

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

In the Matter of)
Westel, Inc.) File No.: EB-IHD-22-00033166
NAL/Acct. No.: 202332080033
FRN: 0004359444

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 18, 2023

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By the Commission:

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I. INTRODUCTION

1. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a forfeiture penalty of \$400,000 against Westel, Inc. (Westel or Company) for apparently willful and repeated violations stemming from its failures to file Annual and Quarterly Telecommunications Reporting Worksheets (Worksheets), as well as an apparently willful violation of a Commission order for its failure to respond fully to an Enforcement Bureau (Bureau) Letter of Inquiry (LOI) regarding compliance with filing and contribution requirements under the Communications Act of 1934, as amended (Act), and the Federal Communications Commission’s (FCC or Commission) rules. Since February 1, 2020, Westel failed repeatedly to file or to file on time a total of 14 Worksheets between February 1, 2020 and May 1, 2023. We therefore propose in this NAL a penalty of \$400,000 for Westel’s apparently willful and repeated violations in failing to file Annual and Quarterly Worksheets and a willful violation for failing to respond to the Bureau’s LOI fully by the response deadline, in apparent violation of sections 52.17(b), 52.32(b),

54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders to file Worksheets and to respond to the Bureau's LOI.¹

2. Under the rules and orders of the Commission, telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file Worksheets with the Universal Service Administrative Company (USAC). These filing requirements further important regulatory programs implemented by the Commission pursuant to the Act. USAC and the administrators of the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in Commission rules, each service provider's equitable and accurate contributions responsibilities for the Universal Service Fund (USF) and these other federal funding mechanisms, consistent with the Act and our rules. Likewise, the Commission relies on the information filed in Worksheets to assess equitable and accurate federal regulatory fees owed by each service provider. The failure to file timely, complete, and accurate Worksheets undermines the Commission's efforts to maintain the USF and these other federal cost recovery programs arising under the Act. The equitable administration of each of these federal payment requirements depends on the timely filing of Worksheets.

II. BACKGROUND

A. Legal Framework

3. 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."² 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 telecommunications revenues.³ The Commission also requires certain providers of interstate telecommunications to contribute to the USF.⁴ Pursuant to the Act, the Commission has likewise established cost recovery rules for the TRS Fund, LNP and NANP administration, and federal regulatory

¹ 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *Wireline Competition Bureau Releases the 2023 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-12, Public Notice, DA 22-1094, 2022 WL 10379829, at *10 (WCB Oct. 14, 2022) (*2023 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176, 14200 (WCB 2021) (*2022 Annual Worksheet Instructions*); Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Ellen Garner Chief Executive Officer, and Tom Garner, Chairman, Westel Inc. (Feb. 7, 2022) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 54.713, 64.604, 64.2009(e), and 64.2115) (on file in EB-IHD-22-00033166) (LOI).

² 47 U.S.C. § 254(d).

³ 47 CFR § 54.706(b). *See also* 47 CFR § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). According to its 2022 Annual Worksheet filing, Westel provides interexchange services, and is therefore subject to the Worksheet filing and contribution requirements established under the FCC's rules. *See* Federal Communications Commission, *FCC Form 499 Filer Database Detailed Information*, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=808840> (last visited July 7, 2023); 47 CFR § 54.706(a) (indicating that providing access to interexchange service is considered interstate telecommunications).

⁴ *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).

fees,⁵ and requires service providers to file Annual and Quarterly Worksheets.⁶ The Commission is authorized to issue LOIs to investigate service providers' compliance with these and other requirements implemented under the Act.⁷

1. Annual and Quarterly Worksheet Filing Requirements

4. The Commission has established specific procedures to administer the USF. Each service provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A, also known as the Annual Worksheet,⁸ and file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.⁹ 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.¹⁰ 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.¹¹ A service provider must timely file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.¹² The Commission's rules require that service providers report accurate information in the Annual Worksheets.¹³ 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.¹⁴

⁵ See 47 U.S.C. §§ 225(b)(1); 251(e)(2); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.32(a), 64.604(c)(5)(iii)(A).

⁶ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

⁷ See, e.g., 47 U.S.C. § 403.

⁸ See 47 CFR § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), 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 the Commission's Registration System (CORES) and obtaining a Filer ID from USAC's E-File system. See, e.g., *2022 Annual Worksheet Instructions*, *supra* note 1, at 14191.

⁹ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹⁰ E.g., *2022 Annual Worksheet Instructions*, *supra* note 1, at 14236.

¹¹ 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. In other words, 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. 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.* at 5752-53, para. 12.

¹² See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200.

¹³ 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." See, e.g., 2022 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, see *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200-01, the requirement 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 2022 FCC Form 499-A, Line 606.

¹⁴ 47 CFR § 54.713.

5. 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.”¹⁵ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.¹⁶ The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.¹⁷ 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.¹⁸ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission’s rules, certain service providers¹⁹ must contribute to the TRS Fund based on their end-user revenues.²⁰ Under the Commission’s rules, the TRS Fund administrator, Rolka Loube Associates LLC (Rolka Loube), uses Annual Worksheet filings to determine each service provider’s annual or monthly TRS Fund contribution amounts.²¹

6. 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.²² Section 251(e)(2) of the Act requires that “[t]he 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.”²³ In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission’s rules.²⁴ Under the Commission’s rules, service providers²⁵ must contribute to the costs of numbering administration and

¹⁵ 47 U.S.C. § 225(b)(1).

¹⁶ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 para. 7 (1993).

¹⁷ 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).

¹⁸ *Id.*

¹⁹ 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).

²⁰ *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).

²¹ *Id.* Rolka Loube 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).

²² 47 U.S.C. § 251(e)(1).

²³ *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).

²⁴ 47 CFR §§ 52.17, 52.32.

²⁵ 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)

(continued....)

LNP on the basis of their end-user telecommunications revenues.²⁶ The NANP administrator’s billing and collection agent, Welch LLP (Welch),²⁷ and the LNP administrator, iconectiv, LLC (iconectiv),²⁸ respectively use Annual Worksheet filings to determine service providers’ required payments for NANP and LNP administration.²⁹

7. The Act directs the Commission to “assess and collect regulatory fees to recover the costs of carrying out” the functions of the Commission,³⁰ including “enforcement activities, policy and rulemaking activities, user information services, and international activities.”³¹ Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.³² Service providers³³ must pay regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.³⁴

8. Because USAC, Rolka Loube, 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, completeness, and timeliness of Worksheet filings are vital. When a service provider fails to file Worksheets by each filing deadline, 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.³⁵ A contributor’s failure to comply with the Worksheet filing

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(stating that, for the purpose of the Commission’s Part 52 rules, “telecommunications carrier” includes an interconnected VoIP provider).

²⁶ 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).”); *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 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.).

²⁷ In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Comm’n Comm’n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB 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 Welch LLP, <https://welchllp.com> (last visited June 22, 2023); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), <https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa>.

²⁸ See *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd 8406 (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

²⁹ 47 CFR §§ 52.17(b), 52.32(b).

³⁰ 47 U.S.C. § 159(a); see also *id.* § 156(a).

³¹ *2022 Annual Worksheet Instructions*, *supra* note 1, at 14192.

³² 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).

³³ See Federal Communications Commission, *Regulatory Fees*, <https://www.fcc.gov/licensing-databases/fees/regulatory-fees> (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited June 22, 2023).

³⁴ See 47 CFR § 1.1154.

requirements 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.”³⁶ 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 fails to comply with the Worksheet filing requirements can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.³⁷ As a consequence, other service providers carry an unfair burden of funding the USF and the other federal regulatory programs arising under the Act.³⁸ Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the filing 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.³⁹

2. LOI Response Requirements

9. Section 403 of the Act grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.⁴⁰ Section 0.111(a)(17) of the Commission’s rules delegates authority to the Bureau to “conduct investigations . . . on its own initiative” of potential violations of the Act and of the Commission’s rules.⁴¹ An LOI issued to an entity under investigation by the Bureau constitutes a Commission order, and a failure to respond to a Bureau LOI fully and on time constitutes a violation of a Commission order.⁴² This violation can give rise to a forfeiture penalty under section 503 of the Act.⁴³ An investigation target’s failure to provide a complete and timely response to an LOI threatens to compromise the Commission’s ability to adequately investigate violations of the Act and the Commission’s rules.⁴⁴ Given the critical importance of LOIs to

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³⁵ See *id.* § 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *Telseven NAL*, *supra* note 8, at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 8, at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008) (*Telrite NAL*), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

³⁶ 47 U.S.C. § 254(d).

³⁷ See, e.g., *Telseven NAL*, *supra* note 8, 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); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), Order of Forfeiture, 23 FCC Rcd 8952 (2008).

³⁸ See *Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

³⁹ See *Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

⁴⁰ 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.”); see also LOI, *supra* note 1, at 2 (citing 47 U.S.C. §§ 154(i), 154(j), 403).

⁴¹ 47 CFR § 0.111(a)(17). In addition, section 4(i) of the Act authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.” See 47 U.S.C. § 154(i).

⁴² See, e.g., 47 U.S.C. § 155(c)(3); *Aura Holdings of Wis., Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018), Forfeiture Order, 34 FCC Rcd 2540 (2019).

⁴³ 47 U.S.C. § 503(b)(1)(B) (any person who is found, in accordance with procedures set forth in section 503, to have willfully or repeatedly failed to comply with provisions of the Act or “any rule, regulation, or order issued by the Commission” shall be liable for a forfeiture penalty).

the Commission's investigatory and regulatory functions, it is imperative that investigation targets respond fully and on a timely basis. An incomplete or untimely LOI response results in the Commission wasting limited resources and time pursuing information that the Commission needs to complete its investigation.

B. Factual Background

10. Westel is incorporated and headquartered in Texas.⁴⁵ In 1981, the Commission approved the Company's application for authority to operate as a resale common carrier and to resell communication services and facilities of other common carriers on an interstate basis under section 214 of the Act.⁴⁶ Westel is an interexchange carrier that currently provides Voice over Internet Protocol (VoIP) over broadband connection, resold VoIP, resold long distance and toll-free service, resold unified communication services including voice mail and video.⁴⁷

11. Westel filed its first Annual Worksheet in 2002.⁴⁸ Generally, between April of 2002 and November of 2009, Westel's Annual and Quarterly Worksheet filings were not substantially late.⁴⁹ Beginning in February of 2010, however, Westel began missing filing deadlines, and in February 2011, the Company began not filing certain Worksheets at all.⁵⁰ More recently, between February 1, 2020, and May 1, 2023, Westel failed repeatedly to file or to file on time a total of 14 Worksheets.⁵¹ *First*, on February 28, 2020, Westel filed the February 2020 Quarterly Worksheet nearly one month late.⁵² *Second*, Westel failed to file the 2020 Annual Worksheet.⁵³ *Third*, Westel failed to file the May 2020 Quarterly Worksheet.⁵⁴ *Fourth*, on August 31, 2020, Westel filed the August 2020 Quarterly Worksheet nearly one

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⁴⁴ See *Neon Phone Serv., Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7974, para. 24 (2017) (*Neon Phone NAL*).

⁴⁵ Westel was incorporated on August 18, 1981. See Response to Letter of Inquiry, from Jason Danowsky, FosterDanowsky, LLP, Counsel to Westel, Inc., to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau at 6, Responses to Question 13-15 (May 9, 2022) (on file in EB-IHD-22-00033166) (LOI Response).

⁴⁶ See *id.* at 5, Response to Question 8.

⁴⁷ *Id.* at 6, Responses to Questions 13. Westel currently offers services in Arizona, Texas, Oklahoma, Kansas, and Missouri. *Id.* at 7, Response to Question 15.

⁴⁸ See Letter from Elfren Castro, Sr. Manager of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (July 10, 2023) (on file in EB-IHD-22-00033166) (USAC Letter).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The Company filed a revised February 2020 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁵³ USAC Letter, *supra* note 48, at 1. On May 8, 2022, Westel claimed it was preparing a 2020 Annual Worksheet, see LOI Response, *supra* note 45, at 7, Response to Question 16, but the Company has still not filed the Worksheet.

⁵⁴ Westel attempted to file the May 2020 Quarterly Worksheet after the May 1, 2020 deadline, but USAC rejected the filing because Westel did not file a completed Worksheet within the 45-day filing window for filing revisions to Quarterly Worksheets or late Quarterly Worksheets. See *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1426 (WCB 2020) (*2020 Annual Worksheet Instructions*); Universal Service Administrative Company, *When to File*, <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited June 22, 2023); USAC Letter, *supra* note 48, at 1.

month late.⁵⁵ *Fifth*, on December 15, 2020, Westel filed the November 2020 Quarterly Worksheet over six weeks late.⁵⁶ *Sixth*, Westel failed to file the February 2021 Quarterly Worksheet.⁵⁷ *Seventh*, on March 31, 2022, Westel filed the 2021 Annual Worksheet nearly one year late.⁵⁸ *Eighth*, Westel failed to file the May 2021 Quarterly Worksheet.⁵⁹ *Ninth*, the Company failed to file the August 2021 Quarterly Worksheet.⁶⁰ *Tenth*, the Company failed to file the November 2021 Quarterly Worksheet.⁶¹ *Eleventh*, on March 18, 2022, Westel filed its February 2022 Quarterly Worksheet nearly seven weeks late.⁶² *Twelfth*, on September 15, 2022, Westel filed its August 2022 Quarterly Worksheet nearly seven weeks late.⁶³ *Thirteenth*, The Company failed to file its 2023 Annual Worksheet.⁶⁴ *Fourteenth*, Westel failed to file its May 2023 Quarterly Worksheet.⁶⁵

12. Although USAC repeatedly contacted Westel to prompt the Company's compliance with the Commission's Worksheet filing requirements, the Company nonetheless has repeatedly failed to comply.⁶⁶ Thus, on September 13, 2021, USAC referred this matter to the Bureau for investigation of Westel's repeated failures to file Worksheets or file Worksheets on time.⁶⁷

⁵⁵ The Company filed a revised August 2020 Quarterly Worksheet after USAC created an estimated Worksheet. USAC Letter, *supra* note 48, at 1.

⁵⁶ The Company filed a revised November 2020 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁵⁷ *Id.*

⁵⁸ The Company filed a revised 2021 Annual Worksheet after USAC created an estimated Worksheet. *Id.*

⁵⁹ *Id.*

⁶⁰ USAC Letter, *supra* note 48, at 1.

⁶¹ On April 21, 2022, Westel attempted to file the November 2021 Quarterly Worksheet nearly six months late, but USAC rejected the filing because Westel did not file a completed Worksheet within the 45-day filing window for filing revisions to Quarterly Worksheets or late Quarterly Worksheets. *See id.*; Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions, Public Notice, 35 FCC Red 13671, 13743 (WCB 2020) (2021 Annual Worksheet Instructions).

⁶² The Company filed a revised February 2022 Quarterly Worksheet after USAC created an estimated Worksheet. USAC Letter, *supra* note 48, at 1.

⁶³ The Company filed a revised August 2022 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* The Company admits it failed to file the following Worksheets by the filing deadlines between February 2020 and February 2022: (1) February 1, 2020; (2) April 1, 2020; (3) May 1, 2020; (4) February 1, 2021; (5) April 1, 2021; (6) May 1, 2021; (7) August 1, 2021; (8) November 1, 2021; (9) February 1, 2022. LOI Response, *supra* note 45, at 7, Responses to Questions 16-17. The Company responded to the LOI on May 9, 2022, and subsequently failed to file or file timely the Worksheets due on August 1, 2022, April 1, and May 1, 2023.

⁶⁶ For example, on November 20, 2020, USAC contacted Westel regarding the November 2020 Quarterly Worksheet. On April 20, 2021, USAC contacted Westel regarding the 2021 Annual Worksheet. On August 6, 2021, USAC contacted Westel regarding the August 2021 Quarterly Worksheet. On November 10, 2021, USAC contacted Westel regarding the November 2021 Quarterly Worksheet. On February 17 and March 17, 2022, USAC contacted Westel regarding the February 2022 Quarterly Worksheet. On April 5, 2022, USAC contacted Westel regarding the Company's 2022 Annual Worksheet. On April 21, 2022, USAC contacted Westel regarding the February 2022 Quarterly Worksheet. USAC Letter, *supra* note 48, at 1-2.

⁶⁷ *Id.* at 2.

13. On February 7, 2022, the Bureau issued an LOI to Westel concerning the Company's compliance with requirements arising under the Act and the Commission's rules.⁶⁸ The Company partially responded to the Bureau's LOI on May 9, 2022.⁶⁹ Westel failed to respond to the Bureau document requests for certain financial data, including (a) the Company's three most recent federal income tax filings, and (b) financial statements for the three most recent years.⁷⁰ The Company has still not produced the required documentation to the Bureau.

14. In its LOI Response, Westel "acknowledges that the violations were continuous over a period of time," but in reference to the upward forfeiture adjustment factors in section 1.80(b)(10) of the Commission's rules,⁷¹ the Company claims: (a) the violations were not egregious; (b) the Company's ability to pay a forfeiture is limited; (c) the violations were not intentional; (d) Westel did not cause substantial harm; (e) there were no prior violations of FCC requirements; and (f) Westel did not obtain substantial economic gain through its rule violations.⁷² Westel admits that its violations were repeated.⁷³ Westel further claimed that its violations were corrected and the Company was developing procedures to ensure future compliance.⁷⁴

15. In reference to the downward forfeiture adjustment factors in section 1.80(b)(10) of the Commission's rules, the Company claims: (a) the violations were minor because they were not intentional, its consumers were not harmed, and the violations were not due to misrepresentation or dishonesty; (b) Westel has cooperated with the Commission's investigation; (c) the Company has a history of overall compliance; and (d) Westel will not be able to survive a substantial forfeiture.⁷⁵ Based on these claims, Westel requests the Commission not issue a forfeiture.⁷⁶ For the reasons discussed below, Westel's arguments provide no basis to refrain from proposing or reducing a forfeiture in this case.

III. DISCUSSION

A. Westel Apparently Violated Commission Rules and Orders by Failing to File Annual and Quarterly Worksheets by the Filing Deadlines

16. Based on evidence developed through the Bureau's investigation, the Company apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by failing to file or to file on time the Company's Worksheets due between February 1, 2020, and May 1, 2023.⁷⁷ Service providers,

⁶⁸ See LOI, *supra* note 1.

⁶⁹ See LOI Response, *supra* note 45. On March 9, 2022, Bureau staff granted Westel's request for an extension until May 9, 2022 to respond to the LOI, and Bureau staff and Westel entered into an agreement to toll the applicable statutes of limitation for 90 days. See Tolling Agreement executed by Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Tom Garner, Director, Westel, Inc. (Mar. 9, 2022) (Tolling Agreement) (on file in EB-IHD-22-00033166).

⁷⁰ See LOI Response, *supra* note 45, at 18, Responses to Document Requests 56-57 ("Westel will provide these documents in a supplemental response."). Westel was required to respond fully to the LOI by the response deadline, and the Company cannot grant itself an extension of time to respond.

⁷¹ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

⁷² LOI Response, *supra* note 45, at 1-2.

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

including interexchange carriers like Westel, must file Annual Worksheets by April 1 of each year, and Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year.⁷⁸

17. We consider each individual failure to file a Worksheet by the filing deadline a separate apparent violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders.⁷⁹ We find that the Company apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders 14 separate times by failing to file or to file on time Worksheets, which were due by the following deadlines: February 1, April 1, May 1, August 1, and November 1, 2020; February 1, April 1, May 1, August 1, and November 1, 2021; and February 1, August 1, 2022; April 1, and May 1, 2023.⁸⁰

B. Westel Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI Fully and by the Response Deadline

18. Section 403 of the Act gives the Commission broad power to compel service providers such as Westel to provide information and documents as directed by a Bureau LOI.⁸¹ The Commission has delegated to the Bureau authority to "conduct investigations . . . on its own initiative" of potential violations of the Act or the Commission's rules.⁸² When an entity subject to Commission jurisdiction fails to respond to a Bureau LOI, the entity violates a Commission order.⁸³

19. The Bureau directed Westel to provide information and documents related to the Company's compliance with the Act and Commission rules establishing filing and contributions requirements.⁸⁴ Westel did not respond to the Bureau's LOI fully. Westel failed to respond to the Bureau's document requests for (a) the Company's three most recent federal income tax filings, and (b) financial statements for the three most recent years. In its May 9, 2022 response to the LOI, Westel stated that it would provide the documents in a later response.⁸⁵ However, Westel was required to respond fully to the LOI by the response deadline, the Company cannot grant itself an additional extension of time to respond, and Westel has still not produced the documentation.

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⁷⁷ See, e.g., 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 61, at 13693; *2020 Annual Worksheet Instructions*, *supra* note 54, at 1363.

⁷⁸ E.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200.

⁷⁹ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 61, at 13693; *2020 Annual Worksheet Instructions*, *supra* note 54, at 1373; see also *Pacific Data Systems*, Notice of Apparent Liability for Forfeiture, DA 23-68, 2023 WL 1067981, at *4, para. 11 (EB Jan. 25, 2023) (*Pacific NAL*) (stating each individual failure to file a Worksheet by each filing deadline is considered a separate violation); *Telnexus LLC*, Notice of Apparent Liability for Forfeiture, DA 22-227, 2022 WL 74189, *3, para. 11 (EB Mar. 9, 2022) (*Telnexus NAL*).

⁸⁰ See generally USAC Letter, *supra* note 48.

⁸¹ 47 U.S.C. § 403; see also *id.* § 154(i).

⁸² 47 CFR § 0.111(a)(17); see 47 U.S.C. § 155(c)(3) ("Any order . . . or action made or taken pursuant to any [] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission.").

⁸³ See, e.g., 47 U.S.C. § 155(c)(3); *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2530, para. 20 (2015), Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 2 (2015).

⁸⁴ See LOI, *supra* note 1.

⁸⁵ See LOI Response, *supra* note 45, at 18, Responses to Document Requests 56-57.

20. The Commission's authority to conduct investigations and to compel entities to provide information and documents sought during investigations is well-established.⁸⁶ Westel has failed to provide a full response to the LOI. In particular, the Company has not provided responses to Document Requests 56 and 57. We thus find that the Company apparently willfully violated a Commission order by failing to respond fully to the LOI by the response deadline.⁸⁷

IV. PROPOSED FORFEITURE

21. 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."⁸⁸ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸⁹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,⁹⁰ and the Commission has so interpreted the term in the section 503(b) context.⁹¹ We therefore find that the Company's failures to file or to file on time a total of 14 Worksheets required between February 1, 2020, and May 1, 2023 were apparently willful and repeated violations. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if "the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability."⁹² In this case, we propose forfeitures for the Company's apparent violations for failures to (a) file the Worksheets due by August 1, 2022, April 1, 2023, and May 1, 2023, and (b) submit a complete response the Bureau's LOI by May 9, 2022.⁹³

22. For the apparent violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against a service provider such as Westel 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.⁹⁴

⁸⁶ Section 403 of the Act grants the Commission both the authority to institute inquiries and "the power to make and enforce any order or orders" relating to its inquiries into compliance with the Act. 47 U.S.C. § 403. Section 0.111(a)(17) of the Commission's rules delegates this authority to the Bureau. 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau the authority to "[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office."). Additionally, section 4(i) of the Act authorizes the Commission to "issue such orders, not inconsistent with this Act as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 4(j) of the Act states that "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." 47 U.S.C. § 154(j).

⁸⁷ See *infra* para. 21 ("willful" means the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law) (quoting 47 U.S.C. § 312(f)(1)).

⁸⁸ 47 U.S.C. § 503(b)(1)(B).

⁸⁹ 47 U.S.C. § 312(f)(1).

⁹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

⁹¹ See, e.g., *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁹² 47 U.S.C. § 503(b)(6)(B).

⁹³ The statute of limitations for the earliest of these apparent violations, which occurred on May 9, 2022, expires August 7, 2023. See *id.*; Tolling Agreement, *supra* note 69.

In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁹⁵ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.⁹⁶ 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.”⁹⁷

23. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

A. Proposed Forfeiture for Apparent Failures to File Worksheets

24. We propose a forfeiture of \$300,000, which includes a \$100,000 forfeiture for each of the three failures to file Worksheets by the deadlines established on (1) August 1, 2022, (2) April 1, 2023, and (3) May 1, 2023. Section 1.80 of the Commission’s rules specifies a base forfeiture of \$3,000 for failure to file required forms or information.¹⁰¹ Given the importance of the Worksheet filing requirements, the Commission has consistently applied an upward adjustment and proposed a forfeiture of \$50,000 for each failure of a service provider to file timely or accurate Worksheets.¹⁰² However, given the accumulating record of non-compliance with the requirements to file accurate Worksheets by each filing deadline, service providers failing to comply with these requirements have been provided notice that the Commission could impose substantially higher upward adjustments for prior violations and for repeated

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⁹⁴ 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 Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356 (EB Dec. 23, 2022); 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).

⁹⁵ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

⁹⁶ 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

⁹⁷ 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) (*1997 Forfeiture Guidelines Order*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁹⁸ *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

⁹⁹ 47 CFR § 1.80(b)(10), Tbl. 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”).

¹⁰⁰ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹⁰¹ *Id.*

¹⁰² E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015) (*PTT Forfeiture Order*); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011) (*ADMA Forfeiture Order*); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006) (*Globcom Forfeiture Order*).

or continuous violations.¹⁰³ An enforcement action for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b) of the Act.¹⁰⁴

25. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the Worksheet filing requirements to be very serious.¹⁰⁵ The Commission, USAC, and the administrators of the TRS Fund, LNP, and NANP rely on the data reported in Worksheets to determine accurate amounts that service providers owe for important funding requirements implemented under the Act.¹⁰⁶ When a service provider fails to report its revenues accurately in its Worksheets by each filing deadline, the service provider could prevent the USF, TRS, LNP and NANP administrators and the Commission from fully invoicing the service provider for federal payment obligations implemented under the Act.¹⁰⁷ Westel's failure to file its Worksheets between February 1, 2020, and May 1, 2023, had serious implications for the administration of these funding requirements. The Commission and the administrators acting on its behalf depend on every service provider's compliance with the periodic Worksheet filing requirements. A service provider's failure to file its Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and nondiscriminatory basis to the USF,¹⁰⁸ and to these other important funding mechanisms arising under the Act. We have also considered the degree of the Company's culpability and repeated violations.¹⁰⁹ The Company has an important obligation to file accurate Worksheets by the filing deadlines every year, and Westel has apparently failed to comply for over three years. Westel's culpability is also substantial given the Company's Worksheet filing failures that occurred after the Company was the subject of an enforcement action for CPNI filing requirements.¹¹⁰ The Company is thus culpable for its repeated filing failures.

26. In the Company's May 9, 2022 LOI Response, the Company incorrectly claimed that its filing violations were not egregious.¹¹¹ After the Bureau issued the February 7, 2022 LOI, Westel filed the August 2022 Quarterly Worksheet approximately seven weeks late, and failed to file the 2023 Annual Worksheet, and the May 2023 Quarterly Worksheet. We find that the Company's 14 filing failures, with three of the failures occurring during the Bureau's investigation, were egregious. Westel also claims the Company's filing violations were not intentional.¹¹² However, as addressed above, we propose forfeitures

¹⁰³ E.g., *Pacific NAL*, *supra* note 79, at *5, para. 15 (providing notice of upward adjustments up to statutory maximum forfeitures for prior violations and for repeated or continuous violations); *PayG, LLC b/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 WL 4245060, *13, para. 41 (Sept. 14, 2022) (*PayG NAL*) (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations); *see also Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385, at *8, para. 26 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (providing notice of future upward adjustments to \$100,000 or more).

¹⁰⁴ *See* 47 U.S.C. § 503(b); *Pacific NAL*, *supra*, note 79, at *5, para. 15; *PayG NAL* at *13, para. 41.

¹⁰⁵ *See* 47 U.S.C. § 503(b)(2)(E).

¹⁰⁶ *See* 47 CFR §§ 1.1154, 1.1157, 52.17(a), 52.32, 54.711, 64.604(c)(5)(iii).

¹⁰⁷ *See id.* §§ 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B); *Telseven NAL*, *supra* note 8, at 6643-44, 6646-48, paras. 15, 23-25; *Telseven Forfeiture Order*, *supra* note 8, at 1636, para. 20; *Telrite NAL*, *supra* note 35, at 7241-42, para. 24.

¹⁰⁸ *See* 47 U.S.C. § 254(d).

¹⁰⁹ *See id.* § 503(b)(2)(E); 47 CFR § 1.80, Note to Para. (b)(10).

¹¹⁰ *See Annual CPNI Certification*, Omnibus Notice of Apparent Liability For Forfeiture, 24 FCC Rcd 2299, 2305 & Appx. 1 (EB 2009) (*2009 Omnibus CPNI NAL*) (notifying Westel and other companies of apparent liability for forfeiture in the amount of \$20,000 for the willful or repeated failure to comply with CPNI certificate filing requirements), *consent decree adopted, Westel, Inc.*, Order, 25 FCC Rcd 12964 (EB 2010).

¹¹¹ LOI Response, *supra* note 45, at 1.

under section 503(b)(1)(B) of the Act for the Company’s “willful” and “repeated” failures to comply with the Commission’s Worksheet filing requirements.¹¹³ The Commission need not find that Westel intended to violate the Commission’s rules and orders in order to propose a forfeiture.¹¹⁴ Westel also claims the Company is unable to pay a forfeiture.¹¹⁵ The Company has provided no evidence to support its inability to pay claim. Westel is free to submit documentation supporting this claim in a response to this NAL.¹¹⁶

27. Westel incorrectly claims that the Company did not cause substantial harm nor obtain substantial economic gain through its rule violations and that the filing violations were minor.¹¹⁷ As addressed above, a service provider that fails to comply with the Commission’s Worksheet filing requirements can either entirely avoid or underpay the USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements by the payment deadlines. This places an unfair burden on service providers that fully comply with the Commission’s filing and payment requirements on a timely basis and allows delinquent service providers to derive an unfair competitive advantage over compliant service providers.¹¹⁸ We therefore reject Westel’s claims that its Worksheet filing violations were minor, did not cause substantial harm, and did not provide the Company a substantial economic gain.¹¹⁹

28. Westel also incorrectly claims that it did not previously violate any FCC requirements.¹²⁰ In fact, however, the Commission previously found that Westel violated the Commission’s Customer Proprietary Network Information (CPNI) certification filing requirements.¹²¹ Having previously been the subject of Commission enforcement action for compliance with a Commission filing requirement, the Commission expects that Westel would implement effective measures to ensure the Company’s future compliance with all its Commission filing obligations, including the Worksheet filing requirements. Although Westel claimed on May 9, 2022, that its filing violations were corrected,¹²² the Company has still not filed its 2020 Annual Worksheet. Westel also stated that it was cooperating with the Commission’s investigation,¹²³ yet it failed to respond completely to the Bureau’s document requests for certain financial data, including (a) the Company’s three most recent federal income tax filings, and (b)

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¹¹² *Id.* at 1-2.

¹¹³ 47 U.S.C. § 503(b)(1)(B).

¹¹⁴ *See supra* para. 20.

¹¹⁵ LOI Response, *supra* note 45, at 2.

¹¹⁶ In analyzing financial hardship claims, the Commission has found that “[i]n general, gross revenues are the best indicator of [a company’s] ability to pay a forfeiture.” *Unipoint Techs., Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014).

¹¹⁷ LOI Response, *supra* note 45, at 1-2.

¹¹⁸ *See, e.g., Telseven NAL, supra* note 8, at 6638-39, para. 6; *Globalcom NAL, supra* note 37, at 3484, para. 12; *LPSI NAL, supra* note 37, at 9977-78, para. 9.

¹¹⁹ Given the importance of the Worksheet filing compliance to the USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements, the associated unfair advantage gained through Westel’s noncompliance, and the resulting disadvantage to Westel’s competitors that comply with the filing and payment requirements, we likewise reject Westel’s argument that the filing violations were minor because they were unintentional, its customers were not harmed, and the violations were not due to misrepresentation or dishonesty. *See* LOI Response, *supra* note 45, at 2.

¹²⁰ *See id.* at 2.

¹²¹ *See 2009 Omnibus CPNI NAL, supra* note 110.

¹²² *See* LOI Response, *supra* note 45, at 2.

¹²³ *See id.* at 2.

financial statements for the three most recent years.¹²⁴ Westel also claimed that it was developing procedures to ensure future compliance with the Worksheet filing requirements,¹²⁵ yet the Company failed to file the Worksheets due by April 1, 2023 and May 1, 2023. Given Westel's long history of Worksheet and CPNI certification filing failures, we also reject the Company's claim that it has a history of overall compliance.¹²⁶

29. In summary, we reject Westel's arguments to not issue or reduce the proposed forfeiture. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements and for repeated or continuous violations.¹²⁷ Consistent with Commission precedent,¹²⁸ we apply an upward adjustment for the repeated nature of the Company's violations, including the Company's failures to file timely a total of 14 Worksheets between February 1, 2020, and May 1, 2023.¹²⁹

30. We thus apply an upward adjustment to the base forfeiture that not only reflects the extent and gravity of the violation, and the substantial harm to federal cost recovery requirements by not filing Worksheets,¹³⁰ but also reflects the repeated violations in this case.¹³¹ We thus propose a forfeiture of \$300,000, which represents a \$100,000 forfeiture for each of the three failures to file Worksheets by the deadlines established on August 1, 2022; April 1, 2023; and May 1, 2023.

B. Proposed Forfeiture for Apparent Failure to Respond Fully to a Bureau LOI

31. As noted above, a letter of inquiry is an order of the Commission, and recipients that fail to provide a complete response on a timely basis can be subjected to a forfeiture penalty.¹³² It is imperative that service providers provide timely, accurate, and complete responses to investigative inquiries to demonstrate their full compliance with the requirements of the Act and the Commission's rules. The Company's failure to provide a timely and complete response to the LOI threatens to compromise the Commission's ability to investigate adequately violations of important federal regulatory requirements.¹³³

¹²⁴ See *id.* at 18, Responses to Document Requests 56-57 ("Westel will provide these documents in a supplemental response."). Westel was required to respond fully to the LOI by the response deadline, and the Company failed to do so.

¹²⁵ See *id.* Corrective action taken by an investigation target to come into compliance with Commission requirements is expected, and does not nullify or mitigate a forfeiture penalty. See, e.g., *Hinton Tel. Co.*, 30 FCC Rcd 2308, 2311, para. 10 (2015), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 11614 (2015); *AT&T Wireless Servs., Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21871, para. 14 (2002); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994).

¹²⁶ See LOI Response, *supra* note 45, at 2.

¹²⁷ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹²⁸ See *Pacific NAL*, *supra* note 79, at *5, paras. 15-17. See also *PayG NAL*, *supra* note 104, at *13, para. 41; *Correct Solutions NAL*, *supra* note 103, at *8, para. 26.

¹²⁹ See USAC Letter, *supra* note 48. Westel admits that its Worksheet filing violations were repeated. See LOI Response, *supra* note 45, at 2.

¹³⁰ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10); *PTT Forfeiture Order*, *supra* note 102, at 14707, para. 19; *ADMA Forfeiture Order*, *supra* note 102, at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, *supra* note 102, at 4720-21, 4727, paras. 26-28, 31, 45.

¹³¹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *Pacific NAL*, *supra* note 79, at *5, para. 15; *PayG NAL*, *supra* note 104, at *13, para. 41; *Correct Solutions NAL*, *supra* note 103, at *8, para. 26.

¹³² See *supra* para. 9.

¹³³ See *Neon Phone NAL*, *supra* note 44, at 7974, para. 24.

32. Section 1.80 of the Commission's rules specifies a base forfeiture of \$4,000 for a party's failure to respond to Commission communications.¹³⁴ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹³⁵ In the past, the Bureau has proposed a \$100,000 forfeiture for the intentional and egregious failure of a company to respond to an LOI.¹³⁶ We find that Westel's failure to respond fully to the LOI in this case was intentional and egregious and therefore propose a forfeiture of \$100,000 for the apparent violation.¹³⁷

33. In assessing a forfeiture amount we consider the nature, extent and gravity of the failure to respond completely to the Bureau's LOI.¹³⁸ Westel's response failures have serious implications on the Commission's ability to investigate the Company and ensure compliance with Commission requirements established under the Act. The Company has an important obligation to respond to a Bureau LOI and is thus highly culpable for its failure to comply. Furthermore, in this instance, the Company requested and received a significant extension of time to respond to the LOI and still did not fully respond. The Company's sustained failure to provide complete responses needlessly increased the difficulty of the Bureau's investigation, hindered the Bureau's efforts to assess the Company's compliance with Commission requirements, and has caused the expenditure of additional Commission resources.

C. Total Proposed Forfeiture

34. Consistent with the Act and the Commission's rules,¹³⁹ 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 four hundred thousand dollars (\$400,000). The total proposed forfeiture includes a proposed forfeiture of (a) three hundred thousand dollars (\$300,000) for the Company's apparently willful and repeated violations resulting from its failures to file three Worksheets; and (b) one hundred thousand dollars (\$100,000) for the Company's apparently willful violation in connection with its failure to respond fully to an LOI by the response deadline.¹⁴⁰

V. CONCLUSION

35. We have determined that Westel apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by failing to file or to file timely its Worksheets between February 1, 2020, and May 1, 2023,¹⁴¹ and a Commission order by failing to respond fully to the Bureau's LOI by the response deadline.¹⁴²

¹³⁴ 47 CFR § 1.80, Tbl. 1 to Para. (b)(10).

¹³⁵ *1997 Forfeiture Guidelines Order*, *supra* note 97, at 17098–99, para. 22.

¹³⁶ *See Quadrant Holdings, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390, *5, paras. 16-17 (EB Aug. 5, 2022) (“The egregiousness and intentional nature of [the] misconduct, as well as [the company's] ability to pay, considered in conjunction with the deterrent effect of the proposed forfeiture, dictate that [the company] be held liable for an amount significantly higher than the base forfeiture set for the relevant misconduct.”).

¹³⁷ *See id.*

¹³⁸ *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

¹³⁹ *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹⁴⁰ 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.

¹⁴¹ *See, e.g.*, 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁴² *See* LOI, *supra* note 1.

VI. ORDERING CLAUSES

36. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Westel, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four hundred thousand dollars (\$400,000) for its willful and repeated violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders,¹⁴³ and its willful violation of a Commission order to respond to the Bureau's LOI.¹⁴⁴

37. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Westel, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 40 below.

38. In order for Westel, Inc. to pay the proposed forfeiture, Westel, Inc. shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@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, Westel, Inc. shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@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:¹⁴⁵

- 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 159¹⁴⁶ or printed CORES form¹⁴⁷ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to 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).¹⁴⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

¹⁴³ See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁴⁴ See LOI, *supra* note 1.

¹⁴⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹⁴⁶ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁴⁷ 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>.

¹⁴⁸ 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.

39. 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. 20554.¹⁴⁹ 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.

40. 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, 47 CFR §§ 1.16, 1.80(g)(3). 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 Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@fcc.gov.

41. 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.¹⁵⁰ 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

¹⁴⁹ See 47 CFR § 1.1914.

¹⁵⁰ 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.¹⁵¹

42. **IT IS FURTHER ORDERED** that within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, (a) pursuant to sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders,¹⁵² Westel, Inc. **SHALL FILE** the Company's 2020 and 2023 Annual Worksheets and any pending 2023 Quarterly Worksheets that were due within 45 days of the release date of this Notice of Apparent Liability for Forfeiture and Order; and (b) pursuant to the Bureau's LOI, **SHALL PRODUCE** a complete response to the Bureau's LOI.¹⁵³

43. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail, return receipt requested, to Tom Garner, Chairman, Westel, Inc., 12015 Park Thirty Five Circle, Suite 1208, Austin, Texas 78753 and Jason Danowsky, Attorney, FosterDanowsky, LLP, 904 West Avenue, Suite 107, Austin, Texas 78701.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵¹ 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).

¹⁵² See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁵³ See LOI, *supra* note 1.