

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

In the Matter of
PayG, LLC d/b/a Skyswitch
File No.: EB-IHD-23-00035031
NAL/Acct. No.: 202332080027
FRN: 0027004217

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 26, 2023

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By the Commission:

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## I. INTRODUCTION

1. Interstate telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file accurate information periodically in Telecommunications Reporting Worksheets (Worksheets) and to pay on time and in full assessments for certain cost recovery mechanisms implemented under the Communications Act of 1934, as amended (Act). By underreporting revenues in its Annual Worksheets between 2018 and 2021, and then repeatedly failing to cooperate with documentation production requirements,<sup>1</sup> PayG, LLC, d/b/a/ Skyswitch (PayG or Company) failed to pay or pay fully by payment deadlines obligations required under the Federal Communications Commission's (Commission's or FCC's) rules for the Universal Service Fund (USF), the Telecommunications Relay Service (TRS) Fund, the North American Numbering Plan (NANP), and federal regulatory fees. The undisputed total amount of these various underpayments over the course of these four years was \$404,416.28.<sup>2</sup> We therefore propose in this Notice of Apparent Liability for Forfeiture (NAL) a penalty of \$1,460,085 for PayG's failures to pay or pay fully on a timely basis payments owed for the USF, TRS Fund, NANP administration and federal regulatory fees in apparent violation of sections 251(e)(2) and 254(d) of the Act and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules.<sup>3</sup>

## II. BACKGROUND

### A. Legal Framework

2. The Act codifies Congress's historical commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."<sup>4</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user

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<sup>1</sup> See *PayG, LLC*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 FCC LEXIS 2984 (Sept. 14, 2022) (*PayG First NAL*) (proposing a forfeiture penalty of \$153,000.00 for PayG's failures to cooperate with documentation production requirements, to file accurate Annual Worksheets, and to maintain current information in the Commission Registration System (CORES), in apparent violation of 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671 (WCB 2020) (*2021 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350 (WCB 2020) (*2020 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2019 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 34 FCC Rcd 426 (WCB 2019) (*2019 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2018 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 33 FCC Rcd 1801 (WCB 2018) (*2018 Annual Worksheet Instructions*)) (proposed forfeiture paid).

<sup>2</sup> As discussed below, during this four-year period the Company failed to pay \$338,701.64 for the USF, \$61,382.50 for the TRS Fund, \$380.14 for NANP administration, and \$3,952 for federal regulatory fees by the payment deadlines. See *infra* paras. 11-26.

<sup>3</sup> 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A).

<sup>4</sup> 47 U.S.C. § 254(d).

telecommunications revenues.<sup>5</sup> Under section 254(d) of the Act, the Commission also requires certain providers of interstate telecommunications to contribute to the USF.<sup>6</sup>

3. The Commission has established specific procedures to administer the USF. Each service provider required to contribute to the USF is required to file annually an FCC Form 499-A, also known as the Annual Worksheet,<sup>7</sup> and, with certain exceptions, to file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.<sup>8</sup> The Universal Service Administrative Company (USAC), as the Commission's administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each service provider's monthly universal service contribution amount.<sup>9</sup> The monthly USF contributions that were invoiced based on projected revenues reported in a service provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider's Annual Worksheet.<sup>10</sup> Each service provider's Annual Worksheet for 2017 through 2020 revenues were respectively due by April 1 of 2018 through 2021.<sup>11</sup> The Commission's rules require that service providers report accurate information in the Annual Worksheets.<sup>12</sup> The Commission's rules also explicitly warn service providers that the failure to file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.<sup>13</sup>

4. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "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>14</sup> To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.<sup>15</sup> The Commission

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<sup>5</sup> 47 CFR § 54.706(a)-(b).

<sup>6</sup> See 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); 47 CFR § 54.706(a).

<sup>7</sup> See 47 CFR § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), forfeiture issued, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new service providers must register with the Commission by obtaining an FCC registration number (FRN) from CORES and obtaining a Filer ID from USAC's E-File system. *E.g.*, 2020 Annual Worksheet Instructions, 35 FCC Rcd at 1372.

<sup>8</sup> See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

<sup>9</sup> *E.g.*, 2020 Annual Worksheet Instructions, 35 FCC Rcd at 1409.

<sup>10</sup> See *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001) (*2001 USF Order*); 47 CFR § 54.711.

<sup>11</sup> 2021 Annual Worksheet Instructions, 35 FCC Rcd at 13693; 2020 Annual Worksheet Instructions, 35 FCC Rcd at 1373; 2019 Annual Worksheet Instructions, 35 FCC Rcd at 448; 2018 Annual Worksheet Instructions, 33 FCC Rcd at 1823.

<sup>12</sup> 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *E.g.*, 2020 FCC Form 499-A, Line 605. While the Commission permits revisions to Worksheets in certain circumstances, see 2020 Annual Worksheet Instructions, 35 FCC Rcd at 1373-74, that opportunity does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. See 2020 FCC Form 499-A, Line 605.

<sup>13</sup> 47 CFR § 54.713.

<sup>14</sup> 47 U.S.C. § 225(b)(1).

<sup>15</sup> See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.<sup>16</sup> 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 voice-telephone users.<sup>17</sup> Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain service providers<sup>18</sup> must contribute to the TRS Fund based on their end-user revenues.<sup>19</sup> Under the Commission's rules, the TRS Fund administrator, RolkaLoube, LLC (RolkaLoube), uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.<sup>20</sup>

5. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.<sup>21</sup> Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>22</sup> In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules.<sup>23</sup> Under the Commission's rules, service providers<sup>24</sup> must contribute to the costs of numbering administration and Local Number Portability (LNP) on the basis of their end-user telecommunications revenues.<sup>25</sup> The

<sup>16</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143-45, paras. 5-9 (2000).

<sup>17</sup> *Id.*

<sup>18</sup> Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. 47 CFR § 64.604(c)(5)(iii)(A).

<sup>19</sup> *Id.* Under the Commission's rules, service providers must contribute at least \$25 per year, and service providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *Id.* § 64.604(c)(5)(iii)(B).

<sup>20</sup> *Id.* Rolka Loube Saltzer Associates, LLC (RLSA) replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See *Interstate Telecommunications Relay Service (TRS) Fund Administrator Transition*, Public Notice, 26 FCC Rcd. 8436 (2011). RLSA is now known as RolkaLoube, LLC. See <https://rolkaloube.com/programs/federal-itrs/> (last visited Mar. 13, 2023).

<sup>21</sup> 47 U.S.C. § 251(e)(1).

<sup>22</sup> *Id.* § 251(e)(2). “Number Portability” means “the ability of users 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.” *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local service providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd. 11701, 11702, para. 3 (1998), *aff'd*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd. 2578 (2002).

<sup>23</sup> 47 CFR §§ 52.17, 52.32.

<sup>24</sup> All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. See *id.* §§ 52.17, 52.32; see also *id.* § 52.5(i)-(j) (stating that, for the purpose of the Commission's Part 52 rules, “telecommunications carrier” includes an interconnected VoIP provider).

<sup>25</sup> See *id.* § 52.17(a) (“Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually . . . such contributions to be no less than twenty-five dollars (\$25.[00]).”); *id.* § 52.32(a) (service providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay \$100 contributions for LNP, and if service providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional

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NANP administrator's billing and collection agent, Welch LLP (Welch),<sup>26</sup> and the LNP administrator, Telcordia Technologies, Inc. d/b/a iconectiv (iconectiv),<sup>27</sup> respectively use Annual Worksheet filings to determine service providers' required payments for NANP and LNP administration.<sup>28</sup>

6. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,<sup>29</sup> including "enforcement activities, policy and rulemaking activities, user information services, and international activities."<sup>30</sup> Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.<sup>31</sup> Service providers<sup>32</sup> must pay regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.<sup>33</sup>

7. Because USAC, RolkeLoubé, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP, and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. The Commission, through USAC, must be able to verify that each service provider is compliant with the Commission's rules, including being able to review documents that support the accuracy of information reported in Worksheets.<sup>34</sup> When a service provider underreports its revenues in its Worksheets, and then exacerbates the problem by not complying with USAC's attempts to verify the reported revenues through supporting documentation, the service provider could prevent administrators from fully invoicing the service provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.<sup>35</sup> A

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database serves, the service providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each service provider on a proportional basis.)

<sup>26</sup> In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. See New Release, Fed. Comm'n's Comm'n, Federal Communications Commission Selects Welch & Company, LLP as the Next North American Numbering Plan Billing and Collection Agent (Apr. 12, 2004), <https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next>. In 2007, the billing and collection agent changed its name to Welch LLP. See <https://welchllp.com> (last visited Mar. 20, 2023); see also *Welch LLP celebrates 100th anniversary in Ottawa*, OTTAWA BUSINESS JOURNAL (Feb. 8, 2018), <https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa>.

<sup>27</sup> See *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, 31 FCC Rcd. 8406, Order (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

<sup>28</sup> 47 CFR §§ 52.17(b), 52.32(b).

<sup>29</sup> 47 U.S.C. § 159(a); see also *id.* § 156(a).

<sup>30</sup> *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1365.

<sup>31</sup> See 47 CFR §§ 1.1152–1.1156, 1.1157(b) (addressing federal regulatory fee requirements for wireless radio, mass media, common carrier, cable television, and international service providers).

<sup>32</sup> See <https://www.fcc.gov/licensing-databases/fees/regulatory-fees> (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited Mar. 13, 2023).

<sup>33</sup> See 47 CFR § 1.1154.

<sup>34</sup> See *id.* § 54.711(a); see also *id.* § 54.706(e).

<sup>35</sup> See *id.* § 54.711(a); *Telseven NAL*, 27 FCC Rcd at 6643–44, 6646–48, paras. 15, 23–25, *Telseven Forfeiture Order*, 31 FCC Rcd at 1636, para. 20 (assessing \$1,658,465.00 in forfeitures for USF, LNP, NANP and federal regulatory fee payment violations effectuated by underreporting revenues in Worksheets and \$100,000 for underreporting projected revenues in two Quarterly Worksheets); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241–42, para. 24 (2008) (proposing \$824,212 forfeiture for USF, TRS Fund, LNP, NANP and federal regulatory fee payment violations effectuated by underreporting revenues in Worksheets and \$100,000 forfeiture for filing two inaccurate Worksheets, and observing, "Although Telrite made monthly payments to the USF covering the amounts invoiced by USAC, those invoiced amounts were based on Telrite's inaccurate

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contributor's failure to comply with the Worksheet filing and verification functions can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>36</sup> The effects on the administration of TRS, LNP, NANP, and on the Commission's assessment of federal regulatory fees are similar. Indeed, a service provider that impedes the Commission and USAC from verifying the revenue information submitted in its Worksheets can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.<sup>37</sup> As a consequence of this evasion, other service providers carry an unfair burden of funding the USF and the other federal regulatory programs arising under the Act.<sup>38</sup> Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the reporting provisions of the Commission's rules, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments required under the Commission's rules.<sup>39</sup>

### B. Factual Background

8. The factual background concerning PayG and its conduct that is set forth in the *PayG First NAL* need not be reiterated at length here.<sup>40</sup> PayG began providing interstate telecommunications services in the last quarter of 2011.<sup>41</sup> On February 9, 2021, USAC referred PayG to the FCC's Enforcement Bureau (Bureau) for investigation of PayG's repeated failures to comply with USAC's requests to provide documentation supporting the Company's Annual Worksheet filings.<sup>42</sup> The Bureau sent a Letter of Inquiry (LOI) to PayG on March 16, 2021,<sup>43</sup> and PayG responded on June 14, July 27, and August 3, 2021.<sup>44</sup>

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Worksheets filed with USAC, and Telrite should have been making significantly larger contributions.”) (*Telrite NAL*), consent decree adopted, Order, 27 FCC Rcd 4110 (2012).

<sup>36</sup> 47 U.S.C. § 254(d).

<sup>37</sup> See, e.g., *PayG First NAL* at \*2, para. 3; *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, 2022 FCC LEXIS 1091 at \*2-9, paras. 2-5 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (proposed forfeiture paid); *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), consent decree adopted, Order, 29 FCC Rcd 2593 (2014).

<sup>38</sup> See *PayG First NAL* at \*2, para. 3; *Correct Solutions NAL* at \*2-9, paras. 2-5; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12.

<sup>39</sup> See *PayG First NAL*, 2022 at \*2, para. 3; *Correct Solutions NAL* at \*2-9, paras. 2-5; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12.

<sup>40</sup> See *PayG First NAL* at \*11-25, paras. 8-20.

<sup>41</sup> Response to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1, 6 (June 14, 2021) (on file in EB-IHD-21-00031864) (LOI Response). PayG has the authority to provide resale service pursuant to section 214 of the Act. See *International Authorizations Granted*, Public Notice, 32 FCC Rcd 10423 (2017); *International Authorizations Granted*, Public Notice, 35 FCC Rcd 14174, 14182 (IB 2020).

<sup>42</sup> See Letter from Fred Theobald, Director of Contributor Operations, Universal Services Administrative Company, to Pam Slipakoff, Investigations & Hearings Division, FCC Enforcement Bureau, at 3 (July 5, 2022) (on file in EB-IHD-21-00031864) (First USAC Letter).

<sup>43</sup> Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Louie Holmes, Chief Executive Officer, PayG, LLC d/b/a Skyswitch (Mar. 16, 2021) (LOI) (on file in EB-IHD-21-00031864).

<sup>44</sup> See LOI Response; Supplement to Responses to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Pam Slipakoff, Investigation & Hearings Division, FCC Enforcement Bureau (July 27, 2021) (on file in EB-IHD-21-00031864); Supplement to Responses to Letter of Inquiry, from Leon Nowalsky, Counsel to PayG d/b/a/ Skyswitch, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 3, 2021) (on file in (continued....))

9. On September 14, 2022, the Commission released the *PayG First NAL*, proposing a penalty of \$153,000 for PayG's repeated failures to file accurate Worksheets, to cooperate with Worksheet documentation production requirements, and to maintain current information in CORES.<sup>45</sup> In the *PayG First NAL*, we observed that PayG prevented USAC from verifying the Company's Annual Worksheets for nearly a three-year period, failing to comply with six requests for supporting documentation that were due between June 5, 2019, and November 23, 2020.<sup>46</sup> The Commission also found that PayG repeatedly filed inaccurate Annual Worksheets for 2018 through 2021.<sup>47</sup>

10. As described above, payment requirements for the USF, TRS Fund, LNP, NANP and federal regulatory fees rely on the accuracy of revenues reported in Annual Worksheets.<sup>48</sup> In the *PayG First NAL*, we reserved the right to take further enforcement action against PayG for violations of payment requirements arising under the Act.<sup>49</sup>

### 1. Failures to Pay or Pay USF Contributions Fully on Time

11. In its original 2018 Annual Worksheet filing on April 26, 2018, and a revision filed on February 20, 2019, PayG reported no revenues for 2017.<sup>50</sup> However, after the Bureau issued the LOI, PayG subsequently filed a revised 2018 Annual Worksheet on June 14, 2021, reporting reseller and end user revenues.<sup>51</sup> On July 19, 2021, PayG submitted another revised 2018 Annual Worksheet, decreasing its reported reseller revenue and increasing its reported end user revenue.<sup>52</sup>

12. PayG also began complying with USAC's documentation requests on July 19, 2021, over two years after USAC first requested supporting documentation.<sup>53</sup> On April 15, 2022, USAC finally obtained all the documentation it needed to verify PayG's Annual Worksheets for 2019 through 2021.<sup>54</sup> Based on PayG's documentation, USAC found that PayG misclassified end user revenues as reseller revenues and thereby underreported its USF contribution base revenues in the Company's Annual Worksheet filings between 2019 and 2021.<sup>55</sup>

13. Pursuant to the Commission's rules, USAC uses Quarterly Worksheet filings, which project a service provider's revenues, to calculate monthly USF invoices, and then USAC uses Annual Worksheet filings, which report actual revenues from the year preceding the Annual Worksheet filing, to

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EB-IHD-21-00031864).

<sup>45</sup> See *PayG First NAL* at \*51, para. 44 (citing 47 CFR §§ 1.8002(b)(2), 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2020 Annual Worksheet Instructions*, 35 FCC Rcd at 1362). PayG paid the proposed forfeiture on October 4, 2022.

<sup>46</sup> *Id.* at \*12-25, paras. 9-20.

<sup>47</sup> *Id.* at \*38-39, paras. 31-32.

<sup>48</sup> See *supra* paras. 3-7.

<sup>49</sup> *PayG First NAL* at \*25, para. 20 & n.82 ("The Commission reserves the right to take further enforcement action against PayG for any violations of USF payment obligations and other payment obligations arising under the Act.").

<sup>50</sup> See Letter from Fred Theobald, Director of Contributor Operations, Universal Services Administrative Company, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau, at 1-2 (May 10, 2023) (on file in EB-IHD-23-00035031) (Second USAC Letter).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *PayG First NAL* at \*28, para. 23 (citing First USAC Letter at 10).

<sup>54</sup> *Id.* (citing First USAC Letter at 9).

<sup>55</sup> *Id.* at para. 20 & n.82 (citing First USAC Letter at 9-10 & n.17).

assess true-ups that correct the USF assessments for that year.<sup>56</sup> Thus, if a service provider's revenues reported in an Annual Worksheet exceed revenues projected in Quarterly Worksheets, USAC will invoice additional USF assessments so that the service provider will fully pay the USF assessments required for the year under the Commission's rules and orders.<sup>57</sup> PayG's initial Annual Worksheets for 2018 through 2021, which PayG filed respectively on April 26, 2018, March 26, 2019, March 23, 2020, and April 1, 2021, were inaccurate; the Company underreported its revenues subject to USF assessments.<sup>58</sup> Based on the revenues inaccurately reported by PayG, the Company was subject to the *de minimis* exception for 2017 through 2019 revenues, and USAC could not invoice PayG for true-ups based respectively on the 2018 through 2020 Annual Worksheets when the true-up invoices would have ordinarily been issued.<sup>59</sup> Thus, PayG did not pay true-ups for the Annual Worksheets for 2018 through 2020 when the true-up payments were due.<sup>60</sup> Likewise, because PayG underreported revenues in its 2021 Annual Worksheet, USAC could also not fully invoice, and PayG did not fully pay USF true-up payments based on the 2021 Annual Worksheet when the true-up payments were due.<sup>61</sup>

14. The Company further delayed USAC's ability to invoice or invoice USF true-up assessments fully based on the Annual Worksheets for 2019 through 2021 by repeatedly failing to comply with USAC's documentation requests pursuant to section 54.711(a) of the Commission's rules.<sup>62</sup> After PayG finally provided USAC the documentation USAC needed to verify PayG's reported revenues, USAC found that PayG needed to revise its 2019, 2020, and 2021 Annual Worksheet filings, and move a total of \$8,551,594 of reseller revenues from Block 3 to the appropriate lines for end user revenues in Block 4 of the Annual Worksheet filings.<sup>63</sup> PayG has not disputed USAC's findings. As USAC received documentation from PayG to assess the accuracy of PayG's reported revenues, it directed PayG to file revisions to the Annual Worksheets for 2019 through 2021 that were consistent with documented revenues. On April 22, 2022, PayG filed revisions to its Annual Worksheets for 2019 through 2021, and USAC accepted these revised Annual Worksheet filings.<sup>64</sup>

15. USAC determined that by underreporting its net universal service contribution base revenues in its Annual Worksheets for 2018 through 2021, PayG underpaid its 2017 USF contributions by \$16,200.72, 2018 USF contributions by \$61,240.71, 2019 USF contributions by \$103,042.17, and 2020

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<sup>56</sup> See 2001 USF Order, 16 FCC Rcd at 5752-53, para. 12; 47 CFR § 54.711.

<sup>57</sup> See 2001 USF Order, 16 FCC Rcd at 5752-53, para. 12. Conversely, if a service provider's revenues reported in an Annual Worksheet are lower than revenues projected in Quarterly Worksheets, USAC will issue credits so that the service provider will not pay more than the USF assessments required for the year. See *id.*

<sup>58</sup> Second USAC Letter at 2. In its LOI Response, PayG acknowledged that it incorrectly reported end user revenues as reseller revenues and therefore, on June 14, 2021, PayG filed revisions to its 2017 through 2021 Annual Worksheets purportedly to correct the inaccuracies. See PayG's LOI Response at 9, Response to Question 16. PayG also admitted that "from January 1, 2018, through [June 14, 2021], USAC did not invoice PayG for USF due to inaccurate information listed on its 499-As and 499-Qs [*i.e.*, Annual and Quarterly Worksheets]." LOI Response at 14, Response to Question 18. USAC determined that PayG's revised Annual Worksheet filings that USAC received on June 14, 2021, were still inaccurate, and the Company continued to underreport its revenues subject to USF assessments. See First USAC Letter at 4-10; Second USAC Letter at 3-4.

<sup>59</sup> Second USAC Letter at 2. Under the *de minimis* exemption, if a service provider's contribution to the USF in any given year would be less than \$10,000, the service provider is not required to pay USF contributions. See 47 CFR § 54.708.

<sup>60</sup> Second USAC Letter at 2.

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

<sup>62</sup> See PayG First NAL at \*13-25, paras. 10-20; Second USAC Letter at 2.

<sup>63</sup> See PayG First NAL at \*25, para. 20 & n.82.

<sup>64</sup> Second USAC Letter at 3.



USF contributions by \$158,218.04.<sup>65</sup> PayG therefore underpaid USF contributions for 2017 through 2020 by a total of \$338,701.64. As USAC received revenues documentation and Annual Worksheet revisions for 2018 through 2021 from PayG, USAC issued USF true-up invoices to the Company. USAC invoiced true-ups based on revised Annual Worksheets for 2018 through 2021 on July 15, August 13, September 15, 2021, and true-ups based on the Annual Worksheets for 2020 and 2021 on October 15, November 15, and December 15, 2021.<sup>66</sup> On May 13, 2022, USAC finally had all the documentation it needed to verify the revenues reported in PayG's Annual Worksheets and was able to invoice the last of the true-ups for PayG's revised Annual Worksheets for 2018 through 2021.<sup>67</sup> PayG paid the May 13, 2022, invoice on June 2, 2022.<sup>68</sup>

16. If PayG had filed accurate Annual Worksheets by the April 1 filing deadlines of 2018 through 2021, USAC would have been able to invoice or invoice USF true-up assessments fully the following July, August, and September, which is USAC's customary true-up process under the Commission's rules and orders.<sup>69</sup> PayG's USF true-up payments would have been due as follows: (1) \$5,400.24 each on August 15, September 14, and October 15, 2018 (\$16,200.72 total for 2018 Annual Worksheet true-ups); (2) \$20,413.57 each on August 15, September 13, and October 15, 2019 (\$61,240.71 total for 2019 Annual Worksheet true-ups); (3) \$34,347.39 each on August 14, September 15, and October 15, 2020 (\$103,042.17 total for 2020 Annual Worksheet true-ups); and (4) \$52,739.34 or \$52,739.35 each on August 13, September 15, and October 15, 2021 (\$158,218.04 total for 2021 Annual Worksheet true-ups).<sup>70</sup> However, PayG did not fully pay the USF true-up assessments until June 2, 2022, when it made a payment of \$144,265.46.<sup>71</sup> In applying the American Rule of accounting,<sup>72</sup> the Company's June 2, 2022, payment satisfied USF payments that were due by the following dates: (1) October 15, 2021;<sup>73</sup> (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* USAC invoiced true-up adjustments for the 2018 revised Annual Worksheet totaling \$16,200.72, as follows: \$5,145.13 (July 15, 2021); \$5,145.14 (Aug. 13, 2021); \$5,145.15 (Sept. 15, 2021); and \$765.30 (May 13, 2022). USAC invoiced true-up adjustments for the 2019 revised Annual Worksheet totaling \$61,240.71, as follows: three assessments of \$11,062.61 (July 15, Aug. 13, and Sept. 15, 2021); and \$28,052.88 (May 13, 2022). USAC invoiced true-up adjustments for the 2020 revised Annual Worksheet totaling \$103,042.17, as follows: two assessments of \$19,801.81 (Oct. 15, and Nov. 15, 2021); \$19,801.82 (Dec. 15, 2021); and \$43,636.73 (May 13, 2022). USAC invoiced true-up adjustments for the 2021 revised Annual Worksheet totaling \$158,218.04, as follows: two assessments of \$32,604.64 (July 15, and Aug. 13, 2021); \$32,604.63 (Sept. 15, 2021); two assessments of \$572.65 (Oct. 15, and Nov. 15, 2021); \$572.64 (Dec. 15, 2021); and \$58,686.19 (May 13, 2022). *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 3-4. See 2001 USF Order, 16 FCC Rcd at 5752-53, para. 12; 47 CFR § 54.711.

<sup>70</sup> Second USAC Letter at 3-4. USF payments are due on the 15th of each month, but if the 15th falls on a weekend or holiday, payments are due on the preceding business day. *Id.* at 3 & n.9. The \$158,218.04 total for the 2021 Annual Worksheet USF contribution true-ups, divided by three is \$52,739.35 per month, rounded to the nearest cent.

<sup>71</sup> *Id.* at 3 & Attachment 1 – Account History.

<sup>72</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>73</sup> Under the American Rule of accounting, the USF payment due on October 15, 2021, was also partially paid through application of PayG's December 2021 through May 2022 monthly payments. See USAC Second Letter, Attachment – Account History.

15, 2022; (7) March 15, 2022; and (8) April 15, 2022.<sup>74</sup> The June 2, 2022 payment also timely paid the USF payment due on June 15, 2022.<sup>75</sup>

## 2. Failures to Pay or Pay TRS Fund Contributions Fully on Time

17. The TRS Fund administrator, RolkaLoube, informed Bureau staff that USAC provided PayG's original 2018 Annual Worksheet filing to RolkaLoube on April 26, 2018, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was due.<sup>76</sup> If PayG had fully reported its revenues, RolkaLoube would have issued PayG 12 monthly TRS Fund invoices between July 20, 2018, and June 21, 2019, totaling \$2,963.57.<sup>77</sup> The 12 TRS Fund payments of \$246.96 or \$246.97 would have been due between August 17, 2018, and July 19, 2019.<sup>78</sup> PayG did not fully pay these TRS Fund obligations until July 6, 2022.<sup>79</sup>

18. USAC provided PayG's original 2019 Annual Worksheet filing to RolkaLoube on May 22, 2019, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was due.<sup>80</sup> If PayG had fully reported its revenues, RolkaLoube would have issued PayG 12 monthly TRS Fund invoices between July 19, 2019, and June 21, 2020, totaling \$10,284.30.<sup>81</sup> The 12 monthly TRS Fund payments of \$857.02 or \$857.03 would have been due between August 16, 2019, and July 19, 2020.<sup>82</sup> PayG did not fully pay these TRS Fund obligations until July 6, 2022.<sup>83</sup>

19. USAC provided PayG's original 2020 Annual Worksheet filing to RolkaLoube on June 6, 2020, and based on PayG's inaccurately reported revenues at that time, no TRS Fund payment was

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<sup>74</sup> See *id.*

<sup>75</sup> See *id.*

<sup>76</sup> E-mail from Theresa Conway, Senior Program Analyst, RolkaLoube, LLC, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau, at 5 (Oct. 7, 2022, 10:05 EDT) (on file in EB-IHD-23-00035031) (RolkaLoube E-mail).

<sup>77</sup> If a contributor opts to pay TRS Fund contributions greater than \$1,200 over 12 months, rather than in one payment, RolkaLoube issues TRS Fund invoices to contributors in three groupings and issues invoices to PayG's grouping the third or fourth Friday of each month. *Id.* at 3-4. USAC provided RolkaLoube a revised 2018 Annual Worksheet for PayG on June 18, 2021, and based on the revenues in this revised filing, PayG owed \$2,2823.58 for TRS Fund assessments due between August 2018 and July 2019. RolkaLoube invoiced PayG \$2,2823.58 on July 23, 2021, which was due on August 22, 2021, and PayG paid on August 13, 2021. USAC provided RolkaLoube the final 2018 Annual Worksheet revision in May 2022, and the revised amount due for the TRS Fund was \$2,963.57, an additional \$139.99, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id.* at 5.

<sup>78</sup> Payment deadlines for TRS Fund invoices issued between July 2018 and June 2019 were 28 days after RolkaLoube issued the invoices. *Id.* at 2. The \$2,963.57 total for the 12-month period, due between August 2018 and July 2019, divided by 12 is \$246.96 per month, rounded to the nearest cent. Beginning in July 2020, payment due dates for TRS Fund monthly invoices were changed to 30 days after RolkaLoube issued the invoices. *Id.*

<sup>79</sup> *Id.* at 5.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* USAC also provided RolkaLoube a revised 2019 Annual Worksheet on June 18, 2021, and based on the revenues in this revised filing, PayG owed \$5,573.31 for TRS Fund assessments due between August 2019 and July 2020. RolkaLoube invoiced PayG \$5,573.31 on July 23, 2021, which was due on August 22, 2021, and PayG paid on August 13, 2021. USAC provided RolkaLoube a final 2019 Annual Worksheet revision for PayG in May 2022 and the revised amount due was \$10,284.30, an additional \$4,710.99, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id.*

<sup>82</sup> RolkaLoube E-mail at 2. The \$10,284.30 total for the 12-month period, due between August 2019 to July 2020, divided by 12 is \$857.03 per month, rounded to the nearest cent.

<sup>83</sup> *Id.* at 5.

due.<sup>84</sup> If PayG had fully reported its revenues, RolkaLoube would have issued 12 monthly TRS Fund invoices between July 24, 2020, and June 18, 2021, totaling \$32,562.48.<sup>85</sup> The 12 monthly TRS Fund payments of \$2,713.54 would have been due between August 23, 2020, and July 18, 2021.<sup>86</sup> PayG did not fully pay these TRS Fund obligations until July 6, 2022.<sup>87</sup>

20. USAC provided RolkaLoube the original 2021 Annual Worksheet filing from PayG on June 18, 2021, and based on PayG's inaccurately reported revenues at that time, RolkaLoube determined that PayG owed \$26,020.08 to the TRS Fund for the August 2021 to July 2022 period.<sup>88</sup> If PayG had fully reported its revenues, RolkaLoube would have issued 12 monthly TRS Fund invoices between July 16, 2021, and June 17, 2022, totaling \$43,506.96.<sup>89</sup> The 12 monthly TRS Fund payments of \$3,625.58 would have been due between August 15, 2021, and July 17, 2022.<sup>90</sup> PayG did not fully pay its TRS Fund obligations due between August 15, 2021, and June 19, 2022, until July 6, 2022.<sup>91</sup> For this 11-month period, PayG should have paid \$39,881.38 (\$3,625.58 x 11 months), but the Company only paid \$24,309.23, and therefore PayG underpaid contributions owed between August 15, 2021, and June 19, 2022, by \$15,572.15 (\$39,881.38 - \$24,309.23).<sup>92</sup>

21. In sum, based on verified revenues in the Company's Annual Worksheets for 2018 through 2021 accepted by USAC, PayG underpaid the TRS Fund as follows: \$2,963.57 (2018 Annual Worksheet); \$10,284.30 (2019 Annual Worksheet); \$32,562.48 (2020 Annual Worksheet); and \$15,572.15 (2021 Annual Worksheet). PayG's TRS Fund underpayments for the Annual Worksheets

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.* USAC also provided RolkaLoube a revised 2020 Annual Worksheet for PayG on July 20, 2021, and based on the revenues in this revised filing, PayG owed \$18,273.12 for TRS Fund assessments due between August 2020 and July 2021. RolkaLoube invoiced PayG \$18,273.12 on August 20, 2021, which was due on September 19, 2021, and PayG paid on September 8, 2021. USAC provided Rolka a final 2020 Annual Worksheet revision in May of 2022, and the revised amount due for the TRS Fund was \$32,562.48, an additional \$14,289.36, which RolkaLoube invoiced on June 17, 2022, was due on July 17, 2022, and PayG paid on July 6, 2022. *Id.*

<sup>86</sup> *Id.* at 2.

<sup>87</sup> *Id.* at 5.

<sup>88</sup> RolkaLoube E-mail.

<sup>89</sup> *Id.* Based on the June 18, 2021, version of the 2021 Annual Worksheet, on July 23, 2021, RolkaLoube invoiced PayG a monthly installment of \$2,168.34, which was due on August 22, 2021. USAC provided RolkaLoube a revised 2021 Annual Worksheet on July 20, 2021, and based on the reported revenues in that filing, the amount due for TRS Fund assessments was \$26,519.16. On August 20, 2021, RolkaLoube credited back to PayG the July 23, 2021, \$2,168.34 installment assessment, and billed PayG two of twelve TRS Fund monthly assessments totaling \$4,419.86 (\$2,209.93 each), which RolkaLoube invoiced on August 20, 2021, were due September 19, 2021, and PayG paid on September 8, 2021. Between September of 2021 and May of 2022, RolkaLoube invoiced nine monthly TRS Fund assessments of \$2,209.93, which PayG paid. USAC provided RolkaLoube a final 2021 Annual Worksheet revision on May 16, 2022, which changed the amount due for TRS Fund assessments to \$43,506.96 (an additional \$16,987.80 above the \$26,519.16 assessment based on the July 20, 2021, version of the revised 2021 Annual Worksheet). On June 17, 2022, RolkaLoube credited back to PayG \$24,309.23 that was billed and paid based on the July 20, 2021, version of the Annual Worksheet filing (11 x \$2,209.93 monthly installment assessments). RolkaLoube also invoiced PayG for \$43,506.96, based on the final, May 16, 2022, version of the 2021 Annual Worksheet. RolkaLoube applied the \$24,309.23 credit to the final assessment, and a \$19,197.73 balance was due on July 17, 2022, which PayG paid on July 6, 2022. *Id.*

<sup>90</sup> *Id.* at 2.

<sup>91</sup> *Id.* at 5. PayG timely paid its TRS Fund obligation due in July 2022 with its July 6, 2022, payment. *Id.*

<sup>92</sup> *Id.* at 5.

from 2018 through 2021 totaled \$61,382.50.<sup>93</sup> PayG did not dispute these underpayment amounts. Monthly payments were due for each August to July period following each Annual Worksheet filing deadline of April 1 of 2018 through 2021. PayG's delinquency for TRS Fund obligations began on August 17, 2018.<sup>94</sup> PayG did not fully pay TRS Fund assessments based on verified revenues in the Company's Annual Worksheet revisions for 2018 through 2021 until July 6, 2022, almost four years after payments were first due.

### 3. Failures to Pay NANP Administration Assessments Fully on Time

22. The NANP administrator's billing agent, Welch, informed Bureau staff that based on the inaccurate revenues reported in PayG's original 2019 Annual Worksheet filing, Welch invoiced PayG a \$25 assessment for NANP administration.<sup>95</sup> Based on the verified revenues reported in the 2019 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by \$134.33.<sup>96</sup> PayG's NANP obligation based on the 2019 Annual Worksheet was due by October 15, 2019, but PayG did not fully pay this assessment until July 11, 2022.<sup>97</sup>

23. Based on the inaccurate revenues reported in PayG's original 2020 Annual Worksheet filing, Welch invoiced PayG a \$25 assessment for NANP administration.<sup>98</sup> Based on the verified revenues reported in the 2020 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by \$160.22.<sup>99</sup> PayG's NANP obligation based on the 2020 Annual Worksheet was due October 13, 2020, but PayG did not fully pay this assessment until July 11, 2022.<sup>100</sup>

24. Based on the inaccurate revenues reported in PayG's original 2021 Annual Worksheet filing, Welch invoiced PayG a \$130.39 assessment for NANP administration.<sup>101</sup> Based on the verified revenues reported in the 2021 Annual Worksheet accepted by USAC, PayG underpaid the assessment for NANP administration by \$85.59.<sup>102</sup> PayG's NANP obligation based on the 2021 Annual Worksheet was due October 12, 2021, but PayG did not pay the \$85.59 assessment until July 11, 2022.<sup>103</sup>

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<sup>93</sup> PayG admitted that from January 1, 2018, through June 14, 2021, RolkaLoube did not invoice PayG for TRS Fund assessments "due to inaccurate information listed on its 499-As and 499-Qs [*i.e.*, Annual and Quarterly Worksheets]." LOI Response at 15, Response to Question 20.

<sup>94</sup> RolkaLoube E-mail at 2.

<sup>95</sup> E-mail from Heather Bambrough, Principal, Welch, LLP, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Sept. 21, 2022, 8:06 EDT) (on file in EB-IHD-23-00035031) (Welch E-mail). Based on PayG's original 2018 Annual Worksheet filing, Welch invoiced PayG a \$25 assessment for NANP administration, and PayG's assessment for NANP administration did not change based on the revised 2018 Annual Worksheet verified and accepted by USAC. *See id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* Based on PayG's revised 2019 Annual Worksheet filings, Welch issued true-up invoices of (1) \$64.19, which PayG paid on December 15, 2021, and (2) \$80.14, which PayG paid on July 11, 2022. *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* Based on PayG's revised 2020 Annual Worksheet filings, Welch issued true-up invoices for (1) \$78.15, which PayG paid on December 15, 2021, and (2) 82.07, which PayG paid on July 11, 2022. *Id.*

<sup>101</sup> Welch E-mail.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

25. In sum, PayG underpaid assessments for NANP administration by a total of \$380.14 for assessments based on the Company's Annual Worksheets for 2019 through 2021.<sup>104</sup> Payments of \$134.33, \$160.22, and \$85.59 were respectively due on October 15, 2019, October 13, 2020, and October 12, 2021. PayG's NANP administration payment delinquency therefore began on October 15, 2019, and PayG did not fully meet its NANP administration obligations until July 11, 2022.

#### 4. Failures to Pay or Pay Federal Regulatory Fees Fully on Time

26. Based on the inaccurate revenues reported in PayG's 2019 through 2021 Annual Worksheet filings, the Company did not pay or did not fully pay its 2019 through 2021 federal regulatory fees by the payment deadlines.<sup>105</sup> After USAC provided Commission staff PayG's verified revenues in the revised Annual Worksheet filings accepted by USAC, on October 1, 2022, Commission staff issued three invoices to collect PayG's unpaid 2019 and 2020 federal regulatory fees, and an underpayment for 2021 federal regulatory fees.<sup>106</sup> PayG owed \$1,173 and \$1,669 respectively for 2019 and 2020 federal regulatory fees, and PayG underpaid 2021 federal regulatory fees by \$1,110, a total delinquency of \$3,952.<sup>107</sup> PayG's federal regulatory fee payments for 2019 through 2021 were respectively due in full by September 27, 2019, September 28, 2020, and September 27, 2021.<sup>108</sup> PayG did not pay or fully pay its federal regulatory fees for 2019 through 2021 until December 5, 2022.<sup>109</sup>

### III. DISCUSSION

#### A. PayG Failed to Pay or Pay USF Contributions Fully When Due

27. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by willfully and repeatedly failing to pay or pay its USF contributions fully on time.<sup>110</sup> PayG's USF true-up contributions based on accurate Annual Worksheets for 2018 through 2021 were due respectively in August, September, and October of 2018 through 2021.<sup>111</sup> PayG either did not pay or underpaid its USF

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<sup>104</sup> PayG admitted that from January 1, 2018, through June 14, 2021, Welch did not fully invoice PayG for NANP administration assessments due to inaccurate information listed on its Annual and Quarterly Worksheets. *See* LOI Response at 17, Response to Question 24 (acknowledging that PayG would need to pay additional assessments).

<sup>105</sup> *See* E-mail from Roland Helvajian, Program Analyst, Financial Operations, FCC Office of Managing Director, to David Janas, Special Counsel, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 15, 2022, 11:28 EDT) (on file in EB-IHD-23-00035031) (OMD December 15, 2022, E-mail).

<sup>106</sup> Based on inaccurate revenue data from PayG's 2019 through 2021 Annual Worksheets, the Commission's Fee Filer System indicated that PayG did not owe 2019 or 2020 federal regulatory fees, and apparently indicated that PayG owed only \$1,883 for 2021 federal regulatory fees. *See* LOI Response at Exhibit 54; OMD December 15, 2022, E-mail at 4-5 (indicating that PayG paid only \$1,883 for federal regulatory fees on September 14, 2021, when the Company should have paid \$2,993 by September 27, 2021).

<sup>107</sup> *See id.* at 6-7. PayG admitted that it did not pay 2019-20 federal regulatory fees by the payment deadlines and would need to pay regulatory fee assessments based on revised Annual Worksheet filings. LOI Response at 18, Response to Question 26; 37, Response to Question 54.

<sup>108</sup> *Regulatory Fee Filing Window is Extended to Monday, September 27, 2021*, Public Notice, 36 FCC Rcd 13907 (OMD Sept. 24, 2021) (*2021 Reg Fees Public Notice*); *Regulatory Fee Filing Window is Extended to Monday, September 28, 2020*, Public Notice, 35 FCC Rcd 10466 (OMD Sept. 24, 2020) (*2020 Reg Fees Public Notice*); *Regulatory Fee Filing Window is Extended to Friday, September 27, 2019*, Public Notice, 34 FCC Rcd 8590 (OMD 2019) (*2019 Reg Fees Public Notice*).

<sup>109</sup> OMD December 15, 2022, E-mail at 1.

<sup>110</sup> 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

<sup>111</sup> Second USAC Letter at 3-4.

true-up contributions when due for the Annual Worksheets for 2018 through 2021 by a total of \$338,701.64.<sup>112</sup>

28. According to PayG's inaccurately reported revenues in its Annual Worksheets for 2018 through 2020, the Company was subject to the *de minimis* exemption under section 54.708 of the Commission's rules.<sup>113</sup> PayG's repeated failures to report revenues fully in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented USAC from invoicing PayG for any USF contributions between July 15, 2018, and March 15, 2021. PayG also prevented USAC from fully invoicing the Company for USF contributions between April 15, 2021, and April 15, 2022.<sup>114</sup> As the Commission has repeatedly observed, service providers must fully pay their contributions to the USF in a timely manner.<sup>115</sup> The Act and the Commission's rules do not require an invoice from the administrator to establish a payment obligation for the USF.<sup>116</sup> A service provider that does not file a required Worksheet might not receive an invoice from USAC, but it is still required to contribute to the USF by required payment deadlines (unless its accurately reported revenues are considered *de minimis*).<sup>117</sup> Likewise, if a service provider underreports its revenues in its Worksheets, and as a result USAC invoices less than the full USF payment required under the Commission's rules, the service provider is nonetheless required to fully contribute by the payment deadlines.<sup>118</sup>

29. Failures to pay USF contributions fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed contribution by the payment deadline, and continue until the service provider has fully paid the amount owed.<sup>119</sup> The Act and the Commission's rules issued pursuant to the Act establish that the requirement to pay USF contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.<sup>120</sup> We consider PayG's failures to pay monthly USF assessments on time to be continuing

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<sup>112</sup> *Id.* at 3.

<sup>113</sup> 47 CFR § 54.708.

<sup>114</sup> USAC did not receive all the supporting documentation that USAC needed to verify PayG's revenues until USAC issued the May 13, 2022, invoice. Second USAC Letter at 3.

<sup>115</sup> See, e.g., 47 CFR §§ 54.706, 54.713; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6.; *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16686-87, para. 6 (2011) (*Kajeet NAL*), *consent decree adopted*, Order, 30 FCC Rcd 10608 (2015); *NTS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5139, para. 4 (2010) (*NTS NAL*), *consent decree adopted*, Order, 28 FCC Rcd 16515 (2013).

<sup>116</sup> See, e.g., *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26 (citing 47 U.S.C. § 254(d); 47 CFR § 54.706(b)); *Kajeet NAL*, 26 FCC Rcd at 16686 n.22; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 n.12.

<sup>117</sup> See, e.g., *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *Kajeet NAL*, 26 FCC Rcd at 16686 & n.22; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

<sup>118</sup> See 47 U.S.C. § 254(d) (service providers "shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."); 47 CFR 54.706(a) (service providers "must contribute to the universal service support mechanisms."); *Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15; *Telrite NAL*, 23 FCC Rcd at 7238-39, paras. 14-15.

<sup>119</sup> E.g., *Telseven NAL*, 27 FCC Rcd at 6644, para. 15, 6647, para. 23; *Telrite NAL*, 23 FCC Rcd at 7243, para. 27. USF assessments that have been delinquent for more than 90 days can be transferred to the United States Department of the Treasury (Treasury Department) for collection under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B. See 47 CFR § 1.1917; <https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/> (last visited Mar. 13, 2023). A service provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent is collecting USF, TRS, LNP, NANP or federal regulatory fee debt, and thus in either case, the payment violation continues until the debt is fully paid.

<sup>120</sup> The Act and the Commission's rules establish that the obligation to pay USF contributions does not end until the contributor fully pays all assessments required under the Commission's rules. See 47 U.S.C. § 254(d) (service  
(continued....))

violations that began on August 15, 2018, when the first of three true-up payments was due based on a 2018 Annual Worksheet filing that complied with the Commission's rules.<sup>121</sup> Within the last 12 months, PayG failed to pay eight monthly USF payments on time.<sup>122</sup> These USF payment violations continued until June 2, 2022, the date that the Company fully paid its past due USF true-up contributions based on the revised Annual Worksheet filings for 2018 through 2021 that USAC verified and approved.<sup>123</sup>

**B. PayG Failed to Pay or Pay TRS Fund Contributions Fully When Due**

30. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing to pay or pay its TRS Fund contributions fully on time.<sup>124</sup> PayG's monthly TRS Fund contributions based on accurate Annual Worksheets for 2018 through 2021 were due respectively in each August to July period following the April 1 filing deadlines for the Company's Annual Worksheets for 2018 through 2021.<sup>125</sup> PayG either did not pay or underpaid its TRS Fund contributions when due for the Annual Worksheets for 2018 through 2021 by a total of \$61,382.50.<sup>126</sup>

31. PayG's repeated failures to fully report revenues in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented RolkaLoubé from invoicing PayG for TRS Fund contributions between July 2018 and June 2021. PayG also prevented RolkaLoubé from fully invoicing the Company for TRS Fund contributions between July 2021 and May 2022.<sup>127</sup> Service providers must fully pay their contributions to the TRS Fund in a timely manner.<sup>128</sup> The Commission's rules do not require an invoice from the administrator to establish a payment obligation for the TRS Fund.<sup>129</sup> Moreover, if a service provider underreports its revenues in its Worksheets, and as a

(Continued from previous page) \_\_\_\_\_

providers "*shall contribute*, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.") (emphasis added); 47 CFR § 713(b) (providing that in addition to having a continuing obligation to pay delinquent USF payments, a USF contributor is also obligated to pay interest, penalties and other charges "*until all charges and costs are paid in full*") (emphasis added); *id.* at § 54.706(a) (service providers "*must contribute* to the universal service support mechanisms.") (emphasis added).

<sup>121</sup> Second USAC Letter at 3-4.

<sup>122</sup> As addressed above, under the American Rule of accounting, the Company failed to pay on time USF contributions that were due on (1) October 15, 2021; (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February 15, 2022; (7) March 15, 2022; and (8) April 15, 2022. *See* Second USAC Letter, Attachment – Account History.

<sup>123</sup> *See, e.g., Telseven NAL*, 27 FCC Rcd at 6644, para. 15, 6647, para. 23 ("Telseven's violations for unpaid USF contributions continued with each subsequent day on which it failed to make full payment . . . the Commission has treated failures to pay universal service and other obligations as continuing violations.").

<sup>124</sup> 47 CFR § 64.604(c)(5)(iii)(A).

<sup>125</sup> RolkaLoubé E-mail at 2, 5.

<sup>126</sup> *Id.*

<sup>127</sup> RolkaLoubé finally had all the revenue information it needed to invoice PayG fully on June 17, 2022, and PayG timely paid its TRS Fund obligation due in July 2022. *Id.*

<sup>128</sup> *See, e.g., Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS*, 25 FCC Rcd at 5139, para. 4.

<sup>129</sup> *See, e.g., 47 CFR § 64.604(c)(5)(iii)(A); Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 839-40, para. 3 & n.13 (2009) (*ADMA NAL*), *forfeiture assessed*, Forfeiture Order, 26 FCC Rcd 4152 (2011); *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

result RolkaLoubé invoices less than the full TRS Fund payment required under the Commission's rules, the service provider is nonetheless required to fully contribute by the payment deadlines.<sup>130</sup>

32. Failures to pay TRS Fund contributions fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed contribution by the payment deadline, and continue until the service provider has fully paid the amount owed.<sup>131</sup> The Commission's rules issued pursuant to the Act establish that the requirement to pay TRS Fund contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.<sup>132</sup> We consider PayG's failures to pay or pay fully its TRS Fund contributions on time to be continuing violations that began on August 17, 2018, when the first monthly TRS Fund assessment was due based on a 2018 Annual Worksheet filing that complied with the Commission's rules.<sup>133</sup> PayG's TRS Fund payment violations continued until July 6, 2022, the date that the Company fully paid its TRS Fund contributions based on the revised Annual Worksheet filings for 2018 through 2021 that USAC verified and approved.<sup>134</sup>

### C. PayG Failed to Pay NANP Administration Obligations Fully When Due

33. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated section 52.17 of the Commission's rules by willfully and repeatedly failing to pay its NANP administration payment obligations fully on time.<sup>135</sup> PayG's NANP administration assessments based on accurate Annual Worksheets for 2019 through 2021 were due respectively on October 15, 2019, October 13, 2020, and October 12, 2021.<sup>136</sup> PayG underpaid its NANP administration assessments when due for the Company's Annual Worksheets for 2019 through 2021 by a total of \$380.14.<sup>137</sup>

34. PayG's repeated failures to report revenues fully in its Annual Worksheet filings and repeated failures to comply with documentation production requirements prevented Welch from fully invoicing the Company for NANP administration assessments due between October 15, 2019, and October 12, 2021.<sup>138</sup> Service providers must fully pay their assessments for NANP administration in a

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<sup>130</sup> 47 CFR § 64.604(c)(5)(iii)(A) (service providers "shall contribute to the TRS Fund" as prescribed by the Commission's rules); *Telrite NAL*, 23 FCC Rcd at 7240, para. 19; *see also Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

<sup>131</sup> *See, e.g., Telrite NAL*, 23 FCC Rcd at 7243, para. 27, 7244-45, para. 32; *ADMA NAL*, 24 FCC Rcd at 854, para. 33.

<sup>132</sup> The Commission's rules establish that the requirement to pay TRS Fund contributions does not end until the contributor pays fully all assessments required under the Commission's rules. *See* 47 CFR § 64.604(c)(5)(iii)(A) (service providers "shall contribute to the TRS Fund") (emphasis added), *id.* § 64.604(c)(5)(iii)(B) ("Each subject contributor that has revenues subject to contribution *must* contribute at least \$25 per year. [If] annual contributions total less than \$1,200 [the contributor] *must* pay the entire contribution at the beginning of the contribution period [and if] contributions total \$1,200 or more [the contributor] may divide their contributions into equal monthly payments.") (emphasis added).

<sup>133</sup> RolkaLoubé E-mail at 5.

<sup>134</sup> *Telrite NAL*, 23 FCC Rcd at 7243, para. 27 ("nonpayment of USF, TRS, and other contributions constitute continuing violations").

<sup>135</sup> 47 CFR § 52.17.

<sup>136</sup> Welch E-mail at 1.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*



timely manner.<sup>139</sup> The Commission's rules do not require an invoice from the administrator to establish a payment obligation for NANP administration.<sup>140</sup> Moreover, if a service provider underreports its revenues in its Worksheets, and as a result Welch invoices less than the full NANP administration payment required under the Commission's rules, the service provider is nonetheless required to contribute fully by the payment deadlines.<sup>141</sup>

35. Failures to pay NANP administration assessments fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed assessment by the payment deadline, and continue until the service provider has fully paid the amount owed.<sup>142</sup> The Act and the Commission's rules issued pursuant to the Act establish that the requirement to pay NANP administration assessments imposes a continuing obligation to pay after a service provider did not make required payments by the deadlines.<sup>143</sup> We consider PayG's failures to pay NANP administration assessments fully when due to be continuing violations that began on October 15, 2019, when the NANP administration assessment was due based on a 2019 Annual Worksheet filing that complied with the Commission's rules.<sup>144</sup> PayG's NANP payment violations continued until July 11, 2022, the date that the Company fully paid its NANP administration assessments based on the revised Annual Worksheet filings for 2019 through 2021 that USAC verified and approved.<sup>145</sup>

#### **D. PayG Failed to Pay or Pay Federal Regulatory Fees Fully When Due**

36. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violated sections 1.1154 and 1.1157 of the Commission's rules by willfully and repeatedly failing to pay or pay fully its federal regulatory fees for 2019 through 2021 on time.<sup>146</sup> PayG's regulatory fee payments based on accurate Annual Worksheets for 2019 through 2021 were due respectively on September 27, 2019, September 28, 2020, and September 27, 2021.<sup>147</sup> PayG either did not pay or underpaid federal regulatory fees when due by a total of \$3,952.<sup>148</sup>

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<sup>139</sup> See, e.g., 47 CFR § 52.17; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS NAL*, 25 FCC Rcd at 5139, para. 4.

<sup>140</sup> See, e.g., *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

<sup>141</sup> See *Telrite NAL*, 23 FCC Rcd at 7240, para. 20; See also *Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

<sup>142</sup> See *Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6140, para. 33 (2008) (*Compass Global NAL*), consent decree adopted, Order, 26 9287 (2011).

<sup>143</sup> The Act and the Commission's rules establish that the requirement to pay NANP administration assessments does not end until the contributor fully pays all assessments required under the Commission's rules. See 47 U.S.C. § 251(e)(2) ("The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission") (emphasis added); 47 CFR § 52.17 ("All telecommunications carriers in the United States shall contribute on a competitively neutral basis . . . Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the [Commission] . . . Carriers that have no end-user telecommunications revenues shall contribute twenty-five dollars") (emphasis added).

<sup>144</sup> Welch E-mail at 1.

<sup>145</sup> See *Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6140, para. 33.

<sup>146</sup> 47 CFR §§ 1154, 1157.

<sup>147</sup> *2021 Reg Fees Public Notice*, 36 FCC Rcd 13907; *2020 Reg Fees Public Notice*, 35 FCC Rcd 10466; *2019 Reg Fees Public Notice*, 34 FCC Rcd 8590.

<sup>148</sup> OMD December 15, 2022, E-mail at 6-7.

37. PayG's repeated failures to report revenues fully in its Annual Worksheet filings for 2019 through 2021 and repeated failures to comply with documentation production requirements prevented the Commission's Fee Filer System from invoicing the Company for 2019 and 2020 federal regulatory fees.<sup>149</sup> It also prevented the Commission from fully invoicing the Company for 2021 federal regulatory fees. Service providers must fully pay federal regulatory fees on time.<sup>150</sup> The Commission's rules do not require an invoice to establish a payment obligation for federal regulatory fees.<sup>151</sup> Moreover, if a service provider underreports its revenues in its Worksheets, and as a result the Commission invoices less than full federal regulatory fees required under the Commission's rules, the service provider is nonetheless required to pay fully the fees by the payment deadlines.<sup>152</sup>

38. Failures to pay federal regulatory fees fully and on time are continuing violations, which begin the day a service provider does not pay owed fees in full by the payment deadline, and continue until the service provider has fully paid the amount owed.<sup>153</sup> The Commission's rules issued pursuant to the Act establish that the requirement to pay federal regulatory fees imposes a continuing obligation to pay after a service provider did not make required payments by the deadlines.<sup>154</sup> We consider PayG's failures to pay or pay fully its federal regulatory fees on time to be continuing violations that began on September 27, 2019, when 2019 federal regulatory fees were due based on a 2019 Annual Worksheet filing that complied with the Commission's rules.<sup>155</sup> PayG's federal regulatory fee payment violations continued until December 5, 2022, the date that the Company fully paid its federal regulatory fees based on the Company's revised Annual Worksheet filings for 2019 through 2021 that USAC verified and approved.<sup>156</sup>

#### IV. PROPOSED FORFEITURE

39. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"<sup>157</sup> Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against PayG of up to \$237,268 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,372,677 for a single act or failure to act.<sup>158</sup> In exercising our

<sup>149</sup> In December 2021, the Commission discontinued the use of the Fee Filer System and incorporated this system into CORES. *What You Owe – Interstate Telecommunications Service Providers and Toll-Free Number Regulatory Fees for FY 2022*, Regulatory Fees Fact Sheet, 2022 WL 4299756 (Sept. 16, 2022).

<sup>150</sup> See, e.g., 47 CFR §§ 1154, 1157; *Telseven NAL*, 27 FCC Rcd at 6638-39, para. 6; *Kajeet NAL*, 26 FCC Rcd at 16686-87, para. 6; *NTS NAL*, 25 FCC Rcd at 5139, para. 4.

<sup>151</sup> See, e.g., *Telseven NAL*, 27 FCC Rcd at 6639, para. 6 & n.26; *NTS NAL*, 25 FCC Rcd at 5139, para. 4 & n.12.

<sup>152</sup> See *Telrite NAL*, 23 FCC Rcd at 7241, para. 22; See also *Telseven NAL*, 27 FCC Rcd at 6643-44, para. 15.

<sup>153</sup> See *Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6140, para. 33.

<sup>154</sup> The Commission's rules establish that the requirement to pay federal regulatory fees does not end until the contributor fully pays all assessments required under the Commission's rules. See 47 CFR § 1.1157(b)(1) ("Payments of standard regulatory fees applicable to certain wireless radio, mass media, common carrier, cable and international services shall be filed in full on an annual basis."); *id.* § 1.1157(c) (providing that in addition to having a continuing obligation to pay delinquent regulatory fees, a party is also obligated to pay a penalty if the payment is submitted "after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.") (emphasis added).

<sup>155</sup> See OMD December 15, 2022, E-mail.

<sup>156</sup> See *Telrite NAL*, 23 FCC Rcd at 7243, para. 27; *Compass Global NAL*, 23 FCC Rcd at 6140, para. 33.

<sup>157</sup> 47 U.S.C. § 503(b).

<sup>158</sup> See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and a statutory maximum of \$1,000,000 for a single act or failure to act). See *Amendment of Section 1.80(b) of the* (continued....)

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>159</sup> In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.<sup>160</sup> The forfeiture guidelines listed in section 1.80 of the Commission’s rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”<sup>161</sup>

40. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.<sup>162</sup> Under section 1.80 of the Commission’s rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.<sup>163</sup> We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.<sup>164</sup>

41. Section 503(b)(6)(B) of the 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>165</sup> In this case, we propose forfeitures for the Company’s failures to pay its USF contributions fully between August 15, 2018, and June 1, 2022, to pay its TRS Fund contributions fully between August 17, 2018, and July 5, 2022, to pay its NANP administration assessments fully between October 15, 2019, and July 10, 2022, and to pay its federal regulatory fees fully between September 27, 2019, and December 4, 2022. As discussed above, the Act and the Commission’s rules issued pursuant to the Act establish that the requirements to pay USF, TRS Fund, NANP and federal regulatory fee assessments impose continuing obligations to pay.<sup>166</sup> Because the obligations to pay delinquencies for these cost recovery obligations continue until the obligations are satisfied, the statute of limitations did not begin to run until the delinquencies were paid.<sup>167</sup>

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*Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356 (EB Dec. 23, 2022) (*2022 Inflation Update Order*); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 88 Fed. Reg. 783 (Jan. 5, 2023) (setting January 15, 2023, as the effective date for the increases) (*2022 Inflation Update Publication*).

<sup>159</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>160</sup> 47 CFR § 1.80(b)(10), Table 1 to Para. (b)(10).

<sup>161</sup> See *Commission’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17109-10, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines Order*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>162</sup> See *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

<sup>163</sup> 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10). See also *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

<sup>164</sup> 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

<sup>165</sup> 47 U.S.C. § 503(b)(6)(B).

<sup>166</sup> See *supra* notes 120, 132, 143, and 154 and accompanying text.

<sup>167</sup> See, e.g., *Earle v. District of Columbia*, 707 F.3d 299, 307 (D.C. Cir. 2012) (When “the text of the pertinent law imposes a continuing obligation to act . . . ‘a party can continue to violate it until that obligation is satisfied and the statute of limitations will not begin to run until it does.’”) (quoting *AKM LLC v Secretary of Labor*, 675 F.3d 752, 763 (D.C. Cir. 2012) (Garland, J. concurring)); *Yukon-Kuskokwim Health Corp. v. U.S.*, 444 F.Supp.3d 215, 220-21 (D.D.C. 2020) (finding defendants ignored deadline to act for over 25 years, did not fulfill their obligation, and

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### A. Forfeiture Methodology for Payment Violations

42. In February of 2015, in an attempt to improve the efficiency of USF, TRS Fund, LNP, NANP, and federal regulatory fee payment enforcement, the Commission adopted a policy statement relating to calculating forfeitures for these payment violations.<sup>168</sup> In appropriate cases, the Commission planned to determine forfeitures for these payment violations by multiplying a debt for each of these federal payment requirements by three, *i.e.*, the Commission would use a “treble damages” forfeiture method.<sup>169</sup> Industry associations filed Petitions for Reconsideration and Stay of the *2015 Forfeiture Policy Statement*,<sup>170</sup> but the Commission has not utilized the “treble damages” forfeiture method in an enforcement item adjudicating a USF, TRS Fund, LNP, NANP, or federal regulatory fee payment violation. On May 26, 2023, the Commission adopted an order dismissing the Petition for Reconsideration and Petition for Stay on the grounds that the Commission decided to vacate the *2015 Forfeiture Policy Statement* in favor of determining appropriate forfeitures adjudicated on a case-by-case basis.<sup>171</sup> Accordingly, the Commission will determine an appropriate forfeiture for each USF, TRS Fund, LNP, NANP, or federal regulatory fee payment violation case by applying the factors in section 503(b)(2)(E) of the Act, the *1997 Forfeiture Guidelines Order*, and section 1.80 of the Commission’s rules.<sup>172</sup> This will enable the Commission to issue penalties for each payment violation that is closely tailored to the specific circumstances of each individual adjudication.<sup>173</sup>

### B. Failure to Comply with USF Payment Obligations

43. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the USF payment requirements to be very serious.<sup>174</sup> The USF is a multibillion-dollar program that depends on service providers submitting accurate revenue information in Worksheet filings.<sup>175</sup> By repeatedly underreporting its revenues and preventing USAC from verifying the revenues,

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pertinent code imposed a “‘continuing obligation to act’ on Defendants such that they ‘continue to violate it until that obligation is satisfied.’”); *Appalachian Voices v. McCarthy*, 989 F.Supp.2d. 30, 45 (D.D.C. 2013) (concluding that pertinent law “imposes ‘a continuing obligation to act’” and defendant “‘continue[s] to violate it until that obligation is satisfied.’”).

<sup>168</sup> *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Policy Statement, 30 FCC Rcd 1622 (2015) (*2015 Forfeiture Policy Statement*).

<sup>169</sup> *Id.* at 1623-24, para. 6.

<sup>170</sup> See Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTTEL for Reconsideration of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015), [https://www.fcc.gov/ecfs/file/download/DOC-55f611f51b800000-A.pdf?file\\_name=CTIA.pdf](https://www.fcc.gov/ecfs/file/download/DOC-55f611f51b800000-A.pdf?file_name=CTIA.pdf); Petition of CTIA – The Wireless Association, National Cable & Telecommunications Association, United States Telecom Association, and COMPTTEL for Stay of Policy Statement, EB Docket No. 16-330 (filed Mar. 6, 2015).

<sup>171</sup> *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Federal Programs*, Memorandum Opinion and Order, FCC 23-42 (2023) (*2023 Forfeiture Policy Order*).

<sup>172</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd 17087. When establishing a forfeiture, section 503(b)(2)(E) of the Act requires the Commission to 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.” *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4722-23, para. 34 (2006) (*Globcom Forfeiture Order*).

<sup>173</sup> See *2023 Forfeiture Policy Order* at paras. 6-8; *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 34.

<sup>174</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>175</sup> See, e.g., *Proposed Second Quarter 2023 Universal Service Contribution Factor*, DA 23-213, 2023 WL 2559889 (OMD Mar. 14, 2022). The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors’ total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. *Id.* at \*1. For the

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PayG's payment violations spanned approximately four years and totaled \$338,702 to the nearest dollar. We have also considered the degree of the Company's culpability.<sup>176</sup> The Company is highly culpable for repeatedly not paying and underpaying its USF contributions for four years, particularly when USAC repeatedly prompted the Company to comply with the reporting and payment requirements during this four-year period. We thus find that PayG's misconduct was egregious, and resulted in substantial harm to the Commission's USF cost recovery requirements implemented under the Act.<sup>177</sup> Moreover, PayG's repeated and continuous violations resulted in a substantial economic gain to the Company, which withheld \$338,702 of USF contributions for approximately four years.<sup>178</sup>

44. To determine forfeitures for USF payment violations, the Commission has previously applied the American Rule of accounting<sup>179</sup> to delinquent service providers' USF accounts to determine the number of unpaid monthly USF contributions within a year of a NAL.<sup>180</sup> The Commission has previously assessed a base forfeiture of \$20,000 for each month in which a contributor failed to pay a required USF contribution, and \$10,000 for each month in which a contributor failed to pay a required USF contribution in full.<sup>181</sup> We have also previously added to base forfeitures an upward adjustment of 50 percent of the delinquent contributor's USF delinquency to account for the degree of harm to the USF.<sup>182</sup>

45. In the *Globcom Forfeiture Order*, however, the Commission stated that service providers have notice that the Commission could issue the statutory maximum forfeiture under section 503(b) of the Act for each violation of the Commission's payment requirements.<sup>183</sup> Thus in 2003, service providers like Globcom had notice that the maximum potential forfeiture for *each* continuing payment violation could be as high as the statutory maximum, which at that time was \$1,200,000.<sup>184</sup> As of January 15, 2023, the maximum forfeiture under section 503(b)(2)(B) has been increased to \$2,372,677, which is an increase of \$1,172,677.<sup>185</sup> In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and

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second quarter of 2023 alone, the total projected program support needed was \$2,073,280,000, and the total projected collected interstate and international end-user telecommunications revenues was \$8,761,743,000. *Id.* Thus, when service providers underreport end-user telecommunications revenues, and as a result underpay USF contributions (in this case for approximately four years), the effects are widespread.

<sup>176</sup> *See id.*

<sup>177</sup> *See* 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

<sup>178</sup> *See id.*

<sup>179</sup> *See* 47 CFR § 54.713(e) (providing that payments for USF assessments "shall apply . . . to the contributor's oldest past due amounts first").

<sup>180</sup> *See, e.g., Telseven NAL*, 27 FCC Rcd at 6647, paras. 23-24; *Kajeet NAL*, 26 FCC Rcd at 16694-95, paras. 21-22.; *NTS NAL*, 25 FCC Rcd at 5142, paras.12-13.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35. "Pursuant to section 503(b) of the Act, weighing the factors set forth in the statute, the Commission may determine the appropriate forfeiture within the range permitted by the statute." *Id.* (citing 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27).

<sup>184</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35 & n.105 ("Each failure to pay the amount due each month constituted a violation that continued for more than 10 days.").

<sup>185</sup> *See 2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

circumstances of the violations.<sup>186</sup> Moreover, when the Commission issued the *Globcom Forfeiture Order*, the Commission had “repeatedly warned carriers that larger forfeitures and even revocation of operating authority might be in store for future universal service nonpayment cases.”<sup>187</sup> The Commission further warned service providers that if the forfeiture methodology described in the *Globcom Forfeiture Order* is not adequate to deter violations of the Commission’s payment rules, “our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them.”<sup>188</sup>

46. The forfeiture methodology set forth in the *Globcom NAL* was established approximately 20 years ago.<sup>189</sup> PayG’s conduct illustrates that the Commission needs to again increase forfeitures for payment violations in order to provide an effective deterrent.<sup>190</sup> When the *Globcom NAL* was issued in 2003, section 503(b)(2)(B) of the Act authorized the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation.<sup>191</sup> As of January 15, 2023, the Commission’s forfeiture authority has increased to \$237,268 for each violation or each day of a continuing violation, which is an increase of \$117,268.<sup>192</sup> Given the evolution of our statutory forfeitures over time, the need for increased deterrence based on our experience with nonpayment of required contributions, the importance of the USF, and the facts and circumstances of PayG’s willful and repeated violations of its contribution obligations, we find it appropriate to increase the base forfeiture for PayG’s USF payment violations from \$20,000 to \$100,000 for each month in which the Company failed to pay a required USF contribution. Additionally, for the same reasons, we likewise impose an upward adjustment of 100 percent of PayG’s USF delinquency to account for the degree of harm to the USF.<sup>193</sup>

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<sup>186</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30 (citing *SBC Communications, Inc., v. FCC*, 373 F.3d 140, 151 (D.C. Cir. 2004) (holding that the service provider’s conduct constituted five individual continuing violations and the forfeiture amount was rationally related to goal of deterrence)).

<sup>187</sup> *Id.* at 4723, para. 36 (noting that the Commission had “imposed increasingly larger forfeitures for USF [payment] violations because of the gravity of violations in this area and the accumulating record of non-compliance”). See, e.g., *America’s Tele-network Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20903, 0906, paras. 8-9 (2000), *forfeiture issued*, Forfeiture Order, 15 FCC Rcd 24391 (2000); *Intellicall Operator Servs.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13539, 13541, paras. 7-8 (2000), *forfeiture issued*, Forfeiture Order, 15 FCC Rcd 21771 (2000); *Matrix Telecom, Inc.*, 15 FCC Rcd 13544, 13546-47, paras. 7-8 (2000), *forfeiture issued*, Forfeiture Order, 16 FCC Rcd. 10553 (2001), *reconsideration denied*, Memorandum Opinion and Order, 16 FCC Rcd 18105 (2001).

<sup>188</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4724, para. 38.

<sup>189</sup> *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, *Globcom Forfeiture Order*, 21 FCC Rcd 4710.

<sup>190</sup> PayG’s payment violations totaled \$338,702 to the nearest dollar, spanned four years, and during this four-year period, USAC repeatedly attempted to prompt the Company’s compliance with the payment requirements. See generally First USAC Letter; Second USAC Letter.

<sup>191</sup> *Globcom NAL, Inc.*, 18 FCC Rcd at 19902, para. 22.

<sup>192</sup> See *2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

<sup>193</sup> See 47 U.S.C. § 503(b)(2)(E) (“In determining the amount of such a forfeiture penalty, the Commission or its designee shall 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”); 47 CFR § 1.80 (providing in part for upward adjustments for egregious misconduct, substantial harm, substantial economic gain, and a repeated or continuous violations, which as addressed above, are demonstrated in this case); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that the Commission retained its authority to “issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

47. We therefore propose a \$100,000 base forfeiture for each of the eight USF payment violations that occurred within the last year, which provides for a total base forfeiture of \$800,000.<sup>194</sup> We also apply an upward adjustment of 100 percent of PayG's USF delinquency that occurred as a result of the Company inaccurately reporting its revenues in its Annual Worksheets for 2018 through 2021, which was \$338,702 to the nearest dollar.<sup>195</sup> We therefore propose a total forfeiture of \$1,138,702 (\$800,000 base forfeiture + \$338,702 upward adjustment) for PayG's failure to pay eight USF contributions by the payment deadlines.

48. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's USF payment rules, we warn service providers that pursuant to our warning in *Globcom* the Commission could issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for USF payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.<sup>196</sup> Currently, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against service providers like PayG of up to \$237,268 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,372,677 for a single act or failure to act,<sup>197</sup> and maximum forfeiture amounts are adjusted annually for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act).<sup>198</sup>

### C. Failure to Comply with TRS Fund Payment Obligations

49. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the TRS Fund payment requirements to be very serious.<sup>199</sup> By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned approximately four years and totaled over \$60,000. The Company is highly culpable for repeatedly not paying and underpaying its TRS Fund contributions for four years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's TRS and other payment requirements during this four-year period.<sup>200</sup> We thus find that PayG's misconduct was egregious, and resulted in substantial harm to the Commission's TRS Fund cost recovery requirements.<sup>201</sup> Moreover, PayG's repeated and continuous violations resulted in a substantial economic gain to the Company, which withheld a total of \$61,383 in TRS Fund contributions for approximately four years.<sup>202</sup>

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<sup>194</sup> Applying the American Rule of accounting, *see* 47 CFR § 54.713(e), PayG failed to pay on time USF contributions that were due on (1) October 15, 2021; (2) November 15, 2021; (3) December 15, 2021; (4) January 14, 2022; (5) February 15, 2022; (7) March 15, 2022; and (8) April 15, 2022. *See* Second USAC Letter, Attachment – Account History. PayG did not pay these contributions until June 2, 2022. *See id.* at 3.

<sup>195</sup> Second USAC Letter at 3.

<sup>196</sup> *See* 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

<sup>197</sup> *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2); *2022 Inflation Update Order*, 2023 WL 1067981; *2022 Inflation Update Publication*, 88 Fed. Reg. 783.

<sup>198</sup> Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (1990 Inflation Adjustment Act). Federal agencies must annually adjust civil monetary penalties, and publish each annual adjustment by January 15. 1990 Inflation Adjustment Act § 4(a). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." 1990 Inflation Adjustment Act § 6.

<sup>199</sup> *See* 47 U.S.C. § 503(b)(2)(E).

<sup>200</sup> *See generally* First USAC Letter; Second USAC Letter.

<sup>201</sup> *See* 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

<sup>202</sup> *See id.*

50. To determine forfeitures for TRS Fund payment violations, the Commission has previously applied a base forfeiture of \$10,000 for each year a service provider has failed to pay or to pay the TRS Fund payment obligations fully.<sup>203</sup> The Commission has also previously applied an upward adjustment of 50 percent of the delinquent contributor's TRS Fund debt.<sup>204</sup>

51. Service providers have received notice, however, that the Commission could issue the statutory maximum forfeiture under section 503(b)(2)(B) of the Act for each violation of the Commission's TRS Fund payment requirements.<sup>205</sup> In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations.<sup>206</sup> The Commission warned service providers that if the forfeiture methodology described in the *Globcom Forfeiture Order* is not adequate to deter violations of the Commission's payment rules, we would exercise our statutory authority to impose larger penalties.<sup>207</sup>

52. PayG's conduct illustrates that the Commission needs to again increase forfeitures for TRS Fund payment violations in order to provide an effective deterrent.<sup>208</sup> Consistent with our adjustments to the forfeiture methodology for PayG's USF payment violations, we therefore increase PayG's base forfeiture for TRS Fund payment violations from \$10,000 to \$50,000 for each year in which PayG has failed to pay or pay fully a required TRS Fund contribution. Additionally, for the same reasons, we likewise impose an upward adjustment of 100 percent of PayG's TRS Fund delinquency to account for the degree of harm to the TRS Fund.<sup>209</sup>

53. We therefore propose a \$50,000 base forfeiture for each of the four annual TRS Fund payment violations, which PayG did not pay until July 6, 2022, and which provides for a total base forfeiture of \$200,000.<sup>210</sup> We also apply an upward adjustment of 100 percent of PayG's TRS Fund delinquency that occurred as a result of the Company inaccurately reporting its revenues in its Annual Worksheets for 2018 through 2021, which was \$61,383 to the nearest dollar.<sup>211</sup> We therefore propose a total forfeiture of \$261,383 (\$200,000 base forfeiture + \$61,383 upward adjustment) for PayG's failure to pay TRS Fund contributions by the payment deadlines for four years.

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<sup>203</sup> See *PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531, 11543-54, paras. 31-32 (2014) (*PTT NAL*), *forfeiture assessed*, Forfeiture Order, 30 FCC Rcd 14701 (2015); *RB Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4402, paras. 25-26 (2012) (*RB Commc'ns NAL*), *forfeiture assessed*, Forfeiture Order, 29 FCC Rcd 5668 (2014), *pet. recon. denied*, 30 FCC Rcd 4720 (2015); *ADMA NAL*, 24 FCC Rcd at 852-53, paras. 33, 35.

<sup>204</sup> See *PTT NAL*, 29 FCC Rcd at 11543-54, paras. 31-32; *RB Commc'ns NAL*, 27 FCC Rcd at 4402, paras. 25-26; *ADMA NAL*, 24 FCC Rcd at 852-53, paras. 33, 35.

<sup>205</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, 4723, paras. 31, 35 (citing 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b)); *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27).

<sup>206</sup> *Globcom Forfeiture Order*, 21 FCC Rcd at 4721, para. 30.

<sup>207</sup> *Id.* at 4724, para. 38.

<sup>208</sup> PayG's TRS Fund payment violations totaled \$61,383.00 to the nearest dollar, spanned four years, and during this four-year period, USAC repeatedly attempted to prompt the Company's compliance with the payment requirements. See generally First USAC Letter; Second USAC Letter.

<sup>209</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22.

<sup>210</sup> Monthly payments were due for each August to July period following each Annual Worksheet filing deadline of April 1, 2018 through 2021. See RolkaLoube E-mail at 2.

<sup>211</sup> PayG's delinquency for TRS Fund obligations began on August 17, 2018, and PayG did not fully pay TRS Fund assessments based on verified revenues in the Company's Annual Worksheet revisions for 2018 through 2021 until July 6, 2022, approximately four years after payments were first due. See *id.*



54. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's TRS Fund payment rules, we warn service providers that, pursuant to the warning in *Globcom*, the Commission could issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for TRS Fund payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.<sup>212</sup>

**D. Failure to Comply with NANP Administration Payment Obligations**

55. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the NANP administration payment requirements to be substantial.<sup>213</sup> By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned approximately three years. The Company is culpable for repeatedly underpaying its NANP administration obligations for three years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's NANP and other payment requirements during this three-year period.<sup>214</sup>

56. To determine forfeitures for NANP payment violations, the Commission has previously applied a base forfeiture of \$10,000 for each year a service provider failed to pay or to pay a NANP payment obligation fully.<sup>215</sup> We therefore propose a \$10,000 base forfeiture for each of the three annual NANP payment violations, which PayG did not pay until July 11, 2022, and which provides for a total proposed forfeiture of \$30,000 (\$10,000 x 3 violations).

57. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's NANP payment rules, we warn service providers that the Commission could adjust the forfeiture methodology and issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for NANP payment violations up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act for each violation.<sup>216</sup>

**E. Failure to Comply with Federal Regulatory Fee Payment Obligations**

58. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with the federal regulatory fee payment requirements to be substantial.<sup>217</sup> By repeatedly underreporting its revenues and preventing USAC from verifying the revenues, PayG's payment violations spanned three years and totaled nearly \$4,000. The Company is highly culpable for repeatedly not paying and underpaying its federal regulatory fees over three years, particularly when USAC repeatedly prompted PayG to fully report the Company's revenues and thereby fully pay the Company's federal regulatory fee and other payment requirements during this three-year period.<sup>218</sup>

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<sup>212</sup> See 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

<sup>213</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>214</sup> See *id.*

<sup>215</sup> See *Telseven NAL*, 27 FCC Rcd at 6648, para. 26; *Telrite NAL*, 23 FCC Rcd at 7245, para. 33; *Compass Global NAL*, 23 FCC Rcd at 6141, para. 37.

<sup>216</sup> See 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

<sup>217</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>218</sup> See *id.*

59. The Commission has previously applied a base forfeiture of \$10,000 per year for federal regulatory fee payment violations.<sup>219</sup> Based upon the facts and circumstances of this particular case, and given the total amount of the three federal regulatory fee payment violations,<sup>220</sup> we find that the \$10,000 base forfeiture is appropriate for each of PayG's three federal regulatory fee payment violations. We thus propose a total forfeiture of \$30,000 (\$10,000 x 3 violations).

60. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's federal regulatory fee payment rules, we warn service providers that the Commission could adjust the forfeiture methodology and issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for federal regulatory fee payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.<sup>221</sup>

#### F. Total Proposed Forfeiture

61. Consistent with the Act and the Commission's rules,<sup>222</sup> we have exercised our discretion and considered the specific circumstances related to the Company and the violations it apparently committed, and we find the Company apparently liable for a forfeiture of one million four hundred sixty thousand eighty-five dollars (\$1,460,085). The total proposed forfeiture includes forfeitures of (a) one million one hundred thirty-eight thousand seven hundred two dollars (\$1,138,702) for the Company's willful and repeated failures to pay or pay fully USF contributions when due; (b) two hundred sixty-one thousand three hundred eighty-three dollars (\$261,383) for the Company's willful and repeated failures to pay or pay fully TRS Fund contributions when due; (c) thirty thousand dollars (\$30,000) for the Company's willful and repeated failures to pay fully NANP administration assessments when due; and (d) thirty thousand dollars (\$30,000) for the Company's willful and repeated failures to pay or pay fully federal regulatory fees when due.

#### V. CONCLUSION

62. We have determined that PayG apparently violated sections 251(e)(2) and 254(d) of the Act and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules by willfully failing to pay or pay fully its USF contributions, TRS Fund contributions, NANP administration obligations and federal regulatory fees when these federal payment requirements were due.<sup>223</sup> As such, PayG is apparently liable for a forfeiture of \$1,460,085.<sup>224</sup>

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<sup>219</sup> See *Telseven NAL*, 27 FCC Rcd at 6648, para. 28; *Telrite NAL*, 23 FCC Rcd at 7245, para. 35; *Compass Global NAL*, 23 FCC Rcd at 6141-42, para. 38.

<sup>220</sup> PayG failed to pay or underpaid its federal regulatory fee by a total of \$3,952.00 between September 27, 2019, and December 4, 2022. See OMD December 15, 2022, E-mail.

<sup>221</sup> See 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35; *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17100-01, para. 27.

<sup>222</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Table 3 to Para. (b)(10).

<sup>223</sup> 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A). This Notice of Apparent Liability applies exclusively to the Commission rule violations by PayG described herein and does not address any other potential criminal, civil or administrative liabilities of PayG and its successors, assigns, agents or consultants.

<sup>224</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

## VI. ORDERING CLAUSES

63. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>225</sup> and section 1.80 of the Commission's rules,<sup>226</sup> PayG, LLC d/b/a Skyswitch is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one million four hundred sixty thousand eighty-five dollars (\$1,460,085) for willful and repeated violations of sections 251(e)(2) and 254(d) of the Act, 47 U.S.C. §§ 251(e)(2), 254(d), and sections 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), and 64.604(c)(5)(iii)(A) of the Commission's rules, 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A).

64. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,<sup>227</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, PayG, LLC d/b/a Skyswitch **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 paragraph 67 below.

65. In order for PayG, LLC d/b/a Skyswitch to pay the proposed forfeiture, PayG, LLC d/b/a Skyswitch shall notify Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), and David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov) of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, PayG, LLC d/b/a Skyswitch shall send electronic notification of payment to Pamela Gallant at [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), Kalun Lee at [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), Georgina Feigen at [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), and David Janas at [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov) on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>228</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159<sup>229</sup> or printed CORES form<sup>230</sup> must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>231</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

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<sup>225</sup> 47 U.S.C. § 503(b).

<sup>226</sup> 47 CFR § 1.80.

<sup>227</sup> *Id.*

<sup>228</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

<sup>229</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>230</sup> Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

<sup>231</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

66. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.<sup>232</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

67. 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(g)(3) of the Commission’s rules.<sup>233</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearing Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to [Pamela.Gallant@fcc.gov](mailto:Pamela.Gallant@fcc.gov), [Kalun.Lee@fcc.gov](mailto:Kalun.Lee@fcc.gov), [Georgina.Feigen@fcc.gov](mailto:Georgina.Feigen@fcc.gov), [David.Janas@fcc.gov](mailto:David.Janas@fcc.gov), and [EnforcementBureauIHD@fcc.gov](mailto:EnforcementBureauIHD@fcc.gov).

68. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.<sup>234</sup> Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we

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<sup>232</sup> See 47 CFR § 1.1914.

<sup>233</sup> *Id.* §§ 1.16, 1.80(g)(3).

<sup>234</sup> 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.<sup>235</sup>

69. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Geoff Bloss, Chief Executive Officer, PayG, LLC d/b/a Skyswitch, 295 Madison Avenue, 5<sup>th</sup> Floor, New York, NY 10017, and to Marc Korman, Esq., Sidley Austin LLP, 1501 K Street, NW, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>235</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).