

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

In the Matter of)	File No. EB-08-IH-5303
)	
RB Communications, Inc., d/b/a Starfone)	NAL/Acct. No. 201232080018
)	
Apparent Liability for Forfeiture)	FRN 0012951612
)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: April 13, 2012

Released: April 16, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that RB Communications, Inc., d/b/a Starfone, apparently violated Section 214 of the Communications Act of 1934, as amended (the “Act”),¹ and Sections 1.1154, 1.1157(b)(1), 63.18, 64.604(c)(5)(iii)(A), and 64.1195 of the Commission’s rules,² by willfully and repeatedly failing to: (1) apply for and obtain authorization from the Commission to provide international telecommunications service; (2) register with the Commission; (3) contribute to the Telecommunications Relay Service (TRS) Fund; and (4) pay regulatory fees to the Commission. Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Starfone is apparently liable for a total forfeiture of \$408,668.

II. BACKGROUND

2. Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate of authorization from the Commission.³ While the Commission has granted “blanket” authority to carriers providing domestic service,⁴ 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.⁵ Instead, a carrier must seek and obtain Section 214 approval

¹ 47 U.S.C. § 214.

² 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 63.18, 64.604(c)(5)(iii)(A), 64.1195.

³ 47 U.S.C. § 214(a).

⁴ 47 C.F.R. § 63.01(a) (authorizing “[a]ny party that would be a domestic interstate communications common carrier . . . 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”).

⁵ *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 and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11365-66, para. 2 & n.8 (1999) (grant of blanket authority is only for domestic services and does not extend to the provision of international services).

from the Commission prior to providing such services.⁶ The Commission has explained that the international Section 214 review process enables the Commission to review applications for risks to 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.⁷ 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.⁸

3. Section 63.18 of the Commission's rules requires that any carrier that seeks Section 214 authority "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."⁹ 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 1988.¹⁰ Section 63.18(e)(2) establishes specific requirements for parties "applying for authority to resell the international services of authorized common carriers," and Section 63.23 of the rules, in turn, identifies the conditions that apply to "carriers authorized to resell the international services of other authorized carriers."¹¹

4. Congress has charged the Commission 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 fraud, and do not evade oversight.¹² Section 64.1195 of the Commission's rules requires 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).¹³

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

⁶ 47 C.F.R. § 63.18; *see also* 47 U.S.C. § 214(a).

⁷ *See 1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909, 4914-16, paras. 14-16 (1999) (*1998 International Biennial Review Order*); *Personal Communications Industry Ass'n's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16882-83, para. 50 (1998) (*PCIA Forbearance Order*).

⁸ *See 1998 International Biennial Review Order*, 14 FCC Rcd at 4915, para. 15; *PCIA Forbearance Order*, 13 FCC Rcd at 16882, para. 50.

⁹ 47 C.F.R. § 63.18.

¹⁰ *See id.*

¹¹ *Id.* §§ 63.18(e)(2), 63.23.

¹² *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, paras. 59-62 (2000) (*Carrier Selection Order*).

¹³ 47 C.F.R. § 64.1195; *see Telecommunications Reporting Worksheet, FCC Form 499-A*, available at <http://transition.fcc.gov/Forms/Form499-A/499a2-2011.pdf> (Oct. 2011).

speech-impaired individuals in the United States.”¹⁴ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.¹⁵ Pursuant to Section 64.604(c)(5)(iii)(A) of the Commission’s rules, every provider of interstate or international telecommunications services must contribute to the TRS Fund based upon its end-user revenues.¹⁶

6. The Commission has established specific procedures for administration of the TRS Fund and other associated federal regulatory programs. These include the requirement that each telecommunications provider file, pursuant to Section 54.711(a) of the Commission’s rules, accurate company-specific revenue data on Form 499-A annually.¹⁷ The information reported on Form 499-A is used to determine the telecommunications provider’s payment obligations to the TRS Fund and other regulatory programs. These periodic filings trigger a determination of liability, if any, and subsequent billing and collection by the entities that administer the regulatory programs. Providers must timely pay their contribution invoices,¹⁸ and the Commission’s rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.¹⁹

7. Pursuant to Section 9(a)(1) of the Act, Section 1.1151 of the Commission’s rules requires providers of interstate telecommunications services and other providers to pay regulatory fees to the Commission to cover the costs of certain regulatory activities.²⁰ In particular, Sections 1.1154 and 1.1157 of the Commission’s rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.²¹ Such fees must be paid on an annual basis,²²

¹⁴ 47 U.S.C. § 225(b)(1).

¹⁵ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, para. 3 (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, 5141, 5143, paras. 2, 5 (2000). Rolka Loube Salter Associates currently is responsible for administering the TRS Fund.

¹⁶ 47 C.F.R. § 64.604(c)(5)(iii)(A) (requiring every carrier that provides “interstate services, including . . . international . . . services” to contribute to the TRS Fund).

¹⁷ 47 C.F.R. § 54.711(a); see also 47 C.F.R. § 64.604(c)(5)(iii)(A).

¹⁸ See 47 C.F.R. § 64.604(c)(5)(iii)(A), (B). Our rules, however, do not condition payment on receipt of an invoice or other notice from the TRS Fund administrator. See *id.*

¹⁹ See 47 C.F.R. § 54.713(c).

²⁰ Section 9(a)(1) of the Act directs the Commission to “assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1); see also 47 C.F.R. §§ 1.1151, 1.1154, 1.1157. Interstate telecommunications service providers (ITSPs) are subject to regulatory fees based on billed interstate and international end-user revenues for local and most toll services. Carriers whose total regulatory fee payment obligation is less than \$10 are exempt; however, the vast majority of FCC Form 499-A filers are required to pay ITSP regulatory fees. See *Regulatory Fees Fact Sheet: What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2011* at 6, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309146A1.doc (rel. Aug. 2011).

²¹ See 47 C.F.R. §§ 1.1154, 1.1157.

²² See 47 C.F.R. § 1.1157(b)(1).

and failure to do so subjects a carrier to late payment penalties, as well as possible revocation of its operating authority.²³

8. RB Communications, Inc. is a California corporation that does business under the trade name “Starfone.”²⁴ Beginning in 2003,²⁵ Starfone has resold interstate and international telecommunications services²⁶ to end users.²⁷ On October 6, 2008, the Universal Service Administrative Company (USAC) referred Starfone to the Enforcement Bureau (Bureau) for potential enforcement action related to its apparent failures to register and to comply with other regulatory requirements.²⁸

9. On March 9, 2009, the Bureau issued a letter of inquiry (LOI) to Starfone seeking information about its compliance with the Commission’s rules governing, among other things, the provision of international telecommunications service and contributions to the TRS Fund.²⁹ The Bureau issued a further letter of inquiry to Starfone on September 4, 2009.³⁰

10. In its response to the LOI, Starfone admitted that it had not previously applied for an international Section 214 authorization.³¹ Starfone also admitted that it had failed to timely register with the Commission,³² and that it had never contributed to the TRS Fund.³³

11. On July 23, 2009, USAC received for the first time a signed “registration-only” Form 499-A from Starfone. On February 1, 2010, Starfone submitted an application for international Section 214 authority, which was granted on March 5, 2010.³⁴ On April 1, 2010, Starfone provided annual revenue data to USAC for the first time, reporting its calendar year 2009 revenue on Form 499-A. It made a timely 499-A filing in April of 2011. In December 2011, Starfone filed the Forms 499-A that had been due in 2007, 2008, and 2009. Starfone made no payments to the TRS Administrator for 2007, 2008, or 2009.

²³ See 47 U.S.C. § 159(c)(1), (3).

²⁴ *Response of RB Communications, Inc., d/b/a Starfone to the Enforcement Bureau’s March 9, 2009 Letter of Inquiry*, dated April 9, 2009, Responses to Inquiries 1, 5 (*LOI Response*).

²⁵ *Id.*, Response to Inquiry 2; *Response of RB Communications, Inc., d/b/a Starfone to the Enforcement Bureau’s September 4, 2009 Letter of Inquiry*, dated September 29, 2009, Responses to Inquiry 19 (*FLOI Response*).

²⁶ *Id.* Starfone advertises itself as “a value added provider of Long Distance (International), prepaid and postpaid calling services based on an online pinless calling card system” that allows users global access to over 300 countries. See Starfone web site at <http://www.starfone.net/aboutus.aspx> (visited April 9, 2012). Starfone states that “although the company’s business model is to provide international calls only, the configuration of its switches does give its end-users the ability to make interstate calls which comprise a very small percentage of the company’s overall traffic.” *FLOI Response*, Response to Inquiry 20(a). In 2004, the company received a certificate of public convenience and necessity in California to operate as a nondominant interexchange carrier providing inter- and intra-LATA services. *LOI Response*, Response to Inquiry 6.

²⁷ *FLOI Response*, Response to Inquiry 20(c).

²⁸ USAC administers the federal Universal Service Fund. 47 C.F.R. § 54.701(a).

²⁹ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Mr. Lyle Watkins, General Manager, Starfone, dated Mar. 9, 2009 (*LOI*).

³⁰ Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Mr. Lyle Watkins, General Manager, RB Communications, Inc., dated Sept. 4, 2009 (*FLOI*).

³¹ *LOI Response*, Response to Inquiry 18.

³² See *id.*, Response to Inquiry 8.

³³ *Id.*, Response to Inquiry 12. TRS contributions are due annually on July 26.

³⁴ See *International Authorizations Granted*, Public Notice, 25 FCC Rcd 2337, 2339 (2010) (File No. ITC-214-20100203-00075).

Further, with the exception of a small payment made in 2011, Starfone has not paid any regulatory fees due to the Commission for the period 2007 to 2011.

III. DISCUSSION

12. 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.³⁵ 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.³⁶ The legislative history to Section 312(f)(1) clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,³⁷ and the Commission has so interpreted the term in the Section 503(b) context.³⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.³⁹ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.⁴⁰ 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.⁴¹ The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act, a rule, or a Commission order.⁴² As set forth below, we conclude that Starfone is apparently liable for forfeiture for its apparent willful and repeated violations of Section 214 of the Act⁴³ and Sections 1.1154, 1.1157(b)(1), 63.18, 64.604(c)(5)(iii)(A), and 64.1195 of the Commission’s rules.⁴⁴

13. The fundamental issues in this case are whether Starfone apparently violated the Act and the Commission’s rules by willfully or repeatedly failing to apply for and obtain authorization from the Commission to provide international telecommunications service, register with the Commission, contribute to the TRS Fund, and pay regulatory fees to the Commission. We answer these questions in the affirmative. Based on the facts and circumstances before us, we therefore conclude that Starfone is apparently liable for a forfeiture of \$408,668.

A. Starfone Apparently Failed to Obtain an International Section 214 Authorization Before Providing International Telecommunications Service

14. We find that Starfone provided international telecommunications service without an international Section 214 authorization from November 1, 2003 until March 5, 2010. In its LOI Response,

³⁵ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(2).

³⁶ 47 U.S.C. § 312(f)(1).

³⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

³⁸ *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting Co.*).

³⁹ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage), *forfeiture issued*, Forfeiture Order, 17 FCC Rcd 22626 (2002).

⁴⁰ *See Callais Cablevision*, 16 FCC Rcd at 1362, para. 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, para. 5.

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

⁴² *See, e.g., SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

⁴³ 47 U.S.C. § 214.

⁴⁴ 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 63.18, 64.604(c)(5)(iii)(A), 64.1195.

Starfone stated that it began providing international telecommunications service on November 1, 2003.⁴⁵ Starfone did not apply for international Section 214 authority until February 3, 2010, nearly a year after receiving a letter of inquiry from the Bureau, and was not granted such authority until March 5, 2010.⁴⁶ Starfone stated in the LOI Response, and again in its Section 214 application, that it had not previously been granted international Section 214 authority.⁴⁷ Thus, Starfone apparently provided international telecommunications service without Commission-granted international Section 214 authority from November 1, 2003 to March 5, 2010. We therefore conclude based on a preponderance of the evidence that Starfone has apparently willfully and repeatedly violated Section 214 of the Act and Section 63.18 of the Commission's rules.

B. Starfone Apparently Failed to Register with the Commission

15. We conclude that Starfone has apparently violated Section 64.1195(a) of our rules by failing to register with the Commission from the time it began providing interstate telecommunications services until July 23, 2009.⁴⁸ Starfone'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 on Form 499-A.⁴⁹ Although Starfone had provided interstate telecommunications services for several years, it failed to register in accordance with Section 64.1195(a) until July 23, 2009. As a result of its misconduct, Starfone operated for a significant period of time without participation in any of the programs tied to registration. As an interstate telecommunications carrier, Starfone had a clear and affirmative duty to satisfy this federal obligation.⁵⁰

16. We view Starfone'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 TRS and other programs, and to fulfilling Congress' objectives in Section 225(b)(1) of the Act, 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 TRS 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.

⁴⁵ *FLOI Response*, Response to Inquiry 19.

⁴⁶ *See International Authorizations Granted*, Public Notice, 25 FCC Rcd at 2339.

⁴⁷ *LOI Response*, Response to Inquiry 18; File No. ITC-214-20100203-00075 at Attach. 2.

⁴⁸ Starfone's recent Form 499-A filings reflect that it has been providing interstate telecommunications service at least since sometime in 2004.

⁴⁹ 47 C.F.R. § 64.1195(a). 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 16025, para. 62.

⁵⁰ *See The 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, 17099, para. 22 (1997) ("it is each licensee's obligation ... to know and comply with all of the Commission's rules").

17. The impact of a carrier's failure to register is no less severe where, as here, that carrier ultimately registers with the Commission. Although Starfone registered on July 23, 2009, Starfone delayed its registration for a substantial period of time and did not complete its registration until several months after 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.⁵¹ Based on a preponderance of the evidence, therefore, we find that Starfone apparently has violated Section 64.1195(a) of the Commission's rules by willfully and repeatedly failing to register until July 23, 2009.

C. Starfone Apparently Failed to Make TRS Fund Contributions

18. As a provider of interstate and international telecommunications services, Starfone was obligated to contribute to the TRS Fund on the basis of its interstate and international end-user telecommunications revenues reported on its annual Worksheet.⁵² A carrier's contribution to the TRS Fund is based upon its revenues for the prior calendar year and a contribution factor determined annually by the Commission.⁵³ Subject carriers must make TRS contributions on an annual basis, with certain exceptions that are not applicable to Starfone.⁵⁴ Records of the TRS administrators indicate that Starfone made no payment towards its TRS Fund obligations prior to 2010. We therefore conclude, based on a preponderance of the evidence, that Starfone has apparently violated Section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing, up to the date of this NAL, to make all required TRS contributions due to the TRS Administrator in 2007, 2008, and 2009.⁵⁵

D. Starfone Apparently Failed to Pay its Regulatory Fees

19. As an interstate telecommunications service provider, Starfone is required to pay regulatory fees on the basis of its interstate and international end-user revenues as reported on its Form 499-A.⁵⁶ The Commission's records indicate that, with the exception of a very small payment made in September 2011, Starfone has failed to make any regulatory fee payments to date. We therefore conclude, based on a preponderance of the evidence, that Starfone apparently violated Sections 1.1154 and

⁵¹ *E.g.*, *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 846, para. 15 (2009) (*ADMA NAL*) (citing *AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21870-71, paras. 12-14 (2002); *America's Tele-Network Corp.*, Order of Forfeiture, 16 FCC Rcd 22350, 22355, para. 15 (2001); *Coleman Enters., Inc. d/b/a/ Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24388, para. 8 (2000)), *forfeiture issued*, Forfeiture Order, 26 FCC Rcd 4152 (2011) (*ADMA Forfeiture Order*).

⁵² 47 C.F.R. § 64.604(c)(5)(iii)(A); *see also id.* at (c)(5)(iii)(B) (setting forth methods of computation and payment of contributions to TRS Fund).

⁵³ *Id.* at (c)(5)(iii)(B).

⁵⁴ *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.* The billing cycle for TRS assessments runs from July 1 to June 30 of each year, with assessments made based on carriers' reported revenue information for the corresponding FCC Form 499-A.

⁵⁵ Because the contributions remain unpaid, these constitute continuing violations. *See Omnia International Telecom, LLC d/b/a Omnia Telecom*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 4254, 4265-66, paras. 27, 29 (2009) (*Omnia NAL*).

⁵⁶ *See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to pay regulatory fees due to the Commission for each year from 2007 to 2011.⁵⁷

E. Proposed Forfeiture Amount

20. Section 503(b)(1) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵⁸ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation by a common carrier, up to a statutory maximum of \$1,500,000 for a single act or failure to act.⁵⁹ 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," as well as our forfeiture guidelines.⁶⁰

21. We conclude that Starfone apparently failed to obtain an international Section 214 authorization from the Commission prior to providing international telecommunications service. Starfone apparently operated as an international telecommunications service provider from November 2003 until March 5, 2010 without authorization from the Commission. We therefore find that this apparent violation of the Act and the Commission's rules was both willful and repeated. Given the unambiguous language of the Act,⁶¹ the Commission's rules and decisions,⁶² and even the Commission's website,⁶³ it should have been apparent to Starfone that it was required to obtain Section 214 authority from the Commission to provide international telecommunications service.

22. In light of the clear statutory and Commission requirements, we find that Starfone's failure to obtain Section 214 authority from the Commission prior to providing international telecommunications service was also egregious. 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

⁵⁷ 47 C.F.R. §§ 1.1154, 1.1157(b)(1); *see also* 47 U.S.C. § 159(a)(1). Because the fees remain unpaid, these constitute continuing violations. *See Omnia NAL*, 24 FCC Rcd at 4266, para. 29; *Telrite Corporation*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7245, para. 35 (2008) (*Telrite NAL*).

⁵⁸ 47 U.S.C. § 503(b)(1)(B).

⁵⁹ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). The Commission has amended Section 1.80(b)(2) of the Rules three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note. The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,325,000 to \$150,000/\$1,500,000).

⁶⁰ 47 U.S.C. § 503(b)(2)(E); *see also* 47 C.F.R. § 1.80(b)(6), Note to paragraph (b)(6): Guidelines for Assessing Forfeitures.

⁶¹ 47 U.S.C. § 214(a).

⁶² *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 International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

⁶³ 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://transition.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."

the vital programs linked to registration,⁶⁴ 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.⁶⁵ 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 Starfone.⁶⁶ 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,"⁶⁷ 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 Starfone's apparent willful and repeated failure to obtain Section 214 authority from the Commission prior to providing international telecommunications service.⁶⁸

23. Starfone failed to register with the Commission until July 23, 2009, in apparent willful and repeated violation of Section 64.1195(a) of our rules. Registration with the Commission through filing of Telecommunications Reporting Worksheets is fundamental to the implementation of our central repository of carriers and to the administration of multiple statutorily derived programs – including the TRS 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.

24. We have previously established \$100,000 as the base forfeiture for a carrier's failure to register with the Commission.⁶⁹ 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."⁷⁰ 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."⁷¹ 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 Starfone's misconduct, and that a proposed forfeiture of \$100,000 is therefore warranted.

⁶⁴ See *supra* para. 16.

⁶⁵ See *1998 International Biennial Review Order*, 14 FCC Rcd at 4915-17, paras. 15-18; *id.* at 4939-40, paras. 72-74.

⁶⁶ See *LOI Response*, Response to Inquiry 7 (submitting annual revenue information for 2006-2007); see also email from William W. Holcomb, Esq., Counsel for Starfone, to Margaret Dailey, Attorney, Investigations and Hearing Division, Enforcement Bureau, FCC, dated January 9, 2012 (submitting updated annual revenue information for 2008-2010).

⁶⁷ 47 U.S.C. § 503(b)(2)(E).

⁶⁸ *ADMA Forfeiture Order*, 26 FCC Rcd at 4161-62, para. 27 (assessing a \$100,000 forfeiture against a prepaid calling card company for unauthorized international telecommunications service); *Teleplus, LLC, Notice of Apparent Liability for Forfeiture*, 24 FCC Rcd 7666, 7670-71, para. 12 (2009) (same); *Omniat NAL*, 24 FCC Rcd at 4264, para. 25 (same); *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8706, para. 41 (2007) (same).

⁶⁹ See *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 15131, 15142, para. 29 (2005), *proceeding terminated*, 21 FCC Rcd 10883 (2006); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13277, 13287, para. 26 (2005) (*InPhonic NAL*), *forfeiture issued*, 22 FCC Rcd 8689; *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291, 13302, para. 30 (2005), *proceeding terminated*, 22 FCC Rcd 8681 (2007).

⁷⁰ See, e.g., *InPhonic NAL*, 20 FCC Rcd at 13287, para. 26.

⁷¹ *Id.*

25. We also find that Starfone has failed to make TRS contributions for 2007 to 2009. Where a provider fails to satisfy its TRS obligations for an extended period of time, it thwarts the purpose for which Congress established Section 225(b)(1) of the Act and its implementing regulations – 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.”⁷² We have previously stated that nonpayment of TRS and other contributions constitute continuing violations because they are cured only by payment of all monies owed.⁷³ To effectively deter companies like Starfone from violating our rules governing payment into the TRS and other programs, our forfeiture calculations will reflect not only the violations that began within the last twelve months, but all such continuing violations.⁷⁴

26. 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.⁷⁵ Thus, we propose a \$30,000 forfeiture for Starfone’s failure to pay its TRS Fund contributions for each year from 2007 to 2009. In the past, we have also calculated upward adjustments to forfeitures for failure to make TRS payments based on a percentage of one half of the company’s unpaid balance.⁷⁶ As described above, Starfone currently owes \$257,336 to the TRS Fund for 2007 to 2009. Thus, under this formula, we propose an upward adjustment of \$128,668 for Starfone’s apparent nonpayment violations, taking into account all the factors enumerated in Section 503(b)(2)(E) of the Act. Accordingly, we find Starfone liable for a total proposed forfeiture of \$158,668 for its apparent willful and repeated failure to make contributions into the TRS Fund.

27. Finally, we find that, with the exception of a small payment in 2011, Starfone has apparently failed to make regulatory fee payments due to the Commission on the basis of its actual interstate and international end-user telecommunications revenues for each year from 2007 to 2011. A carrier’s failure to contribute toward the costs of certain regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program and accomplishment of Congress’ objectives in Section 9(a)(1) of the Act. As with the failure to make TRS contributions, failures to make regulatory fee payments are continuing violations until they are cured by the payment of all monies owed.⁷⁷ The Commission has established a base forfeiture amount of \$10,000 for failure to make required regulatory fee payments.⁷⁸ Therefore, we find Starfone is apparently liable for a forfeiture of \$50,000 for its willful and repeated failure to make regulatory fee payments from 2007 to 2011.

IV. CONCLUSION

28. In light of the seriousness, duration, and scope of the apparent violations, we propose a forfeiture in the amount of \$408,668 for Starfone’s failure to apply for and obtain authorization from the Commission to provide international telecommunications service, register with the Commission, contribute to the TRS Fund, and make regulatory fee payments. We caution that additional violations of

⁷² 47 U.S.C. § 225(b)(1).

⁷³ See *Omniatech NAL*, 24 FCC Rcd at 4265, 66, paras. 27, 29.

⁷⁴ See *Telrite NAL*, 23 FCC Rcd at 7243, para. 27.

⁷⁵ See *ADMA NAL*, 24 FCC Rcd at 853, para. 35; *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19904, para. 29 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710, 4721, para. 31 (2006).

⁷⁶ See, e.g., *ADMA NAL*, 24 FCC Rcd at 853, para. 35; *Globcom NAL*, 18 FCC Rcd at 19904, para. 29.

⁷⁷ See *Omniatech NAL*, 24 FCC Rcd at 4266, para. 29; *Telrite NAL*, 23 FCC Rcd at 7245, para. 35.

⁷⁸ See *Omniatech NAL*, 24 FCC Rcd at 4266, para. 29; *Telrite NAL*, 23 FCC Rcd at 7245, para. 35; *Compass Global Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6141-42, para. 38 (2008).

the Act or the Commission's rules could subject Starfone to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of Starfone's operating authority, including disqualification of Starfone's principals from the provision of any interstate or international common carrier services without the prior consent of the Commission.⁷⁹

V. ORDERING CLAUSES

29. 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 RB Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$408,668 for willfully and repeatedly violating the Act and the Commission's rules.

30. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules,⁸⁰ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, RB Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

31. IT IS FURTHER ORDERED THAT RB Communications, Inc. shall submit within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, a report supported by a sworn statement or declaration under penalty of perjury of a corporate officer setting forth in detail its plan to come into compliance with the reporting and payment obligations discussed herein. The report must be mailed to Theresa Z. Cavanaugh, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554. RB Communications, Inc. shall also transmit a copy of the report via email to terry.cavanaugh@fcc.gov.

32. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 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. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS NYC, and account number 27000001. An FCC Form 159 (Remittance Advice) must be submitted with the payment. 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). RB Communications, Inc. will also send electronic notification within forty-eight (48) hours of the date said payment is made to margaret.dailey@fcc.gov.

33. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER must be mailed to Theresa Z. Cavanaugh, Acting 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.

34. 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

⁷⁹ See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2004); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

⁸⁰ See 47 C.F.R. § 1.80(f)(3).

(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.

35. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture and Order under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸¹ For answers to questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov.

36. 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 RB Communications, Inc., Renzo Biogeti, Owner, 444 West Ocean Blvd., Suite 1515, Long Beach, CA 90802.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸¹ See 47 C.F.R. § 1.1914.