Telecommunications providers that do not file this worksheet because their contributions would be *de minimis* should retain Figure 1 and documentation for their contribution base revenues for three years and may be required to provide it to the FCC, the FCC's data collection agent or [USAC] upon request").

⁵⁷ As noted above, the rules still require carriers such as ADMA to file annual worksheets for purposes of other regulatory programs, such as the TRS fund.

federal universal service program. Consequently, a carrier's failure to file required Worksheets frustrates the very purpose for which Congress enacted section 254(d) – to ensure that every interstate carrier “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵⁸ Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's Universal Service program.

18. ADMA as a provider of prepaid calling cards and a reseller of telecommunications services must file worksheets with USAC reporting accurate historical and projected telecommunications revenue. ADMA did not file the required reports on February 2006, April 2006, and May 2006. Based on a preponderance of the evidence, we find that ADMA apparently violated sections 52.17(b), 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules by willfully and repeatedly failing to file certain Telecommunications Reporting Worksheets.⁵⁹

C. ADMA Apparently Failed To Make Universal Service Fund Contributions

19. We next conclude that ADMA has apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute fully and timely to the universal service support mechanisms.⁶⁰ Section 54.706(c) of the Commission's rules unambiguously directs that “entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support mechanisms.”⁶¹ ADMA was required pursuant to section 54.706(b) of the Commission's rules to contribute to universal service mechanisms based upon its projected collected end-user telecommunications revenue filed on its quarterly Worksheets.⁶²

20. ADMA has demonstrated a pattern of failing to fulfill its contribution obligations by failing to make universal service payments. According to USAC, ADMA's first USF payment was received by the fund administrator on November 6, 2006. The record is clear that at least between January 2006 and October 2006, however, that ADMA failed to make any required payments to USAC on 10 separate occasions and should have paid a total of \$23,670 in USF contributions.⁶³ The violations continued with each subsequent day on which it failed to make full payment.⁶⁴ Based on a preponderance

⁵⁸ 47 U.S.C. § 254(d).

⁵⁹ Failure to file may constitute a continuing violation. *See Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125 ¶ 29 (2008) (holding that Compass Global's apparent failure to file constituted “continuing violations for which the statute of limitations for forfeiture is tolled until the violation is cured”) (“*Compass Global NAL*”); *Telerite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231 at ¶ 30 (2008) (stating that failures to file accurate reports constitute “continuing violations for which the statute of limitations for forfeiture does not begin to run until the violation is cured”); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940 ¶ 20 (2007) (holding that failure to file accurate Form 497s constitutes a continuing violation) (“*VCI NAL*”).

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

⁶¹ 47 C.F.R. § 54.706(c).

⁶² *Id.* § 54.706(b).

⁶³ *LOI Supplemental Response* at inquiry 10. ADMA first filed revenue information on August 1, 2006 and states it will pay all invoiced USF amounts going forward.

⁶⁴ *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.”);

(continued...)

of the evidence, we find that ADMA has apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute fully and timely to the USF from January 2006 to October 2006.

D. ADMA Apparently Failed to Make TRS Contributions

21. We also find that ADMA has apparently violated section 225 of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing to contribute fully to the TRS Fund.⁶⁵ As an interstate telecommunications carrier, ADMA was obligated to contribute to the TRS Fund on the basis of its interstate end-user telecommunications revenues reported on its annual Worksheet.⁶⁶ 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.⁶⁷ Subject carriers must make TRS contributions on an annual basis, with certain exceptions that are not applicable to ADMA.⁶⁸ Because ADMA failed to register until August 2006, it was not timely billed for TRS obligations in 2005 or 2006. However, the TRS payments were still due on time in those calendar years.⁶⁹

22. The record indicates that ADMA's revenues required it to pay a total of \$121,412 in 2005 and 2006 TRS obligations but ADMA did not make any TRS contributions until December 19, 2006, when it made payments totaling \$79,020.63.⁷⁰ We therefore conclude based on a preponderance of the evidence that ADMA has apparently violated section 225 of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing to make full and timely TRS contributions for its 2005 and 2006 assessments.

(Continued from previous page)

Telerite Corp., Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231 (2008) at ¶ 15; *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). See also *Compass Global NAL*, 23 FCC Rcd at 6125 ¶ 33 (stating that nonpayment of USF and other obligations constitute continuing violations); *Global Crossing North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110 ¶¶ 25-27 (2008) (finding that apparent failure to make timely and full payments to the USF constituted continuing violations); *VCI NAL*, 22 FCC Rcd at 15933 ¶ 24 & n.69 (holding that failure to return excess Lifeline and Link Up support is a continuing violation).

⁶⁵ 47 U.S.C. § 225; 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁶⁶ *Id.* See also 47 C.F.R. § 64.604(c)(5)(iii)(B) (setting forth methods of computation and payment of contributions to TRS Fund).

⁶⁷ 47 C.F.R. § 64.604(c)(5)(iii)(B).

⁶⁸ *Id.* Under the Commission's rules, each subject carrier must contribute at least \$25 per year, and providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, providers may divide their contributions into equal monthly payments. *Id.*

⁶⁹ *Id.* The billing cycle for TRS assessments runs from July 1 to June 30 of each year, with assessments made based on carriers' reported revenues information for the corresponding FCC Form 499-A.

⁷⁰ Email from Maggie Gillo, NECA to Diana Lee, FCC, dated January 3, 2008 (attaching ADMA account history).

E. ADMA Apparently Failed to Make Timely NANP Administration Contributions

23. We further find that ADMA has apparently violated section 251(e)(2) of the Act and section 52.17(a) of the Commission's rules⁷¹ by willfully and repeatedly failing to make timely contributions toward the costs of number administration. As a telecommunications carrier, ADMA was obligated to contribute to NANP administration cost recovery mechanisms on the basis of its end-user telecommunications revenues reported on its Form 499-A annual Worksheet during the period covered by this *NAL*.⁷²

24. The record demonstrates that ADMA failed to timely remit its NANP payment in 2005, 2006, and 2007. Because ADMA did not register until August 2006, NANPA did not invoice the company until October 12, 2006. The due date on the invoice was November 12, 2006, yet ADMA failed to make any payments until February 1, 2007.⁷³ Additionally, NANPA invoiced ADMA for 2007 NANP administration payments on June 12, 2007, with payment due on July 12, 2007. Because ADMA did not file its 2005 499-A until July 2, 2007, ADMA was not invoiced for 2005 NANP administration payments until October 12, 2007. The fact that ADMA was not invoiced until October of 2007 does not negate the fact that the 2005 NANP administration payments were due in 2005. The 2007 and 2005 amounts were not paid by ADMA until April 14, 2008. The 2007 payment was over eight months late and the 2005 payment was years late. We therefore conclude based on a preponderance of the evidence that ADMA has apparently violated section 251(e)(2) of the Act and section 52.17(a) of the Commission's rules by willfully and repeatedly failing to make timely NANP administration contributions on three occasions.

F. ADMA Apparently Failed to Obtain an International Section 214 Authorization

25. We also find that ADMA has apparently violated section 214(a) of the Act⁷⁴ and section 63.18 of the Commission's rules⁷⁵ by willfully failing to apply for and obtain authorization from the Commission to provide international telecommunications service. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, "unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity" require, or will require, the construction, extension, or operation of the line.⁷⁶ Part 63 of the Commission's rules requires that a carrier seek and obtain Commission approval prior to providing international service.⁷⁷ The Commission has explained that the international section 214 review process enables the Commission to review applications for risks to

⁷¹ 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17(a).

⁷² *Id.* In particular, contributions to support numbering administration are based upon a provider'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. 47 C.F.R. § 52.17(a). NANP administration contributions are due on an annual basis, with certain exceptions not relevant here.

⁷³ Email from Heather Bambrough, Welch and Company, to Elizabeth Mumaw, Investigations and Hearings Division, July 17, 2007.

⁷⁴ 47 U.S.C. § 214(a).

⁷⁵ 47 C.F.R. § 63.18.

⁷⁶ 47 U.S.C. § 214(a).

⁷⁷ 47 C.F.R. § 63.01 *et. seq.*

competition, particularly in situations where the applicant has an affiliation with a foreign carrier with market power on the foreign end of the route that may be able to leverage that market power to discriminate against U.S. competitors to the detriment of U.S. consumers.⁷⁸ The review process also includes consultation with Executive Branch agencies regarding national security, law enforcement, foreign policy and trade concerns that may be unique to the provision of international service.⁷⁹

26. For these reasons, section 63.18 of the Commission's rules therefore requires that "any party seeking authority pursuant to section 214 . . . for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application."⁸⁰ Section 63.18(e)(2) clearly assigns the obligation to apply for and obtain section 214 authorization before providing international service to resellers by establishing specific requirements for parties "applying for authority to resell the international services of authorized U.S. common carriers subject to [section 63.23] of this part," which, in turn, identifies the conditions that apply to "carriers authorized to resell the international services of other authorized carriers."⁸¹

27. Notwithstanding these explicit requirements, ADMA provided international service without an authorization pursuant to section 214 from the Commission until January 30, 2007. In its annual Telecommunications Reporting Worksheets for 2005, 2006, and 2007, ADMA reports international revenues for toll services,⁸² yet the Commission has no record that ADMA applied for or obtained section 214 authorization prior to January 30, 2007. In an LOI to ADMA the Bureau asked for all authorizations and jurisdictions where ADMA provides telecommunications service. In response, ADMA provided a copy of an international section 214 authorization for Business Telecommunications Services, Inc. (BTS) that the Commission granted on October 19, 2001. ADMA was not a wholly-owned subsidiary of BTS at the time the Commission granted BTS's request for an international section 214 authorization, however, and could not have operated under BTS's authorization until January 30, 2007, when it became a wholly owned subsidiary of BTS.⁸³ Prior to January 30, 2007, therefore, ADMA operated without Commission-granted international section 214 authority. ADMA has provided us with no other evidence that it held an international section 214 authorization at any time. We therefore conclude based on a preponderance of the evidence that ADMA has apparently willfully violated section 214 of the Act and section 63.18 of the Commission's rules.

G. Proposed Forfeiture Amount

28. 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

⁷⁸ See *1998 International Biennial Review Order*, 14 FCC Rcd at 4914-16 ¶¶ 14-16; *PCIA Forbearance Order*, 13 FCC Rcd at 16882-83 ¶ 50.

⁷⁹ See *1998 International Biennial Review Order*, 14 FCC Rcd at 4914-15 ¶ 14; *PCIA Forbearance Order*, 13 FCC Rcd at 16882 ¶ 50.

⁸⁰ 47 C.F.R. § 63.18.

⁸¹ *Id.* § 63.18(e)(2).

⁸² See ADMA Telecom, Inc. 2005 FCC Form 499-A, ADMA Telecom, Inc. 2006 FCC Form 499-A, ADMA Telecom, Inc. 2007 FCC Form 499-A.

⁸³ See 47 C.F.R. § 63.21 (h). A company can provide international service pursuant to another company's international section 214 authorization if the former is a wholly-owned subsidiary.

liable to the United States for a forfeiture penalty.⁸⁴ 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.⁸⁵ 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.”⁸⁶

29. ADMA failed to register with the Commission until August 1, 2006, in apparent violation of section 64.1195(a) of our rules. The registration and filing of Telecommunications Reporting Worksheets are fundamental to the implementation of our central repository of carriers and to the administration of multiple statutorily derived programs – including the Universal Service Fund. Where, as here, a carrier ignores its obligations by wholly failing to register for a long period – thereby affecting the time and manner in which these important federal programs are funded – it undermines the programs and thwarts the purposes for which Congress and the Commission established them.

30. We have previously established \$100,000 as the base forfeiture for a carrier’s failure to register with the Commission.⁸⁷ We explained that “[t]his egregious behavior strikes at the core of our ability to implement and enforce the Act and our rules effectively, thus warranting a substantial forfeiture.”⁸⁸ A carrier that fails to register hampers “efficient and effective Commission enforcement by delaying detection of, and action against, its behavior . . . [and] imposes a substantial burden on the Commission, which can only identify such carriers through compliance review programs that require significant amounts of staff time and resources.”⁸⁹ Taking into account all of the factors enumerated in section 503(b)(2)(E) of the Act, we conclude that this same reasoning accurately describes the impact of ADMA’s misconduct, and that a proposed forfeiture of \$100,000 is therefore warranted.

31. ADMA also should have filed its Telecommunications Reporting Worksheets. ADMA failed to file an annual Telecommunications Worksheet which was due April 1, 2006, until August 1, 2006. Similarly, it failed to file quarterly Worksheets due on February 1, 2006, and May 1, 2006, until August 2, 2006. A contributor’s obligation to file these Worksheets is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, and LNP programs. ADMA has thus delayed payment into these programs and has shifted to compliant contributors and their customers the economic costs associated with the administration of these programs. As noted above, in the past, the Commission has proposed a forfeiture of \$50,000 for each failure to file a Worksheet or for filing an

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

⁸⁵ 47 U.S.C. § 503(b)(2)(B); 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).

⁸⁶ 47 U.S.C. § 503(b)(2)(E). We note that, although many of the apparent violations at issue here occurred more than one year prior to release of this *NAL*, our actions are within the statute of limitations because of the tolling agreement between ADMA and the Bureau. *See infra* note 41.

⁸⁷ *See Telecom House, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 15131 15142 ¶ 29 (2006) *InPhonic, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13277, 13287 ¶ 26 (2005); *Teletronics, Inc.*, Notice of Apparent Liability of forfeiture and Order, 20 FCC Rcd 13291, 13302 ¶ 30 (2005) (“*Teletronics NAL*”), *consent decree entered*, 22 FCC Rcd 8681 (2007).

⁸⁸ *See, e.g., InPhonic, Inc.*, 20 FCC Rcd at 13287 ¶ 26.

⁸⁹ *Id.*

inaccurate quarterly or annual Worksheet.⁹⁰ Accordingly, we find that ADMA is apparently liable for a \$150,000 forfeiture for failure to timely file the February 1, 2006, April 1, 2006, and May 1, 2006 Forms 499.

32. We also found that ADMA failed to make payments to the USF from January 2006 to October 2006. Nonpayment of universal service contributions is an egregious offense that bestows on delinquent entities an unfair competitive advantage by shifting to compliant contributors the economic costs and burdens associated with universal service. An entity's failure to make required universal service contributions frustrates 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.⁹¹ Generally, the Commission has established a base forfeiture amount of \$10,000 for each month in which a contributor has failed to fully pay required universal service contributions and \$20,000 for each month in which a contributor has failed to make any required universal service contribution,⁹² plus an upward adjustment based on one-half of the company's approximate unpaid contributions.⁹³ In addition, consistent with other similar recent cases,⁹⁴ and for the reasons explained therein, we treat the failures to pay universal service and other obligations as continuing violations.

33. Accordingly, consistent with those recent NALs, as well as our previous statements that nonpayment of USF, TRS, and other contributions can constitute continuing violations, and to effectively deter companies from violating our rules governing payment into the USF, TRS, and other programs, our forfeiture calculation today will reflect not only the violations that began within the last twelve months but all such continuing violations. As in previous orders, we warn contributors 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 a provider's operating authority.⁹⁵

34. As a result, we propose a forfeiture of \$200,000 for ADMA's willful or repeated failure to contribute fully and timely to the USF on ten occasions between January 2006 and October 2006. Moreover, 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 \$11,835, approximately one-half of the largest amount of ADMA's unpaid USF

⁹⁰ See *id.*

⁹¹ See 47 U.S.C. § 254(d).

⁹² 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 4710 at 4721-4724 ¶ 31-38.

⁹³ 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.

⁹⁴ See, e.g. *Global Crossing North America, Inc. et al.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110 ¶¶ 21-24 (2008) (proposing \$10,518,013 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231 (2008) (proposing \$924,212 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125 ¶¶ 34-38 (2008) (proposing \$828,613.44 forfeiture for, *inter alia*, the apparent failure to make required universal service contributions).

⁹⁵ See *Globcom Forfeiture Order*, 21 FCC Rcd at 4724 ¶ 38 & n.105.

contributions due to USAC and the FCC, to our proposed base forfeiture. We therefore issue a total proposed forfeiture of \$211,835 against ADMA for its apparent willful or repeated failures to contribute fully to the USF.

35. We also find that ADMA has failed to make TRS contributions in 2005 and 2006. Where a provider fails to satisfy its TRS obligations, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations -- 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.”⁹⁶ The Commission has generally established a base forfeiture amount of \$10,000 for each instance in which a contributor fails to make required TRS contributions and an upward adjustment based on one-half of the company’s approximate unpaid contributions at the time the investigation was initiated.⁹⁷ Thus, for the reasons described above, we propose a \$20,000 forfeiture for ADMA’s failure to pay its TRS Fund contributions in 2005 and 2006 and an upward adjustment of \$60,706, approximately one-half of ADMA’s unpaid TRS Fund contributions. We therefore issue a total proposed forfeiture of \$80,706 against ADMA for its apparent willful or repeated failure to contribute fully to the TRS Fund.

36. We also concluded that ADMA apparently failed to make timely contributions toward NANP administration cost recovery mechanisms on the basis of its actual end-user telecommunications revenues since 2005. As with universal service and TRS, the failure of carriers to make required NANP administration 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.⁹⁸ The Commission has generally established a base forfeiture amount of \$10,000 for each instance in which a contributor fails to make required contributions to the NANP administration cost recovery mechanisms. Consequently, and consistent with precedent,⁹⁹ we find that ADMA is apparently liable for the base forfeiture of \$30,000 for failing to pay contributions toward NANP administration cost recovery mechanisms for 2005, 2006, and 2007.¹⁰⁰

37. Finally, we conclude that ADMA has apparently failed to obtain an international section 214 authorization from the Commission prior to providing international telecommunications service. A carrier’s failure to obtain the 214 authorization undermines the Commission’s ability to accomplish Congress’ objectives in section 214 of the Act. ADMA apparently operated as an international telecommunications service provider from 2003 until January 30, 2007 without authorization from the Commission. We therefore find that this apparent violation of the Act and the Commission’s rules was continuing. Given the unambiguous language of the Act,¹⁰¹ the Commission’s rules and decisions,¹⁰² and

⁹⁶ 47 U.S.C. § 225(b)(1).

⁹⁷ See *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24 ¶¶ 31-38.

⁹⁸ 47 U.S.C. § 251(e)(2).

⁹⁹ *Teletronics NAL*, 20 FCC Rcd at 13303 ¶ 35 (2005) (finding that the carrier was apparently liable for a forfeiture of \$10,000 for the carrier’s failure to make its NANP administration contribution).

¹⁰⁰ See, e.g., *id.*

¹⁰¹ 47 U.S.C. § 214(a).

¹⁰² See, e.g., 47 C.F.R. §§ 63.12, 63.18, 63.20, 63.21, 63.23; see also *1998 International Biennial Review Order*, 14 FCC Rcd 4909; *Regulation of Int’l Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992) (“*International Resale Order*”).

even the Commission's web site,¹⁰³ it should have been apparent to ADMA that it was required to obtain section 214 authority from the Commission to provide international telecommunications service.

38. In light of the Commission's clear requirements, and the important public interest considerations involving national security, law enforcement, foreign policy and trade policy,¹⁰⁴ we find that ADMA's failure to obtain section 214 authority from the Commission prior to providing international telecommunications service was also egregious. We view ADMA's apparent failure to obtain section 214 authority as serious a dereliction of its responsibilities under the Act and our rules as its failure to register pursuant to section 64.1195(a) of the Commission's rules.¹⁰⁵ Just as a telecommunications carrier that fails to register can operate outside of the Commission's oversight and evade its federal obligations to contribute toward the vital programs linked to registration, international telecommunications carriers that fail to obtain section 214 authority may endanger important public interest considerations involving national security, law enforcement, foreign policy and trade policy. We also find that a proposed forfeiture must be large enough to have a deterrent effect on companies with gross revenues commensurate with those of ADMA.¹⁰⁶ Pursuant to the Commission's mandate from Congress to consider "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require,"¹⁰⁷ we find, consistent with prior precedent for entities failing to receive prior authorization from the International Bureau, that a proposed forfeiture of \$100,000 is warranted for ADMA's apparent willful repeated failure to obtain section 214 authority from the Commission prior to providing international telecommunications service.¹⁰⁸

IV. CONCLUSION

39. In light of the seriousness, duration and scope of the apparent violations, we find that a proposed forfeiture in the amount of \$672,541 is warranted. As discussed, this proposed forfeiture amount includes a total proposed forfeiture of \$100,000 for ADMA's failure to register with the Commission, a total proposed forfeiture of \$150,000 for ADMA's failure to file Telecommunications Reporting Worksheets, a total proposed forfeiture of \$211,835 for ADMA's failure to pay its USF obligations, a total proposed forfeiture of \$80,706 for ADMA's apparent failure to make TRS contributions, a total proposed forfeiture of \$30,000 for ADMA's apparent failure to make NANP contributions, and a total proposed forfeiture of \$100,000 for ADMA's apparent failure to obtain an international section 214 authorization prior to commencing international service.

¹⁰³ For example, the Commission's website has a list of frequently asked questions about section 214 applications for providers of international telecommunications services. See <http://www.fcc.gov/ib/pd/pf/214faq.html>. Among the questions and answers are the following: "Question: If I am merely reselling the international services of another carrier, do I have to file a section 214 application? Answer: Yes, including in the case of mobile international services. Refer to 47 CFR § 63.18(e)(2), global resale service."

¹⁰⁴ See *1998 International Biennial Review Order*, 14 FCC Rcd at 4915-17 ¶¶ 15-18; *id.* 4939-40 ¶¶ 72-74.

¹⁰⁵ 47 C.F.R. § 64.1195(a).

¹⁰⁶ See Letter from Steven A. Augustino, Counsel for ADMA Telecom, Inc. to Elizabeth Mumaw, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Apr. 12, 2007, at Exhibit A (submitting gross annual revenue on its 2007 Annual Worksheet).

¹⁰⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁰⁸ *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8703 ¶35 (2007).

V. ORDERING CLAUSES

40. 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 ADMA Telecom, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$672,541 for willfully and repeatedly violating the Act and the Commission's rules.

41. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,¹⁰⁹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, ADMA Telecom, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

42. 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 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. ADMA will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov.

43. 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. ADMA also will e-mail an electronic copy of its response to Hillary.DeNigro@fcc.gov.

44. 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.

¹⁰⁹ See 47 C.F.R. § 1.80.

45. 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 Steven A. Augustino, Counsel for ADMA Telecom, Inc., Kelley Drye & Warren LLP, Washington Harbor, Suite 400, 3050 K Street, NW, Washington, D.C. 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary