

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

In the Matter of)	File No.: EB-TCD-12-00000376
)	
Purple Communications, Inc.)	NAL/Acct. No.: 201432170007
)	
)	FRN: 0015419872

FORFEITURE ORDER

Adopted: December 16, 2015

Released: December 18, 2015

By the Commission: Commissioner O’Rielly concurring.

I. INTRODUCTION

1. We impose a penalty of \$11,937,549 against Purple Communications, Inc. (Purple or Company), for failing both to submit accurate data to the Telecommunications Relay Services (TRS) administrator (Administrator) and to use a reasonable process to verify the registration information of thousands of TRS users, in violation of the Federal Communications Commission’s (FCC or Commission) rules and orders. TRS allows persons with speech and/or hearing disabilities to engage in communications with family, friends, and service providers that do not have such disabilities in a manner that is functionally equivalent to how hearing persons use telephone services. Misuse of TRS interferes with its delivery to people who legitimately depend on it to engage in the critical communications that are a part of daily life. Such abuse also depletes monies collected to cover the cost of providing TRS. In this case, Purple not only failed to follow the Commission’s rules and orders but also requested and received almost \$1 million from the TRS Fund that it was not eligible to receive. As a result of Purple’s actions, the Commission issued a Notice of Apparent Liability for Forfeiture (NAL) against Purple, finding that the Company’s non-compliance with the Commission’s rules and orders allowed ineligible persons access to TRS, and Purple to receive ineligible payments. After reviewing Purple’s response to the NAL (NAL Response), we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$11,937,549 forfeiture the Commission previously proposed.

II. BACKGROUND

2. TRS allows persons with speech and/or hearing disabilities access to reliable, nationwide communications service.¹ Consumers are not charged for using TRS; instead, TRS is funded through monies paid by all consumers via their monthly telecommunication services bills.² These monies are collected by intrastate and interstate common carriers and paid into a fund (TRS Fund or Fund) that is used to reimburse TRS providers for their reasonable costs of providing TRS.³ The Administrator (selected by the Commission and subject to its oversight) manages the TRS Fund, including ensuring that the appropriate level of contributions are made by carriers to cover the costs associated with providing TRS to users and verifying the accuracy of payments made from the Fund to TRS providers (Providers).⁴

¹ See *Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548, para. 2 (2011) (*VRS Call Practices R&O*).

² *Id.* at 5549, para. 3.

³ *Id.*

⁴ See *id.*

3. Common carriers and other entities seeking to provide forms of TRS that allow TRS users to take advantage of Internet-based technologies—Video Relay Service (VRS), Internet Protocol Relay Service (IP Relay), and Internet Protocol Captioned Telephone Service (IP CTS) (collectively, Internet-based TRS or iTRS)—must be certified by the Commission as iTRS Providers in order to receive compensation from the TRS Fund.⁵ Providers of iTRS submit requests for compensation to the Administrator and are reimbursed through the TRS Fund for compensable services they provide to eligible TRS users.⁶

4. In recent years, the Commission has taken steps to better ensure that iTRS is provided to eligible users and that requests for reimbursements are only for service provided to such users in compliance with the Commission's rules and orders.⁷ As described fully in the *NAL*, one such measure was the Commission's establishment of the ten-digit numbering system, which includes the registration and verification of VRS and IP Relay users.⁸ As a result, VRS and IP Relay Providers are required to use a reasonable process to verify registration information, including the registrant's name and mailing address.⁹ All Providers are also required to provide the Administrator with true and adequate data to, among other things, enable the Administrator to determine payments to be made to Providers from the TRS Fund.¹⁰

5. On May 2, 2014, the Commission issued an *NAL* proposing an \$11,937,549 forfeiture against Purple for its apparent willful and repeated violation of the *Second Internet-Based TRS Order* and Section 64.604(c)(5)(iii)(D) of the Commission's rules¹¹ based on the Company's failure to implement a reasonable process to verify the accuracy of its IP Relay users' registration information and to submit true and adequate data to the Administrator.¹²

6. In charging Purple with the willful and repeated violation of these requirements over a nineteen month period, the *NAL* described in detail the Company's failure to implement a reasonable

⁵ See *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898, 10902, para. 8 (2011).

⁶ See, e.g., *VRS Call Practices R&O*, 26 FCC Rcd at 5549, para. 3.

⁷ See *Purple Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5491, 5492, para. 4 & n.9 (2014) (*NAL*) (citing *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (2013); *Structure and Practices of the Video Relay Service Program*, Further Notice of Proposed Rulemaking, 26 FCC Rcd 17367 (2011); *Structure and Practices of the Video Relay Service Program*, Second Report and Order and Order, 26 FCC Rcd 10898 (2011); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service*, Further Notice of Proposed Rulemaking, 21 FCC Rcd 5478 (2006); *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds That Video Relay Service (VRS) May Not Be Used As a Video Remote Interpreting Service*, Public Notice, 20 FCC Rcd 1471 (2005)).

⁸ See *NAL*, 29 FCC Rcd at 5493, paras. 5-6.

⁹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 809, para. 37 (2008) (*Second Internet-Based TRS Order*).

¹⁰ See 47 C.F.R. §64.604(c)(5)(iii)(D).

¹¹ 47 C.F.R. § 64.604(c)(5)(iii)(D) (codified at 47 C.F.R. § 64.604(c)(5)(iii)(C) at the time of the continuing violations at issue).

¹² See *NAL*, 29 FCC Rcd at 5503-04, paras. 28-29. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. At the time of the *NAL*, Purple provided IP Relay; as of November 14, 2014, Purple no longer offers IP Relay.

verification process and the results of this failure as demonstrated by the existence of a specific group of unverified users and monies Purple received as a result of submitting inaccurate data to the Administrator. Specifically, the NAL charged Purple with violating the Commission's rules and orders by:

- Failing to implement a reasonable process to verify the accuracy of registration information provided by each IP Relay user registering with Purple between May 28, 2010, and December 31, 2011;
- Issuing ten-digit (telephone) numbers to at least 40,000 users with "names" that appeared on their face to be gibberish, random keystrokes, vulgarities, or otherwise self-evidently false names (False Names)¹³ before verifying each such user's name and mailing address; and
- Submitting claims to the Administrator for compensation from the TRS Fund based on the call minutes generated by False Name users, which led to Company receiving almost \$ million in reimbursements from the TRS Fund to which it was not entitled.¹⁴

7. On June 2, 2014, Purple filed an NAL Response requesting that the Commission cancel or reduce the proposed forfeiture.¹⁵ In its NAL Response, Purple makes several arguments that broadly fall into two categories: (1) a denial that its verification process was unreasonable,¹⁶ and (2) a claim that the Commission misapplied the Act's statutory factors in setting the forfeiture.¹⁷ With respect to the first category of arguments, Purple essentially restates prior arguments that we fully discussed and rejected in the NAL. It requests, however, that we reverse our decision because, in Purple's view, we applied a "new" legal standard that cannot legally be sustained.¹⁸ Purple's second argument (relating to what it claims is a misapplication of the statutory factors) has two prongs: (1) imposing the forfeiture on Purple would violate the law,¹⁹ and (2) a proper application of the statutory factors requires a reduction or cancellation of the forfeiture.²⁰

III. DISCUSSION

8. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),²¹ Section 1.80 of the Commission's rules,²² and the Commission's *Forfeiture Policy Statement*.²³ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other

¹³ See *id.* at 5499, para. 19 (highlighting obviously false names such as ["first name last name"] "██████████," "██████████ ██████████," and "██████████," included in the 40,000 users issued ten-digit (telephone) numbers).

¹⁴ *Id.* at 5495, para. 10.

¹⁵ Purple Communications, Inc.'s Response to Notice of Apparent Liability for Forfeiture (June 2, 2014) (on file in EB-TCD-12-00000376) (NAL Response).

¹⁶ See NAL Response at 20-34.

¹⁷ See *id.* at 51-56.

¹⁸ See *id.* at 42-51.

¹⁹ See *id.* at 38-54.

²⁰ See *id.* at 59-70.

²¹ 47 U.S.C. § 503(b).

²² 47 C.F.R. § 1.80.

²³ *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

matters as justice may require.”²⁴ As discussed below, we have fully considered Purple’s response to the *NAL*, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore affirm the \$11,937,549 forfeiture proposed in the *NAL*.

A. Purple’s Verification Process Did Not Satisfy the “Reasonable” Standard Because It Never Verified a Registrant’s Name and Mailing Address

9. In its *NAL* Response, Purple asserts that its verification process was reasonable at all times during the period in question.²⁵ This issue was fully addressed in the *NAL* and Purple fails to persuade us that we should revisit our conclusion here.²⁶ While the Commission’s orders at the time the verification process was adopted allowed Providers flexibility in choosing the exact method of verification they would use, the orders were clear that, at a minimum, a reasonable verification process must verify a user’s name and mailing address. Purple’s process failed to meet this baseline standard.²⁷

10. Likewise, the *NAL* reviewed Purple’s “██████████” or “██████████” verification and “██████████” fraud detection processes, Purple’s various updates and modifications to these processes, and the timing and manner in which Purple applied the updates.²⁸ For the reasons discussed in the *NAL*, we found Purple’s processes insufficient because they never verified the user’s name or mailing address as required by the *Second Internet-Based TRS Order*.²⁹

11. In its *NAL* Response, however, Purple asks us to revisit our finding without offering any new facts.³⁰ Indeed, the Company relies on the same ██████████ process already discussed and rejected in the *NAL*, arguing that the process specifically “targeted” names and mailing addresses.³¹ As discussed in the *NAL*, Purple claimed that it targeted users through several fraud detection measures that identified ██████████.³² However, targeting users’ names and mailing addresses does not equate to verifying names and mailing addresses as required by the *Second Internet-Based TRS Order*. For example, as discussed in the *NAL*, as part of its investigation:

[T]he Bureau examined an address that Purple had provided that was associated with 299 different registrations; each registration had listed “201 Alice St., Alger, OH 45812” as the registrant’s address. No such mailing address existed. Bureau staff contacted the post office in Alger, Ohio (a town with a population of less than 1,000) and confirmed that the mailing address did not exist.³³

Purple never mentions this fact in its *NAL* Response, nor does it explain how its alleged “targeting” approach verified any of the 299 registrations in the example above.³⁴ Purple’s description of its ██████████

²⁴ 47 U.S.C. § 503(b)(2)(E).

²⁵ See *NAL* Response at 10-16.

²⁶ See *NAL*, 29 FCC Rcd at 5496-5502, paras. 13-25; see also *id.* at 5493-94, paras. 5-7 (discussing the relevant orders adopting the registration and verification process, timing issues, and Providers obligations).

²⁷ See *Second Internet-Based TRS Order*, 24 FCC Rcd at 809, para. 37.

²⁸ See *NAL*, 29 FCC Rcd at 5500-01, paras. 21-24.

²⁹ See *id.* at 5495, 5496-99, paras. 10, 14-18.

³⁰ See *NAL* Response at i-iv.

³¹ *Id.* at 22.

³² *NAL*, 29 FCC Rcd at 5500-5501, paras. 21-22.

³³ *Id.* at 5498, para. 16 (citations omitted).

³⁴ Prior to implementing the Verity ██████████ to assess the accuracy of names and addresses provided during registration and assign a reliability score, Purple’s verification process made no effort to verify a user’s mailing

██████████ processes does not change the fact that the Company did not use a reasonable process to verify the registration information provided by over 40,000 False Names, assigned them ten-digit telephone numbers, allowed them to make calls, and sought to collect money from the TRS Fund based on those calls.³⁵

12. Throughout its NAL Response, Purple also invokes the “guest user” policy to explain why the *NAL* is wrong in finding that the Company’s verification process was not reasonable and to justify why it assigned users ten-digit numbers and sought monies from the TRS Fund.³⁶ More specifically, Purple argues that it did not violate the Commission’s verification rules and orders because it was only following the guest-user policy and was required to register the False Names, assign them a ten-digit number, and begin providing service to them prior to the completion of the verification process.³⁷ We reject this argument. As we discussed in the *NAL*, Purple described its verification process as “simultaneous registration and verification.”³⁸ Thus, Purple’s guest user argument is contradicted by its own statements that “the Company itself viewed its verification process as having been completed *before* it assigned ten-digit numbers to False Name [users].”³⁹ Moreover, Purple’s argument also contradicts its *Refresh Public Notice* comments, where contrary to the Company’s argument that the Commission required Providers to assign ten-digit numbers in order to provide service under the guest user policy, Purple acknowledges that, in articulating the guest user policy, “[t]he Commission further instructed providers that they must process the calls even if they have not yet assigned the ten-digit number.”⁴⁰ As a result, Purple cannot avail itself of the “guest user” policy as justification for its actions.

13. In its NAL Response, Purple also argues that “immediate verification was not required by the Commission.”⁴¹ To support its argument, Purple points out that a postcard verification process (an example the Commission described as reasonable) was an ineffective method of verification because it was not timely.⁴² The Company further claims that if “Purple had used the postcard method, it would not be the subject of an NAL.”⁴³ These arguments miss the mark entirely. The *NAL* does not say that Purple was required to immediately verify users. Instead, the crux of the standard in the *NAL* is whether the

address. *See id.* at 5496-5498, paras. 16, 17. Purple’s process verified that the address given was served by a PSAP, not a postal address as required by the *Second Internet-Based TRS Order*. *See id.* at 5497-98, para. 16.

³⁵ Even if the “██████████” fraud detection methods did constitute a verification process, a reasonable verification process would not rely on ██████████ measures to verify users when the requirements established by the Commission were aimed at preventing ineligible users from getting into the system in the first place.

³⁶ The guest user policy required iTRS Providers, to the extent technically feasible, to temporarily process a new user’s calls after a Provider registered the user but before it had completed the verification of the user’s name and address and other numbering-related processes, including the assignment of a ten-digit telephone number and provisioning the user in the iTRS directory. *See Consumer & Governmental Affairs Bureau Reminds Video Relay Service (VRS) and Internet Protocol (IP) Relay Service Providers of Their Outreach Obligations and Clarifies Their Call Handling Obligations for Unregistered Users After November 12, 2009, Ten-Digit Numbering Registration Deadline*, Public Notice, 24 FCC Rcd 12877 (CG Bur. 2009).

³⁷ *NAL* Response at 3-6, 16-20.

³⁸ *NAL*, 29 FCC at 5502, para. 25.

³⁹ *Id.* (emphasis added).

⁴⁰ *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record Regarding Misuse of Internet Protocol Relay Service*, Public Notice, 27 FCC Rcd 1569 (CG Bur. 2012) (*Refresh Public Notice*), Purple Communications, Inc.’s Comments on *Refresh Public Notice*, at 9 (received Mar. 21, 2012), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017026568>.

⁴¹ *NAL* Response at 18.

⁴² *See id.* at 11.

⁴³ *Id.* at 18.

process used was a reasonable means of verifying registration information. Purple cannot justify its defective process by attacking a process it did not use. Thus, whether or not some process other than the one Purple used is “timely” is irrelevant. Purple seeks to alter or ignore the standard applied in the *NAL*—that any process an iTRS Provider implements will be assessed based on whether it is a reasonable means of verifying registration information

14. Our findings and conclusions in the *NAL* are based on the record and the facts, not on what may or may not have occurred had Purple hypothetically used a verification process other than the one it did. The Commission left it up to the Providers to choose the verification process they would use. Purple chose its verification process; we reviewed the reasonableness of that verification process and found that it did not comply with the Commission’s rules.⁴⁴

B. No Reduction or Cancellation of the Proposed Forfeiture is Warranted

15. Purple also claims that the Commission must cancel or reduce the proposed forfeiture for a variety reasons. Principally, it argues that (1) imposing the forfeiture would violate the law, and (2) the *NAL* does not adequately take into account the Act’s factors for assessing a forfeiture, including Purple’s ability to pay.⁴⁵ We disagree. As discussed more fully below, Purple’s attack on the lawfulness of the forfeiture ignores both Commission precedent and the relevant facts in the record which are articulated in the *NAL* upon which the forfeiture is based.

1. The *NAL* Complied with Applicable Law in Determining the Proper Forfeiture in this Case

16. Purple first argues that the verification requirement was “never previously [] disclosed in a rulemaking proceeding” and, therefore, “amount[s] to retroactive implementation of new liability standards in violation of principles of due process.”⁴⁶ As a preliminary matter, the verification requirement and reasonableness standard (which, at a minimum, require verifying the name and mailing address a user provided during registration) were, in fact, adopted in a rulemaking order.⁴⁷ Moreover, Purple was an active participant in those proceedings, even commenting on the Commission’s proposed registration and verification processes.⁴⁸ Thus, we reject Purple’s assertion that it had no notice of its obligation to use a reasonable process to verify a registrant’s name and mailing address.

17. We also reject Purple’s claim that the *NAL* “amount[s] to retroactive implementation of new liability standards.”⁴⁹ Purple’s claim ignores the facts—the *NAL* did not articulate any standards requiring “instant verification” or the “pre-screening for the use of a traditional, English-origin name only.”⁵⁰ The *NAL* found Purple’s verification process unreasonable because it *never* verified a registrant’s

⁴⁴ We do not need to address Purple’s misunderstanding with respect to the timing of assignment of ten-digit numbers. *See id.* at 18-19. We fully reviewed and discussed the Commission’s requirements regarding assigning ten-digit numbers in the *NAL*. *See NAL*, 29 FCC Rcd at 5493-94, paras. 5-8. Purple’s interpretation of the Commission’s orders and law related to the timing and assignment of ten-digit numbers ignores what the Commission has previously said: “[W]e conclude that [Providers] must institute procedures to verify the accuracy of registration information, including the consumer’s name and mailing address, *before issuing the consumer a ten-digit telephone number.*” *Second Internet-Based TRS Order*, 24 FCC Rcd at 809, para. 37 (emphasis added).

⁴⁵ *See NAL Response* at 38-56.

⁴⁶ *Id.* at 39.

⁴⁷ *See Second Internet-Based TRS Order*, 24 FCC Rcd at 808, para. 37 (mandating Internet-based TRS providers to implement a reasonable verification process to verify the accuracy of registration information, including the consumer’s name and mailing address).

⁴⁸ *See NAL*, 29 FCC Rcd at 5495, para. 11 n.30.

⁴⁹ *NAL Response* at 39.

⁵⁰ *See id.* at ii, 15, and 39.

name and mailing address.⁵¹ Purple’s after-the-fact research into a limited number of False Names ignores the fundamental basis of the verification process violation—the Company’s failure to use a reasonable process to verify registration information, including a registrant’s name and mailing address.

18. Purple further argues that a registrant should be permitted to apply for service using “a range of acceptable identity information, including what is submitted for a ‘name,’ that would merit additional review and investigation to determine if the user provided potentially verifiable information.”⁵² Yet again, Purple’s argument is inapposite and does not address the standard applied in the *NAL*. The fact that neither the *First Internet-Based TRS Order*⁵³ nor the *Second Internet-Based TRS Order* prohibited Providers from accepting a range of identity information to assist the Provider in verifying registration information is irrelevant. Purple’s argument ignores the standard established in the *Second Internet-Based TRS Order*—that a reasonable verification process, at the very least, required Providers to verify both the registrant’s name and mailing address.⁵⁴ In order to verify those two pieces of information, users had to provide the necessary information to enable Purple to do so, and Purple had to actually perform that verification.

19. Purple mischaracterizes the *NAL*, arguing that the *NAL* adopts “[a]n unwritten standard that arbitrarily equates so-called ‘False Names’ with ‘ineligible users.’”⁵⁵ To support this argument, Purple offers a limited number of False Names that Purple asserts it was able to confirm were “real” individuals using Facebook, Twitter, LinkedIn, and a handful of other web-based sources.⁵⁶ Purple’s subsequent research for purposes of responding to the *NAL* has nothing to do with Purple’s verification process at the time the violations occurred. Specifically, Purple has never argued that a Facebook search, for example, was part of its verification process. As we discussed above, in the *NAL* we found that Purple used an unreasonable verification process and the False Names are evidence of the type of registration information that was allegedly “verified” by Purple.

20. Purple next argues that the *NAL* failed to comply with Section 503 of the Act by not specifying the facts upon which the charged violation was based, including the dates of the violations.⁵⁷ We disagree. Section 503 requires that we identify the violation (act, rule, or order violated), “the nature of the act or omission charged . . . and the facts upon which such charge is based,” and “state the date on which such conduct occurred.”⁵⁸ The *NAL* identified the specific order (the *Second Internet-Based TRS Order*) that was the basis of our finding that Purple failed to use a reasonable process to verify information provided during registration and the specific rule (Section 64.604(c)(5)(iii)(D)) that Purple violated in submitting inaccurate data to the TRS Fund administrator.⁵⁹ The *NAL* described in detail the nature of the violations and the facts used by the Commission in reaching these conclusions.⁶⁰ With specific reference to the record, the *NAL* illustrates the impact of the violations by describing False

⁵¹ See *NAL*, 29 FCC Rcd at 5496-5503, paras. 13-28.

⁵² *NAL* Response at 51.

⁵³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591 (2008) (*First Internet-Based TRS Order*).

⁵⁴ *Second Internet-Based TRS Order*, 24 FCC Rcd at 809, para. 37.

⁵⁵ *NAL* Response at 51.

⁵⁶ See *id.* at 44-50.

⁵⁷ *Id.* at 51-52.

⁵⁸ 47 U.S.C. § 503(b)(4)(C)(i)-(iii).

⁵⁹ See *NAL*, 29 FCC Rcd at 5495, para. 10.

⁶⁰ See *id.* at 5495–5503, paras. 10-28. The facts described in the *NAL* were gleaned from more than 200,000 pages submitted in 11 filings Purple made over the course of the three year investigation.

Names, providing examples and a sampling of the False Names, and identifying the amount of ineligible reimbursements Purple received.⁶¹ In sum, we find no support for Purple's claim that the *NAL* failed to provide the facts upon which the *NAL* is based.

21. With respect to identifying dates, Section 503 requires that we identify the dates of Purple's conduct related to the violation (i.e., the conduct of the violator).⁶² We interpret Section 503 as requiring the Commission to identify the relevant dates related to the violator's "conduct," which may occur on a single day (and continue over multiple days), or occur over multiple days (or even months or years) in cases involving multiple violations, and constitute a continuing violation, such as in this case. This interpretation is based on a practical reading of Section 503's reference to "conduct," especially in cases like Purple, where the conduct occurred multiple times (at least 40,000 times in the case of False Name users) extending over a period of months.

22. We interpret Section 503 as requiring sufficient notice to provide the violator with the information he or she needs to mount a defense to the violations charged in a Notice of Apparent Liability. The notice requirements of Section 503 requiring a Notice of Apparent Liability to "state the date" are satisfied when the Notice of Apparent Liability identifies the conduct resulting in the violations and provides (1) specific cite references to the record (i.e., specific citations to files and documents provided by the violator that identified relevant dates sufficient to allow the violator to lodge its defense) or, (2) citations to the records containing dates and other relevant information. We do not read Section 503 to require the Commission to regurgitate the entire record in a Notice of Apparent Liability or an appendix. If the Notice of Apparent Liability identifies the specific facts that form the basis of the violation, the conduct at issue, and either identifies dates or date ranges with specific citation to the record, our obligation under the statute is satisfied. In this case, we not only provided the dates Purple's conduct occurred in the *NAL*, but also provided Purple with a concise electronic copy of the record identifying the False Name users who generated the reimbursements that Purple received that it was not entitled to and other relevant information regarding dates relevant to Purple's conduct.⁶³

23. The *NAL* identifies a variety of relevant dates and date ranges related to Purple's conduct and the violations charged, satisfying the requirements of Section 503.⁶⁴ The *NAL* not only provides the dates that the Company failed to implement a reasonable verification process (from May 28, 2010, through December 31, 2011), but also includes a detailed discussion of the various stages of Purple's implementation of its verification process, along with the dates each stage was implemented.⁶⁵ Finally, the *NAL* identifies 22 inaccurate submissions Purple made to the Administrator and states that they were made between July 2010 and January 2012.⁶⁶ Two of the 22 submissions were annual submissions that were made outside the aforementioned date range; however, as explained below, while the annual submissions impacted the overall rate used for reimbursements, the Commission did not include the annual submissions for purposes of calculating the forfeiture amount.⁶⁷ Accordingly, consistent with past

⁶¹ See *id.* at 5499, para. 33 & Appendix B; see also Letter from Jon Wilkins, Acting Managing Director, FCC Office of the Managing Director, to John F. Cannon, Counsel for Purple Communications, Inc., at 2 (July 7, 2014) (on file in EB-TCD-12-00000376) (July 7 Letter). Not only did we cite to the record containing the False Names (a record that Purple itself provided to the Bureau in the first instance), but at Purple's request, [REDACTED] gave the electronic record back to Purple for its review and analysis. See July 7 Letter at 2 & Attachments.

⁶² 47 U.S.C. § 503(b)(4)(C)(iii).

⁶³ See *NAL*, 29 FCC Rcd at 5495, para. 10. See also July 7 Letter at 2 & Attachments.

⁶⁴ See *id.* at 5496–5499, paras. 14–18.

⁶⁵ See *id.* at 5501, para. 24.

⁶⁶ See *id.* at 5495, para.10.

⁶⁷ See *infra* para 25 & n.72; see also *NAL*, 29 FCC Rcd at 5506, paras. 33–34.

precedent involving continuing violations⁶⁸ and our interpretation of Section 503 of the Act, we reject Purple's claim that the *NAL* failed to comply with that section of the Act.

24. Lastly, Purple argues that the forfeiture is unlawful because it is barred by the statute of limitations.⁶⁹ The facts and nature of the violations prove otherwise. As we said in the *NAL*, the relevant time-period for purposes of determining the applicable statute of limitations is on or after July 12, 2011, to the "present" (i.e., May 2, 2014, the date of release of the *NAL*).⁷⁰ The applicable statute of limitations period is derived from the dates of the violations, the fact that the violations were continuing in nature, and the tolling agreement the Bureau and Purple entered into on July 12, 2012, empowering the Commission to pursue violations that occurred on or after July 12, 2011, to the present.⁷¹

25. In making its statute of limitations argument, Purple misconstrues the nature of the violations and calculation of the forfeiture. First, Purple fails to acknowledge the continuing nature of the violations. The Company failed to implement a reasonable process and use it to verify each registrant's registration information. As a result of this violation, over the cited period (May 28, 2010, through December 31, 2011), unverified users were allowed access to TRS and made calls they were not entitled to make. The *NAL* described a total of 22 inaccurate submissions, among these were 19 monthly submissions and three annual submissions. From July 2010 through January 2012, Purple submitted a total of 20 of those inaccurate submissions to the TRS Fund Administrator that contained minutes from the unverified users (with seven of these submissions made during the period covered by the tolling agreement).⁷² While submissions were made both prior to and during the time period covered by the various tolling agreements, the Commission retains the power to pursue the 13 earlier submissions

⁶⁸ See, e.g., *License Renewal Application of E. Carolina Broad. Co., Inc. former Licensee of Stations WGBR(AM)/WKTC(FM) Goldsboro, N.C.*, Memorandum Opinion and Order, 6 FCC Rcd 6154, 6155-56, para. 12 (1991) (finding that where a continuing violation occurred, stating the date when the violation began and ended is sufficient to comply with the requirements of Section 503).

⁶⁹ See *NAL* Response at 53-54.

⁷⁰ *NAL*, 29 FCC Rcd at 5506, para. 34 n.87.

⁷¹ See Tolling Agreement, executed by and between Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, and John F. Cannon, Counsel for Purple Communications, Inc. (July 12, 2012) (July 12 Tolling Agreement); Second Extended Tolling Agreement, executed by and between Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, and John F. Cannon, Counsel for Purple Communications, Inc. (June 6, 2013); Third Extended Tolling Agreement, executed by and between Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, and John F. Cannon, Counsel for Purple Communications, Inc. (Nov. 15, 2013); Fourth Extended Tolling Agreement, executed by and between Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, and John F. Cannon, Counsel for Purple Communications, Inc. (Mar. 14, 2014). In the *NAL* Response, Purple incorrectly states that the tolling agreements encompass violations occurring on or after July 13, 2011. See *NAL* Response at 7. However, the first agreement took effect on July 12, 2012 (the "Effective Date," which was determined by the date on which both parties signed and dated the agreement) and tolls all violations that "would have expired on the Effective Date of this Agreement." July 12 Tolling Agreement at 1-2.

⁷² See *NAL*, 29 FCC Rcd at 5503-04, paras. 29-30. In 2010, 2011, and 2012, Purple made the required annual filings with the TRS Fund administrator. These annual filings contained minutes associated with False Name users. The 19 monthly submissions and 2011 annual submission were filed during the relevant period. These annual submissions are used by the TRS Fund administrator as a part of the rate setting process. While they impacted the overall rate used for reimbursements and/or supported the amounts claimed by Purple, the Commission relied on the 19 monthly submissions for purposes of calculating the forfeiture amount. As described the *NAL*, "on nineteen occasions," Purple "improperly sought reimbursement from the TRS Fund for calls made by at least 40,000 False Name users for which it was not entitled to compensation;" as a result of this, it "improperly received almost \$ [REDACTED] from the TRS Fund." *Id.* at 5506, para. 33. Although the "three annual submissions also adversely affected the Fund," *id.* at 5506, para. 33, we concluded there as we do here "that an appropriate penalty is [REDACTED] times the amount that Purple improperly received from the TRS Fund." *Id.* at 5506, para. 34.

because Purple has not amended any of the submissions to make them accurate, and thus each submission is a continuing apparent violation and remains actionable until corrected.⁷³ As described in the *NAL*, the Company's unreasonable verification process and submission violations occurred over an extended period and resulted in monies being released from the TRS Fund that should not have been paid to Purple.⁷⁴ The submission of the inaccurate forms (both monthly and annual) had an impact on planning by the TRS Fund administrator; this impact not only potentially resulted in higher TRS Fund projections, but also in higher contributions requirements (thus impacting not just TRS, but the telecommunications industry at large). These violations continue until the unreasonable verification process and inaccurate submissions are cured.⁷⁵

26. Second, Purple points to "calls [made] prior to the statutorily limited period" to argue that the Commission "used the incorrect base to calculate its trebled forfeiture."⁷⁶ According to Purple, the *NAL*'s forfeiture calculation is incorrect, arguing that the forfeiture should be calculated only on calls made within the statute of limitations period.⁷⁷ Purple's assertion is incorrect. The *NAL* explicitly explained how the forfeiture was calculated and the calculation was not based on calls made. We concluded that "an appropriate penalty [was] [REDACTED] times the amount that Purple improperly received from the TRS Fund as a result of the violations at issue in th[e] *NAL*: \$11,937,549 ([REDACTED] times \$[REDACTED])."⁷⁸ We explained that the "forfeiture [was] based on Purple's failure to implement a reasonable verification process and its twenty-two submissions to the TRS Fund administrator in connection with seeking reimbursement from the Fund."⁷⁹ These 22 submissions resulted in Purple receiving \$[REDACTED] from the TRS Fund. We properly assessed an overall forfeiture of \$11,937,549; as we point out in the *NAL*, that figure "is less than the statutory maximum, which is \$34,500,000 (i.e., 22 continuing filing violations and one continuing verification process violation, each with a statutory maximum of \$1,500,000)."⁸⁰ Accordingly, we reject Purple's arguments and find that the forfeiture was properly calculated using violations within the applicable statute of limitations.

2. The Statutory Factors, including Ability to Pay, Also Support the Imposed Forfeiture

27. Purple proffers a number of arguments to support its contention that a reduction or cancellation of the forfeiture is warranted. The Company argues that Purple complied with the

⁷³ See *VCI Co.*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (finding that violations continue until they are corrected).

⁷⁴ See *NAL*, 29 FCC Rcd at 5495-5504, paras. 11-29.

⁷⁵ While Purple takes issue with concept of a continuing violation, to-date it has not made any filings to correct its prior submissions and consistent with past precedent, those violations continue until corrected. See *VCI Co.*, 22 FCC Rcd at 15940, para. 20.

⁷⁶ *NAL* Response at 53.

⁷⁷ See *id.* at 53-54.

⁷⁸ *NAL*, 29 FCC Rcd at 5506, para. 34. As a general matter, Section 503(b)(6) of the Act prohibits the Commission from assessing a forfeiture against a carrier for conduct that occurred more than one year before the Commission issues a Notice of Apparent Liability for that conduct. See 47 U.S.C. § 503(b)(6)(A)(i). As indicated above, however, the Bureau and Purple agreed to toll the statute of limitations, empowering the Commission to pursue apparent violations that occurred on or after July 12, 2011, to the present. Purple used the verification processes at issue in this *NAL*, and submitted seven of the 22 submissions at issue in this *NAL*, during this period of time.

⁷⁹ *NAL*, 29 FCC Rcd at 5506, para. 34 n.87.

⁸⁰ *Id.* at 5506, para. 34 n.88. For the reasons described in the *NAL*, we find that, "analogous to the approach in the False Claims Act," [REDACTED] the almost \$[REDACTED] Purple sought from the Fund in 19 monthly filings submitted during the relevant period is an "appropriate penalty" that is "directly linked to the magnitude of Purple's economic gain and the harm it caused to the TRS Fund." *Id.* at 5506, paras. 33-34.

Commission's orders by "implementing a reasonable verification system" and therefore its 22 submissions seeking monies from the TRS Fund were compliant,⁸¹ that any violations of the verification requirements were not willful,⁸² and that the Commission misapplied the Section 503 statutory factors (including failure to take into account Purple's ability to pay).⁸³ Purple then concludes that, based on such arguments, a forfeiture is unwarranted.⁸⁴ We reject Purple's arguments. As an initial matter and with regard to the Company's claim that its 22 submissions to the TRS Fund were compliant, the *NAL* squarely refutes any such argument. The *NAL* reviewed the record at length and found, for the reasons stated therein, that Purple failed to implement a reasonable verification process and that the 22 submissions violated our rules.⁸⁵ We see no reason to revisit our findings and conclusions here based on Purple's self-serving and conclusory statements.

28. Purple also argues that even if it did not comply with verification requirements, Purple never intended to violate such requirements (i.e., the violation wasn't "willful") and therefore, imposition of a forfeiture in this case is "inappropriate."⁸⁶ We reject this argument because it flouts past precedent and the plain language of the Act. 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.⁸⁷ The legislative history of Section 312(f)(1) of the Act further clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸⁸ and the Commission has so interpreted the terms in the Section 503(b) context.⁸⁹

29. Purple goes on to argue that the statutory factors favor a significant downward adjustment to the forfeiture.⁹⁰ Specifically, Purple claims that "*the nature, circumstances, extent, and gravity of the alleged violation are minor,*" and thus, the Commission should reduce the forfeiture.⁹¹ Purple's view of the violation is wholly dependent on its underlying premise that no violation occurred in the first instance (i.e., that its verification process was reasonable and therefore, its submissions were accurate)—a proposition that we reject in both the *NAL* and this forfeiture order. Purple describes its "██████████" fraud protection measures as successful and thus considers the violations to be "minor."⁹² Purple's focus on its "██████████" fraud detection measures misses the point—Purple was required to implement a reasonable verification process to verify users' name and mailing address. The fact that Purple may have deactivated some users on the ██████████ after Purple identified suspicious or fraudulent behavior on a call is, at best, a corrective action taken after the verification violation.

⁸¹ NAL Response at 59.

⁸² *Id.* at 59-60.

⁸³ *Id.* at 59-70.

⁸⁴ *Id.* at 59.

⁸⁵ *NAL*, 29 FCC Rcd at 5495, para. 10.

⁸⁶ NAL Response at 59-60. For the same reasons discussed above, we also reject Purple's assertion that it wasn't "culpable." *See id.* at 62.

⁸⁷ 47 U.S.C. § 312(f)(1).

⁸⁸ H.R. REP. No. 97-765, at 50-51 (1982) (Conf. Rep.), as reprinted in 1982 U.S.C.C.A.N. 2261, 2294-95.

⁸⁹ *See AT&T Inc.*, File No. EB-SED-13-00008891, Notice of Apparent Liability for Forfeiture, FCC 15-12, 2015 WL 400611, at *3, para. 7 n.24 (Jan. 29, 2015); *S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991); *Catholic Radio Network of Loveland, Inc.*, File No. EB-10-DV-0407, Memorandum Opinion and Order, 2015 WL 503049, at *1, para. 4 (Enf. Bur. Feb. 6, 2015).

⁹⁰ *See* NAL Response at 60-64.

⁹¹ *Id.* at 61.

⁹² *Id.*

30. We also note that Purple’s characterization of the violations as “minor” also does not reflect the impact of the violations. As we said in the *NAL*, the violations caused “substantial harm” to the TRS Fund and brought “substantial economic gain” to Purple, which improperly received almost \$ million from the TRS Fund.⁹³ Moreover, “Purple’s three annual submissions also adversely affected the TRS Fund by supplying erroneous information used to project the necessary size of the TRS Fund and the calculation that determines how much carriers would need to contribute.”⁹⁴

31. Purple also states that “the Commission must consider such other factors as justice may require,” asking the Commission to not only consider its “industry-leading technology solutions for verification,” but also, paradoxically, its “Compliance Plan” (implemented as a result of a 2010 Consent Decree with the Bureau for other alleged violations of the Communications Act and the Commission’s rules and orders).⁹⁵ Far from providing a basis for reducing the forfeiture, the record from the 2010 Consent Decree (and the related “Compliance Plan”) demonstrates Purple has a history of submitting non-compensable minutes for reimbursement and that such conduct persists. Since the 2010 Consent Decree, Purple has reported at least additional instances of non-compliance with the Act and/or the Commission’s rules and orders to the Bureau.⁹⁶ Moreover, the Bureau has recently discovered that Purple’s submissions to the TRS Administrator since January 2013 included international calls, demonstrating further non-compliance of the same nature as previously covered by the 2010 Consent Decree and inconsistent with the Company’s Compliance Plan. Accordingly, we reject Purple’s claims for reduction or cancellation of the forfeiture based on the statutory factors and affirm our finding in the *NAL* that a substantial forfeiture is warranted in this case.⁹⁷

32. Finally, Purple requests that we reduce or cancel the forfeiture based on its ability to pay.⁹⁸ We have reviewed Purple’s financial documents and plea for a reduction of the forfeiture based on “ability to pay” and, standing alone, Purple’s financial documents might support a reduction.⁹⁹ However, we are required to take into consideration each of the statutory factors in determining the forfeiture amount—the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, history or prior offenses, ability to pay, and other matters as justice may require.¹⁰⁰ We believe there should be a balanced assessment of these factors and, when viewed in this light, Purple has not presented sufficient evidence to justify reduction or cancellation of the forfeiture amount.

⁹³ See *NAL*, 29 FCC Rcd at 5506, para. 33 & n.84 (citing 47 C.F.R. § 1.80(b)(8), Note).

⁹⁴ *Id.* at 5506, para 33.

⁹⁵ *NAL* Response at 62-63. The referenced “Compliance Plan” relates to a 2010 Consent Decree that settled the investigation of Purple’s submission of minutes to the TRS Fund associated with marketing and outreach programs, internal calls and international calls, which Purple knew or should have known were non-compensable.

⁹⁶ Since December 2010, Purple has reported improperly submitting to the Administrator and reimbursed the TRS Fund \$ based on submission of improper minutes. In February 2015, Purple disclosed that its software had not been updated since . As a result, submissions filed for had to be resubmitted and over \$ reimbursed to the TRS Fund. This highlights ongoing compliance issues, particularly with a key component of Purple’s verification measures and fraud detection methods.

⁹⁷ See *NAL*, 29 FCC Rcd at 5505-07, paras. 33-34.

⁹⁸ *NAL* Response at 64-69.

⁹⁹ See *id.* at Exhibits A-H.

¹⁰⁰ See 47 U.S.C. § 503(b)(2)(E) (requiring that we take into account the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”).

33. As discussed in detail in the *NAL* and above, the Company was on notice of the verification requirement more than a year before the requirement went into effect and even provided comments in the rulemaking.¹⁰¹ The importance of accurate submissions was reflected in the 2010 Consent Decree the Company entered into with the Commission to settle prior investigations and was incorporated into compliance measures agreed to as a part of the agreement. The Company's continued non-compliance, as evidenced by this case, past practices, and non-compliance disclosures made since 2010, has an impact on consumers who contribute the monies used to provide TRS, administration of the TRS Fund, and most importantly threatens the viability of services offered to persons who utilize TRS to meet their daily needs. And while [REDACTED]

[REDACTED] For the reasons discussed in the *NAL*¹⁰³ and below, having considered all of the factors (including nature, circumstances, extent, and gravity of the violation) and, in particular, looking to Purple's degree of culpability and history of prior offenses, we find nothing in "the record in this case, including [Purple]'s ability to pay, warrants any leniency or mitigation of that amount."¹⁰⁴ Accordingly, we conclude that a forfeiture of \$11,937,549 is appropriate.

IV. CONCLUSION

34. Based on the record before us and in light of the applicable statutory factors, we conclude that Purple willfully and repeatedly violated the *Second Internet-Based TRS Order* and Section 64.604(c)(5)(iii)(D) of the Commission's rules by failing to implement a reasonable verification process to verify the accuracy of users' registration information and failing to submit true and adequate data to the Administrator. We decline to cancel or reduce the \$11,937,549 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹⁰⁵ and Section 1.80 of the Rules,¹⁰⁶ Purple Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven million nine hundred thirty-seven thousand five hundred forty-nine dollars (\$11,937,549) for willfully and repeatedly violating the *Second Internet-Based TRS Order* and Section 64.604(c)(5)(iii)(D) of the Rules.

36. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.¹⁰⁷ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁰⁸

37. 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. Purple Communications, Inc., shall send electronic notification of payment to Johnny Drake at

¹⁰¹ See *supra* para. 5; *NAL*, 29 FCC Rcd at 5495, 5501, paras. 10, 24.

¹⁰² *NAL* Response at 65-69.

¹⁰³ *NAL*, 29 FCC Rcd at 5505-07, paras. 33-34.

¹⁰⁴ *Bondy*, 26 FCC Rcd at 7845, para. 16.

¹⁰⁵ 47 U.S.C. § 503(b).

¹⁰⁶ 47 C.F.R. § 1.80.

¹⁰⁷ *Id.*

¹⁰⁸ 47 U.S.C. § 504(a).

johnny.drake@fcc.gov and fcecbaccess@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.¹⁰⁹ When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

17. 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, DC 20554.¹¹⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to John Goodman, Corporate Vice President and Chief Legal Officer, Purple Communications, Inc., 595 Menlo Drive, Rocklin, CA 95765-3708, and to John F. Cannon, Stradling Yocca Carlson & Rauth, P.C., 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660-6422.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹¹⁰ See 47 C.F.R. § 1.1914.