

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

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

**FORFEITURE ORDER**

**Adopted: March 9, 2011**

**Released: March 10, 2011**

By the Commission:

**I. INTRODUCTION**

1. In this *Forfeiture Order*, we assess a monetary forfeiture of \$662,541 against ADMA Telecom, Inc. (“ADMA”). We find that ADMA willfully and repeatedly violated sections 214, 225, 251(e)(2), and 254 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> 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 Federal Communications Commission’s (the “Commission’s” or “FCC’s”) rules by (1) failing to register with the Commission, (2) failing to make required regulatory filings, (3) failing to obtain an international section 214 authorization, and (4) failing 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.<sup>2</sup>

**II. BACKGROUND**

2. The facts and circumstances upon which this *Forfeiture Order* are based are set forth in detail in the *ADMA NAL*,<sup>3</sup> and need not be repeated here at length. ADMA is a Florida-based company that has provided telecommunications services since 2001,<sup>4</sup> primarily providing prepaid calling cards for calling to international destinations.<sup>5</sup> ADMA also sells the telecommunications services of a related entity, Business Telecommunications Services, Inc. (“BTS”), owned by ADMA’s two shareholders.<sup>6</sup> ADMA obtains telecommunications switching capacity and administrative support from BTS.<sup>7</sup>

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

<sup>2</sup> 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.

<sup>3</sup> See *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 838-43 ¶¶ 2-12 (2009) (“*ADMA NAL*” or “*NAL*”). The *ADMA NAL* is incorporated by reference herein.

<sup>4</sup> 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*”).

<sup>5</sup> See *id.* at 1.

<sup>6</sup> See *id.*

<sup>7</sup> *Id.*

3. An Enforcement Bureau (“Bureau”) investigation showed that ADMA failed to comply with the Commission’s registration requirement as well as its contribution and revenue filing requirements from the time it first provided telecommunications services in the United States in 2001<sup>8</sup> until August 2006. Specifically, ADMA failed to timely file quarterly and annual worksheets due in February 2006, April 2006, and May 2006, and failed to contribute to the USF from January through October 2006.<sup>9</sup> Similarly, ADMA failed to timely and fully remit its TRS obligations and to make contributions to the NANP administration cost recovery mechanism in 2005 and 2006. Finally, ADMA provided international telecommunications services without obtaining international section 214 authorization. On January 15, 2009, the *ADMA NAL* proposed a forfeiture for these apparent violations in the total amount of \$672,541.

4. ADMA filed its response to the *ADMA NAL* on February 13, 2009.<sup>10</sup> Therein, ADMA alleges several defects in the Commission’s proposed forfeiture.<sup>11</sup> First, ADMA argues that its revenue in 2006 qualified it for the *de minimis* USF exemption and thus it was not required to submit the Form 499-Q due in the first half of 2006 and was not responsible for ten months of unpaid USF.<sup>12</sup> Second, ADMA asserts that it should not be penalized for failing to pay three years worth of NANP invoices because the invoices were mailed to the wrong address and ADMA never received them.<sup>13</sup> Third, ADMA argues that portions of the forfeiture are outside the applicable statute of limitations.<sup>14</sup> Each of these arguments is addressed in detail below.

### III. DISCUSSION

5. The proposed forfeiture in this case was assessed in accordance with section 503(b)(1) of the Act, section 1.80 of the Commission’s rules, and the Commission’s forfeiture guidelines set forth in its *Forfeiture Policy Statement*.<sup>15</sup> In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account “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.”<sup>16</sup> 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.<sup>17</sup> 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<sup>18</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>19</sup>

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<sup>8</sup> See LOI Response at 3.

<sup>9</sup> See *Supplemental Response of ADMA Telecom, Inc. to the Enforcement Bureau’s June 2, 2006 Letter of Inquiry*, dated August 1, 2006, at 10 (“Supplemental LOI Response”).

<sup>10</sup> See Letter from Steven A. Augustino, Counsel to ADMA Telecom, Inc. to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Federal Communications Commission (dated February 13, 2009) (“NAL Response”).

<sup>11</sup> See *id.* at 1.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* at 3-4 and Exhibit 2.

<sup>14</sup> See *id.* at 4-5.

<sup>15</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80, *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *reconsideration denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>17</sup> 47 U.S.C. § 312(f)(1).

<sup>18</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> 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 *Continued...*”).

The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>20</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>21</sup>

6. We have examined ADMA’s response to the *ADMA NAL* pursuant to the aforementioned statutory factors, our rules, and the *Forfeiture Policy Statement*, and find by a preponderance of the evidence that ADMA willfully and repeatedly violated the Commission’s rules by failing to register and submit annual and quarterly worksheets pursuant to sections 54.711 and 64.1195 of the Commission’s rules; failing to timely and fully remit payments to the USF, TRS Fund, and cost recovery mechanism for NANP administration; and failing to obtain an international section 214 authorization to provide international telecommunications services pursuant to section 63.18 of the Commission’s rules.<sup>22</sup> We reduce by \$10,000 the proposed forfeiture amount for ADMA’s failure to make timely contributions to the NANP administration but deny ADMA’s petition to further reduce or eliminate the proposed forfeiture. We conclude that ADMA is liable for a forfeiture of \$662,541.

#### A. ADMA Is Liable For a Forfeiture For Failing to Register With the Commission

7. In the *ADMA NAL*, the Commission found that ADMA began providing interstate telecommunications service in 2001, but did not register with the Commission until August 1, 2006, the date on which it filed its first Form 499. We determined that ADMA was in apparent violation of section 64.1195(a) of our rules and proposed a forfeiture of \$100,000.<sup>23</sup> In its NAL Response, ADMA does not dispute that it violated section 64.1195(a), nor does it quibble with the amount of the penalty. ADMA contends, however, that the statute of limitations bars the Commission from assessing a forfeiture. Section 503(b)(6) of the Act states that no forfeiture shall be imposed against a carrier if the violation charged occurred more than a year prior to the date of issuance of an NAL.<sup>24</sup> ADMA asserts that any violations that accrued prior to December 8, 2005 are time barred as a result of a tolling agreement signed December 8, 2006.<sup>25</sup>

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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 ...”.

<sup>19</sup> 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.*”).

<sup>20</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>21</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

<sup>22</sup> See 47 U.S.C. §§ 214, 225, 251(e)(2), 254; 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.

<sup>23</sup> See *ADMA NAL*, 24 FCC Rcd at 845-46 ¶¶ 13-15, 851 ¶¶ 29-30.

<sup>24</sup> See 47 U.S.C. § 503(b)(6)(B).

<sup>25</sup> NAL Response at 4-5.

8. Consistent with our precedent,<sup>26</sup> we find, however, that ADMA's failure to register was a continuing violation that began on the day ADMA started providing interstate telecommunications service without having registered in accordance with section 64.1195(a) and continued until it filed its first Form 499 on August 1, 2006.<sup>27</sup> Thus, the limitations period did not begin to run on the continuing violation until August 1, 2006 and would not have expired until August 1, 2007. Under the December 8, 2006 tolling agreement, this violation is not time barred. We therefore affirm both the *ADMA NAL*'s finding that ADMA violated section 64.1195(a) of the Commission's rules and its assessment of a \$100,000 forfeiture for that violation.<sup>28</sup>

#### **B. ADMA Is Liable For a Forfeiture For Failing to Submit Telecommunications Reporting Worksheets**

9. In the *ADMA NAL*, the Commission concluded that ADMA apparently violated sections 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules<sup>29</sup> by willfully and repeatedly failing to file any Telecommunications Reporting Worksheets ("Worksheet") until August 2006.<sup>30</sup> Thus, the Commission found that ADMA was apparently liable for a \$50,000 forfeiture for each of these failures to timely file Worksheets which were due on February 1, 2006, April 1, 2006, and May 1, 2006.<sup>31</sup>

10. ADMA admits that it did not file the annual Worksheet that was due on April 1, 2006 until August 1, 2006, and that it did not file the quarterly Worksheets due on February 1, 2006 and May 1, 2006 until August 2, 2006.<sup>32</sup> Yet, ADMA contends that it is excessive to assess a \$50,000 forfeiture for each failure to file a Worksheet when the Worksheets were filed only a few months late.<sup>33</sup> We reject ADMA's position. As discussed in the *ADMA NAL*, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's Universal

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<sup>26</sup> *Global Teldata II, LLC*, Order of Forfeiture, 22 FCC Rcd 8710, 8716-8717 ¶¶ 16-17 (2007) (*Global Teldata Forfeiture Order*) (The Commission concluded that Global Teldata's failure to register pursuant to 47 C.F.R. § 64.1195(a) was a continuing violation.) See also *Teletronics, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13291, 13292 ¶ 5 (2005) ("*Teletronics NAL*") (holding same), *consent decree entered*, 22 FCC Rcd 8681 (2007); *InPhonic, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13277, 13282-83 ¶¶ 14-16 (2005) ("*InPhonic NAL*") (holding same); *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689 (2007) ("*InPhonic Forfeiture Order*") (holding same).

<sup>27</sup> See 47 U.S.C. § 503(b)(2)(B) (authorizing the Commission to assess a forfeiture for "each violation or *each day of a continuing violation*. . . ." (emphasis added)).

<sup>28</sup> 47 C.F.R. §§ 64.1195(a); *ADMA NAL*, 24 FCC Rcd at 851 ¶¶ 29-30 (The Commission concluded that a proposed forfeiture of \$100,000 was warranted for ADMA's failure to register); *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 13655, 13661-62, 13666 ¶¶ 17-19, 29 (2007) ("*Telecom House NAL*") (The Commission concluded that a proposed forfeiture of \$100,000 was warranted for Telecom House's failure to register), *consent decree entered*, 21 FCC Rcd 10883 (2006); *Communications Services Integrated, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17251, 17256-57, 17260 ¶¶ 14-16, 24 (2005) ("*CSII NAL*") (The Commission concluded that a proposed forfeiture of \$100,000 was warranted for CSII's failure to register.), *consent decree entered*, 21 FCC Rcd 10462 (2006).

<sup>29</sup> 47 C.F.R. §§ 54.711(a), 64.604(c)(5)(iii)(B).

<sup>30</sup> See *ADMA NAL*, 24 FCC Rcd at 846-47 ¶¶ 16-18.

<sup>31</sup> *Id.* at 851-52 ¶ 31.

<sup>32</sup> *Id.*

<sup>33</sup> See NAL Response at 7.

Service program.<sup>34</sup> The late filing of telecommunications reporting worksheets, even if just by “a few months,” results in delayed payments, and difficulty in calculating contributions to USF, TRS, and other regulatory fee programs. The Commission has consistently assessed a forfeiture of \$50,000 for failure to timely file a Worksheet.<sup>35</sup> ADMA’s bald assertion that the forfeiture is too high does not dissuade us from following our precedent.<sup>36</sup>

11. In its NAL Response, ADMA also claims that it qualified for the *de minimis* exemption under the Commission’s universal service rules in 2006 and was therefore not required to file two of the three Form 499s at issue (February and May 2006).<sup>37</sup> Under the Commission’s rules, a company is considered *de minimis* for the purposes of the universal service filing and contribution requirements if its contribution to universal service in any given year would be less than \$10,000.<sup>38</sup> Companies that qualify for this *de minimis* exemption are not required to file a quarterly FCC Form 499-Q, but they are required to file a completed FCC Form 499-A every year.<sup>39</sup> We are not persuaded by ADMA’s argument and we affirm the *ADMA NAL*’s finding that ADMA did not qualify for the *de minimis* exemption and was therefore required to file a February or May 2006 Form 499-Q.

12. The filing instructions for the 2006 Form 499-A (reporting calendar year 2005 revenues) state that, “Telecommunications providers that do not file this Worksheet because they are *de minimis* for purposes of universal service contributions (and need not file for any other purpose) should retain Figure 1

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<sup>34</sup> *ADMA NAL*, 24 FCC Rcd at 846-47 ¶ 17; *Local Phone Service, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78 ¶¶ 9-11 (2006) (“*LPSI NAL*”).

<sup>35</sup> *Local Phone Service, Inc.*, Forfeiture Order, 23 FCC Rcd 8952, 8956 ¶ 11 (2008) (“*LPSI Forfeiture Order*”) (imposing \$50,000 forfeiture for each late filed worksheet); *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13312-13 ¶¶ 14-15 (2005) (“*Carrera NAL*”) (imposing \$50,000 forfeiture for each failure to timely file a reporting worksheet for a total of \$250,000 for five worksheets); modified by *Carrera Communications, LP*, Order of Forfeiture, 22 FCC Rcd 9585, 9590 ¶¶ 11-12 (2007) (reducing forfeiture amount based on ability to pay); *InPhonic NAL*, 20 FCC Rcd at 13287 ¶ 27 (proposing \$50,000 forfeiture for each failure to timely file a reporting worksheet for a total \$100,000 for two worksheets), *aff’d by InPhonic Forfeiture Order*, 22 FCC Rcd 8689 (2007); *Telecom House NAL*, 21 FCC Rcd at 13666 ¶ 30 (proposing \$50,000 forfeiture for each failure to timely file a reporting worksheet for a total of \$150,000 for three worksheets); *Global Teledata II, LLC*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17264, 17274-75 ¶ 25 (2005) (“*Global Teledata NAL*”) (proposing \$50,000 forfeiture for failure to timely file a reporting worksheet); *CSII NAL*, 20 FCC Rcd at 17260 ¶ 25 (proposing \$50,000 forfeiture for each failure to timely file a reporting worksheet for a total of \$150,000 for three worksheets).

<sup>36</sup> As noted in the *ADMA NAL*, pursuant to section 503(b)(6) of the Act, the Commission only proposed forfeitures for apparent violations that occurred within one year of the date of the NAL. Therefore, although we found that ADMA apparently violated the Act and our rules for five years, we propose forfeitures only for violations that occurred within the parameters of the tolling agreement. See, e.g., *Globcom, Inc.* Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003) (“*Globcom NAL*”); *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967), *Teletronics NAL*, 20 FCC Rcd at 13298-99 ¶¶ 20-22.

<sup>37</sup> NAL Response at 2-3.

<sup>38</sup> 47 C.F.R. § 54.708.

<sup>39</sup> See 47 C.F.R. § 54.708; Telecommunications Reporting Worksheet, FCC Revised Form 499-A (2006), Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, Number Administration, and Local Number Portability Support Mechanisms at 5, <http://www.fcc.gov/Forms/Form499-A/499a-2006.pdf> (“2006 Telecommunications Reporting Worksheet Instructions”); *Wireline Competition Bureau Reminds De Minimis Telecommunication Providers of Certain FCC Regulation, Reporting, and Contribution Requirements*, Public Notice, 22 FCC Rcd 1889, 1890-91 (Wireline Comp. Bur. 2007) (*WCB Public Notice*).

and documentation of their contribution base revenues for 3 calendar years after the date each Worksheet is due.”<sup>40</sup> Thus, ADMA should have documentation to support its claim of *de minimis* status if it had properly determined that the company qualified. But ADMA relies not on its revenue information, and not on the documentation required by the USAC directions to the Form 499, but instead, ADMA relies exclusively on an internal USAC e-mail to FCC staff.<sup>41</sup> This e-mail estimated ADMA’s likely reported revenues for 2006 based on the information USAC had at that time. Plainly, USAC’s estimate was based on incomplete data, because it did not include ADMA’s quarterly revenue for the periods during which ADMA had not filed Form 499-Qs, and this is an inadequate basis for determining the company’s obligations. ADMA failed to provide any evidence from its own accounts and records reflecting that the company was or thought it was *de minimis* during this period. In the absence of any persuasive evidence, we reject ADMA’s assertion that it was not required to file.

13. ADMA also contends that there has been significant confusion surrounding *de minimis* carrier treatment under USF in 2005 and 2006<sup>42</sup> and cites as support a January 2007 Public Notice issued by the Wireline Competition Bureau reminding *de minimis* telecommunications providers of their FCC registration, reporting and contribution requirements.<sup>43</sup> ADMA, however, was not a *de minimis* carrier in 2006, and therefore the rules that apply to such carriers are irrelevant. ADMA also contends that the fact that such a notice was necessary bears on the Commission’s analysis of ADMA’s “degree of culpability” and on the “circumstances” of the offense.<sup>44</sup> This Public Notice is irrelevant, however, because, as ADMA acknowledges, it did not qualify for the *de minimis* exemption at the time of the violation in 2006. Therefore we affirm the *ADMA NAL*’s finding of a violation and imposition of a forfeiture on these grounds.

### **C. ADMA Is Liable For a Forfeiture For Failing to Make Universal Service Fund Contributions**

14. In the *ADMA NAL*, the Commission also concluded that ADMA had 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.<sup>45</sup> Specifically, the Commission found that ADMA failed to make payments to the USF from January 2006 to October 2006 and assessed a proposed forfeiture of \$211,835.<sup>46</sup>

15. In its NAL Response, ADMA contends that the proposed forfeiture amounts for its failure to file and make USF contributions are excessive. Specifically, ADMA argues that a forfeiture of \$211,835 is excessive when its total delinquency for its 2005 revenues was \$10,870.53.<sup>47</sup> As discussed in the *ADMA NAL*, 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

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<sup>40</sup> See 2006 Telecommunications Reporting Worksheet Instructions at 6.

<sup>41</sup> NAL Response at 3.

<sup>42</sup> See NAL Response at 6.

<sup>43</sup> See *id.*; *WCB Public Notice*, 22 FCC Rcd at 1889.

<sup>44</sup> NAL Response at 6.

<sup>45</sup> See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(c); *ADMA NAL*, 24 FCC Rcd at 847-48 ¶¶ 19-20.

<sup>46</sup> See *ADMA NAL*, 24 FCC Rcd at 852-53 ¶¶ 32-35.

<sup>47</sup> See NAL Response at 7.

non-discriminatory distribution of universal service costs among all telecommunications providers.<sup>48</sup> 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, plus an upward adjustment based on one-half of the company's approximate unpaid contributions.<sup>49</sup> Thus, our precedent already considers the amount of the delinquent payment, because it is used to make upward adjustments. The *ADMA NAL* followed this Commission precedent in calculating the amount of the forfeiture for these violations, and we find no reason to depart from that precedent here. Thus, we affirm the *ADMA NAL*'s application of this precedent.

16. ADMA also contends this proposed forfeiture amount was excessive because the company did not owe any USF contributions in 2006.<sup>50</sup> ADMA argues that the number of months for which the USF was unpaid and the amount of its USF contributions that was paid late is overstated in the *ADMA NAL*, because USAC believed at the time that ADMA was "tracking below" the *de minimis* threshold in 2006 and was therefore not required to pay USF from January through October 2006.<sup>51</sup> As we have already determined above,<sup>52</sup> ADMA should have filed quarterly Worksheets. If it had done so, it would in fact have been invoiced by USAC and required to make monthly USF contributions throughout 2006. The fact that the company's filing violation caused USAC not to send an invoice does not excuse ADMA's failure to pay.

17. Thus, we affirm the finding in the *ADMA NAL* that ADMA 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. We also affirm the *ADMA NAL*'s proposed forfeiture of \$211,835 for ADMA's failure to pay its USF obligations.

#### **D. ADMA Is Liable For a Forfeiture For Failing to Make TRS Contributions**

18. In the *ADMA NAL*, the Commission found that ADMA 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 in 2005 and 2006.<sup>53</sup> Thus, based on established precedent, the Commission proposed a \$20,000 forfeiture for ADMA's failure to pay its TRS Fund contributions in 2005 and 2006, plus an upward adjustment of \$60,706, representing approximately one-half of ADMA's unpaid TRS Fund contributions, for a total proposed forfeiture of \$80,706.<sup>54</sup>

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<sup>48</sup> See *ADMA NAL*, 24 FCC Rcd at 852 ¶ 32; 47 U.S.C. § 254(d).

<sup>49</sup> See, e.g., *See Globalcom, Inc.*, 25 FCC Rcd 3479, 13485 ¶16 (2010) (*Globalcom NAL*); *NTS NAL*, 25 FCC Rcd 5137, 5142 ¶¶ 12-13 (2010) ("*NTS NAL*"); *LPSI NAL*, 21 FCC Rcd at 9980 ¶¶ 15-16; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7242-44 ¶¶ 25-28 (2008) ("*Telrite NAL*"); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138-40 ¶ 31-34 (2008) ("*Compass Global NAL*"); *Global Crossing North America, Inc. et al.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd, 6120 ¶ 21 (2008) ("*Global Crossing NAL*"); *OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd 10479, 10482 ¶ 10 (2006) ("*OCMC Forfeiture Order*"); *Globcom NAL*, 18 FCC Rcd at 19903-04 ¶¶ 25-27; *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4721-24 ¶ 31-38 (2006) ("*Globcom Forfeiture Order*"). 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 19903-04 ¶¶ 25-27.

<sup>50</sup> *NAL Response* at 7.

<sup>51</sup> *Id.* at 2-3.

<sup>52</sup> See *supra* ¶¶ 11-13.

<sup>53</sup> See *ADMA NAL*, 24 FCC Rcd at 848 ¶¶ 21-22; 47 U.S.C. § 225; 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>54</sup> See *ADMA NAL*, 24 FCC Rcd at 853 ¶ 35.

19. While ADMA concedes it failed to pay its required 2006 TRS fund contribution, it contends that its failure to pay a TRS fund contribution for 2005 occurred prior to December 8, 2005 and is beyond the statute of limitations in this case.<sup>55</sup> We reject this theory because the violation occurred in July 2006, when payment was due. Thus, the violation occurred within the tolled period.<sup>56</sup>

20. We find that an \$80,706 forfeiture is appropriate for ADMA's failure to make TRS contributions. ADMA 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.<sup>57</sup> 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.<sup>58</sup> Carriers are required to make TRS contributions regardless of any *de minimis* status.<sup>59</sup> Because ADMA failed to register until August 2006, it was not timely billed for TRS obligations in 2005 or 2006. This does not excuse ADMA's failure to make payments due in those calendar years.<sup>60</sup> Thus, we affirm the proposed \$80,706 forfeiture contained in the *ADMA NAL* for the company's failure to pay its TRS Fund contributions in 2005 and 2006.

**E. ADMA Is Liable For a Forfeiture For Failing To Make Timely NANP Administration Contributions**

21. In the *ADMA NAL*, the Commission found 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 contributions toward the costs of number administration for 2005, 2006 and 2007.<sup>61</sup> Applying the established base forfeiture amount of \$10,000 for each instance in which ADMA failed to make required contributions to the NANP administration cost recovery mechanisms, we found that ADMA was apparently liable for the base forfeiture of \$30,000 for failing to pay its NANP contributions for 2005, 2006, and 2007.<sup>62</sup>

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<sup>55</sup> NAL Response at 4-5.

<sup>56</sup> Moreover, as discussed in the *ADMA NAL* and consistent with Commission precedent, failure to pay USF contributions and other similar payment obligations are continuing violations. See *ADMA NAL*, 24 FCC Rcd at 852 ¶ 32, citing *Global Crossing NAL*, 23 FCC Rcd 6110 ¶¶ 21-24 (proposing \$10,518,013 forfeiture for continuing failure to make required USF contributions); *Omniate International Telecom, LLC d/b/a OMNIATE Telecom*, 24 FCC Rcd 4252, 4265 ¶ 27 (2009) (proposing \$10,518,013 forfeiture for continuing failure to make required USF contributions) ("*Omniate NAL*"); *Telrite NAL*, 23 FCC Rcd 7231 (proposing \$40,000 forfeiture for continuing failure to satisfy its TRS obligations for the 2005-2008 funding periods.); *Compass Global NAL*, 23 FCC Rcd 6125 (proposing \$828,613.44 forfeiture for continuing failure to make required USF contributions). To the extent ADMA believes its failure to satisfy its TRS obligations arises in 2005, that failure was a continuing violation that began in July 2006 and continued until the company paid its entire delinquent balance due to the TRS. ADMA had not fully paid its TRS obligations at the time the *ADMA NAL* was issued. ADMA had made payments totaling only \$79,020, approximately 65% of what it owed to the TRS. *ADMA NAL*, 24 FCC Rcd at 848 ¶ 22. Thus the violation was continuing at the time the *ADMA NAL* was issued and the forfeiture is also not time barred on that basis.

<sup>57</sup> 47 U.S.C. § 225; 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>58</sup> *Id.*; 47 C.F.R. § 64.604(c)(5)(iii)(B) (setting forth methods of computation and payment of contributions to TRS Fund).

<sup>59</sup> *WCB Public Notice*, 22 FCC Rcd at 1892.

<sup>60</sup> 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.

<sup>61</sup> See *ADMA NAL*, 24 FCC Rcd at 849 ¶¶ 23-24; 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17(a).

<sup>62</sup> See *ADMA NAL*, 24 FCC Rcd at 853 ¶ 36.



22. ADMA concedes that it never paid its NANP contributions from the time it began providing service in 2001 until February 1, 2007, but argues that imposing a \$10,000 forfeiture for each of three violations is excessive because the total payment due for 2006 was \$307.85 and a \$100 late fee was applied to that bill.<sup>63</sup> We reject ADMA's position. Late payment fees address administrative expenses and are not a substitute for forfeitures. We find that failure to pay NANP contributions for a significant period is a serious violation of our rules that warrants a significant penalty. As noted in the *ADMA NAL*, "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."<sup>64</sup> Well-established precedent imposes a forfeiture for such violation in the amount of \$10,000 for each instance in which a contributor fails to make the required contribution.<sup>65</sup> ADMA has offered no reason for us to deviate from that precedent.

23. ADMA also argues that we are prohibited from imposing a forfeiture for its failures to pay NANP contributions in 2006 and 2007 because these failures were not willful. ADMA states that Welch & Company, LLP, the Commission's billing and collection agent for NANP contributions, sent the 2006 and 2007 NANP invoices to an incorrect address instead of to ADMA's address in Florida.<sup>66</sup> As an initial matter, we note that even if ADMA's actions were not willful, the Commission may also assess a forfeiture for violations that are merely repeated and not willful.<sup>67</sup> We also note that a carrier is obligated to submit contributions when due regardless of whether it receives an invoice or other notice from the NANP administrator.<sup>68</sup> As discussed in the *Globcom NAL*, the Act and our rules do not condition payment on receipt of an invoice or other notice from USAC.<sup>69</sup> In addition "a carrier's failure to submit its contributions may subject the carrier to the enforcement provisions of the Act and other applicable law."<sup>70</sup> In this case, ADMA did not submit NANP administration contributions for 2005, 2006, or 2007. Thus, like the USF contributions discussed in the *Globcom NAL*, ADMA had an obligation to ensure it was being billed for and paying its NANP contributions. Furthermore, there is no evidence that ADMA inquired about the status of its NANP invoices at anytime between 2005 and 2007. As a result, ADMA deprived the NANP administration fund of funds necessary to carry out the goals of its important statutory program. Thus, ADMA had a responsibility to make sure that its NANP payments were being made in a timely manner, regardless of whether it actually received the invoices.

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<sup>63</sup> NAL Response at 7-8.

<sup>64</sup> *ADMA NAL*, 24 FCC Rcd at 853 ¶ 36.

<sup>65</sup> *Id.*, citing *Teletronics NAL*, 20 FCC Rcd at 13303 ¶ 35. See also, *Omnit NAL*, 24 FCC Rcd at 4265-66 ¶ 28; *Telrite NAL*, 23 FCC Rcd 7231, 7245-46 ¶ 33; *Compass Global NAL*, 23 FCC Rcd 6125, 6141-42 ¶ 38.

<sup>66</sup> See NAL Response at 3-4

<sup>67</sup> See *Supra* n.20.

<sup>68</sup> 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."). E.g., "Proposed Third Quarter 2003 Contribution Factor," *Public Notice*, 18 FCC Rcd 11442 (Wireline Comp. Bur. 2003) ("Contribution payments are due on the date shown on the [USAC] invoice.")

<sup>69</sup> See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). Cf. *Globcom NAL*, 18 FCC Rcd at 19896, n.22 (explaining that a carrier that does not file may fail to receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*). See also 2006 Telecommunications Reporting Worksheet Instructions.

<sup>70</sup> See *Globcom NAL*, 18 FCC Rcd at 19896 ¶ 5.

24. ADMA also argues that the 2005 violation is barred by the statute of limitations because the relevant payment was due more than one year before the Bureau and ADMA executed the tolling agreement.<sup>71</sup> Since we released the *ADMA NAL*, the NANP Plan Administrator cancelled all amounts ADMA owed for 2005.<sup>72</sup> According to the NANP Plan Administrator, they do not charge a fee in the year a company registers. As a result, ADMA was not responsible for its 2005 NANP bill. We therefore cancel the \$10,000 forfeiture amount attributed to that apparent violation. As a result, we do not reach ADMA's argument in respect to the 2005 NANP payment violation.

25. The record is clear that ADMA failed to make any contributions toward NANP administration cost recovery mechanisms on the basis of its actual end-user telecommunications revenues since 2001. We conclude that ADMA is liable for forfeiture for its failure to pay NANP contributions in 2006 and 2007 because it provided a telecommunications service to end users in the United States and was required by section 52.17 of the Commission's rules to make contributions based on its revenues derived from that service. Thus, we find that ADMA is liable for \$20,000 for failure to make timely NANP administration contributions for 2006 and 2007.

#### **F. ADMA Is Liable For a Forfeiture For Failing to Obtain International Section 214 Authorization**

26. In the *ADMA NAL*, the Commission found that ADMA has apparently violated section 214(a) of the Act and section 63.18 of the Commission's rules by willfully failing to apply for and obtain authorization from the Commission to provide international telecommunications service and, consistent with Commission precedent, proposed a \$100,000 forfeiture for this violation.<sup>73</sup>

27. In its NAL Response, ADMA contends that its failure to obtain section 214 authorization is a technical violation on par with an unauthorized pro forma transfer of control because had ADMA reorganized its ownership and become a wholly owned subsidiary of an affiliated company, BTS, ADMA could have provided international telecommunications service using BTS's authorization.<sup>74</sup> ADMA also contends the Commission's Forfeiture Guidelines prescribe a \$1,000 forfeiture for such a violation. We reject ADMA's argument that its hypothetical ability to use another affiliated company's authorization warrants a sizable reduction to the proposed forfeiture amount. Although we permit a wholly owned subsidiary to operate under its parent's international section 214 authorization,<sup>75</sup> ADMA was not a wholly owned subsidiary of BTS at the time the Commission granted BTS's request for an international section 214 authorization or at the time the Bureau investigated ADMA's noncompliance. ADMA did eventually become a wholly-owned subsidiary of BTS in January 2007, but that change occurred long after the investigation began. ADMA provided unauthorized international telecommunications service for years, deriving revenue from this service while failing to comply with numerous regulatory obligations. The amount of the forfeiture is consistent with precedent for entities failing to receive international section 214 authorization prior to providing that service.<sup>76</sup> We conclude that a forfeiture of \$100,000 is warranted for

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<sup>71</sup> NAL Response at 5.

<sup>72</sup> See NANPA credit note CN002504.

<sup>73</sup> See *ADMA NAL*, 24 FCC Rcd at 849-50 ¶¶ 25-27; 47 U.S.C. § 214(a); 47 C.F.R. § 63.18.

<sup>74</sup> NAL Response at 7.

<sup>75</sup> 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.

<sup>76</sup> *InPhonic NAL*, 22 FCC Rcd at 8706 ¶ 41 (proposing a forfeiture of \$100,000 for InPhonic's apparent operation as an international telecommunications service provider without section 214 authorization); *Omniat NAL*, 24 FCC Rcd at 4264 ¶ 25 (proposing a forfeiture of \$100,000 for Omniat's apparent operation as an international

*Continued...*

ADMA's willful failure to obtain section 214 authority from the Commission prior to providing international telecommunications service.<sup>77</sup>

#### IV. CONCLUSION

28. Except as otherwise noted herein, we affirm the findings contained in the *ADMA NAL*. In light of the seriousness, duration and scope of the apparent violations, we find that a forfeiture of \$662,541 is warranted, including: (1) \$100,000 for ADMA's failure to register with the Commission; (2) \$150,000 for ADMA's failure to file Telecommunications Reporting Worksheets; (3) \$211,835 for ADMA's failure to pay its USF obligations; (4) \$80,706 for ADMA's failure to make TRS contributions; (5) \$20,000 for ADMA's failure to make NANP contributions; and (6) \$100,000 for ADMA's failure to obtain an international section 214 authorization prior to commencing international service.

#### V. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED THAT**, pursuant to section 503(b) of the Communications Act of 1934, as amended,<sup>78</sup> and section 1.80 of the Commission's rules,<sup>79</sup> ADMA Telecom, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$662,541 for willfully or repeatedly violating the Act and the Commission's rules.

30. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules by March 18, 2011. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>80</sup> 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 in the caption to this Order. 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. The parties shall also send electronic notification of the date said payment is made to [pam.slipakoff@fcc.gov](mailto:pam.slipakoff@fcc.gov).

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telecommunications service provider without section 214 authorization); *Teleplus, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7666, 7670-71 ¶ 12 (Enf. Bur. 2009) (proposing a forfeiture of \$100,000 for Teleplus' apparent operation as an international telecommunications service provider without section 214 authorization).

<sup>77</sup> See *ADMA NAL*, 24 FCC Rcd at 854 ¶ 38.

<sup>78</sup> 47 U.S.C. § 503(b).

<sup>79</sup> 47 C.F.R. § 1.80.

<sup>80</sup> 47 U.S.C. § 504(a).

31. **IT IS FURTHER ORDERED** that copies of this *Forfeiture Order* shall be sent by certified mail, return receipt requested, to Steven A. Augustino, Counsel to ADMA Telecom, Inc., Kelley Drye & Warren, LLP, Washington Harbour, Suite 400, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary