

Before the
Federal Communications Commission
Washington, DC 20554

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

FORFEITURE ORDER

Adopted: May 30, 2017

Released: June 8, 2017

By the Commission:

I. INTRODUCTION

1. We impose a penalty of \$975,000 against Advanced Tel, Inc. (ATI or Company) for violating its federal regulatory obligations as a telecommunications service provider for several years by failing to file required data and make required contributions to important federal programs.

II. BACKGROUND

2. 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.

3. Following the Bureau's investigation, the Commission released the ATI NAL on January 26, 2015, proposing a forfeiture penalty of \$1,588,988 for ATI's apparent violations, including its failure to file required data and make required contributions to important federal programs.

1 The investigation began under File No. EB-08-IH-5311 and was subsequently assigned the above-captioned file number.

2 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).

3 ATI has provided contradictory information on the date it began providing service. See Advanced Tel, Inc. April 2015 FCC Form 499-A (on file in EB-IHD-14-00014860) (stating ATI began providing service prior to 1999); Letter from Kenneth Fish, Chief Financial Officer, Advanced Tel, Inc., to Rebekah Bina, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 16, 2009) (on file in EB-IHD-15-00018603) (stating ATI began providing service in 2006); Advanced Tel, Inc. April 2002 FCC Form 499-A (on file in EB-IHD-14-00014860) (stating ATI was a new registrant in 2002).

4 The NAL includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See Advanced Tel, Inc., Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 833 (2015) (ATI NAL).

5 Id. at 834-39, paras. 5-18.

4. On February 25, 2015, ATI filed a response to the *ATI NAL*, and on February 26, 2015, ATI filed a supplemental response.<sup>6</sup> ATI did not dispute the facts underlying the violations identified in the *ATI NAL*.<sup>7</sup> Rather, ATI sought to reduce the forfeiture based on its inability to pay the proposed forfeiture in the *ATI NAL*, or to mitigate the forfeiture amount based on arguments regarding the statute of limitations.<sup>8</sup>

### III. DISCUSSION

5. The Commission proposed a forfeiture in the *ATI NAL* in accordance with Section 503(b) of the Act, Section 1.80 of the Rules, and the Commission's *Forfeiture Guidelines*.<sup>9</sup> 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 matters as justice may require."<sup>10</sup> As discussed below, we have fully considered ATI's response and supplemental response to the *ATI NAL*. The Company has requested a downward adjustment under Section 1.80 of the Rules,<sup>11</sup> and provided financial documentation sufficient to demonstrate that a downward adjustment is warranted based on the Company's inability to pay the forfeiture proposed in the *ATI NAL*. We therefore reduce the \$1,588,988 forfeiture proposed in the *ATI NAL* to \$975,000. ATI has also raised a variety of legal arguments relating to the statute of limitations and the continuing violation doctrine, but as discussed below, the reduction in the proposed forfeiture renders ATI's arguments moot.

6. ATI does not dispute our conclusions in the *ATI NAL* that it willfully and repeatedly failed to: (i) timely and fully contribute to the Universal Service Fund (USF);<sup>12</sup> (ii) timely and fully contribute to the Telecommunications Relay Service (TRS) Fund;<sup>13</sup> (iii) timely and fully pay Local Number Portability (LNP) cost recovery mechanism contributions;<sup>14</sup> (iv) timely and fully pay required regulatory fees;<sup>15</sup> and (v) timely file a Quarterly Telecommunications Reporting Worksheet (FCC Form 499-Q or Quarterly Worksheet).<sup>16</sup> We therefore affirm our conclusions in the *ATI NAL* with respect to those violations for the reasons set forth in the *ATI NAL*.<sup>17</sup> ATI challenges our proposed forfeiture amount in the *ATI NAL* based on ATI's inability to pay the proposed forfeiture amount, as well as our application of the statute of limitations under the Act.

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<sup>6</sup> See Allison D. Rule, Esq., Marashlian & Donahue, LLC, Counsel to Advanced Tel, Inc., Response to Notice of Apparent Liability for Forfeiture (Feb. 25, 2015) (on file in EB-IHD-14-00014860) (*ATI NAL Response*); Allison D. Rule, Esq., Marashlian & Donahue, LLC, Counsel to Advanced Tel, Inc., Supplement to Response to Notice of Apparent Liability for Forfeiture (Feb. 26, 2015) (on file in EB-IHD-14-00014860) (*ATI Supplemental Response*).

<sup>7</sup> See *ATI NAL Response*; *ATI Supplemental Response*.

<sup>8</sup> See *id.*

<sup>9</sup> See 47 U.S.C. § 503(b); 47 CFR § 1.80; *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 Guidelines*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>11</sup> See 47 CFR § 1.80(b)(8), Note to paragraph (b)(8); *ATI NAL Response* at 31-32; *ATI Supplemental Response* at 1-2.

<sup>12</sup> See 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

<sup>13</sup> See 47 U.S.C. § 225; 47 CFR § 64.604(c)(5)(iii).

<sup>14</sup> See 47 U.S.C. § 251(e)(2); 47 CFR § 52.32.

<sup>15</sup> See 47 CFR § 1.1154, 1.1157(b)(1).

<sup>16</sup> See 47 CFR § 54.711.

<sup>17</sup> See *ATI NAL*, 30 FCC Rcd at 834, 842, paras. 5, 29.

**A. Downward Adjustment to Forfeiture for ATI's Inability to Pay**

7. The Company claimed it is unable to pay the proposed forfeiture amount.<sup>18</sup> As ATI observes,<sup>19</sup> the Commission will not consider reducing or canceling a forfeiture in response to a claimed inability to pay unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects a company's current financial status.<sup>20</sup> In analyzing financial hardship claims, the Commission's long-established standard is to consider a company's gross revenues.<sup>21</sup> The Commission has found that in general, "gross revenues are the best indicator of [a company's] ability to pay a forfeiture."<sup>22</sup> In fact, ATI notes that, consistent with case precedent, gross revenue is an appropriate indication of its ability to pay a forfeiture.<sup>23</sup>

8. ATI provided financial documentation to support its claim that it cannot pay the proposed forfeiture amount.<sup>24</sup> ATI, however, claims its average gross revenue from 2012 through 2014 was [REDACTED], and asserted that the proposed forfeiture should be reduced to [REDACTED], which it claims represents 4.5 percent of the Company's average annual gross revenue from 2012 through 2014.<sup>25</sup> ATI supports its alleged gross revenues with unaudited financial statements prepared by ATI.<sup>26</sup>

9. When an enforcement subject claims an inability to pay a proposed forfeiture, the Commission examines "the totality of the violator's particular financial circumstances in evaluating that claim."<sup>27</sup> Our determination of a violator's ability to pay should reflect whether the company "in general is financially capable of paying a forfeiture, not whether financial data from a limited portion of its operations can sustain a forfeiture."<sup>28</sup> In appropriate circumstances, the Commission will consider

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<sup>18</sup> See ATI NAL Response at 31-32; ATI Supplemental Response at 1-2.

<sup>19</sup> See ATI NAL Response at 31.

<sup>20</sup> See *PTT Phone Cards, Inc.* Forfeiture Order, 30 FCC Rcd 14701, 14706, para. 16 (2015) (citations omitted) (*PTT*).

<sup>21</sup> See *id.*

<sup>22</sup> *Unipoint Techs., Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014) (citing *PJB Communc'ns. of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 8 (1992)). See also *Sunstar Travel & Tours, Inc.*, Forfeiture Order, 25 FCC Rcd 13804, 13808, para. 14 (2010) (citing *Coleman Enters.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 n.24 (2000), *recons. denied*, Order on Reconsideration, 16 FCC Rcd 10016 (2001)).

<sup>23</sup> See ATI NAL Response at 31 ("In considering a carrier's claim of inability to pay, case precedent reveals that the best indicators of a carrier's ability to pay a forfeiture are its gross revenues.") (citation omitted); ATI Supplemental Response at 2 (asserting that forfeitures should be based on a certain percentage of average gross revenue).

<sup>24</sup> See ATI NAL Response at Exhib. G; ATI Supplemental Response at Exhib. A; Email from Joshua Touber, Advanced Tel, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (June 18, 2015) (on file in EB-IHD-14-00014860) (providing 2010-13 joint tax returns of ATI and its parent company) (ATI 6/18/15 Email); Email from Joshua Touber, Advanced Tel, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Nov. 25, 2015) (on file in EB-IHD-14-00014860) (providing 2014 joint tax return of ATI and its parent company) (ATI 11/25/15 Email).

<sup>25</sup> ATI Supplemental Response at 2.

<sup>26</sup> See ATI NAL Response at Exhib. G; ATI Supplemental Response at Exhib. A.

<sup>27</sup> *SM Radio, Inc.*, Order of Review, 23 FCC Rcd 2429, 2431-32, para. 10 (2008).

<sup>28</sup> *Hinton Tel. Co. of Hinton, OK, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6643, 6644, para. 10 (Common Carrier Bur. 1992), *application for review denied*, 8 FCC Rcd 5176 (1993).

revenues of a company's affiliated operations and its parent company.<sup>29</sup> ATI provided 2010 through 2014 joint tax returns of ATI and its parent company, InterMetro Communications, Inc. (InterMetro).<sup>30</sup> As opposed to the unaudited financial statements of ATI, we find that the more reliable and objective financial information to assess ATI's inability to pay the proposed forfeiture are the three joint tax returns.<sup>31</sup> The Companies deemed that the businesses of ATI and InterMetro were sufficiently interconnected to justify a joint tax return.<sup>32</sup> The Companies found it appropriate to report its joint revenue for purposes of determining its income tax obligation. We likewise find it appropriate to rely on their jointly reported revenue for purposes of determining a forfeiture.<sup>33</sup> We reject ATI's proposed forfeiture reduction, and adjust the forfeiture downward based on the 2012 through 2014 joint tax returns provided by ATI.

10. The 2012, 2013 and 2014 joint tax returns indicate that average gross revenue for the Companies over the three-year period was [REDACTED] to the nearest dollar.<sup>34</sup> Based on the joint tax returns that ATI submitted to the Commission, we find that the \$1,588,988 forfeiture proposed in the *ATI NAL* should be reduced. The inability to pay adjustment is not designed to reflect the severity of the violation, but is instead intended to produce a forfeiture that the violator should be able to afford, and is considered against the totality of the circumstances underlying this case. Based on those considerations, we find that a forfeiture of \$975,000, which is a rounded figure that is [REDACTED] percent of the Companies' joint average gross revenue from 2012 through 2014 is reasonable and consistent with Commission precedent addressing an enforcement subject's ability to pay a forfeiture.<sup>35</sup>

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<sup>29</sup> *SM Radio, Inc.*, 23 FCC Rcd at 2432, para. 10 (citations omitted); *Forfeiture Guidelines*, 12 FCC Rcd at 17158, para. 113 (1997) (stating the Commission will consider the totality of the circumstances, and "[t]he parent company's ability to pay, therefore, is relevant in evaluating the subsidiary company's ability to pay the forfeiture").

<sup>30</sup> ATI and InterMetro are referred to collectively herein as the Companies.

<sup>31</sup> See, e.g., *Coleman Enters.*, 15 FCC Rcd at 24389, para. 11 ("we consider the most reliable and recent financial information that [the company] provided us to be its 1998 federal tax return showing gross revenues"), *recons. denied*, 16 FCC Rcd at 10025, para. 6 ("the Commission has discretion to determine what documentation it considers as reliable and objective evidence of ability to pay"); *Hoosier Broadcasting Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641, para. 7 (Enforcement Bureau 2000) (claims of inability to pay "should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three year period." (citations omitted)).

<sup>32</sup> See ATI 6/18/15 Email, *supra*, note 24; ATI 11/25/15 Email, *supra*, note 24.

<sup>33</sup> InterMetro and ATI share corporate headquarters and certain officers and board members. InterMetro Communications, Inc., FCC Form 499 Filer Database Detailed Information for 499 Filer ID Number 826003, <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=826003> (last visited June 6, 2017); Advanced Tel, Inc., FCC Form 499 Filer Database Detailed Information for 499 Filer ID Number 822008, <http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=822008> (last visited June 6, 2017).

<sup>34</sup> See ATI 6/18/15 Email, *supra*, note 24; ATI 11/25/15 Email, *supra*, note 24. The tax returns show that gross revenues for 2012, 2013 and 2014 were [REDACTED], respectively. See *ibid.*

<sup>35</sup> See *Coleman Enters.*, 16 FCC Rcd at 10025 (forfeiture not deemed excessive where it represented approximately 7.96 percent of the violator's gross revenues); *Kenneth Paul Harris, Sr.*, Forfeiture Order, 15 FCC Rcd 23991, 23993, para. 7 (Enforcement Bureau 2000) (forfeiture not deemed excessive where it represented approximately 4.52 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd at 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *PJB Communications*, 7 FCC Rcd at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

**B. ATI's Arguments Concerning the Statute of Limitations are Moot**

11. Section 503(b)(6)(B) of that Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”<sup>36</sup> ATI makes several arguments concerning the statute of limitations. ATI argues: (a) the Commission attempts to disregard the statute of limitations through the *ATI NAL*;<sup>37</sup> (b) the Commission misapplies and confuses the continuing violation doctrine;<sup>38</sup> (c) the Commission disregards its own precedent, which according to ATI, precludes the application of the continuing violation doctrine;<sup>39</sup> and (d) by applying the continuing violation doctrine, the Commission violates ATI's due process rights, unlawfully discriminates against ATI, and violates the Administrative Procedures Act.<sup>40</sup> ATI also argues that a tolling agreement between ATI and the Bureau expired on November 19, 2014. Thus, ATI argues, the Commission was limited to proposing forfeitures only for violations that began on or after January 26, 2014 – one year prior to the issuance of the *ATI NAL*.<sup>41</sup>

12. We need not address those arguments here since they are mooted by the Commission's downward adjustment for ATI's inability to pay.<sup>42</sup> If the Commission were to agree with ATI's proposal for calculating the forfeiture we would assess a total forfeiture of \$978,988<sup>43</sup> – which is more than the forfeiture amount we impose in this Order. Put another way, we need not address ATI's arguments regarding the statute of limitations and continuing violation doctrine because ATI is already benefitting from a lower forfeiture due to the Commission's acceptance of ATI's inability to pay the proposed forfeiture or even a lower \$978,988 forfeiture.

13. Section 54.713(e) of the Rules requires the application of the American Rule of accounting, which applies any payments to oldest debts first.<sup>44</sup> The result of applying the American Rule of accounting to ATI's USF assessments and payment failures is that ATI failed to pay any portion of all 12 USF invoices issued by USAC within the 12 months preceding the *ATI NAL*.<sup>45</sup> Under the theory advocated by ATI, we would therefore assess a \$20,000 base forfeiture for each USF payment violation,<sup>46</sup>

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<sup>36</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>37</sup> See *ATI NAL* Response at 6-17.

<sup>38</sup> See *id.* at 6-17, 27-28.

<sup>39</sup> See *id.* at 26-27. We note that when Congress passed the Act, it explicitly gave the Commission authority to issue forfeitures for continuing violations. See 47 U.S.C. § 503(b)(2).

<sup>40</sup> See *ATI NAL* Response at 28-31.

<sup>41</sup> See *id.* at 2-5.

<sup>42</sup> See *supra*, paras. 7-10.

<sup>43</sup> See *infra*, paras. 13-16.

<sup>44</sup> See 47 CFR § 54.713(e) (“If a universal service fund contributor pays the Administrator a sum that is less than the amount due for the contributor's universal service contribution, the Administrator shall adhere to the “American Rule” . . . . In applying the payment to outstanding principal, the Administrator shall apply such payment to the contributor's oldest past due amounts first.”).

<sup>45</sup> As of December 15, 2014, ATI's total debt owed for USF assessments was \$643,642.66, and between January and December 2014, USAC issued 12 monthly invoices assessing ATI a total of \$13,412.31 for USF contributions. See E-mail from Michelle Garber, Senior Director of Financial Operations, Universal Service Administrative Company, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (January 16, 2015) (on file in EB-IHD-14-00014860). Thus, payments made by ATI for 2014 invoices were applied to older debts under the American Rule of accounting. ATI's claim that all USF obligations incurred after August 2014 had been paid in full, see *ATI NAL* Response at 5-6, is not correct.

<sup>46</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*).

which multiplied by 12 violations totals \$240,000. Further, consistent with Commission precedent concerning forfeitures for USF payment failures,<sup>47</sup> we would add an upward adjustment of 50 percent of ATI's highest debt for unpaid USF assessments, \$703,655 (one-half of \$1,407,310.76 to the nearest dollar),<sup>48</sup> which would subject ATI to a total forfeiture of \$943,655 for USF payment violations.

14. ATI argues however that when assessing a forfeiture, the Commission cannot take into account debt for USF payment failures if USAC transfers the debt to the United States Department of the Treasury (Treasury) for collection.<sup>49</sup> We find no merit in this argument. ATI's USF payment violations were not satisfied merely because ATI's USF debt was transferred to Treasury for collection. Treasury is the collection agent for ATI's debt to the USF. Whether USF debt resides with USAC or Treasury is irrelevant to the amount of debt that ATI owes to the USF.<sup>50</sup> ATI's debt to the USF is a relevant measure of the gravity of ATI's payment failures for the Commission to consider when determining an appropriate forfeiture penalty under the Act, the Rules, and the *Forfeiture Guidelines*.<sup>51</sup>

15. As to ATI's other federal program payment violations, consistent with Commission precedent concerning forfeitures for TRS payment failures, as applied to ATI, a \$10,000 base forfeiture for ATI's TRS payment violation within the year preceding the *ATI NAL*,<sup>52</sup> plus an upward adjustment of 50 percent of ATI's highest debt for unpaid TRS assessments,<sup>53</sup> \$5,333 (one-half of \$10,665.80 to the nearest dollar),<sup>54</sup> would subject ATI to a forfeiture of \$15,333 for the TRS payment violation. ATI would also be subject to a \$10,000 base forfeiture for its LNP payment violation,<sup>55</sup> and a \$10,000 base forfeiture

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<sup>47</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>48</sup> See *ATI NAL*, 30 FCC at 841, para. 22. Under Section 503(b)(2)(E) of the Act, the Commission must consider a violator's history of prior offenses. Thus, when assessing an upward adjustment to a forfeiture, see 47 CFR § 1.80(b)(8), Note to paragraph (b)(8), it is appropriate to consider ATI's highest debt for unpaid USF assessments, which ATI reached in October 2009.

<sup>49</sup> *Id.* at iv-v, 15-17.

<sup>50</sup> While ATI has challenged the Commission's enforcement action for ATI's payment violations, ATI has not disputed that it owes the amounts assessed by the USF, TRS, and LNP administrators. The USF, TRS and LNP debt is not subject to any pending administrative review process, and is legally enforceable debt under 31 CFR § 285.12(c)(3)(i). ATI's suggestion that the debt is not legally enforceable is thus without merit. See *ATI NAL Response* at 15-16 & n. 70. Moreover, the payment violations identified in the *ATI NAL* are not violations for ATI's failures to make collection action payments to the Department of the Treasury, see *id.* at 15, but violations of the Commission's payment rules, as ATI acknowledges, see *id.* at n.66.

<sup>51</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; 12 FCC Rcd 17087.

<sup>52</sup> See, e.g., *RB Commc'ns, Inc., d/b/a Starfone*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4402, para. 26 (2012) (*Starfone NAL*), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 5668 (2014) (*Starfone Forfeiture Order*), *recons. denied*, Memorandum Opinion and Order, 30 FCC Rcd 4720 (Deputy Chief, Enforcement Bureau 2015); *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>53</sup> See, e.g., *PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531, 11544, para. 32 (2014), *forfeiture issued*, 30 FCC Rcd 14701 (2015); *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>54</sup> See *ATI NAL*, 30 FCC at 841, para. 24.

<sup>55</sup> See, e.g., *PTT Phone Cards*, 29 FCC Rcd at 11544, para. 34; *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16695, para. 24 (2011), *consent decree adopted*, Order, 30 FCC Rcd 10608 (Enforcement Bureau 2015); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7245, para. 34 (2008) *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

for its regulatory fee payment violation.<sup>56</sup>

16. Thus, if the Commission were to agree with ATI's proposed forfeiture methodology,<sup>57</sup> the total forfeiture assessment for USF and other federal program payment violations as discussed above would be \$978,988, which is greater than the forfeiture amount we assess in this Order. Accordingly, ATI's arguments concerning the statute of limitations and the continuing violation doctrine are dismissed as moot.

#### IV. CONCLUSION

17. After considering the relevant statutory factors, the Commission's Rules, and the Commission's *Forfeiture Guidelines*, we find that ATI is liable for a total forfeiture of \$975,000. Based upon the evidence before us, a forfeiture of \$975,000 properly reflects the nature, extent, and gravity of the violations and, with respect to the Company, its degree of culpability, history of prior offenses, and ability to pay.

#### V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>58</sup> and Section 1.80 of the Rules,<sup>59</sup> Advanced Tel, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine hundred seventy five thousand dollars (\$975,000) for willfully and/or repeatedly violating 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.

19. 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.<sup>60</sup> 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.<sup>61</sup>

20. 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](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), and David Janas at [David.Janas@fcc.gov](mailto: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>62</sup> 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

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<sup>56</sup> See, e.g., *PTT Phone Cards*, 29 FCC Rcd at 11544, para. 33; *Starfone NAL*, 27 FCC Rcd at 4402, para. 27. If the Commission were to limit the scope of violations only to violations that *began* within one year of the *ATI NAL*, as ATI argues, ATI would not be subject to a \$50,000 forfeiture for their failure to timely file its Quarterly Worksheet due November 1, 2013, which it did not file until January 27, 2014, nearly three months late. Cf. *ATI NAL*, 30 FCC at 839, 842, paras. 18, 27.

<sup>57</sup> See ATI NAL Response at 2.

<sup>58</sup> 47 U.S.C. § 503(b).

<sup>59</sup> 47 CFR § 1.80.

<sup>60</sup> *Id.*

<sup>61</sup> 47 U.S.C. § 504(a).

<sup>62</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

21. 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.<sup>63</sup> Advanced Tel, Inc. shall send electronic notification of a request to Jeffrey Gee at [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), and David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov) on the date said request is made. 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](mailto:ARINQUIRIES@fcc.gov).

22. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 225, 251(e)(2) and 254(d) of the Act, and sections 1.1154, 1.1157(b)(1), 52.32, 54.706(a), 64.604(c)(5)(iii) of the Rules,<sup>64</sup> within 90 days Advanced Tel, Inc. **SHALL PAY** all overdue assessments for the Universal Service Fund, the Telecommunications Relay Service Fund, the Local Number Portability cost recovery mechanism, and federal regulatory fees.

23. **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 counsel for Advanced Tel, Inc., Allison D. Rule, Esq., Marshlian & Donahue, LLC, 1420 Spring Hill Road, Suite 401, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>63</sup> See 47 CFR § 1.1914.

<sup>64</sup> 47 U.S.C. §§ 154(i), 225, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.32, 54.706(a), 64.604(c)(5)(iii).