

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

In the Matter of	)	File No.: EB-IHD-14-00014860 <sup>1</sup>
	)	
Advanced Tel, Inc.	)	NAL/Acct. No.: 201532080005
	)	
	)	FRN: 0006815898

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: January 23, 2015**

**Released: January 26, 2015**

By the Commission:

**I. INTRODUCTION**

1. Telecommunications service providers are required to pay federal regulatory fees and make timely contributions to the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, and the cost recovery mechanism for local number portability (LNP). When telecommunications service providers fail to pay their share of obligations to the USF, TRS, LNP, and regulatory fee programs, and fail to file data required to assess their payment obligations for these programs, they undermine the efficiency and effectiveness of these federal programs. These delinquent contributors also obtain an unfair competitive advantage over companies that comply with the Communications Act of 1934, as amended (Act) and the Commission's rules (Rules). Today, we propose a penalty of \$1,588,988 against Advanced Tel, Inc. (ATI or Company) for the Company's apparent failures to timely and fully pay required contributions to federal regulatory programs over several years.

2. ATI failed to timely make required contributions to the USF, TRS Fund, and LNP cost recovery mechanism, and failed to timely pay federal regulatory fees. These apparent rule violations are serious offenses. These payment failures not only deprive the USF, TRS Fund, LNP cost recovery mechanism, and the Commission of resources needed for important federal regulatory programs, but these payment failures also give delinquent service providers an unfair competitive advantage by shifting to compliant service providers the economic costs associated with these federal regulatory programs. ATI also failed to timely file required revenue information with the Universal Service Administrative Company (USAC), thereby impeding USAC's ability to calculate the Company's required monthly USF contributions. ATI's payment failures span several years and at one point ATI owed nearly \$1.5 million in overdue assessments for federal regulatory programs. The penalties we propose here reflect the seriousness, duration, and scope of ATI's various payment violations.

**II. BACKGROUND**

3. ATI is a California-based non-dominant interexchange carrier that provides interstate, international, and intrastate long distance telecommunications services as a switchless reseller in 25 states.<sup>2</sup> ATI has provided these services since 2002.<sup>3</sup>

<sup>1</sup> This case was formerly assigned File No. EB-08-IH-5311.

<sup>2</sup> See *Domestic Section 214 Application Filed for the Transfer of Control of Advanced Tel, Inc. to InterMetro Communications, Inc.*, Public Notice, 22 FCC Rcd 5534 (Wireline Comp. Bur. 2007); Advanced Tel, Inc. April 2014 FCC Form 499-A (on file in EB-IHD-14-00014860).

4. In May 2008, USAC referred ATI to the Enforcement Bureau (Bureau) for potential enforcement action, alleging that ATI had failed to comply with the Commission's USF contribution Rules. On November 26, 2008, the Bureau sent ATI a letter of inquiry (LOI) directing that the Company respond to questions regarding its compliance with contribution obligations and other related regulatory requirements contained in the Act and the Rules.<sup>4</sup> ATI submitted its response to the LOI on March 16, 2009.<sup>5</sup> ATI then requested consent decree negotiations. In accordance with long-standing FCC policy, before it could enter into a consent decree ATI was required to pay or arrange payment plans for outstanding debts for USF, TRS, LNP and regulatory fee assessments. The Bureau granted ATI repeated extensions of time to make these payments and arrangements. After ATI informed the Bureau that the Company was making arrangements to pay outstanding amounts owed under installment plans with the U.S. Department of Treasury (Treasury Department), the Bureau sent ATI a second LOI on March 7, 2014 (Second LOI).<sup>6</sup> ATI responded to the Second LOI on May 7, August 15, and September 11, 2014.<sup>7</sup> ATI subsequently again fell behind on its USF, TRS, LNP and regulatory fee payment obligations, and notified the Bureau that it could no longer pursue a consent decree.<sup>8</sup>

### III. DISCUSSION

5. Based on the facts and circumstances before us, and as described more fully below, we find that ATI apparently willfully or repeatedly failed to timely make required USF, TRS and LNP contributions and timely pay required regulatory fees in accordance with Sections 251(e)(2), and 254(d) of the Act and Sections 1.1154, 1.1157, 52.32, 54.706, and 64.604(c)(5)(iii) of the Rules, and to timely file a Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q or Quarterly Worksheet), as Section 54.711 of the Rules requires.<sup>9</sup>

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<sup>3</sup> See Advanced Tel, Inc. April 2002 FCC Form 499-A (new filer registration) (on file in EB-IHD-14-00014860). As evidenced by the April 2002 FCC Form 499-A filing, ATI presumably understood its obligation to register with the Commission under 47 C.F.R. § 64.1195.

<sup>4</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to David Singer, Advanced Tel, Inc. (Nov. 26, 2008) (on file in EB-IHD-14-00014860) (LOI).

<sup>5</sup> Letter from Glenn Harris, Vice President Business and Legal Affairs, Advanced Tel, Inc., to Rebekah Bina, Attorney, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 16, 2009) (on file in EB-IHD-14-00014860) (LOI Response).

<sup>6</sup> Letter from Pamela S. Kane, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to David Olert, Chief Financial Officer, Advanced Tel, Inc. (May 12, 2014) (on file in EB-IHD-14-00014860) (Second LOI).

<sup>7</sup> See Email from Joshua Touber, Advanced Tel, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 11, 2014) (on file in EB-IHD-14-00014860); Letter from Joshua Touber, Advanced Tel, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Aug. 15, 2014) (on file in EB-IHD-14-00014860); Letter from David Olert, Chief Financial Officer, Advanced Tel, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (May 12, 2014) (on file in EB-IHD-14-00014860) (Second LOI Response).

<sup>8</sup> ATI apparently does not plan to pay any further delinquent, or current, federal regulatory program obligations; rather, the Company is "conserving cash" in anticipation of winding down operations and seeking a court-controlled dissolution and bankruptcy process. Email from Jonathan Marashlian, Marashlian & Donahue, Counsel to ATI, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 26, 2014) (on file in EB-IHD-14-00014860).

<sup>9</sup> See 47 U.S.C. §§ 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 52.32, 54.706, 54.711, 64.604(c)(5)(iii).

**A. ATI Failed to Timely and Fully Contribute to the USF**

6. We conclude that ATI apparently violated Section 254(d) of the Act and Section 54.706(a) of the Rules by willfully or repeatedly failing to contribute fully and timely to the universal service support mechanisms.<sup>10</sup> Section 54.706(a) of the Commission's Rules unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support mechanisms."<sup>11</sup> "Interstate telecommunications" include, among other things, "resale of interstate services," such as the services provided by ATI.<sup>12</sup>

7. ATI was required to contribute to the universal service support mechanisms based upon its end-user telecommunications revenues.<sup>13</sup> The record reflects that ATI failed to contribute fully and timely to the USF beginning in July 2006.<sup>14</sup> On November 16, 2007, ATI made its first attempt to remedy its USF payment problems when it submitted a request to USAC for a structured payment plan allowing it to pay its delinquent USF balance in monthly installments.<sup>15</sup> USAC granted the request, and in April 2008 ATI began making monthly payments in accordance with the approved payment plan.<sup>16</sup> After several months, however, ATI stopped making payments, and in December 2008 USAC terminated the payment plan based on ATI's failure to make timely and complete payments on both the payment plan and on its current USF obligations.<sup>17</sup> ATI's noncompliance with its USF contribution obligations continued even after the Company became aware of the Bureau's investigation in November 2009.<sup>18</sup> In December 2009, ATI again requested a payment plan allowing it to pay its outstanding USF balance in installments.<sup>19</sup> ATI made a few payments toward its delinquency between December 2009 and March 2010, but failed to also make timely and complete payments on its current USF obligations. As a result, USAC ultimately rejected ATI's second payment plan request.<sup>20</sup>

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<sup>10</sup> 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

<sup>11</sup> 47 C.F.R. § 54.706(a).

<sup>12</sup> *See id.*

<sup>13</sup> *See* 47 C.F.R. § 54.706(b).

<sup>14</sup> *See* Universal Service Administrative Company, Invoice to Advanced Tel, Inc., No. UBDI 0000204165 (July 21, 2006) (on file in EB-IHD-14-00014860).

<sup>15</sup> *See* Email from Stefani Watterson, USAC, to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Aug. 25, 2009) (on file in EB-IHD-14-00014860).

<sup>16</sup> *See* Email from Stefani Watterson, USAC, to Irene Flannery, Assistant Chief, Investigations and Hearings Division, FCC Enforcement Bureau (July 30, 2009) (on file in EB-IHD-14-00014860).

<sup>17</sup> *See* Letter from Michelle Garber, Director of Financial Operations, USAC, to Vince Arena, Chief Financial Officer, Advanced Tel, Inc. (Nov. 21, 2008) (on file in EB-IHD-14-00014860) (advising of the defaults and providing notice of impending transfer of ATI's current USF debt to the Treasury Department); Letter from Michelle Garber, Director of Financial Operations, USAC, to Vince Arena, Chief Financial Officer, Advanced Tel, Inc. (Dec. 4, 2008) (on file in EB-IHD-14-00014860) (providing notice of termination of ATI's payment plan and the transfer of the remaining balance due under that plan to the Treasury Department).

<sup>18</sup> *See* Universal Service Administrative Company, Invoice to Advanced Tel, Inc., No. UBDI 0000401565 (Jan. 22, 2010) (on file in EB-IHD-14-00014860) (indicating that ATI's first USF payment after November 2008 was a partial payment on December 17, 2009).

<sup>19</sup> *See* Letter from InterMetro Communications, Inc., to Regina Dorsey, FCC Office of Managing Director (dated December 15, 2009) (on file in EB-IHD-14-00014860) (requesting a long-term payment plan for ATI's outstanding USF balance). ATI is InterMetro Communications, Inc.'s wholly-owned subsidiary.

<sup>20</sup> *See* Stefani Watterson, USAC, to Rebekah Bina, Attorney-Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 15, 2010) (on file in EB-IHD-14-00014860).

8. The record demonstrates that ATI has maintained large outstanding balances for unpaid USF contributions over a period spanning approximately eight years. When a company has chronic payment failures to the USF, USAC transfers the company's debt to the Treasury Department for collection under the Debt Collection Improvement Act of 1996 (DCIA).<sup>21</sup> Invoices from USAC to ATI show that between 2007 and 2014, the Commission and USAC apparently made numerous DCIA transfers for ATI's unpaid USF contributions.

9. ATI's apparent USF violations include the nonpayment of at least 36 USF invoices assessed between October 22, 2011 and September 22, 2014, and these violations will continue until ATI cures them with full payments.<sup>22</sup> Data from ATI and USAC demonstrate that the highest amount ATI owed for USF contributions, including amounts transferred under the DCIA, was \$1,407,310.76 in October 2009. Notably, ATI's substantial payment failures continued year after year, even though ATI collected over \$2,500,000 for USF assessments from its customers between 2006 and 2014.<sup>23</sup> Based on the record, we find that ATI apparently violated Section 254(d) of the Act and Section 54.706(a) of the Rules by willfully or repeatedly failing to contribute fully and timely to the USF.<sup>24</sup>

### **B. ATI Failed to Timely and Fully Contribute to the TRS Fund**

10. We also find that ATI apparently violated Section 64.604(c)(5)(iii) of the Rules by willfully or repeatedly failing to timely and fully contribute to the TRS Fund. As directed by the Act, the Commission must "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."<sup>25</sup> To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.<sup>26</sup> Pursuant to the Rules, every provider of interstate telecommunications, interconnected VoIP, or non-interconnected VoIP services, including international and resale services, must contribute to the TRS Fund based upon its interstate and international end-user revenues<sup>27</sup>

11. As a provider of interstate and international telecommunications services, ATI was obligated to contribute to the TRS Fund on the basis of its interstate and international end-user

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<sup>21</sup> See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B.

<sup>22</sup> See Universal Service Administrative Company, Invoices to Advanced Tel, Inc., (Oct. 2011 – Sept. 2014) (on file in EB-IHD-14-00014860). We note that USAC applies payments to the oldest debt carried on USAC's books first, and not the most current billed amounts. See *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16381, para. 16 (2007); 47 C.F.R. § 54.713(e) (Administrator shall adhere to "American Rule" of accounting). The Commission likewise applies any payments to the oldest debts first when ascertaining the number of monthly USF payment violations. See, e.g., *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16689, para. 13 n.52 (2011) (internal citations omitted) (*Kajeet NAL*).

<sup>23</sup> See Second LOI Response at Exhib. G.

<sup>24</sup> See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

<sup>25</sup> See 47 U.S.C. § 225(b)(1).

<sup>26</sup> See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5300, para. 3 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with other individuals. Such services provide telephone access to a significant number of Americans who, without it, might not be able to make calls to or receive calls from other users. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5141, 5143, paras. 2, 5 (2000).

<sup>27</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A).

telecommunications revenues.<sup>28</sup> The TRS Fund Administrator calculates the contribution that a carrier is required to make to the TRS Fund by applying a contribution factor (determined annually by the Commission) to the carrier's revenues for the prior calendar year as reported in the annual Telecommunications Reporting Worksheets (FCC Form 499-A or Annual Worksheets) due in April of each year.<sup>29</sup> The TRS Fund Administrator uses a July 1 through June 30 billing year, and subject carriers must make TRS contributions on a monthly or annual basis.<sup>30</sup> Failures to timely contribute to the TRS Fund constitute continuing violations until the violations are cured by paying all monies owed.<sup>31</sup>

12. ATI failed to timely and fully pay TRS Fund contributions due by December 12, 2012, July 6, 2013, and July 1, 2014.<sup>32</sup> The highest amount ATI owed for TRS Fund contributions was \$10,665.80 (due December 12, 2012).<sup>33</sup> We conclude, based on a preponderance of the evidence, that ATI apparently violated Section 225 of the Act and Section 64.604(c)(5)(iii) of the Rules by willfully or repeatedly failing to timely and fully pay required TRS Fund contributions due December 12, 2012, July 6, 2013, and July 1, 2014.<sup>34</sup>

### C. ATI Failed to Timely and Fully Contribute to the LNP Cost Recovery Mechanism

13. We next conclude that ATI apparently violated Section 251(e)(2) of the Act and Section 52.32 of the Rules by willfully or repeatedly failing to timely and fully pay LNP cost recovery mechanism contributions. Telecommunications number portability concerns the ability of consumers of telecommunications services to “retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”<sup>35</sup> The presence of this feature in the telecommunications marketplace fosters consumer choice and enhances competition.<sup>36</sup> The Act gives every telecommunications carrier a duty to

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<sup>28</sup> See *id.*; see also, e.g., 47 C.F.R. § 64.604(c)(5)(iii)(B) (setting forth methods for computing and paying TRS contributions); *PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 14-135, 2014 WL 4628748 at \*4, para. 13 (Sept. 16, 2014) (*PTT NAL*); *Wireline Competition Bureau Releases 2014 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 29 FCC Rcd 939, 956–57 (Wireline Comp. Bur. 2014) (*2014 Telecommunications Worksheet Instructions*).

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

<sup>30</sup> *Id.* Under the Rules, each subject provider must contribute at least \$25 per year, and providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, providers that are current on their payments may divide their contributions into equal, monthly payments. *Id.*

<sup>31</sup> See, e.g., *Unipoint Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12758–59, para. 15 (2012) (*Unipoint NAL*), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 1633 (2014) (*Unipoint Forfeiture Order*); *RB Communications, Inc., d/b/a Starfone*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4402, para. 25 (2012) (*Starfone NAL*), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 5668 (2014) (*Starfone Forfeiture Order*); *Omniate International Telecom, LLC*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 4254, 4265, para. 27 (2009) (*Omniate NAL*).

<sup>32</sup> See Second LOI Response at Exhibit E-2; Email from Jonathan Marshlian, Marshlian & Donahue, Counsel to ATI, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 26, 2014) (on file in EB-IHD-14-00014860).

<sup>33</sup> See Second LOI Response at Exhibit E-2.

<sup>34</sup> See 47 U.S.C. § 225; 47 C.F.R. § 64.604(c)(5)(iii).

<sup>35</sup> 47 C.F.R. § 52.21(n).

<sup>36</sup> The Commission has observed that in requiring number portability, “Congress recognized that the inability of customers to retain their telephone numbers when changing local service providers hampers the development of local competition.” *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998). See H.R. Rep. No. 104-204(I), 104th Cong., 1st Sess. at 113 (1995) (Joint Explanatory Statement) (stating

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provide local number portability<sup>37</sup> and specifies that “[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>38</sup> In implementing this statutory directive, the Commission adopted Section 52.32 of its Rules, which requires, among other things, that all telecommunications carriers contribute to the costs of LNP on the basis of their end-user telecommunications revenues for the prior calendar year.<sup>39</sup> A failure to make LNP contributions constitutes a continuing violation until it is cured by paying all monies owed.<sup>40</sup>

14. ATI has failed to timely and fully pay contributions for LNP cost recovery each year from 2011 to 2014, and ATI has not yet fully paid these required contributions.<sup>41</sup> We therefore find, based on the preponderance of the evidence, that ATI apparently violated Section 251(e)(2) of the Act and Section 52.32 of the Rules by willfully or repeatedly failing to timely make required payments to the LNP cost recovery mechanism for 2011, 2012, 2013, and 2014.<sup>42</sup>

#### **D. ATI Failed to Timely and Fully Pay Required Regulatory Fees**

15. We further conclude that ATI apparently violated Sections 1.1154 and 1.1157(b)(1) of the Rules by willfully or repeatedly failing to timely and fully pay required regulatory fees for fiscal years 2010, 2011, 2013, and 2014. Section 9 of the Act directs the Commission to “assess and collect regulatory fees to recover the costs” of certain enumerated Commission activities, including “enforcement activities, policy and rulemaking activities, user information services, and international activities.”<sup>43</sup> Consistent with this directive, the Commission has set forth in its Rules schedules of annual regulatory fees that entities regulated by the Commission must remit to the Commission, as well as requirements for when the fees must be paid.<sup>44</sup> As a provider of interstate and international telecommunications services, ATI was obligated to pay regulatory fees based on its interstate and international end-user revenues as recorded on its Annual Worksheets.<sup>45</sup> Failures to make regulatory fee payments are continuing violations until they are cured by paying all amounts due.<sup>46</sup>

16. ATI’s regulatory fees for fiscal years 2010, 2011, 2013, and 2014 were due by August 31, 2010, September 15, 2011, September 20, 2013, and September 23, 2014, respectively.<sup>47</sup> ATI has not

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that “[t]he ability to change service providers is only meaningful if a customer can retain his or her local telephone number”).

<sup>37</sup> See 47 U.S.C. § 251(b)(2).

<sup>38</sup> See 47 U.S.C. § 251(e)(2).

<sup>39</sup> See 47 C.F.R. § 52.32.

<sup>40</sup> See, e.g., *PTT NAL*, 2014 WL 4628748 at \*5, para. 16; *Omniate NAL*, 24 FCC Rcd at 4265–66, para. 28.

<sup>41</sup> See Second LOI Response, Exhibit E-3.

<sup>42</sup> See 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.32.

<sup>43</sup> See 47 U.S.C. § 159(a)(1)–(2).

<sup>44</sup> See 47 C.F.R. §§ 1.1152–1.1156, 1.1157(b)(1).

<sup>45</sup> See 47 C.F.R. § 1.1154.

<sup>46</sup> See, e.g., *PTT NAL*, 2014 WL 4628748 at \*6, para. 18; *Starfone NAL*, 27 FCC Rcd at 4402, para. 27; *Omniate NAL*, 24 FCC Rcd at 4266, para. 29.

<sup>47</sup> See *Payment Methods and Procedures for Fiscal Year 2014 Regulatory Fees*, Public Notice, DA 14-1283, 2014 WL 4384200 at \*1 (Sept. 5, 2014); *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, 28 FCC Rcd 12635 (2013); *FY 2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011*, Public Notice, 26 FCC Rcd 13029 (2011); *FY 2010 Regulatory Fees Due No Later Than August 31, 2010, Eastern Time (ET)*, Public Notice, 25 FCC Rcd 10676 (2010).

fully paid its regulatory fees for any of these fiscal years.<sup>48</sup> Based on the preponderance of the evidence, we find that ATI apparently violated Sections 1.1154 and 1.1157(b)(1) of the Rules by willfully or repeatedly failing to make regulatory fee payments for fiscal years 2010, 2011, 2013, and 2014.<sup>49</sup>

**E. ATI Failed to Timely File a Quarterly Telecommunications Reporting Worksheet Due November 1, 2013**

17. We find that ATI apparently violated Sections 54.711 of the Rules by willfully failing to timely file a Quarterly Worksheet due November 1, 2013. The Act directs the Commission to establish, administer, and maintain programs to promote universal service and TRS, and to ensure LNP and effective numbering administration more generally, among other mandates.<sup>50</sup> To help accomplish these goals, the Commission has established the USF, the TRS Fund, and the cost recovery mechanism for LNP. As Congress has directed,<sup>51</sup> the Commission funds these programs through assessments on telecommunications service providers. To gather the data necessary to calculate assessments, the Commission requires interstate telecommunications service providers, among others, to file Annual Worksheets reporting the providers' actual revenues from various types of services during the calendar year.<sup>52</sup> Telecommunications service providers such as ATI must also file Quarterly Worksheets projecting their revenue for the upcoming quarter.<sup>53</sup> USAC relies on the projected revenue data to calculate each telecommunications service provider's required monthly USF contribution.<sup>54</sup>

18. ATI neglected to timely file the Quarterly Worksheet due November 1, 2013. This failure to timely file constituted a continuing violation until ATI cured it by filing the required Worksheet.<sup>55</sup> USAC did not receive the Company's November 2013 Quarterly Worksheet until January 27, 2014, nearly three months past its due date.<sup>56</sup> Based on the preponderance of the evidence, we find that apparently ATI willfully violated Section 54.711 of the Rules by failing to timely file its November 1, 2013 Quarterly Worksheet.<sup>57</sup>

**IV. PROPOSED FORFEITURES**

19. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply substantially with any of the provisions of [the

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<sup>48</sup> See Second LOI Response at Exhibit E-5; Email from Jonathan Marashlian, Marashlian & Donahue, Counsel to ATI, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 26, 2014) (on file in EB-IHD-14-00014860).

<sup>49</sup> See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

<sup>50</sup> See 47 U.S.C. §§ 225(b)(1)–(2), 251(b)(2), (e), 254(a)(2).

<sup>51</sup> See 47 U.S.C. §§ 225(d)(3), 251(e)(2), 254(d).

<sup>52</sup> See 47 C.F.R. §§ 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

<sup>53</sup> See *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001). Carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). See *id.* at 5755, para. 19.

<sup>54</sup> See *2014 Telecommunications Reporting Worksheet Instructions*, 29 FCC Rcd at 978.

<sup>55</sup> See, *e.g.*, *PTT NAL*, 2014 WL 4628748 at \*4, para. 11; *Unipoint NAL*, 27 FCC Rcd at 12758, para. 14.

<sup>56</sup> See Universal Service Administrative Company, Advanced Tel, Inc. – Form 499 – Search Forms, available at <https://efile.universalservice.org/form499/source/search.asp> (last visited Sept. 3, 2014) (on file in EB-IHD-14-00014860).

<sup>57</sup> See 47 C.F.R. § 54.711.

Communications Act] or of any rule, regulation, or order issued by the Commission.”<sup>58</sup> In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>59</sup> In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>60</sup> Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.<sup>61</sup>

20. As set forth above, we conclude that ATI is apparently liable for forfeitures for willfully or repeatedly failing to timely make required USF, TRS and LNP contributions, timely pay required regulatory fees, and timely file a Quarterly Worksheet.<sup>62</sup> Based on the facts and circumstances before us, we therefore find that ATI is apparently liable for forfeiture penalties totaling one million five hundred eighty-eight thousand, nine hundred eighty-eight dollars (\$1,588,988). The forfeiture penalties reflect our application of the existing methodologies for calculating forfeitures for violations of federal program payment Rules, which we explain in detail below.<sup>63</sup>

#### A. Failure to Timely and Fully Pay USF Contributions

21. The Commission has established a base forfeiture amount of \$10,000 for each month in which a contributor has failed to fully pay required USF contributions and \$20,000 for each month in which a contributor has failed to make any required USF contribution,<sup>64</sup> plus an upward adjustment based on one-half of the company’s unpaid contributions.<sup>65</sup> The Commission has treated failures to pay the USF as continuing violations.<sup>66</sup> Our forfeiture calculation therefore reflects not only violations that began within the last twelve months, but also violations that began prior to the last twelve months and continued during the twelve-month period preceding this NAL.

22. We find that ATI is apparently liable for a forfeiture for willfully or repeatedly failing to contribute to the USF on at least a total of 36 occasions between October 22, 2011 and September 22, 2014. Accordingly, we assess a \$20,000 forfeiture for each of these 36 months in which ATI failed to remit any contribution toward its outstanding USF obligations. Thus, we find ATI apparently liable for a base forfeiture of \$720,000 for its willful or repeated failures to contribute timely and fully to the USF. Moreover, consistent with our approach for assessing liability for USF contribution violations, and taking

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<sup>58</sup> See 47 U.S.C. § 503(b)(1)(B).

<sup>59</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>60</sup> 47 C.F.R. § 1.80(b)(8), note to paragraph (b)(8).

<sup>61</sup> *Id.*

<sup>62</sup> See 47 U.S.C. §§ 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 52.32, 54.706, 54.711, 64.604(c)(5)(iii).

<sup>63</sup> See *infra* paras. 21-28.

<sup>64</sup> See, e.g., *OCMC, Inc.*, Order of Forfeiture, 21 FCC Rcd 10479, 10482, para. 10 (2006) (*OCMC Forfeiture Order*); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710, 4722, para. 33 (2006) (*Globcom Forfeiture Order*).

<sup>65</sup> See, e.g., *OCMC Forfeiture Order*, 21 FCC Rcd at 10482, para 10; *Globcom Forfeiture Order*, 21 FCC Rcd at 4722, para. 33.

<sup>66</sup> See, e.g., *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7243, para. 27 (2008) (*Telrite NAL*); *Compass Global Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, at 6138–40, paras. 31–34 (2008) (*Compass Global NAL*); *Global Crossing North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110, 6117–19, paras. 16, 21 (2008) (*Global Crossing NAL*); *Globcom Forfeiture Order*, 21 FCC Rcd at 4725, n.105.



into account all the factors enumerated in section 503(b)(2)(E) of the Act, we add an upward adjustment of \$703,655 to the base forfeiture – approximately one-half of \$1,407,310.76, the highest amount of ATI's apparent unpaid USF contributions during the period at issue.<sup>67</sup> We therefore find ATI apparently liable for a forfeiture of one million four hundred twenty-three thousand, six hundred fifty-five dollars (\$1,423,655) for its willful or repeated failures to contribute fully and timely to the USF.

#### **B. Failure to Timely and Fully Pay TRS Contributions**

23. The Commission has established a base forfeiture amount of \$10,000 for each year in which a contributor fails to timely make required TRS Fund contributions.<sup>68</sup> Thus, we propose a base forfeiture of thirty thousand dollars (\$30,000) for ATI's failure to pay its TRS Fund contributions due December 12, 2012, July 6, 2013, and July 1, 2014.

24. ATI owed \$10,665.80 for TRS Fund contributions by December 12, 2012.<sup>69</sup> The Commission has previously adjusted forfeitures upwards for failure to make TRS payments by 50 percent of a company's largest unpaid TRS balance.<sup>70</sup> Consistent with this precedent, we propose an upward adjustment of \$5,333 for ATI's apparent TRS Fund contribution failures, taking into account all the factors enumerated in Section 503(b)(2)(E) of the Act. Accordingly, we find ATI apparently liable for a total forfeiture of thirty-five thousand, three hundred thirty-three dollars (\$35,333) for its apparent willful or repeated failures to timely contribute to the TRS Fund.

#### **C. Failure to Timely and Fully Pay LNP Contributions**

25. The Commission has established a base forfeiture of \$10,000 for each year in which there is a failure to timely make required LNP contributions.<sup>71</sup> We therefore find ATI apparently liable for a forfeiture of forty thousand dollars (\$40,000) for its willful or repeated LNP contribution failures in 2011, 2012, 2013, and 2014.

#### **D. Failure to Timely and Fully Pay Regulatory Fees**

26. The Commission has established a base forfeiture amount of \$10,000 for each year a company fails to timely and fully make required regulatory fee payments.<sup>72</sup> Therefore, we find ATI is apparently liable for a forfeiture of forty thousand dollars (\$40,000) for its willful or repeated regulatory fee payment failures in 2010, 2011, 2013, and 2014.

#### **E. Failure to Timely File Quarterly Telecommunications Reporting Worksheet**

27. In the past, the Commission has imposed a forfeiture of \$50,000 for each failure to file a Quarterly Worksheet.<sup>73</sup> Consistent with this precedent, we find that ATI is apparently liable for a

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<sup>67</sup> See *supra* para. 9.

<sup>68</sup> See, e.g., *Starfone NAL*, 27 FCC Rcd at 4402, para. 26; *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd. 838, 853 para. 35 (2009) (*ADMA NAL*), *forfeiture issued*, Forfeiture Order, 26 FCC Rcd 4152 (2011) (*ADMA Forfeiture Order*); *Globcom NAL*, 18 FCC Rcd at 19904, para. 29.

<sup>69</sup> See Second LOI Response at Exhibit E-2.

<sup>70</sup> See, e.g., *Starfone NAL*, 27 FCC Rcd at 4402, para. 26; *ADMA NAL*, 24 FCC Rcd at 853, para. 35; *Globcom NAL*, 18 FCC Rcd at 19904, para. 29.

<sup>71</sup> See, e.g., *Kajeet NAL*, 26 FCC Rcd at 16695, para. 24; *Telrite NAL*, 23 FCC Rcd at 7245, para. 34.

<sup>72</sup> See, e.g., *Starfone NAL*, 27 FCC Rcd at 4402, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6141–42, para. 38.

<sup>73</sup> E.g., *ADMA Forfeiture Order*, 26 FCC Rcd at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, 21 FCC Rcd at 4720–21, 4727, paras. 26–28, 31, 45.

forfeiture of fifty thousand dollars (\$50,000) for its willful failure to timely file its quarterly Worksheet due November 1, 2013.

28. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of one million five hundred eighty-eight thousand, nine hundred eighty-eight dollars (\$1,588,988) for which ATI is apparently liable.

## V. CONCLUSION

29. We have determined that ATI apparently willfully and repeatedly violated Sections 251(e)(2) and 254(d) of the Communications Act and Sections 1.1154, 1.1157, 52.32, 54.706, 54.711, and 64.604(c)(5)(iii) of the Commission's Rules. As such, consistent with our existing methodology for calculating forfeitures for violations of federal program payment Rules, ATI is apparently liable for a forfeiture of \$1,588,988.

## VI. ORDERING CLAUSES

30. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>74</sup> and Section 1.80 of the Commission's Rules,<sup>75</sup> that Advanced Tel, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of one million five hundred eighty-eight thousand, nine hundred eighty-eight dollars (\$1,588,988) for willful or repeated violations of Sections 251(e)(2) and 254(d) of the Communications Act and Sections 1.1154, 1.1157, 52.32, 54.706, 54.711, and 64.604(c)(5)(iii) of the Commission's Rules.<sup>76</sup>

31. **IT IS FURTHER ORDERED** that pursuant to Section 1.80 of the Commission's Rules,<sup>77</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Advanced Tel, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 34–35 below.

32. 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. Advanced Tel, Inc. shall send electronic notification of payment to Jeffrey Gee at Jeffrey.Gee@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and David M. Janas at David.Janas@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>78</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions Advanced Tel, Inc. should follow based on the form of payment it selects:

- 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.

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<sup>74</sup> 47 U.S.C. § 503(b).

<sup>75</sup> 47 C.F.R. § 1.80.

<sup>76</sup> 47 U.S.C. §§ 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157, 52.32, 54.706, 54.711, and 64.604(c)(5)(iii).

<sup>77</sup> 47 C.F.R. § 1.80.

<sup>78</sup> 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.

33. 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 12<sup>th</sup> Street, SW, Room 1-A625, Washington, DC 20554.<sup>79</sup> If Advanced Tel, Inc. has questions regarding payment procedures, it can contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

34. 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 Commission's Rules.<sup>80</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), William A. Kehoe at [William.Kehoe@fcc.gov](mailto:William.Kehoe@fcc.gov), and David M. Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov).

35. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; 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.

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<sup>79</sup> See 47 C.F.R. § 1.1914.

<sup>80</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

36. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to Advanced Tel Inc.'s attorney, Mr. Jonathan S. Marashlian, Esq., Marashlian & Donahue, LLC, 1420 Spring Hill Road, Suite 401, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary