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

In the Matter of	)	File No. EB-08-IH-1386
	)	
Telseven, LLC	)	NAL/Acct. No. 201232080024
	)	
Patrick B. Hines	)	FRN 0009834466
	)	
Apparent Liability for Forfeiture	)	FRN 0021816459

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 14, 2012 **Released: June 14, 2012**

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (*NAL*), we find that Telseven, LLC (Telseven or Company) apparently violated: (1) Section 254(d) of the Communications Act of 1934, as amended (Act), and Section 54.706 of the Commission's rules by willfully or repeatedly failing to contribute fully to the Universal Service Fund (USF);[1] (2) Section 54.711(a) of the Commission's rules by willfully or repeatedly filing inaccurate FCC Forms 499-Q;[2] (3) Section 251(e)(2) of the Act and Section 52.17 the Commission's rules by willfully or repeatedly failing to make full contributions to the administration of the North American Numbering Plan (NANP);[3] (4) Section 251(e)(2) of the Act and Section 52.32(a) of the Commission's rules by willfully or repeatedly failing to make full contributions to the administration of local number portability (LNP);[4] and (5) Sections 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully or repeatedly failing to pay regulatory fees when due.[5] Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Telseven is apparently liable for forfeiture penalties totaling one million, seven hundred fifty-eight thousand, four hundred sixty-five dollars ($1,758,465).

II. BACKGROUND

2. The Act codifies Congress's historic commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In

[1] 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

[2] 47 C.F.R. § 54.711(a). Form 499-Q is also known as the Quarterly Telecommunications Reporting Worksheet or Quarterly Worksheet.

[3] 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17.

[4] 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.32(a).

[5] 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

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."[6] In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to register with the Commission, comply with annual and quarterly filing requirements, and contribute to the USF based on their interstate and international end-user telecommunications revenues.[7] The Universal Service Administrative Company (USAC) currently administers the USF.[8] USAC uses contributors' revenue projections, as reported on Form 499-Q, to determine each contributor's monthly universal service contribution obligation and bills the carrier accordingly each month.[9] Consistent with the Debt Collection Improvement Act of 1996 (DCIA),[10] USAC transfers invoices for USF contributions that have become over 90 days delinquent to the Commission for further action to collect the outstanding debt.[11] A provider's failure to pay its share into the USF skews the playing field by giving the provider an economic advantage over its competitors, who must then shoulder more than their fair share of the costs of universal service.

3. 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.[12] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements . . . shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[13] In carrying out this statutory directive, the Commission adopted Section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute on the basis of their end-user telecommunications revenues for the prior calendar year on a competitively neutral basis to meet the costs of numbering administration.[14]

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[6] 47 U.S.C. § 254(d).

[7] 47 C.F.R. §§ 54.706(b), 54.711, 64.1195; *see also* 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.").

[8] 47 C.F.R. § 54.701(a).

[9] *See id.* §§ 54.709(a), 54.713(b). The monthly bills are subject to an annual true-up based on the actual revenues that contributors report on FCC Form 499-A. *See Federal-State Joint Board on Universal Service, Petition for Reconsideration Filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5755, para. 19 & n.32 (2001) (*Quarterly Reporting Order*); 47 C.F.R. § 54.709(a). Form 499-A is also known as the Annual Telecommunications Reporting Worksheet or Annual Worksheet.

[10] *See* Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358.

[11] *See* USAC, *Understanding Invoices*, *available at* http://www.universalservice.org/cont/invoices/ (last visited Apr. 28, 2012). Debt collection procedures may include further administrative efforts by both the Commission and the United States Treasury or, as appropriate, Commission referral of the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917. Collection efforts may result in additional charges, including interest and penalties, as provided under 31 U.S.C. § 3717, and administrative charges pursuant to 47 C.F.R. §§ 1.1940, 54.713 and 31 C.F.R. § 285.12(j).

[12] 47 U.S.C. § 251(e)(1).

[13] *Id.* § 251(e)(2).

[14] 47 C.F.R. § 52.17.

4. Section 251(b)(2) of the Act establishes that every telecommunications carrier has a duty to provide local number portability in accordance with requirements established by the Commission.[15] Section 251(e)(2) of the Act requires, in pertinent part, that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[16] In implementing this statutory directive, the Commission adopted Section 52.32 of its rules, which requires, among other things, that all telecommunications carriers contribute to the costs of local number portability on the basis of their end-user telecommunications revenues for the prior calendar year.[17]

5. Pursuant to Section 1.1151 of the Commission's rules, providers of interstate telecommunications services and other providers must pay regulatory fees to the Commission to cover the costs of certain regulatory activities.[18] In particular, Sections 1.1154 and 1.1157(b)(1) of the Commission's rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.[19] Such fees must be paid on an annual basis,[20] and failure to do so subjects a carrier to late payment penalties, as well as to possible revocation of its operating authority.[21] Further, under its "red light rule," the Commission withholds action on applications or requests for benefits from any entity that has failed to timely meet its USF, TRS, NANP, and LNP contribution obligations or to pay its regulatory fees when due, and ultimately dismisses such applications or other requests if the delinquencies are not resolved.[22]

6. The Commission has established specific procedures for the administration of the USF, numbering, LNP, regulatory fee, and other associated federal regulatory programs. The procedures include the requirement that each telecommunications provider file accurate company-specific revenue data on FCC Form 499-A annually.[23] With certain exceptions, interstate telecommunications providers also must file good faith estimates of their projected revenue on Form 499-Q.[24] The numbering program and LNP administrators and the Commission use the data reported on Form 499-A to determine and bill for the telecommunications provider's LNP administration, numbering administration, and regulatory fee payment obligations, and USAC uses that data as well as the data reported on Form 499-Q to determine

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[15] 47 U.S.C. § 251(b)(2).

[16] *Id.* § 251(e)(2).

[17] 47 C.F.R. § 52.32.

[18] Section 9(a)(1) of the Act directs the Commission to "assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities." 47 U.S.C. § 159(a)(1); *see also* 47 C.F.R. § 1.1151.

[19] 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

[20] *Id.* § 1.1157(b)(1). Section 1.1154 of the Commission's rules sets forth the schedule of annual regulatory charges and filing locations for common carrier services. *See* 47 C.F.R. § 1.1154.

[21] *See* 47 U.S.C. § 159(c)(1), (c)(3).

[22] 47 C.F.R. § 1.1910. The "red light rule" took effect on November 1, 2004. *See FCC Announces Brief Delay in Enforcement of Red Light Rule*, Public Notice, 19 FCC Rcd 19452 (2004).

[23] *See* 47 C.F.R. § 54.711(a); *see also, e.g.*, FCC Form 499-A Telecommunications Reporting Worksheet − Annual Filing, *available at* http://transition.fcc.gov/Forms/Form499-A/499a-2012.pdf (last visited May 15, 2012).

[24] *See* 47 C.F.R. § 54.711(a); *Quarterly Reporting Order*, 16 FCC Rcd at 5755, para. 19; *see also FCC Form 499-Q Telecommunications Reporting Worksheet − Quarterly Filing for Universal Service Contributors*, *available at* http://www.fcc.gov/Forms/Form499-Q/499q-2012.pdf (last visited May 15, 2012).

and bill for the provider's USF contribution obligations.[25] Carriers must pay their contribution invoices in a timely manner,[26] and the Commission's rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.[27]

7. Telseven is a Florida-based company that held itself out and registered with the Commission[28] as a "provider of interstate telecommunications services."[29] Telseven described its telecommunications service as an "interstate Enhanced Number Assistance Directory Service" (ENADA).[30] This service, according to Telseven, offered consumers the ability to obtain information about recently disconnected or out-of-service toll free numbers.[31] A consumer using this service would

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[25] *See* 47 C.F.R. §§ 1.1154 (regulatory fees), 52.17 (numbering), 52.32 (LNP), 54.709 (USF).

[26] *See, e.g.*, 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made."); *Proposed Fourth Quarter 2011 Contribution Factor*, Public Notice, 26 FCC Rcd 12943, 12946 (Off. Managing Dir. 2011) ("Contribution payments are due on the date shown on the invoice."); *see also* 47 C.F.R. § 54.713(b) (noting that if a USF "contributor fails to make full payment on or before the date due of . . . monthly invoice provided by the Administrator, the payment is delinquent"). The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC, other program administrator, or the Commission. *See, e.g.*, 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). For instance, a carrier that does not file Form 499-A or Form 499-Q may not receive an invoice from USAC, but is nonetheless required to contribute to the USF, unless its revenues are considered *de minimis*. *See Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896, para. 5 n.22 (2003) (*Globcom NAL*) (subsequent history omitted). In the case of USF contributions, providers whose contribution obligation in a given year is less than $10,000 are considered *de minimis* and exempted from contributing to the USF for that year. *See* 47 C.F.R. § 54.708. Filers do not calculate the amounts that they must contribute in the Quarterly and Annual Worksheets. Rather, the USF, TRS, NANP, and LNP administrators use the revenue information on these Worksheets to calculate a funding base and individual contributions for each support mechanism. *See, e.g.*, 2012 Telecommunications Worksheet Instructions (FCC Form 499-A) at 31, *available at* http://www.fcc.gov/document/2012-form-499-instructions (last visited May 9, 2012).

[27] 47 C.F.R. § 54.713.

[28] *See* Telseven, LLC "Registration Detail," *available at* https://fjallfoss.fcc.gov/coresWeb/searchDetail.do?frn=0009834466 (last visited May 15, 2012). Telseven also obtained authorization, pursuant to Section 214 of the Communications Act and Section 63.18 of the Commission's rules, to provide international telecommunications services. *See International Authorizations Granted*, Public Notice, 19 FCC Rcd 4036 (Int'l Bur. 2004).

[29] Telseven, LLC, d/b/a Calling 101 10 275, Calling 10 1515 800, Calling 10 10 141, *Application for Authority to Provide Service in Accordance with Section 63.18(e)(2) of the Rules*, Attach. 1 at Response to Question 9 (filed Feb. 6, 2004) ("Telseven . . . is a competitive provider of interstate telecommunications services."), *available at* http://licensing.fcc.gov/cgibin/ws.exe/prod/ib/forms/reports/swr031b.hts?q_set=V_SITE_ANTENNA_FREQ.file_numberC/File+Number/%3D/ITC2142004020900047&prepare=&column=V_SITE_ANTENNA_FREQ.file_numberC/File+Number (last visited May 14, 2012); FCC Form 499 Filer Database Detailed Information, Filer Identification for Telseven, *available at* http://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=823700 (last visited May 11, 2012) (based on Telseven's Form 499 filings, listing all states except Alaska and Nevada as jurisdictions in which Telseven provides telecommunications services); *see* Letter from Wendy M. Creeden, Counsel for Telseven, LLC, Sullivan & Worcester, LLP, to Elizabeth Mumaw, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at Responses to Questions 1–2 (Sept. 22, 2008) (on file in EB-08-IH-1386) (*Telseven Sept. 22 Letter*).

[30] *Telseven Sept. 22 Letter* at Response to Question 2.

[31] *See* Telseven, LLC, Calling 10, LLC d/b/a California Calling 10, and Patrick Hines, Response to the Order Instituting Investigation and Denial of All Assertions of Possible Violation of California Law of Telseven, LLC, Calling 10, LLC d/b/a California Calling 10, and Patrick Hines, an Individual, Case No. I.10-12-010, at 9-10 (Cal. Pub. Util. Comm'n, filed Jan. 21, 2011) (*Telseven Response to Cal. Pub. Util. Comm'n Investigation Order*).

contact Telseven by dialing one of the approximately one million such numbers that Telseven controlled.[32] A consumer dialing one of these numbers typically heard a message offering Telseven's assistance in finding the current toll-free number of the party the consumer was trying to reach.[33] A recorded message would then provide the consumer with an "equal access code" (*i.e.*, dial-around number) for contacting Telseven's directory assistance platform in Nevada.[34] Consumers dialing this equal access code would have their calls transmitted to the Nevada platform by Telseven, rather than by the consumer's prescribed long distance carrier.[35] Since Telseven did not offer service in Nevada, all calls using this equal access number were interstate long distance calls.

8. Telseven imposed per call charges on many of the consumers who contacted its Nevada platform. These charges included, in addition to any fees that Telseven imposed for transmission to the Nevada platform and the other aspects of Telseven's purported service, a per call "Federal Universal Service Fund charge."[36] Telseven also "charge[d] an administrative recovery fee of $1.65 in any month" the consumer dialed its "directory assistance service . . . to offset the cost Telseven incurs in complying with regulatory obligations" including "the cost of complying with the Federal Universal Service Charge."[37]

9. On July 2, 2008, the Enforcement Bureau (Bureau) issued a letter of inquiry (LOI) to Telseven seeking information about its compliance with the USF contribution rules and other related regulatory obligations.[38] On September 22, 2008, Telseven responded to the LOI.[39] In response to the Bureau's requests for additional financial information and the identity of all Telseven affiliates, Telseven filed supplemental information on December 18, 2009, June 15, 2010, and July 12, 2010.[40] The information developed through the Bureau's investigation indicates that Telseven apparently failed to fully and timely contribute to the USF and the NANP and LNP cost recovery mechanisms, provide good

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[32] *See* Cal. Pub. Util. Comm'n, Order Instituting Investigation into the Operations of Telseven, LLC, Calling 10, LLC, and Patrick Hines, Case No. I.10-12-010, at 7 (issued Dec. 21, 2010) (*Cal. Pub. Util. Comm'n Investigation Order*); Post-Hearing Brief of Consumer Protection & Safety Div., Cal. Pub. Util. Comm'n, Case No. I.10-12-010, at 29 (filed Apr. 6, 2012) (*Cal. Pub. Util. Comm'n Post-Hearing Brief*); Cal. Pub. Util. Comm'n, Telseven Hearing, Testimony of Patrick B. Hines, Case No. I.10-12-010, at 389 (Nov. 17, 2011).

[33] *See Cal. Pub. Util. Comm'n Post-Hearing Brief* at 32.

[34] *See Telseven Response to Cal. Pub. Util. Comm'n Investigation Order* at 10.

[35] *See* Cal. Pub. Util. Comm'n, Opening Brief of Calling 10, LLC d/b/a California Calling 10. Telseven, LLC and Patrick Hines, Case No. I.10-12-010, at 41 (Cal. Pub. Util. Comm'n, filed Apr. 6, 2011).

[36] *See* "Telseven.com – Welcome to Telseven LLC," *available at* http://telseven.com (Jan. 23, 2012) (on file in EB-08-IH-1386).

[37] *See* "Telseven.com – Rates," *available at* http://telseven.com/rate.html (Jan. 23, 2012) (on file in EB-08-IH-1386).

[38] Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Patrick Hines, Chief Executive Officer, Telseven (Jul. 2, 2008) (on file in EB-08-IH-1386).

[39] *Telseven Sept. 22 Letter.*

[40] Letter from Wendy M. Creeden, Counsel for Telseven, to Robert B. Krinsky, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 18, 2009) (on file in EB-08-IH-1386); Letter from Kathy L. Cooper, Counsel for Telseven, to Michele Berlove, Deputy Div. Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Jun. 15, 2010) (on file in EB-08-IH-1386); Letter from Kathy L. Cooper, Counsel for Telseven, to Robert B. Krinsky, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (Jul. 12, 2010) (on file in EB-08-IH-1386).

faith estimates of its projected telecommunication revenue in its Quarterly Worksheets, and pay its annual regulatory fees to the Commission.[41]

10. On April 20, 2012, Telseven filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division.[42] Telseven informed the Bureau of this Chapter 7 bankruptcy filing on April 23, 2012.[43] By April 26, 2012, Telseven's Internet website stated that the Company is "no longer providing services."[44]

III. DISCUSSION

11. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[45] 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.[46] 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,[47] and the

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[41] *See Telseven Sept. 22 Letter* at Response to Questions 9, 11–14; *see also, e.g.*, E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 31, 2012, 13:28 EDT) (attaching USAC billing history for Telseven); E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 14, 2012, 9:20 EDT); E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 12, 2012, 11:41 EDT); E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 13, 2012, 14:04 EDT) (Fourth Theobald E-mail); E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 1, 2012, 9:04 EDT) (Fifth Theobald E-mail); E-mail from Fred Theobald, USAC, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (May 2, 2012, 13:17 EDT) (Sixth Theobald E-mail); E-mail from Heather Bambrough, Welch, LLP, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 24, 2012, 12:16 EDT) (regarding Telseven's NANP payment deficiency); E-mail from Heather Bambrough, Welch, LLP, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 24, 2012, 13:49 EDT) (Second Bambrough E-mail); E-mail from Karen Laffey, Neustar, Inc., to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 27, 2012, 16:54 EDT) (E-mail from Karen Laffey, Neustar, Inc., to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 23, 2012, 12:00 EDT) (Second Laffey E-mail) (attaching spreadsheet listing delinquent invoice amounts); E-mail from Ann Monahan, Financial Management Specialist, FCC Office of the Managing Director (Feb. 3, 2012, 9:29 EDT) (First Monahan E-mail); E-mail from Ann Monahan, Financial Management Specialist, FCC Office of the Managing Director (Feb. 6, 2012, 16:09 EDT).

[42] Notification from Jason B. Burnett and Paige A. Wagner, GrayRobinson, P.A., Counsel for Telseven, Notice of Filing Chapter 7 Bankruptcy, U.S. Bankr. Ct., Mid. Dist. Fla., Jacksonville Div., Case No.: 3:11-bk-2682-PMG (Apr. 23, 2012) (on file in EB-08-IH-1386) (stating that on April 20, 2012 Telseven had filed for Chapter 7 bankruptcy).

[43] *Id.*

[44] *See* Telseven, LLC Homepage, *available at* http://telseven.com/ (last visited Apr. 26, 2012) ("Telseven has filed a Chapter 7 Bankruptcy proceeding in Jacksonville, Florida, Case No. 3:12-bk-02683. The company is no longer providing services.").

[45] *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

[46] 47 U.S.C. § 312(f)(1).

[47] *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

Commission has so interpreted the term in the Section 503(b) context.[48] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[49] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[50] To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.[51] The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has violated the Act or a Commission rule.[52]

12. The fundamental issues in this case are whether Telseven apparently violated the Act and the Commission's rules by willfully or repeatedly failing to make required contributions to the USF and the NANP and LNP cost recovery mechanisms, by failing to file accurate Quarterly Worksheets, and by failing to pay required regulatory fees to the Commission.[53] We answer these questions in the affirmative. As set forth below, we conclude that Telseven is apparently liable for forfeiture for willful or repeated violations of Section 251(e)(2) and 254(d) of the Act and Sections 1.1154, 1.1157(b)(1), 52.17, 52.32(a), 54.706, and 54.711 of the Commission's rules. Based on the facts and circumstances before us, we therefore conclude that Telseven is apparently liable for forfeitures totaling one million, seven hundred fifty-eight thousand, four hundred sixty-five dollars ($1,758,465).

A. Telseven Apparently Failed to Make Full and Timely Universal Service Fund Contributions

13. We conclude that Telseven apparently violated Section 254(d) of the Act and Section 54.706(a) of the Commission's rules by willfully or repeatedly failing to contribute fully and timely to the universal service support mechanisms.[54] Section 54.706(a) of the Commission's rules unambiguously directs that "[e]ntities [providing] interstate telecommunications to the public . . . for a fee . . . must contribute to the universal service support mechanisms."[55] As set forth above,[56] Telseven not only held itself out as—and has registered as—a provider of "interstate telecommunications services," but apparently also provided and charged for the interstate long distance transmission to its Nevada platform. Indeed, Telseven's fees to the public apparently included both per-call and monthly charges for the USF.[57] Those fees, in combination with Telseven's registration with the Commission as a provider of

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[48] *See, e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting*).

[49] *See, e.g.*, *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision*) (issuing an NAL for, *inter alia*, a cable television operator's repeated violation of the cable signal leakage rules).

[50] *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5; *Callais Cablevision*, 16 FCC Rcd at 1362, para. 9.

[51] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[52] *See, e.g.*, *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

[53] 47 U.S.C. §§ 251(e)(2), 254(d); 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.32(a), 54.706, 54.711(a).

[54] 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

[55] 47 C.F.R. § 54.706(a).

[56] *Supra* paras. 7–8.

[57] *See* "Telseven.com – Rates," *available at* http://telseven.com/rate.html (Jan. 23, 2012) (on file in EB-08-IH-1386) ("Note that Telseven charges an administrative recovery fee of $1.65 in any month you dial our directory assistance (continued …)

interstate telecommunications services, make clear that Telseven was holding itself out to the public as providing an interstate telecommunications service.

14. According to USAC, Telseven's outstanding balance due for delinquent USF contributions is $1,056,929.62.[58] Our rules direct USAC to apply the "American Rule" of accounting whereby any USF payment of less than the total amount due is applied first to the oldest past due debt.[59] On the basis of that rule, USAC determined that the last monthly USF invoice that Telseven paid in full was the invoice dated October 22, 2007 and due November 15, 2007, and that the last monthly USF invoice that Telseven partially paid was the invoice dated November 22, 2007 and due December 14, 2007.[60]

15. In its April 2009 and July 2009 Form 499-Q filings, Telseven projected such low telecommunications revenues that USAC placed the company in *de minimis* status for 2009, meaning that Telseven would not be required to contribute to the USF for that year.[61] Based on the actual revenues reported by Telseven on its Form 499-A for 2009, Telseven was not *de minimis* in 2009.[62] This resulted in subsequent true-up billing by USAC for each month from July 2010 through September 2010.[63] The last invoice USAC issued to Telseven with new USF contribution charges was for September 2010.[64] For each month from October 2010 through February 2011, inclusive, the invoices USAC issued to Telseven added interest on unpaid obligations and DCIA penalty charges as our rules require.[65] After February 2011, USAC transferred all of Telseven's outstanding USF debt to the Commission for collection in accordance with the DCIA. USAC therefore has not sent any additional invoices to Telseven since February 22, 2011.[66] The absence of a monthly invoice from USAC, however, does not relieve Telseven

(Continued from previous page)
service. This fee is intended to offset the cost Telseven incurs in complying with regulatory obligations and includes the cost of complying with the Federal Universal Service Charge.").

[58] *See* Fifth Theobald E-mail (updating on May 1, 2012 Telseven USF data prepared on January 26, 2012).

[59] 47 C.F.R. § 54.713(e); *see also Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16380–81, para. 16 (2007).

[60] *See* USAC, "Telseven Invoice History," *attached to* Fourth Theobald E-mail; Fifth Theobald E-mail; USAC Invoices to Telseven, Invoice Nos. UBDI0000274287 (statement date Oct. 22, 2007), UBDI0000279222 (statement date Nov. 22, 2007).

[61] *See* Telseven's Form 499-Q for Projected Third Quarter Revenues 2009 (received by USAC Apr. 24, 2009); Telseven's Form 499-Q for Projected Fourth Quarter Revenues 2009) (received by USAC Jul. 23, 2009); *see also* Fourth Theobald E-mail. Section 54.708 of the Commission's rules provides, in pertinent part, that if "a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution . . . ." 47 C.F.R. § 54.708.

[62] *See* Telseven 2009 Form 499-A Telecommunications Reporting Worksheet (reporting actual revenues for calendar year 2009) (received by USAC on Mar. 29, 2010) (Telseven 2009 Form 499-A); Fourth Theobald E-mail.

[63] *See* Telseven 2010 Form 499-A (reporting 2009 revenue); USAC Invoices to Telseven, Invoice Nos. UBDI0000432028 (statement date Jul. 22, 2010), UBDI0000438013 (statement date Aug. 20, 2010), UBDI0000444156 (statement date Sept. 22, 2010); *see also* Fourth Theobald E-mail.

[64] USAC Invoice to Telseven, Invoice No. UBDI0000450029 (statement date Oct. 22, 2010); *see also* Fourth Theobald E-mail.

[65] *See* 47 C.F.R. § 54.713(b); USAC Invoices to Telseven, Invoice Nos. UBDI0000432028 (statement date Jul. 22, 2010), UBDI0000456025 (statement date Nov. 22, 2010), UBDI0000462005 (statement date Dec. 22, 2010), UBDI0000466986 (statement date Jan. 21, 2011), UBDI0000472973 (statement date Feb. 22, 2011); *see also* Fourth Theobald E-mail.

[66] *See supra* para. 2 (discussing DCIA).

of its outstanding payment obligations. The Commission has repeatedly stated that carriers must pay their obligations to USAC regardless of whether or not they receive a bill from USAC.[67] Telseven's violations for unpaid USF contributions continued with each subsequent day on which it failed to make full payment.[68] Based on the record, we find that Telseven has apparently violated Section 254(d) of the Act and Section 54.706 of the Commission's rules by willfully or repeatedly failing to contribute fully and timely to the USF from December 2007 to April 2012, inclusive.

B. Telseven Apparently Failed to Provide Good Faith Estimates of Its Quarterly Telecommunications Revenue

16. Our rules require carriers to file good faith estimates of their quarterly telecommunications revenue on Form 499–Q.[69] A carrier's failure to provide such estimates has serious implications for the USF program because USAC uses the revenue reported on Form 499–Q to calculate each carrier's monthly USF contribution obligation, if any, subject to an annual true-up based on the actual revenues, as reported on the entity's Form 499-A.

17. The Forms 499–Q that Telseven filed in April 2009 and July 2009 apparently failed to provide good faith estimates of Telseven's projected telecommunications revenue for the third and fourth quarters of 2009.[70] In those Quarterly Worksheets, Telseven projected revenues sufficiently low for USAC to place Telseven in *de minimis* status for 2009.[71] Telseven's actual revenue for 2009, as reported on its Form 499-A filing due April 1, 2010, was more than three times greater than Telseven had predicted in its Form 499-Q filings and showed that Telseven did not qualify for *de minimis* status in 2009. USAC determined that Telseven's actual revenues meant that it had a $13,444.62 contribution obligation to the USF for 2009.[72] We deem the difference between Telseven projected revenue, as reported on its Forms 499–Q and its actual revenue, as reported on its Forms 499–A, to be so significant as to show that the Form 499–Q revenue estimates were apparently not made in good faith, as Section 54.711(a) of our rules requires. Based on the record, we therefore find that Telseven apparently violated

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[67] *See, e.g.*, *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7239 n.53 (2008) (*Telrite NAL*); *Globcom, Inc. d/b/a Globcom Global Communications*, Order of Forfeiture, 21 FCC Rcd 4710, 4712, para. 5 (2006) (*Globcom Forfeiture Order*); *BCE Nexxia Corp.*, Notice of Apparent Liability, 20 FCC Rcd 15121, 15124, 15126, paras. 10, 15 (2005).

[68] *See, e.g.*, *Kajeet Inc. and Kajeet/Airlink, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16690, para. 13 (2011) (*Kajeet NAL*); *Telrite NAL*, 23 FCC Rcd at 7239, para. 16; *Globcom Forfeiture Order*, 21 FCC Rcd at 4723, para. 35 n.105 (2006); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546, para. 7 (2000); *Conquest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12525, para. 16 (1999); *see also Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6140, para. 33 (*Compass Global NAL*); *Global Crossing North America, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6110, 6121, para. 24 (2008) (*Global Crossing NAL*).

[69] *See* 47 C.F.R. § 54.711(a); *Quarterly Reporting Order*, 16 FCC Rcd at 5755, para. 19.

[70] *See supra* note 63 and accompanying text.

[71] *See* 47 C.F.R. § 54.708 (stating that "[i]f a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a [USF] contribution . . . for that year").

[72] *See* Fourth Theobald E-mail; USAC Invoices to Telseven, Invoice Nos. UBDI0000432028 (statement date Jul. 22, 2010), UBDI0000438013 (statement date Aug. 20, 2010), UBDI0000444156 (statement date Sept. 22, 2010); Telseven's Form 499-A for calendar year 2009 (received by USAC Mar. 29, 2010); USAC Invoices to Telseven, Invoice Nos. UBDI0000432028 (statement date Jul. 22, 2010), UBDI0000438013 (statement date Aug. 20, 2010), UBDI0000444156 (statement date Sept. 22, 2010).

Section 54.711(a) by willfully or repeatedly filing Forms 499–Q that failed to provide good faith estimates of Telseven's quarterly telecommunications revenue.

C. Telseven Apparently Failed To Make Full and Timely Contributions to the NANP Cost Recovery Mechanism

18. We further find that Telseven has apparently violated Section 251(e)(2) of the Act and Section 52.17(a) of the Commission's rules by willfully or repeatedly failing to make timely contributions toward the costs of number administration. As a provider of interstate telecommunications service, Telseven was obligated to contribute to the NANP administration cost recovery mechanisms on the basis of the end-user telecommunications revenues it reported on its Annual Worksheet (Form 499-A) during the period covered by this *NAL*.[73]

19. The record demonstrates that Telseven failed to timely remit its NANP payment for 2011. The due date on the invoice was July 12, 2011, but the invoice remains unpaid.[74] We therefore conclude based on the record that Telseven has apparently violated Section 251(e)(2) of the Act and Section 52.17(a) of the Commission's rules by willfully or repeatedly failing to make timely NANP administration contributions for 2011.[75]

D. Telseven Apparently Failed To Make Full and Timely Contributions to the LNP Cost Recovery Mechanism

20. The record demonstrates that Telseven failed to contribute fully and timely to the LNP cost recovery mechanism in 2005, 2010, and 2011.[76] As of April 23, 2012, Telseven had not made payment on the LNP invoice issued by the LNP administrator on December 31, 2005, which was due on February 14, 2006.[77] Telseven made only a partial payment for 2010.[78] It has not remitted any payment for 2011.[79] Telseven's outstanding LNP contribution debt is $5,027.20.[80] Based on the record developed in our investigation, we find that Telseven has apparently violated Section 251(e)(2) of the Act and Section 52.32(a) of the Commission's rules by willfully or repeatedly failing to contribute fully and timely to the LNP cost recovery mechanism in 2005, 2010, and 2011.[81]

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[73] 47 C.F.R. § 52.17(b). In particular, contributions to support numbering administration are based upon a provider's end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually by the Chief of the Wireline Competition Bureau, but in no event will be less than $25. *Id.* § 52.17(a). NANP administration contributions are due on an annual basis, with certain exceptions not relevant here.

[74] *See* Second Bambrough E-mail.

[75] 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17(a).

[76] *See* Second Laffey E-mail.

[77] *See Account Summary-Telseven, LLC*, *attached to* Second Laffey E-mail.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *See* 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.32(a).

E. Telseven Apparently Failed to Pay Its Regulatory Fees

21. As an interstate telecommunications service provider, Telseven was required to pay regulatory fees on the basis of its interstate and international end-user revenues reported on its Annual Worksheet.[82] According to Commission records, Telseven has not paid its annual regulatory fees to the Commission for 2009 and 2010.[83] Telseven is delinquent in the amount of $22,736.25.[84] We find that Telseven apparently violated Sections 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully or repeatedly failing to pay regulatory fee program payments when due.[85]

F. Proposed Forfeitures

22. Section 503(b)(1) of the Act provides that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[86] Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against a telecommunications carrier of up to $150,000 for each violation or each day of a continuing violation, up to a statutory maximum of $1,500,000 for a single act or failure to act.[87] In determining the appropriate forfeiture amount, we consider the factors enumerated in Section 503(b)(2)(E) of the Act, including "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,"[88] as well as our forfeiture guidelines.[89]

23. We find that under the American Rule of accounting, in which all payments are applied first to the oldest outstanding debt,[90] the last Telseven USF invoice that was paid in full was the invoice issued on October 22, 2007 that was due on November 15, 2007, and that the last Telseven USF invoice that received partial payment was the invoice issued on November 22, 2007 that was due on December 14, 2007.[91] Since that last partial payment, Telseven has not made any payments on its outstanding USF obligations. The Commission has long recognized that failure to make universal service contributions is an egregious offense.[92] It not only deprives the USF of resources necessary to preserve and advance universal service, but it also bestows on delinquent entities an unfair competitive advantage by shifting to

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[82] *See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

[83] *See* First Monahan E-mail.

[84] *Id.*

[85] *See* 47 C.F.R. §§ 1.1154, 1.1157. Standard regulatory fees applicable to common carrier services must be paid in full by the due date. 47 C.F.R. § 1.1157(b)(1).

[86] *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

[87] *See* 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation,* Order, 23 FCC Rcd 9845 (2008).

[88] 47 U.S.C. § 503(b)(2)(E).

[89] *See* 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): Guidelines for Assessing Forfeitures.

[90] *Id.* § 54.713(e).

[91] *See* USAC, "Telseven Invoice History," *attached to* Fourth Theobald E-mail; Fourth Theobald E-mail; Fifth Theobald E-mail; Sixth Theobald E-mail; USAC Invoices to Telseven, Invoice Nos. UBDI0000274287 (statement date Oct. 22, 2007), UBDI0000279222 (statement date Nov. 22, 2007).

[92] *See, e.g.*, *Kajeet NAL*, 26 FCC Rcd at 16694, para. 21; *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4157, para. 15 (2011)(*ADMA Forfeiture Order*); *Telrite NAL*, 23 FCC Rcd at 7241–42, para. 24.

compliant contributors the economic costs and burdens associated with universal service. An entity's failure to make required universal service contributions frustrates Congress's policy objective in Section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.[93] The Commission has established a base forfeiture amount of $10,000 for each month in which a contributor has failed to fully pay required universal service contributions and $20,000 for each month in which a contributor has failed to make any required universal service contribution,[94] plus an upward adjustment based on approximately one-half of the largest amount of Telseven's unpaid USF contributions during the period covered by the Commission's investigation.[95] In addition, the Commission has treated failures to pay universal service and other obligations as continuing violations.[96] As noted above, because Telseven has not made any payments on any USF invoices since late 2007, our forfeiture calculation reflects not only violations that began within the last twelve months, but also violations that began prior to the last twelve months and continued during the twelve-month period preceding this *NAL*.

24. As a result, we find that Telseven is apparently liable for a forfeiture for willful or repeated failure to make any contribution to the USF for fifty-three months, from January 2008 to May 2012, inclusive. Accordingly, we assess a $20,000 forfeiture for each of the fifty-three months in which Telseven failed to remit any contribution toward its outstanding USF obligation, for a total of $1,060,000. We also assess a $10,000 forfeiture for Telseven's failure to fully pay the invoice due on December 14, 2007.[97] Thus, we find Telseven apparently liable for a base forfeiture of $1,070,000 for its willful or repeated failures to contribute fully and timely to the USF on fifty-four months from December 2007 to May 2012, inclusive. Moreover, consistent with our approach for assessing liability for USF violations, and taking into account all of the factors enumerated in Section 503(b)(2)(E) of the Act, we also add an upward adjustment of $528,465 to the base forfeiture—approximately one-half of the largest amount of Telseven's unpaid USF contributions during the period covered by the Commission's investigation.[98] We therefore find Telseven apparently liable for a forfeiture of one million, five hundred ninety-eight thousand, four hundred sixty-five dollars ($1,598,465) for willful or repeated failures to contribute fully and timely to the USF.

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[93] *See* 47 U.S.C. § 254(d).

[94] *See, e.g.*, *Kajeet NAL*, 26 FCC Rcd at 16694, para. 21; *ADMA Forfeiture Order*, 26 FCC Rcd at 4158, para. 15; *Globalcom NAL*, 25 FCC Rcd at 13485, para. 16; *NTS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5142, paras. 12–13 (2010); *Telrite NAL*, 23 FCC Rcd at 7242–44, paras. 25–28; *Compass Global, NAL*, 23 FCC Rcd at 6138–40, paras. 31–34; *Global Crossing NAL*, 23 FCC Rcd at 6120, para. 21; *OCMC, Inc*., Order of Forfeiture, 21 FCC Rcd 10479, 10482, para. 10 (2006); *Globcom Forfeiture Order*, 21 FCC Rcd at 4721–24, paras. 31–38.

[95] *See, e.g.*, *Kajeet NAL*, 26 FCC Rcd at 16696, para. 26; *ADMA Telecom, Inc*., Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 852–53, para. 34 (2009)(*ADMA NAL*); *Telrite NAL*, 23 FCC Rcd at 7243, para. 28.

[96] *See, e.g.*, *Kajeet NAL*, 26 FCC Rcd at 16694, para. 21; *ADMA Forfeiture Order*, 26 FCC Rcd at 4159 n.56; *Telrite NAL*, 23 FCC Rcd at 7245–46, para. 36; *Compass Global NAL*, 23 FCC Rcd at 6140–42, paras. 34–38; *Global Crossing NAL*, 23 FCC Rcd at 6120–23, paras. 21–27.

[97] *See* USAC Invoice to Telseven, Invoice No. UBDI0000274287 (statement dated Oct. 22, 2007); *see also* Fourth Theobald E-mail.

[98] The American Rule of accounting was applied to determine the largest unpaid invoice. *See* USAC, "Telseven Invoice History," *attached* to Fourth Theobald E-mail; USAC Invoice Telseven, Invoice No. UBDI0000283967 (statement dated Dec. 21, 2007).

25. As we noted above, a carrier's obligation to file Annual and Quarterly Worksheets providing good faith estimates of its telecommunications revenue is directly linked to, and thus has serious implications for, administration of the USF, TRS, NANP, LNP and regulatory fee programs. Telseven filed two Quarterly Worksheets that apparently failed to meet this standard. The Commission has established precedent for a forfeiture of $50,000 for failure to file a Worksheet or for filing an inaccurate Quarterly or Annual Worksheet.[99] We find a forfeiture of $50,000 also appropriate for filing a Quarterly Worksheet that fails to provide a good faith estimate of the filer's projected telecommunications revenue. Accordingly, we find that Telseven is apparently liable for a forfeiture of one hundred thousand dollars ($100,000) for its willful or repeated failure to file Quarterly Worksheets providing such good faith estimates by the May 1 and August 1, 2009 filing deadlines.

26. We also conclude that Telseven apparently failed to contribute to the NANP administration cost recovery mechanism in 2011. The failure to make required NANP administration contributions hampers the Commission's ability to ensure that the cost of establishing telecommunications numbering administration arrangements is "borne by all telecommunications carriers on a competitively neutral basis" as Congress envisioned.[100] The Commission has generally established a base forfeiture amount of $10,000 for each instance in which a contributor fails to make required contributions to the NANP administration cost recovery mechanism. Consequently, and consistent with precedent,[101] we find that Telseven is apparently liable for a forfeiture of ten thousand dollars ($10,000) for willful or repeated failure to make full and timely payment of its required contribution toward the NANP administration cost recovery mechanism for 2011.[102]

27. We also find that Telseven is apparently liable for a forfeiture for willfully or repeatedly failing to make full and timely contributions toward LNP cost recovery mechanisms in 2005, 2010, and 2011. The Commission has prescribed a $10,000 base forfeiture amount for failure to pay LNP contributions.[103] We therefore find Telseven apparently liable for a forfeiture of thirty thousand dollars ($30,000) for its willful and repeated failure to make full and timely payment of its required contribution toward the LNP administration cost recovery mechanism for 2005, 2010, and 2011.

28. Finally, we conclude that Telseven has apparently failed to fully pay its regulatory fees to the Commission. Telseven's violations for failing to fully pay its regulatory fees are continuing until the amounts owed are fully paid.[104] The Commission has established a base forfeiture amount of $10,000 for failure to make required regulatory fee payments.[105] We find Telseven apparently liable for a forfeiture of twenty thousand dollars ($20,000) for its willful or repeated failures to fully pay its regulatory fees to the Commission for 2009 and 2010.

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[99] *See, e.g.*, *ADMA NAL*, 24 FCC Rcd at 851–52, para. 31; *Telrite NAL*, 23 FCC Rcd at 7244, para. 31.

[100] 47 U.S.C. § 251(e)(2).

[101] *See, e.g.*, *ADMA NAL*, 24 FCC Rcd at 853, para. 36; *Telrite NAL*, 23 FCC Rcd at 7245, para. 33; *Teletronics, Inc*., Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13291, 13303, para. 35 (2005).

[102] *See, e.g.*, *Omniat International Telecom*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 4265, para. 28 (2009); *ADMA NAL*, 24 FCC Rcd at 852, para. 37.

[103] *See, e.g.*, *Kajeet NAL*, 26 FCC Rcd at 16695, para. 24; *Telrite NAL*, 23 FCC Rcd at 7245, para. 34.

[104] *See, e.g.*, *Telrite NAL*, 23 FCC Rcd at 7245, para. 35.

[105] *See id.*

G. All Obligations under This *NAL* Extend to Mr. Patrick Hines

29. The Commission may "pierce the corporate veil" and hold one entity or individual liable for the acts or omissions of a different, related entity when: (1) there is a common identity of officers, directors or shareholders; (2) there is common control between the entities; and (3) it is necessary to preserve the integrity of the Communications Act and to prevent the entities from defeating the purpose and provisions of statutory provisions.[106] In *Capital Telephone Co. v. FCC*, for example, the United States Court of Appeals for the D.C. Circuit upheld the Commission's decision to pierce the corporate veil of an applicant for a paging frequency license after concluding that (a) the applicant was wholly-owned and controlled by another applicant for a paging frequency in the same area at a different location and (b) "[i]t would do violence to the statutory command to grant both desirable frequencies to a single commonly controlled enterprise having only one real owner."[107]

30. Here, Telseven appears to be the corporate vehicle for the activities of just one person, Mr. Patrick B. Hines, a/k/a P. Brian Hines.[108] Mr. Hines is the sole officer and director of Telseven, and as such has exercised complete control over Telseven.[109] Mr. Hines is also a beneficiary, and likely the sole beneficiary, of the Patrick Hines Revocable Trust, which owns 100 percent of Telseven.[110] Indeed, Mr. Hines has been identified in official Commission filings as holding 100 percent of Telseven's equity, either directly or indirectly.[111] Further, in a proceeding before the California Public Utilities Commission, Telseven acknowledged that it is wholly-owned by the Patrick Hines Revocable Trust and confirmed that it "is not operated by any other entity . . . not controlled by any other entity . . . [and] is not managed by any other entity."[112] Thus, it appears that Mr. Hines is the sole owner of Telseven. Telseven also

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[106] *See APPC Service, Inc., Data Net Systems, LLC, Davel Communications, Inc., Jaroth, Inc. D/B/A Pacific Telemanagement Services, and Intera Communications Corp., (Complainants) v. NetworkIP, LLC, and Network Enhanced Telecom, LLP, (Defendants)*, Memorandum Opinion and Order, 22 FCC Rcd 4286, 4307, para. 47 (2007) (citations omitted).

[107] *Capital Telephone Co. v. FCC*, 498 F.2d 734 at 737 (D.C. Cir. 1974) (*Capital Telephone*); *see Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (piercing corporate veil where one family owned all of the stock in both entities and the owners took active part in the control and formulations of both entities).

[108] *See* Cal. Pub. Util. Comm'n, Hearing Transcript-Testimony of Patrick B. Hines, Case No. I.10-21-010 at 226-27, (Nov. 16, 2011) (When asked by the administrative law judge to state his name for the record, Mr. Hines responded "Patrick Hines, Patrick Brian Hines, H-i-n-e-s"); *see also* Cal. Pub. Util. Comm'n, Consumer Protection & Safety Div., Response of Consumer Protection & Safety Division to Respondent Patrick Hines' Motion to Stay or Dismiss for Lack of Jurisdiction at 11 (May 4, 2012) (noting that Patrick B. Hines and P. Brian Hines are the same person, and that Mr. Hines is using the "P. Brian Hines" presentation of his name for purposes of the Bankruptcy Court litigation).

[109] *See Telseven Sept. 22 Letter* at Response to Question 3.

[110] *See Calif. Pub. Utilities Comm'n, Case. No. I.10-12-010, Evidentiary Hearing Transcript at 302; Statement of Financial Affairs,* In re: Telseven, LLC, U.S. Bankr. Ct., Mid. Dist. Fla., Jacksonville Div., Case No. 3:12-bk-02682-PMG, Item 20 "Current Partners, Officers, Directors, and Shareholders" (filed May 4, 2012); *see also Corporate Ownership Statement (Rule 7008.1)*, In re: Telseven, LLC, U.S. Bankr. Ct., Middle Dist. Fla. (Jacksonville Div.), Case No. 3:12-bk-02682-PMG at Item 20 "Current Partners, Officers, Directors, and Shareholders" (filed May 4, 2012).

[111] *See* International Section 214 Application of Telseven, LLC, FCC File Number ITC2142004020900047, Attachment 2, granted Dec. 1, 2005, DA 05-3129, Report No. TEL-00970.

[112] *See* Telseven, LLC and California Calling 10, LLC, Response to Inquiry 19 of the Feb. 19, 2009 Data Request from Calif. Pub. Util. Comm'n, (Mar. 20, 2009), incorporated as part of documents assembled in re: Calf. Pub. Util. Comm'n, Order Instituting Investigation on the Commission's own motion into the operations, practices, and (continued …)

identified Mr. Hines as its president in its company registration information provided to the Commission through the Commission Registration System (CORES).[113] On January 5, 2004, Mr. Hines, acting in his capacity as the president of Telseven, executed the Company's "Articles of Amendment of Organization."[114]

31. As in *Capital Telephone Co*, it is necessary here to look beyond the Telseven corporate name and take "cognizance of the identity of ownership and control" between Telseven and Patrick Hines in order to implement core statutory directives and our implementing rules.[115] Specifically, Section 254(d) of the Act mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis" to the USF.[116] Similarly, Section 251(e)(2) of the Act requires that all telecommunications carriers shall bear telecommunications numbering and number portability costs on a competitively neutral basis.[117] Finally, Section 503(b)(1) of the Act specifies that "[a]ny person who is determined by the Commission . . . to have willfully or repeatedly failed to comply with any of the provisions of [the] Act or [Commission] rule . . . shall be liable . . . for a forfeiture penalty."[118] In these circumstances, we are entitled to look through Telseven's corporate structure to prevent Mr. Hines from using a corporate entity to circumvent these statutory directives and our rules implementing them. Because Mr. Hines apparently solely owns, controls, and manages Telseven, we find it consistent with our precedent to hold Mr. Hines personally liable for the actions of Telseven. Accordingly, for purposes of this *NAL*, the term Telseven includes Patrick Hines personally and all obligations under this *NAL* therefore also extend to Mr. Hines.

IV. CONCLUSION

32. In light of the seriousness, duration, and scope of the apparent violations, we propose forfeitures totaling one million, seven hundred fifty-eight thousand, four hundred sixty-five dollars $1,758,465) against Telseven,[119] consisting of one million, five hundred ninety-eight thousand, four hundred sixty-five dollars ($1,598,465) for failure to make full and timely USF contributions; one hundred thousand dollars ($100,000) for failure to file accurate Quarterly Telecommunications Reporting Worksheets; ten thousand dollars ($10,000) for failure to make full and timely NANP contributions; thirty

(Continued from previous page)
conduct of Telseven, LLC, Calling 10, LLC dba California Calling 10, (U-7015-C), and Patrick Hines, an individual, to determine whether Telseven, Calling 10, and Patrick Hines have violated the laws, rules and regulations of this State in the provision of directory assistance services to California consumers, Case No. I.10-12-010, Document No. PUC0226 at para. 3 (filed Dec. 16, 2010).

[113] *See* FCC Registration system –Telseven Profile, *available at* https://fjallfoss.fcc.gov/coresWeb/serchDetail.do?frn=0009834466 (last visited May 15, 2012).

[114] *See Telseven Sept. 22 Letter* at Response to Question 1, Exhibit A: "Telseven Articles of Organization."

[115] *Capital Telephone*, 498 F.2d at 738.

[116] 47 U.S.C. § 254(d).

[117] *Id.* § 251(e)(2); *see also id.* § 159(a) (requiring that the Commission collect regulatory fees to recover the costs of its regulatory activities).

[118] 47 U.S.C. § 503(b)(1).

[119] Telseven continues to have unpaid outstanding balances due to USAC, the LNP and NANP Administrators, and the Commission. We note that payment of the forfeitures proposed in this *NAL* will not absolve Telseven of its obligations to pay its delinquent balances. As discussed above in paragraph 2, debt collection procedures may include further administrative efforts both by the Commission and by the United States Treasury or, as appropriate, referral of the delinquent debt to the Department of Justice for enforced collection action. 47 C.F.R. § 1.1917.

thousand dollars ($30,000) for failure to make full and timely LNP contributions; and twenty thousand dollars ($20,000) for failure to make full and timely regulatory fee payments to the Commission.

33. We caution that additional violations of the Act or the Commission's rules could subject Telseven and its principal to further enforcement action. Such action could take the form of higher monetary forfeitures, disqualification of Telseven's principals, including Mr. Hines, from providing any interstate common carrier service without the prior consent of the Commission, and/or revocation of Telseven's and Mr. Hines's authority to operate any business that is subject to the Commission's regulatory jurisdiction under the Act.

V. ORDERING CLAUSES

34. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act,[120] and Section 1.80 of the Commission's rules,[121] Telseven, LLC is hereby **NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE** in the amount of of one million, seven hundred forty-five thousand, three hundred ninety-four dollars ($1,745,394) for willfully or repeatedly violating the Act and the Commission's rules.

35. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Telseven **SHALL PAY** the full amount of the proposed forfeitures or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeitures.

36. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. An FCC Form 159 (Remittance Advice) must be submitted with any payments. When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Telseven will also send electronic notification within forty-eight (48) hours of the date said payment is made to Terry.Cavanaugh@fcc.gov and Robert.Krinsky@fcc.gov.

37. The written statement seeking reduction or cancellation of the proposed forfeitures, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Commission's rules.[122] The written statement must be mailed to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Account number referenced above. The written statement should also be e-mailed to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and Robert B. Krinsky at Robert.Krinsky@fcc.gov.

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[120] 47 U.S.C. § 503(b).

[121] 47 C.F.R. § 1.80.

[122] *See* 47 C.F.R. §§ 1.80(f)(3), 1.16.

38. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

39. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[123] For answers to questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: ARINQUIRIES@fcc.gov.

40. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, to each of the following: Telseven, LLC, 200 Executive Way, Ponte Vedra Beach, Florida 32082; Doreen Abbott, P.O. Box 56257, Jacksonville, Florida 32241-6257; Jacob A. Brown, Esq., Akerman Senterfitt, LLP, 50 N. Laura Street, Suite 3100, Jacksonville, Florida 32202; Jason B. Burnett, Esq., GrayRobinson, P.A., 50 N. Laura Street, Suite 1100, Jacksonville, Florida 32202; and Patrick B. Hines, 350 Ponte Vedra Boulevard, Ponte Vedra Beach, Florida 32082-1812.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[123] *See* 47 C.F.R. § 1.1914.