

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

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| In the Matter of |) | File No.: EB-IHD-13-00010793 ¹ |
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| Conexions, LLC d/b/a Conexion Wireless |) | NAL/Acct. No.: 201432080008 |
| |) | |
| |) | FRN: 0019770882 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: November 1, 2013

Released: November 1, 2013

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we continue our commitment to combatting waste, fraud, and abuse in the Lifeline program (Lifeline) by taking action and proposing monetary forfeitures against a company that apparently has ignored our rules and exploited a program dedicated to providing low-income Americans with basic telephone service, and also apparently has refused to comply with the Commission's investigatory requests. Specifically, we find that Conexions, LLC d/b/a/ Conexion Wireless (Conexions) apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410 of the Commission's rules² by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF or Fund) for ineligible subscriber lines for the months of June 2012 through December 2012, and February 2013. In addition, we find that Conexions apparently willfully and repeatedly failed to provide timely and complete responses to Commission requests for information.³ Based on our review of the facts and circumstances surrounding these apparent violations, we propose a monetary forfeiture in the amount of eighteen million, three hundred ninety-seven thousand, eight hundred and fourteen dollars (\$18,397,814). Furthermore, we direct Conexions to submit, not later than thirty calendar days after the release of this NAL, full and complete responses to all outstanding requests from the Commission for information.

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

¹ This investigation, initiated under file no. EB-13-IH-0203, was subsequently assigned to file no. EB-IHD-13-00010793.

² 47 C.F.R. §§ 54.407, 54.409, 54.410.

³ See, e.g., *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012, 4030, para. 12 (Enf. Bur. 2012) (*Google*) (proposing forfeiture for failure to timely comply with Bureau information and document requests); *International Telecom Exchange, Inc.*, Order of Forfeiture, 22 FCC Rcd 13691, 13693-94, paras. 8-9 (Enf. Bur. 2007) (imposing forfeiture on common carrier that responded eight months late to a Bureau letter of inquiry, and only then after repeated staff requests); see also *LDC Telecomm., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 300, 301, para. 5 (Enf. Bur. 2012) (*LDC*) (proposing a forfeiture for failure to provide documents and information sought by Enforcement Bureau via letter of inquiry within specified time constitutes violation of a Commission order); 47 U.S.C. § 416(c).

members, and emergency services.⁴ Lifeline service is provided by Eligible Telecommunications Carriers (ETCs) designated pursuant to the Communications Act of 1934, as amended (Act).⁵ 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.⁶ 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 service,⁷ and up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands.⁸ ETCs are required to pass these discounts along to eligible low-income consumers.⁹

3. The Commission's Lifeline rules establish explicit requirements that ETCs must meet to receive federal Lifeline support.¹⁰ 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."¹¹ Pursuant to Section 54.407(b) of the rules, an ETC may receive Lifeline support only for qualifying low-income consumers.¹² 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,"¹³ and must, pursuant to Section 54.410(d) of the rules, certify his/her eligibility to receive Lifeline service.¹⁴

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."¹⁵ As explained above, such eligibility requires that a consumer seeking Lifeline service may not already be receiving

⁴ *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 also 47 C.F.R. §§ 54.400–54.422.

⁵ 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).

⁶ 47 C.F.R. § 54.403(a).

⁷ 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).

⁸ 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).

⁹ See 47 C.F.R. § 54.403(a); *Lifeline Reform Order*, 27 FCC Rcd at 6681, para. 53.

¹⁰ See 47 C.F.R. §§ 54.400–54.422.

¹¹ 47 C.F.R. § 54.407(a).

¹² 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 at 6689, para. 74; 47 C.F.R. § 54.405.

¹³ 47 C.F.R. §§ 54.400(a), 54.409(c).

¹⁴ 47 C.F.R. § 54.410(d).

¹⁵ 47 C.F.R. § 54.410(a).

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”).¹⁶

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 Lifeline service.¹⁷ 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.¹⁸ 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 under 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.¹⁹ An ETC may revise its Form 497 data within 12 months after the data are submitted.²⁰

7. In addition to reviewing claims submitted by ETCs, USAC conducts in-depth data validations (IDVs) to further ensure compliance with the Lifeline rules.²¹ When a company is selected for an IDV, USAC will send the company a letter requesting subscriber data for a prior month or months.²² 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

¹⁶ 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).

¹⁷ See 47 C.F.R. § 54.410(b).

¹⁸ See 47 C.F.R. § 54.410(b), (c); see also 47 C.F.R. § 54.410(d).

¹⁹ See 47 C.F.R. § 54.407(d).

²⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 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.

²¹ See *Lifeline Duplicates Order*, 26 FCC Rcd at 9026, para. 7.

²² See, e.g., Letter from Universal Service Administrative Company to Thomas Biddix, Conexions, LLC (Feb. 7, 2013) (on file in EB-IHD-13-00010793).

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.²³

8. *Conexions*. Conexions is a Tennessee corporation²⁴ that provides prepaid wireless telephone services to Lifeline customers. Conexions has been designated as an ETC to provide wireless Lifeline service in Maryland,²⁵ Arkansas,²⁶ and West Virginia.²⁷

9. USAC conducted IDVs of the Lifeline support requested by Conexions for its Maryland, Arkansas and West Virginia subscribers for the months of June 2012 through December 2012 (2012 IDVs). USAC conducted an additional IDV of the Lifeline support requested by Conexions for its Arkansas subscribers for the month of February 2013 (February 2013 IDV). Based on USAC's analysis, Conexions apparently had 3,489 individual intra-company duplicate lines for which Conexions improperly sought Lifeline support reimbursement.²⁸ According to USAC, Conexions requested \$90,938 in overpayments from USAC over the months covered by the IDVs.²⁹

10. On May 14, 2013, the FCC Enforcement Bureau's Investigation and Hearings Division (Bureau) sent a letter of inquiry (LOI) to Conexions seeking documents and information, and requiring a response from Conexions by June 18, 2013.³⁰ Conexions provided a response to this LOI on June 18, 2013.³¹ Upon reviewing Conexions's LOI Response, the Bureau concluded that it was deficient in a

²³ Although USAC recovers the duplicative support payments for the month at issue in the IDV examination (generally a single month), it does not at present always seek to recover the duplicative support that the ETC may have received for the same duplicates for the preceding and following months. We therefore direct USAC, when it determines that an ETC has sought support from the Fund for an intra-company duplicate, to require the ETC to report to USAC (a) the month in which the ETC began requesting and/or receiving duplicative support for each such subscriber, and (b) the month the ETC stopped requesting and/or receiving duplicative support for each such subscriber. We further require that, after receiving such information, USAC shall recover from the ETC all of the duplicative support it has received for such subscribers.

²⁴ See Tennessee Secretary of State, Division of Business Services, Conexions Certificate of Existence, Control No. 000541669, available at <https://tnbear.tn.gov/ECommerce/CertOfExistence.aspx?CN=044063245212023206055197171031249222028020002099>.

²⁵ See Maryland Public Service Commission, Letter Order #29, ML# 128985, TE-10421 (dated March 30, 2011).

²⁶ See Arkansas Public Service Commission, Docket No. 10-099-U, Order No. 3 (dated March 8, 2011), available at http://www.apscservices.info/pdf/10/10-099-u_6_1.pdf.

²⁷ See Public Service Commission of West Virginia, Recommended Decision (dated July 17, 2011), available at <http://www.psc.state.wv.us/scripts/orders/ViewDocument.cfm?CaseActivityID=325971&Source=Docket>.

²⁸ See Letter from Universal Service Administrative Company to Thomas Biddix, Conexions, LLC (Feb. 7, 2013). An "intra-company duplicate line" is any line for which Conexions sought and/or received reimbursement in violation of the Commission's one line per household rule. See 47 C.F.R. § 54.409(c). For the purposes of applying the second prong of our three-part forfeiture framework (a base forfeiture of \$5,000 per duplicate), given the unique circumstances presented by Lifeline intra-company duplicate cases involving multiple months of duplicate service, we have counted each intra-company duplicate line once, regardless of the number of months in which Conexions sought and/or received reimbursement for that line. We account for the duration of each intra-company duplicate line (*i.e.*, the number of months that Conexions sought compensation for each intra-company duplicate line) in the first and third prongs of our forfeiture calculation. See *infra* paras. 16–17.

²⁹ See Letter from Universal Service Administrative Company to Thomas Biddix, Conexions, LLC (Feb. 7, 2013).

³⁰ See Letter from Pamela S. Kane, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Thomas Biddix, Conexions, LLC (May 14, 2013) (on file in EB-IHD-13-00010793).

³¹ See Letter from Thomas Biddix to Marlene Dortch, Secretary, FCC (June 18, 2013) (LOI Response) (on file in EB-IHD-13-00010793).

number of areas and also raised additional issues relevant to the Bureau's investigation. Accordingly, the Bureau directed Conexions to cure the LOI Response deficiencies and to respond to additional questions.³² Conexions committed to cure the deficiencies in its LOI Response and provide the required supplemental information by August 19, 2013.³³

11. Conexions did not submit the revised LOI Response and the required information by August 19, 2013, nor did Conexions seek an extension of the August 19, 2013 deadline. Indeed, Conexions still has not cured the deficiencies in its LOI Response nor provided a response to the Bureau's Supplemental LOI.

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.³⁴ 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.³⁵ 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,³⁶ and the Commission has so interpreted the term in the Section 503(b) context.³⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.³⁸ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.³⁹ 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.⁴⁰ 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.⁴¹

³² See e-mail from Theodore C. Marcus, Investigations & Hearings Division, FCC Enforcement Bureau, to L. Charles Keller, Counsel for Conexions, LLC (July 11, 2013) (Supplemental LOI) (on file in EB-IHD-13-00010793).

³³ See e-mail from L. Charles Keller to Theodore C. Marcus, Investigations & Hearings Division, FCC Enforcement Bureau (July 18, 2013) (on file in EB-IHD-13-00010793). The parties set the deadline for August 17, 2013, but because that date fell on a Saturday, the official deadline for production was Monday, August 19, 2013, pursuant to Section 1.4 of the Commission's rules. 47 C.F.R. § 1.4.

³⁴ See 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

³⁵ 47 U.S.C. § 312(f)(1).

³⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms").

³⁷ 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*).

³⁸ 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).

³⁹ *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 136, para. 9.

⁴⁰ 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

⁴¹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002) (*SBC*).

13. Based on the record evidence developed in this investigation, we conclude that Conexions apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410⁴² of the rules by concurrently requesting Lifeline support reimbursement for 3,489 individual intra-company duplicate lines. Conexions also apparently willfully and repeatedly failed to provide a timely and complete response to Commission requests for information. Based on the facts and circumstances before us, we therefore conclude that Conexions is apparently liable for forfeiture penalties totaling \$18,397,814.

IV. PROPOSED FORFEITURES

14. 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.⁴³ 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,”⁴⁴ as well as our forfeiture guidelines.⁴⁵

15. *Lifeline Duplicates.* 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.

⁴² 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).

⁴³ *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).

⁴⁴ 47 U.S.C. § 503(b)(2)(E).

⁴⁵ *See* 47 C.F.R. § 1.80(b)(8); Note to Paragraph (b)(8): Guidelines for Assessing Forfeitures.

16. To eliminate waste, fraud, and abuse, maintain the integrity of the Fund, and protect the consumers who contribute to the Fund, the Commission has implemented a three-part forfeiture framework for Lifeline overcollection violations that imposes: (1) a 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;⁴⁶ (2) 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 rules;⁴⁷ and (3) an upward adjustment of the base forfeiture equal to three times the reimbursements requested and/or received by the ETC for ineligible subscribers.⁴⁸

17. Based on the facts and record before us, we have determined that Conexions has apparently willfully and repeatedly violated Sections 54.407, 54.409, and 54.410 of the rules.⁴⁹ As documented above, over the course of eight months, and in connection with the submission of nineteen FCC Form 497s, Conexions requested Lifeline support reimbursement of \$90,938 for customers who were receiving more than one Conexions Lifeline service. Accordingly, with respect to the first component of the structure articulated by the Commission, we propose a base forfeiture of \$380,000 for the submission of the FCC Form 497s that included the ineligible intra-company duplicate subscribers in the line counts. With respect to the second component, we propose a base forfeiture of \$17,445,000 based on the 3,489 individual intra-company duplicate lines for which Conexions requested and/or received compensation from the Fund. Finally, with respect to the third component, we propose an upward adjustment of \$272,814, which is three times the amount of support Conexions requested and/or received for ineligible consumers. We therefore conclude that a total proposed forfeiture of \$18,097,814 against Conexions for its apparent violations of the Commission's Lifeline rules is warranted.

18. This NAL 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 NAL are separate from any amounts that an ETC may be required to refund to USAC in order to make the Fund whole.

19. *Failure to Respond.* It is well established that a Commission licensee's failure to respond to an LOI from the Bureau constitutes a violation of a Commission order.⁵⁰ Such violations do not

⁴⁶ 47 C.F.R. § 54.407(d).

⁴⁷ 47 C.F.R. §§ 54.407, 54.409, 54.410. See *Easy Tel. Servs. d/b/a Easy Wireless*, File No. EB-IHD-13-00010590, Notice of Apparent Liability for Forfeiture, FCC 13-129, at 5–7, paras. 13–18 (Sept. 30, 2013) (*Easy Wireless*).

⁴⁸ See *Easy Wireless*, FCC 13-129, at 5–7, paras. 13–18.

⁴⁹ 47 C.F.R. §§ 54.407, 54.409, 54.410.

⁵⁰ See, e.g., *Google*, 27 FCC Rcd at 4030, para. 42 (“It is well established that a Commission licensee’s failure to respond to an LOI from the Bureau violates a Commission order.”); *Carrera Commc’ns, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13316, para. 22 (2005) (*Carrera*) (“Carrera’s willful and repeated failures to respond to the Bureau’s LOIs constitute apparent violations of Commission orders.”), *forfeiture issued*, Order of Forfeiture, 22 FCC Rcd 9585 (2007); *SBC*, 17 FCC Rcd at 7597–98, paras. 19–20 (explaining that the Bureau’s LOI to a common carrier, which included a directive to provide a sworn statement verifying the carrier’s response to the LOI, was a Commission order that the carrier was not permitted to ignore); *LDC*, 27 FCC Rcd at 301, para. 5 (holding that “[t]he Bureau’s LOI directed to LDC was a legal order of the Commission requiring LDC to produce the requested documents and information,” and that “LDC’s failure to provide the documents and information sought within the time and manner specified constitute[d] a violation of a Commission order”); *Milton Goodman*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 18119, 18121–22, paras. 4–6 (Enf. Bur. 2004) (proposing a \$10,000 forfeiture based on an auction applicant’s failure to respond to a Bureau LOI), *cancelled on grounds of extreme financial hardship*, Memorandum Opinion and Order, 20 FCC Rcd 658 (Enf. Bur. 2005); see also 47 U.S.C. § 416(c).

always entail a party's total failure to respond; numerous decisions recognize that parties may violate Commission orders by providing incomplete or untimely responses to Bureau LOIs, or by failing to properly certify the accuracy of their responses.⁵¹

20. As demonstrated above, Conexions has persisted in refusing to provide a complete response to the Bureau's LOI. It also has failed to provide any response to the Bureau's Supplemental LOI. The information and documents that Conexions failed to provide include documents, data, and information that are material to the Bureau's ability to conduct a thorough investigation. For example, in several instances, Conexions's LOI Response either failed to provide the data and information sought by the LOI or only provided partial responses (*e.g.*, missing data months, missing account and reimbursement data, and non-responses to certain sub-parts of LOI queries). Conexions's failure to respond unduly taxed the Commission's resources by requiring Bureau staff to take exceptional measures in an effort to obtain the documents and information that Conexions should have provided. Conexions's conduct delayed and ultimately impeded the Bureau's investigation. Conexions's responsiveness and level of cooperation with this investigation thus fell well short of what we expect and require. Under the circumstances, Conexions's incomplete responses to the LOI, coupled with its utter failure to respond to the Supplemental LOI, constitute willful and repeated violations of a Commission order.⁵²

21. The rules also provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act⁵³ and Section 1.80(b)(6) of the rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵⁴

22. In view of the facts and circumstances apparent from the record, we find that Conexions's conduct warrants a substantial increase from the specified base forfeiture amount of \$4,000 per violation for its failure to respond fully to a Commission inquiry and its failure to respond to further Commission inquiries (*i.e.*, a total base forfeiture of \$8,000).⁵⁵ As discussed above, the record evidence demonstrates that Conexions's failure to cooperate with the Bureau was in many or all cases deliberate. Conexions willfully disregarded a deadline for submitting its response. Misconduct of this nature threatens to compromise the Commission's ability to effectively investigate possible violations of the Communications Act and the Commission's rules and to maintain the integrity of the Fund. Prompt and complete responses to Bureau LOIs are essential to the Commission's enforcement function. Under Section 503(b)(2)(B) of the Act and its implementing regulations, the Commission may propose a forfeiture penalty of up to \$150,000 for each violation.⁵⁶ Given the circumstances of this case, including

⁵¹ See, *e.g.*, *Carrera*, 20 FCC Rcd at 13319, para. 31 (proposing an \$8,000 forfeiture penalty against a company not represented by counsel that filed an untimely and incomplete response to a Bureau LOI); *SBC*, 17 FCC Rcd at 7589–91, 7600, paras. 2–3, 28 (holding that a common carrier's deliberate failure to provide a sworn statement verifying its LOI response until weeks after the Bureau had directed the carrier to respond warranted a \$100,000 forfeiture penalty); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7600–02, paras. 3, 5, 7 (Enf. Bur. 2008) (*Digital Antenna*) (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to Bureau LOIs, including by failing to submit the required sworn statements); *Int'l Telecom Exch.*, Order of Forfeiture, 22 FCC Rcd 13691, 13693–94, paras. 8–9 (Enf. Bur. 2007) (*ITE*) (imposing a forfeiture penalty against a common carrier that responded to the Bureau's LOI eight months late and only after repeated requests from staff).

⁵² See, *e.g.*, *Carrera*, 20 FCC Rcd at 13319, para. 31; *SBC*, 17 FCC Rcd at 7599–600, paras. 25–28; *Digital Antenna*, 23 FCC Rcd at 7600–02, paras. 3, 7; see also 47 U.S.C. § 416(c).

⁵³ See 47 U.S.C. § 503(b)(2)(E).

⁵⁴ 47 C.F.R. § 1.80(b)(8).

⁵⁵ See 47 C.F.R. § 1.80(b)(8); Note to Paragraph (b)(8); Guidelines for Assessing Forfeitures.

⁵⁶ See 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b).

the intentional nature of the violation and its longstanding and continuing nature, and based on our precedent in other failure to respond cases, we find that Conexions is apparently liable for an additional forfeiture penalty of \$300,000, the statutory maximum, for its failures to respond to Commission directives.⁵⁷

23. Accordingly, we find that Conexions is apparently liable for a total forfeiture of \$18,397,814 for its willful or repeated violations of Sections 54.407, 54.409, and 54.410 of the rules,⁵⁸ and for its willful and repeated violations of a Commission order. We also direct Conexions to respond fully to the outstanding requests within thirty calendar days of the date of this NAL. Failure to do so may constitute an additional, continuing violation subjecting Conexions to future enforcement action, including additional forfeitures.

V. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and 1.80 of the rules,⁵⁹ Conexions, LLC d/b/a/ Conexion Wireless (Conexions) is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen million, three hundred ninety-seven thousand, eight hundred and fourteen dollars (\$18,397,814) for apparently willfully and repeatedly violating Sections 54.407, 54.409, and 54.410 of the rules,⁶⁰ and for apparently willfully violating Enforcement Bureau directives to respond to Commission inquiries.⁶¹

25. **IT IS FURTHER ORDERED** that Conexions **SHALL FULLY RESPOND**, not later than thirty calendar days from the release date of this NAL, to all outstanding information requests.

26. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the rules,⁶² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Conexions **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

27. 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. Conexions shall also send electronic notification of payment to Theresa Z. Cavanaugh, at Terry.Cavanaugh@fcc.gov and to Theodore C. Marcus at Theodore.Marcus@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.⁶³ 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.

⁵⁷ See, e.g., *SBC*, 17 FCC Rcd at 7600, para. 28 (affirming Enforcement Bureau's proposal of \$100,000 forfeiture).

⁵⁸ 47 C.F.R. §§ 54.407, 54.409, 54.410; see also *supra* paras. 3–6.

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

⁶⁰ 47 C.F.R. §§ 54.407, 54.409, 54.410.

⁶¹ See *supra* note 50 and accompanying text.

⁶² 47 C.F.R. § 1.80.

⁶³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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, SW, Room 1-A625, Washington, D.C. 20554.⁶⁴ 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.

28. 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,⁶⁵ 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 proposed is otherwise inappropriate.⁶⁶ The written statement must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th 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 Theodore C. Marcus at Theodore.Marcus@fcc.gov.

29. 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.

30. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by certified mail, return receipt requested, and first class mail to Thomas Biddix, Chief Operating Officer and Manager, Conexions, LLC d/b/a Conexion Wireless, 100 N. Harbor City Blvd., Melbourne, FL 32935.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶⁴ See 47 C.F.R. § 1.1914.

⁶⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

⁶⁶ For example, the written statement could include data showing that the months examined in the IDVs were outliers or otherwise not representative.