

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

In the Matter of	)	File No.: EB-IHD-13-00010590 <sup>1</sup>
	)	
Easy Telephone Services d/b/a Easy Wireless	)	NAL/Acct. No.: 201332080033
	)	
	)	FRN: 0016344368

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: September 30, 2013**

**Released: September 30, 2013**

By the Commission: Acting Chairwoman Clyburn and Commissioner Pai issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (NAL), we continue our commitment to combat waste, fraud, and abuse of the Lifeline program (Lifeline) by taking action and proposing monetary forfeitures against a company that has apparently ignored our rules and exploited a program dedicated to providing low-income Americans with basic telephone service. Specifically, we find that Easy Telephone Services d/b/a/ Easy Wireless (Easy Wireless) apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410 of the Commission's rules<sup>2</sup> by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF or Fund) for 307 ineligible consumers for the month of September 2012. Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture in the amount of one million, five hundred eighty-six thousand, five hundred forty-five dollars (\$1,586,545).

**II. BACKGROUND**

2. *Lifeline Service.* Lifeline is part of the USF and helps qualifying consumers have the opportunities and security that phone service brings, including being able to connect to jobs, family members, and emergency services.<sup>3</sup> Lifeline service is provided by Eligible Telecommunications Carriers (ETCs) designated pursuant to the Communications Act of 1934, as amended (Act).<sup>4</sup> An ETC may seek and receive reimbursement from the USF for revenues it forgoes in providing the discounted services to eligible customers in accordance with the rules.<sup>5</sup> Section 54.403(a) of the Commission's rules specifies that an ETC may receive \$9.25 per month for each qualifying low-income consumer receiving Lifeline

<sup>1</sup> This investigation, initiated under file no. EB-12-IH-1641, was subsequently assigned to file no. EB-IHD-13-00010590.

<sup>2</sup> 47 C.F.R. §§ 54.407, 54.409, 54.410.

<sup>3</sup> *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6662–67, paras. 11–18 (2012) (*Lifeline Reform Order*); see 47 C.F.R. §§ 54.400–54.422.

<sup>4</sup> 47 U.S.C. § 254(e) (providing that “only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support”); 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

<sup>5</sup> 47 C.F.R. § 54.403(a).

service,<sup>6</sup> and up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands.<sup>7</sup> ETCs are required to pass these discounts along to eligible low-income consumers.<sup>8</sup>

3. The Commission's Lifeline rules establish explicit requirements that ETCs must meet to receive federal Lifeline support.<sup>9</sup> Section 54.407(a) of the rules requires that Lifeline support "shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves."<sup>10</sup> Pursuant to Section 54.407(b) of the rules, an ETC may receive Lifeline support only for qualifying low-income consumers.<sup>11</sup> A "qualifying low-income consumer" must meet the eligibility criteria set forth in Section 54.409 of the rules, including the requirement that he or she "must not already be receiving a Lifeline service,"<sup>12</sup> and must, pursuant to Section 54.410(d) of the rules, certify his/her eligibility to receive Lifeline service.<sup>13</sup>

4. Section 54.410(a) of the Commission's rules requires further that ETCs have procedures in place "to ensure that their Lifeline subscribers are eligible to receive Lifeline services."<sup>14</sup> As explained above, such eligibility requires that a consumer seeking Lifeline service may not already receive Lifeline service. This obligation therefore requires, among other steps, that an ETC search its own internal records to ensure that the ETC does not provide duplicate Lifeline service to any subscriber (an "intra-company duplicate").<sup>15</sup>

5. The Commission's rules further prohibit an ETC from seeking reimbursement for providing Lifeline service to a subscriber unless the ETC has confirmed the subscriber's eligibility to receive

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<sup>6</sup> Lifeline provides a single discounted wireline or wireless phone service to each qualifying low-income consumer's household. See 47 C.F.R. § 54.401. See also 47 C.F.R. § 54.400(h) (defining "household" as "any individual or group of individuals who are living together at the same address as one economic unit"); *Lifeline Reform Order*, 27 FCC Rcd at 6760, para. 241 (noting that the costs of wireless handsets are not supported by the Lifeline program).

<sup>7</sup> See 47 C.F.R. § 54.403(a). Tribal lands include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma. See 47 C.F.R. § 54.400(e).

<sup>8</sup> See 47 C.F.R. § 54.403(a); *Lifeline Reform Order*, 27 FCC Rcd at 6681, para. 53.

<sup>9</sup> See 47 C.F.R. §§ 54.400–54.422.

<sup>10</sup> 47 C.F.R. § 54.407(a).

<sup>11</sup> 47 C.F.R. § 54.407(b). In 2011, the Commission took action to address potential waste, fraud, and abuse in the Lifeline program by preventing duplicate payments for multiple Lifeline-supported services to the same individual. See *Lifeline and Link Up Reform and Modernization*, Report and Order, 26 FCC Rcd 9022–23, 9026, para. 1 (2011) (*Lifeline Duplicates Order*); see also *Lifeline and Link Up Reform and Modernization*, Order, 28 FCC Rcd 9057 (Wir. Comp. Bur. 2013); 47 C.F.R. § 54.410(a). Specifically, the Commission amended Sections 54.401 and 54.405 of the rules to codify the restriction that an eligible low-income consumer cannot receive more than one Lifeline-supported service at a time. See *Lifeline Duplicates Order*, 26 FCC Rcd at 9026, para. 7. In the *Lifeline Reform Order*, this codified restriction was moved from Section 54.401(a) to revised Section 54.409(c). See *Lifeline Reform Order*, 27 FCC Rcd at 6689, para. 74, n.192. The Commission reiterated this limitation in the *Lifeline Reform Order*. See *Lifeline Reform Order*, 27 FCC Rcd 6689, para. 74; 47 C.F.R. § 54.405.

<sup>12</sup> 47 C.F.R. §§ 54.400(a), 54.409.

<sup>13</sup> 47 C.F.R. § 54.410(d).

<sup>14</sup> 47 C.F.R. § 54.410(a).

<sup>15</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6691, para. 78. In June 2013, the Wireline Competition Bureau on delegated authority underscored these obligations, prohibiting ETCs from activating "a service that it represents to be Lifeline service, even on an interim basis while the consumer's application is being processed, before verifying eligibility," including that a consumer's household does not already subscribe to Lifeline service. *Lifeline and Link Up Modernization and Reform*, Order, 28 FCC Rcd 9057, 9059, para. 6 (Wir. Comp. Bur. 2013); see also 47 C.F.R. § 54.410(a).

Lifeline service.<sup>16</sup> In accordance with Section 54.410, before an ETC may seek reimbursement, it must receive a certification of eligibility from the prospective subscriber that demonstrates that the subscriber meets the income-based and program-based eligibility criteria for receiving Lifeline service, and that the subscriber is not already receiving Lifeline service.<sup>17</sup> As the foregoing discussion reveals, when an ETC seeks Lifeline service support reimbursement for a low-income consumer who already receives Lifeline service from that same ETC, that ETC has violated its obligation in the Commission's rules to confirm the subscriber's eligibility for Lifeline service.

6. ETCs that provide qualifying low-income consumers with Lifeline discounts file an FCC Form 497 with the Universal Service Administrative Company (USAC), either quarterly or monthly, to request support that reimburses them for providing service at the discounted rates. An ETC's FCC Form 497 documents the number of qualifying low-income customers served and the total amount of Lifeline support claimed by the ETC during the specified time period. Section 54.407(d) provides that an ETC may receive reimbursement from the Fund, however, only if it certifies as part of its reimbursement request that it is in compliance with the Lifeline rules.<sup>18</sup> An ETC may revise its Form 497 data within 12 months after the data is submitted.<sup>19</sup>

7. In addition to reviewing claims submitted by ETCs, USAC conducts in-depth data validations (IDVs) to further ensure compliance with the Lifeline rules.<sup>20</sup> When a company is selected for an IDV, USAC will send the company a letter requesting subscriber data for a prior month or months.<sup>21</sup> Once USAC receives the company's data, it analyzes the company's subscriber information to determine whether there are any duplicate subscribers and sends the company another letter with its initial results. USAC provides the company with an opportunity to submit a revised subscriber list to correct subscriber data or to remove subscribers that are no longer receiving service. If USAC determines that a low-income consumer is the recipient of multiple Lifeline benefits from that same ETC, it will send another letter to the ETC identifying the instances of intra-company duplicative support, seek a recovery, and notify the ETC that it must commence the deenrollment process for those duplicates.<sup>22</sup>

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<sup>16</sup> See 47 C.F.R. § 54.410(b).

<sup>17</sup> See 47 C.F.R. § 54.410(b), (c); *see also* 47 C.F.R. § 54.410(d).

<sup>18</sup> See 47 C.F.R. § 54.407(d).

<sup>19</sup> See *Lifeline Reform Order*, 27 FCC Rcd 6788, para. 305. Subsequent revisions, however, do not vitiate violations of an ETC's duty to verify the eligibility of the subscribers that are reflected on any of its previously filed Form 497s.

<sup>20</sup> See *Lifeline Duplicates Order*, 26 FCC Rcd at 9026, para. 7.

<sup>21</sup> See, e.g., Letter from Universal Service Administrative Company, to Caitlyn Lumpkin, Easy Telephone Services (dated November 12, 2012) (on file in EB-IHD-13-00010590).

<sup>22</sup> Although USAC recovers the duplicative support payments for the month at issue in the IDV examination (generally a single month), it does not currently recover the duplicative support that the ETC received for the same duplicates for the preceding and following months. We therefore direct USAC, when it notifies an ETC to commence the process of deenrolling intra-company duplicates identified through the IDV process, to require the ETC to inform USAC of (a) the month and year in which the ETC began requesting and/or receiving duplicative support for providing Lifeline service to each such duplicate and (b) the month and year in which the ETC stopped requesting and/or receiving duplicative support for providing Lifeline service to each such duplicate. Thereafter, USAC shall recover from the ETC all of the duplicative support it has received from such duplicates.

8. *Easy Wireless*. Easy Wireless is a Florida corporation<sup>23</sup> that provides wireless telephone services, predominantly to Lifeline customers. On November 17, 2011, the Oklahoma Corporation Commission (Oklahoma Commission) designated Easy Wireless as an ETC to provide wireless Lifeline service in Oklahoma.<sup>24</sup>

9. USAC conducted an IDV of the Lifeline support requested by Easy Wireless for its Oklahoma subscribers for the month of September 2012 (September IDV). On March 4, 2013, USAC sent a letter to Easy Wireless informing the company that the September IDV revealed 307 individual intra-company duplicates among the subscribers for whom Easy Wireless had sought Lifeline support reimbursement.<sup>25</sup> According to USAC, these 307 duplicate enrollments resulted in a request for \$10,515 in overpayments from USAC.<sup>26</sup>

### III. DISCUSSION

10. 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.<sup>27</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>28</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>29</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>30</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>31</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>32</sup> 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

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<sup>23</sup> See Letter from John J. Heitmann, Esq., counsel for Easy Telephone Services d/b/a Easy Wireless, to Marlene Dortch, Secretary, Federal Communications Commission at 2 (dated Jan. 22, 2013) (LOI Response).

<sup>24</sup> See Oklahoma Corporation Commission, “Eligible Telecommunications Carriers,” <http://www.occeweb.com/pu/ETC%20Designation/2012-11-01ETCInformationreport.pdf> (last visited Aug. 13, 2013). Easy Wireless is also designated as an ETC in additional states.

<sup>25</sup> See Letter from Universal Service Administrative Company, to Caitlyn Lumpkin, Easy Telephone Services (dated Mar. 4, 2013). For the purposes of this NAL, an “individual intra-company duplicate” is an individual subscriber for whom the ETC sought and/or received reimbursement more than once in a single month.

<sup>26</sup> See *id.*

<sup>27</sup> See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>28</sup> 47 U.S.C. § 312(f)(1).

<sup>29</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 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>30</sup> See, e.g., *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*Southern California Broadcasting*).

<sup>31</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>32</sup> *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 136, para. 9.

imposed.<sup>33</sup> The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act, or a Commission rule or Order.<sup>34</sup>

11. Based on the record evidence developed in this investigation, we conclude that that Easy Wireless apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410<sup>35</sup> of the rules by concurrently requesting Lifeline support reimbursement for 307 subscribers who were already receiving Easy Wireless Lifeline service. Based on the facts and circumstances before us, we therefore conclude that Easy Wireless is apparently liable for forfeiture penalties totaling \$1,586,545.

#### IV. PROPOSED FORFEITURE

12. For the violations at issue here, Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against a telecommunications carrier of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.<sup>36</sup> 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,”<sup>37</sup> as well as our forfeiture guidelines.<sup>38</sup>

13. In calculating a proposed forfeiture, we are guided in part by *VCI Company*, a Notice of Apparent Liability for Forfeiture issued to a Lifeline provider that had apparently submitted inaccurate Form 497s to USAC and, as a result, collected support to which it was not entitled.<sup>39</sup> In that case, the Commission analogized an inaccurate low-income reimbursement request on a Form 497 to the

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<sup>33</sup> 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

<sup>34</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

<sup>35</sup> 47 C.F.R. §§ 54.407, 54.409, 54.410. See also *supra* paras. 3-6 (discussing these rules and observing that when an ETC seeks Lifeline service support reimbursement for a low-income consumer who already receives Lifeline service from that ETC, that ETC has failed in its obligation to confirm the subscriber’s eligibility for Lifeline service in violation of the rules).

<sup>36</sup> See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA 13-1615, 2013 WL 3963800 (Enf. Bur. 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment “shall apply only to violations which occur after the date the increase takes effect,” we apply the forfeiture penalties in effect at the time the violation took place. 28 U.S.C. § 2461 note (6). Here, because the violations at issue occurred before September 13, 2013, the applicable maximum penalties are based on the Commission’s previous inflation adjustment that became effective on September 2, 2008. See *Inflation Adjustment of Maximum Forfeiture Penalties*, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

<sup>37</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>38</sup> See 47 C.F.R. § 1.80(b)(8); Note to Paragraph (b)(8): Guidelines for Assessing Forfeitures.

<sup>39</sup> *VCI Company*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 15933 (2007) (*VCI*). The Commission imposed forfeitures for both Lifeline and Link Up overcollections in *VCI*, but it employed the same forfeiture methodology for both. Overcollections of Link Up support are not at issue in this investigation. The Commission did not subsequently release a forfeiture order in that case, as would be its normal practice, because the target company had ceased operations and ceased to exist as a corporate entity.

submission of inaccurate revenue information on a Form 499,<sup>40</sup> and therefore adopted a forfeiture framework based on that utilized in USF contribution enforcement cases. In particular, in *VCI*, the Commission proposed a forfeiture methodology based on three components: (1) a base forfeiture of \$20,000 for each inaccurate FCC Form 497 that VCI filed; (2) a base forfeiture of \$20,000 for each month VCI received improper Lifeline support based on its inaccurate FCC Form 497 filings; and (3) an upward adjustment equal to half of VCI's aggregate Lifeline overcollection.<sup>41</sup>

14. In this NAL, we preserve the basic components of *VCI*'s three-part structure, but we adopt an approach to two of the forfeiture components that is better calibrated to address the harm that Easy Wireless's apparent conduct has caused to the Fund, and also to reflect the substantial reforms that the Commission has implemented to the Lifeline program since *VCI* was issued. In particular, the Commission in recent years has increased its emphasis on ETCs' responsibilities for preventing waste, fraud, and abuse in the Lifeline program and has adopted rules codifying the requirement that a subscriber may not receive more than one Lifeline supported service per household.<sup>42</sup> If an ETC violates our rules and submits a request for Lifeline support that it knew or should have known includes ineligible subscribers, and thus requests and/or receives more reimbursement from the Fund than the amount to which it is properly entitled, it undermines the low-income support reimbursement mechanism. The Commission believes that the imposition of a significant forfeiture amount is a necessary response to Lifeline overcollection violations. Lifeline ETCs must expend the necessary company resources to ensure compliance with the Commission's Lifeline rules, especially the rules and procedures requiring that providers request and/or receive federal universal service support only for service provided to eligible consumers. Imposing a significant forfeiture on such rule violators should deter those service providers that fail to devote sufficient resources to ferreting out company practices resulting in overcollection violations. In addition, a significant forfeiture should achieve broader industry compliance with Lifeline rules that are critically important to the effective functioning of the Fund.

15. With respect to the first component, we preserve the *VCI* framework's base forfeiture of \$20,000 for each instance in which an ETC files an FCC Form 497 that includes ineligible subscribers in the line count, which is a violation of the certification requirement contained in Section 54.407(d) of our rules.<sup>43</sup> We believe that this base forfeiture amount continues to accurately reflect the need to ensure that USAC "receive[s] consistently accurate and reliable information from carriers."<sup>44</sup>

16. With respect to the second component of the three-part structure, it remains appropriate for the forfeiture to reflect the improper Lifeline support sought and/or received from the Fund. However, we conclude that the *VCI* forfeiture framework should be reoriented to place greater emphasis on the number of ineligible subscribers for whom the ETC requests and/or receives reimbursement from the Fund. We are concerned that the prior framework fails to reflect the extent and gravity of the alleged violations. Accordingly, we adopt a base forfeiture of \$5,000 for each ineligible subscriber for whom the ETC requests and/or receives support from the Fund in violation of Sections 54.407, 54.409, and 54.410 of our

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<sup>40</sup> The Commission requires telecommunications providers to file Form 499 to report the revenues they receive from offering service. See 47 C.F.R. § 54.711. The information providers report on Form 499 is used to calculate and assess contributions to the USF, the interstate Telecommunications Relay Services Fund, the administration of the North American Numbering Plan, and the shared costs of local number portability administration.

<sup>41</sup> *VCI*, 22 FCC Rcd at 15939-43, paras. 16-28.

<sup>42</sup> See, e.g., *Lifeline Duplicates Order*, 22 FCC Rcd at 9026-32, paras. 8-18 (codifying the one-discount-per-eligible-customer rule); *Lifeline Reform Order*, 27 FCC Rcd at 6659-60, para. 2 (explaining that reforms adopted in February 2012 could save as much \$2 billion over three years); *id.* at 6687, para. 69 (codifying the one-per-household rule).

<sup>43</sup> 47 C.F.R. § 54.407(d).

<sup>44</sup> See *VCI*, 22 FCC Rcd at 15939-40, para. 18.

rules.<sup>45</sup> We conclude that calculating the second component of the proposed forfeiture by reference to the number of ineligible subscribers, rather than to the duration of the violation, and imposing a forfeiture of \$5,000 for each ineligible subscriber strikes an appropriate balance in light of our need to protect the Fund and send a clearer deterrent message to the industry.<sup>46</sup> We are committed to strict enforcement of our rules and to taking all measures to root out waste, fraud, and abuse even for violations that are of short duration. Together with the first component, this revised structure takes into consideration both the duration of the violation and the magnitude of harm to the Fund.

17. Finally, with respect to the third component, we find, as we did in *VCI*, that a significant upward adjustment of the base forfeiture amount is warranted. However, we increase the upward adjustment calculation to better reflect the gravity of the harm to the Lifeline program in particular, to the Fund in general, and to the consumers who contribute to the Fund.<sup>47</sup> Thus, we propose an upward adjustment equal to three times the reimbursements requested and/or received by Easy Wireless for ineligible subscribers. In adopting this approach to the upward adjustment, we are informed by Section 503(a) of the Act<sup>48</sup> which, in the context of improper intercarrier compensation payments, authorizes a forfeiture of three times the amount of improper compensation. Section 503(a) establishes the principle that, when the harm done by the violation varies based on the amount of the money involved, it is most appropriate to calculate the forfeiture in a manner that reflects the magnitude of the violation. That is the circumstance in this case, and we therefore adjust the forfeiture upward by an amount equal to three times the overcollection requested and/or received.

18. Based on the facts and record before us, we have determined that Easy Wireless has apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410 of the rules.<sup>49</sup> As documented above, in a single month and in connection with the submission of an FCC Form 497, Easy Wireless requested Lifeline support reimbursement of \$10,515 for 307 customers who were receiving more than one Easy Wireless Lifeline service. Accordingly, with respect to the first component of the structure articulated above, we propose a base forfeiture of \$20,000 for the submission of the FCC Form 497 that includes the 307 ineligible intra-company duplicate subscribers in the line count. With respect to the second component, we propose a base forfeiture of \$1,535,000 based on the 307 ineligible subscribers for whom Easy Wireless requested and/or received compensation from the Fund. Finally, with respect to the third component, we propose an upward adjustment of \$31,545, which is three times the amount of support Easy Wireless requested and/or received for ineligible consumers. We therefore conclude that a total proposed forfeiture of \$1,586,545 against Easy Wireless is warranted.

19. This forfeiture structure for Lifeline overcollection violations will in no way foreclose the Commission or any other governmental entity from taking additional enforcement action and imposing additional forfeitures for other violations of the Lifeline rules. Moreover, the Commission clarifies that the penalties that result from this forfeiture structure are separate from any amounts that an ETC may be required to refund to USAC in order to make the Fund whole.

## V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the rules,<sup>50</sup> Easy Telephone Services d/b/a Easy Wireless is hereby **NOTIFIED** of this **APPARENT**

<sup>45</sup> 47 C.F.R. §§ 54.407, 54.409, 54.410.

<sup>46</sup> See 47 C.F.R. § 1.80(b)(8) (providing that, in determining the amount of a forfeiture penalty, the Commission will take into account the extent and gravity of the violations, among other factors).

<sup>47</sup> See 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8).

<sup>48</sup> 47 U.S.C. § 503(a).

<sup>49</sup> 47 C.F.R. §§ 54.407, 54.409, 54.410.

<sup>50</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

**LIABILITY FOR A FORFEITURE** in the amount of one million, five hundred eighty-six thousand, five hundred forty-five dollars (\$1,586,545) for apparently willfully and repeatedly violating Sections 54.407, 54.409, and 54.410 of the rules.<sup>51</sup>

21. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the rules,<sup>52</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Easy Wireless **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Easy Wireless shall also send electronic notification of payment to Theresa Z. Cavanaugh, at Terry.Cavanaugh@fcc.gov and to Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>53</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for making full payment over time 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.<sup>54</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

23. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the rules,<sup>55</sup> and may include any data or information demonstrating that the IDV results referenced in this NAL are materially erroneous or anomalous, or that the forfeiture

<sup>51</sup> 47 C.F.R. §§ 54.407, 54.409, 54.410.

<sup>52</sup> 47 C.F.R. § 1.80.

<sup>53</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>54</sup> See 47 C.F.R. § 1.1914.

<sup>55</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).



proposed is otherwise inappropriate.<sup>56</sup> The written statement must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to Theresa Z. Cavanaugh, at Terry.Cavanaugh@fcc.gov and to Pam Slipakoff at Pam.Slipakoff@fcc.gov.

24. 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 principles (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.

25. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, and first class mail to Joseph Fernandez, Chief Executive Officer, Easy Telephone Services d/b/a Easy Wireless, 4352 SE 95th Street, Ocala, FL 34480.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>56</sup> For example, the written statement could include data showing that the month examined in the IDV was an outlier and that far fewer duplicates existed in the months preceding and following that month.

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**STATEMENT OF  
ACTING CHAIRWOMAN MIGNON L. CLYBURN**

*Re: Easy Telephone Services d/b/a Easy Wireless; Assist Wireless, LLC; Icon Telecom, Inc.; TracFone Wireless, Inc.; and UTPhone, Inc.*

The Lifeline program provides critical communications services to those who are least likely to be able to secure these services for themselves. It affords the less fortunate an ability to contact family, employers, prospective employers and – most critically – emergency services, by the same rapid and reliable means that are routinely available to the rest of us. Protecting this vital program from fraud, waste and abuse is a central component of our efforts to ensure the program’s viability, and it is with this in mind that we propose the very substantial penalties in these cases.

Collecting support for duplicate Lifeline service – the practice we address in these cases – is not only illegal, it diverts resources from legitimate users of the program and is unquestionably within the power and duty of Lifeline providers to prevent. It must stop. And, the more than \$14 million in forfeitures we propose here is meant to achieve that end.

Our goal is to be tough, but fair. The fines in these cases are purposely large. However, I want to ensure adequate deterrence without harming the legitimate service these providers bring to their subscribers. Accordingly, I have instructed the Enforcement Bureau to carefully consider the companies’ responses to these NALs. Ultimately, our objective is to eliminate fraud, waste and abuse, while preserving and promoting the availability of communications services to those in need. I will do all I can to ensure that we achieve this balanced result.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

**Re: *Easy Telephone Services d/b/a Easy Wireless; Assist Wireless, LLC; Icon Telecom, Inc.; TracFone Wireless, Inc.; and UTPhone, Inc.***

Today, the FCC makes it clear that we are serious about combatting the rampant waste, fraud, and abuse plaguing the Lifeline program. By proposing forfeitures totaling more than \$14 million against five providers for apparent Lifeline fraud, we begin the process of regaining the public's trust and showing that we do not take responsible stewardship of public funds lightly.

From 2008 through 2012, the annual disbursements of the low-income component of the Universal Service Fund grew from \$817 million to \$2.2 billion.<sup>57</sup> Some of that growth may have been organic, but we know that a significant amount was due to increased waste, fraud, and abuse within the program. That's why the Commission adopted some reforms in early 2012 to prohibit such abuse.<sup>58</sup> And that's why today's action, enforcing those reforms, is so important.

The substantial abuses of the Lifeline program deserve a significant response. The instant NALs meet that standard. I am especially pleased that my colleagues agreed to my request to increase fiftyfold the proposed forfeitures against Easy Wireless, Icon Telecom, Assist Wireless, UTPhone, and TracFone Wireless. A slap on the wrist is not sufficient when the same company seeks Lifeline support more than once in the same month for the same person.

Unfortunately, these intracompany duplicates are just the tip of the iceberg. We know that the Universal Service Administrative Company has already found tens of thousands of duplicate subscribers in the Lifeline system—and that's just subscribers brazen enough to get Lifeline service from the same company more than once. Many more have gotten Lifeline benefits from multiple companies. Back in

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<sup>57</sup> Compare USAC, 2009 Second Quarter Appendices, Appendix M03 – January 1, 2008 through December 31, 2008 – Cash Basis, with USAC, 2013 Second Quarter Appendices, Appendix M03 – January 1, 2012 through December 31, 2012 – Cash Basis, available at <http://www.usac.org/about/tools/fcc/filings/2013/q2.aspx>.

<sup>58</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012).

April, for example, the Commission issued notices to 37 Easy Wireless subscribers, each of whom had at least *five* Lifeline accounts in his or her name.<sup>59</sup> The American people won't stand for that kind of waste, fraud, and abuse, and neither will I.

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<sup>59</sup> See *L\*\*\* McKoy: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0509, Citation and Order, 28 FCC Rcd 5044 (2013); *S\*\*\* Richardson: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0511, Citation and Order, 28 FCC Rcd 5050 (2013); *J\*\*\* Clardy: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0512, Citation and Order, 28 FCC Rcd 5053 (2013); *E\*\*\* Gardner: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0514, Citation and Order, 28 FCC Rcd 5059 (2013); *L\*\*\* Johnson: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0515, Citation and Order, 28 FCC Rcd 5062 (2013); *C\*\*\* Smith: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0516, Citation and Order, 28 FCC Rcd 5065 (2013); *C\*\*\* Cordova: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0517, Citation and Order, 28 FCC Rcd 5068 (2013); *A\*\*\* Butler: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0518, Citation and Order, 28 FCC Rcd 5071 (2013); *T\*\*\* Relf: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0519, Citation and Order, 28 FCC Rcd 5074 (2013); *T\*\*\* Rolland: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0520, Citation and Order, 28 FCC Rcd 5077 (2013); *C\*\*\* Norton: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0521, Citation and Order, 28 FCC Rcd 5080 (2013); *F\*\*\* Chatkehoodle: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0522, Citation and Order, 28 FCC Rcd 5083 (2013); *B\*\*\* Wilson: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0523, Citation and Order, 28 FCC Rcd 5086 (2013); *B\*\*\* Crumpton: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0371, Citation and Order, 28 FCC Rcd 4415 (2013); *S\*\*\* Hayes: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0375, Citation and Order, 28 FCC Rcd 4427 (2013); *M\*\*\* Estrada: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0376, Citation and Order, 28 FCC Rcd 4430 (2013); *R\*\*\* Jimenez: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0377, Citation and Order, 28 FCC Rcd 4433 (2013); *R\*\*\* Acuff: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0378, Citation and Order, 28 FCC Rcd 4436 (2013); *T\*\*\* Knox: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0379, Citation and Order, 28 FCC Rcd 4444 (2013); *R\*\*\* Villareal: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0380, Citation and Order, 28 FCC Rcd 4447 (2013); *T\*\*\* Hinman: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0382, Citation and Order, 28 FCC Rcd 4453 (2013); *F\*\*\* Marshall: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0383, Citation and Order, 28 FCC Rcd 4456 (2013); *W\*\*\* Thompson: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0384, Citation and Order, 28 FCC Rcd 4459 (2013); *L\*\*\* Johnson: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0385, Citation and Order, 28 FCC Rcd 4465 (2013); *R\*\*\* Smart: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0387, Citation and Order, 28 FCC Rcd 4471 (2013); *A\*\*\* Daniel: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0389, Citation and Order, 28 FCC Rcd 4477 (2013); *T\*\*\* Turner: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0391, Citation and Order, 28 FCC Rcd 4483 (2013); *J\*\*\* Barnett: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0394, Citation and Order, 28 FCC Rcd 4492 (2013); *O\*\*\* Acosta: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0396, Citation and Order, 28 FCC Rcd 4498 (2013); *R\*\*\* Gynells: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0399, Citation and Order, 28 FCC Rcd 4507 (2013); *R\*\*\* Rivas: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0400, Citation and Order, 28 FCC Rcd 4510 (2013); *N\*\*\* Scott: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0401, Citation and Order, 28 FCC Rcd 4513 (2013); *N\*\*\* Herrera: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0402, Citation and Order, 28 FCC Rcd 4516 (2013); *S\*\*\* Taylor: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0403, Citation and Order, 28 FCC Rcd 4519 (2013); *F\*\*\* Fernandez: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0405, Citation and Order, 28 FCC Rcd 4525 (2013); *T\*\*\* Emery: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0407, Citation and Order, 28 FCC Rcd 4531 (2013); *E\*\*\* Allen: Illegal Receipt of Duplicate Support*, File No. EB-13-IH-0410, Citation and Order, 28 FCC Rcd 4540 (2013).