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

In the Matter of	)	
	)	
NECC Telecom, Inc.	)	File No.: EB-IHD-15-00020019
	)	NAL/Acct. No.: 201732080003
	)	FRN: 0007026834
	)	
	)	
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 2, 2016 **Released: December 2, 2016**

By the Commission:

I. INTRODUCTION

1. We propose a penalty of $392,930 against NECC Telecom, Inc. (NECC or Company), for charging excessive universal service fees to its international long distance customers, for transferring substantial control over its authorizations to provide international and domestic telecommunications service without prior Commission approval, and for failing to timely pay regulatory fees to the Commission. Specifically, we find that NECC apparently violated the Communications Act of 1934 (Act), as amended, and the Commission's rules in late 2015 when it overcharged customers by including universal service fund (USF) surcharges on customer bills for international service while NECC was exempt from contributing to USF based on those revenues. Also, we find that NECC's unauthorized transfers of substantial control of the Company, including its federally-granted authorizations, apparently violated the Act and the Rule and prevented the Commission from evaluating possible risks to competition and consumers, as well as other adverse consequences that might have resulted from the transfers. And by failing to fully pay its regulatory fee obligations as an interstate telecommunications provider, NECC deprived the Commission of the funding necessary to cover the costs of a wide variety of regulatory functions. Taken as a whole, we view the Company's apparent noncompliance as a serious dereliction of its responsibilities as a telecommunications service provider, and one that warrants the proposal of a substantial monetary penalty.

II. BACKGROUND

2. Incorporated in Indiana and headquartered in Louisville, Kentucky,[1] NECC is a reseller of primarily international long distance service and some domestic toll service nationwide.[2] On September 20, 2002, NECC received an authorization pursuant to Section 214 of the Act to provide international long distance telecommunications service both as a facilities-based service provider and on a resale basis.[3] NECC also held Section 214 authority by virtue of its business operations and by operation

[1] Indiana Secretary of State, Business Service Division, NECC Telecom, Inc., Business ID No. 2002012900659 (formed Jan. 28, 2002).

[2] *See* NECC Telecom, Inc., April 2016 FCC Form 499-A (on file in EB-IHD-15-00020019) (2016 Form 499-A).

[3] *See* International Bureau Filing System (IBFS) File No.: ITC-214-20020830-00419 (granted Sept. 20, 2002) *available at* http://licensing.fcc.gov/cgi-

(continued….)

of the Commission's rules to offer domestic telecommunications service.[4] Daniel Popa was the sole shareholder of NECC from the Company's formation in 2002 until May 14, 2010, when 51 percent of the outstanding stock of NECC was transferred to Lucia Popa pursuant to a divorce decree.[5] Control of NECC was transferred again on September 29, 2015, through a stock transaction which returned a majority stock ownership interest back to Daniel Popa.[6]

3. NECC's regulatory fees for fiscal years 2008, 2011, and 2016 were due by September 25, 2008,[7] September 15, 2011,[8] and September 27, 2016,[9] respectively. NECC has not fully paid its regulatory fees for any of the three fiscal years. NECC entered into a payment plan with the U.S. Treasury Department and on November 18, 2016, made its first payment under the 36-month plan. However, the unpaid fees and associated late penalties totaled $80,309.88 as of October 28, 2016.[10] As a result of this delinquency, NECC is deemed to have "Red Light" status in accordance with the Commission's Red Light Display System pursuant to Section 1.1910 of the Rules.[11]

4. Because of its high percentage of international revenues in 2012, NECC qualified for and availed itself of the Limited International Revenue Exemption (LIRE) provided in the Commission's rules (Rules), which exempted the Company from contributing to the Universal Service Fund (USF).[12] After reviewing the revenue reported by NECC on its 2013 FCC Form 499A (Annual Worksheet), which

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bin/ws.exe/prod/ib/forms/reports/swr031b hts?q_set=V_SITE_ANTENNA_FREQ.file_numberC/File+Number/%3D/ITC2142002083000419&prepare=&column=V_SITE_ANTENNA_FREQ.file_numberC/File+Number *(*last visited Oct. 19, 2016).

[4] *See* 47 CFR § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.").

[5] *See* NECC Telecom, Inc., Application for Approval of a Transfer of Control, Attachment, IBFS File No.: ITC-T/C-20160119-00045 (filed Jan. 19, 2016) *available at* http://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr031b hts?q_set=V_SITE_ANTENNA_FREQ.file_numberC/File+Number/%3D/ITCT/C2016011900045&prepare=&column=V_SITE_ANTENNA_FREQ file_numberC/File+Number (last visited Oct. 7, 2016).

[6] *Id.*

[7] *See Payment Methods & Procedures for Fiscal Year 2008 Regulatory Fees*, Public Notice, 23 FCC Rcd 12849 (2008).

[8] *See FY2011 Regulatory Fee Deadline is Extended to 11:59 PM, ET, September 16, 2011*, Public Notice, 26 FCC Rcd 13029 (2011).

[9] *See Fee Filer Is Open for Payment of FY 2016 Regulatory Fees; FY 2016 Regulatory Fees Are Due Sept. 27, 2016*, Public Notice, 2016 WL 4625514 (Sept. 6, 2016).

[10] *See* Memorandum from James Lyons, Deputy Chief Financial Officer, FCC Office of Managing Director, to Mindy Littell, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 28, 2016) (on file in EB-IHD-15-00020019) (Regulatory Fees Administrator 10/28/16 Memo).

[11] *See* 47 CFR § 1.1910 (providing that anyone delinquent in non-tax debts to the Commission who files an application or other request for a benefit will be unable to obtain action from the FCC until the delinquent debts have been paid in full or other satisfactory arrangements have been made).

[12] *See* Letter from Dave Case, Chief Financial Officer, USAC, to Jeffrey Gee, Acting Chief, and Kalun Lee, Deputy Division Chief, Investigations and Hearings Division, FCC Enforcement Bureau (June 17, 2015) (on file in EB-IHD-15-00020019) (USAC Referral). *See also* 47 CFR § 54.706(c) (when an entity subject to the USF reporting requirements has quarterly interstate revenue of less than 12 percent of its combined quarterly interstate and international revenue, the carrier is eligible for the LIRE and its international revenue will not be used in determining the entity's quarterly USF contribution base obligation).

reported NECC's annual revenues for 2012, USAC requested further documentation from the Company.[13] After initially responding to the information request and providing a sample of invoices as support documentation,[14] NECC failed to respond to follow-up questions concerning the collection of USF surcharges based on international service despite the fact that NECC was not paying into the USF at the time.[15] On June 17, 2015, USAC referred the Company to the Commission for potential enforcement action.[16]

5. On November 9, 2015, the Enforcement Bureau (Bureau) issued a Letter of Inquiry (LOI) to NECC to investigate whether the Company had violated provisions of the Act and Rules, including improperly recovering excessive federal USF contributions costs through line items on customers' bills, and failing to timely pay regulatory fees applicable to interstate telecommunications providers.[17] After the Bureau granted the Company's extension request, NECC responded on January 20, 2016.[18] IHD issued a supplemental LOI on February 4, 2016, concerning the apparent transfer of control of the Company and seeking additional information about customer surcharges. NECC responded on February 19, 2016.[19]

III. DISCUSSION

6. Based on the facts and circumstances before us, and as described more fully below, we find that NECC apparently willfully and repeatedly (1) violated Section 54.712(a) of the Rules by imposing excessive USF surcharges on customers;[20] (2) failed to obtain prior Commission approval for transferring substantial control of its authorizations to provide international and domestic telecommunications service as required by Section 214 of the Act and Sections 63.03 and 63.24 of the Rules;[21] and (3) failed to fully pay to the Commission regulatory fees applicable to telecommunications service in violation of Sections 1.1154 and 1.1157(b)(1) of the Rules.[22]

[13] *See* 47 CFR § 54.711(a) (authorizing the Commission or USAC to verify any information contained in the Telecommunications Reporting Worksheet).

[14] *See* Letter from Mark Lammert, counsel for NECC, to Deborah Tosi, USAC Senior Financial Analyst (Dec. 19, 2013) (on file in EB-IHD-15-00020019).

[15] *See* USAC Referral.

[16] *See id*.

[17] *See* Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Roman Talis, President and CEO, NECC Telecom, Inc., NECC Wireless Telecommunications, Inc., , Inc. (Nov. 9, 2015) (addressing Company's compliance with 47 U.S.C. §§ 159(a), 201(b), 254(d); and 47 CFR §§ 1.1154, 1.1157, 54.702(n), 54.706, 54.707, 54.711, 54.712, 54.713, 64.1195, 64.2401, and 64.5001) (on file in EB-IHD-15-00020019) (LOI).

[18] *See* Letter from Lance J.M. Steinhart, Counsel to NECC Telecom, Inc., to Mindy Littell, Investigations and Hearings Division, FCC Enforcement Bureau (dated Jan. 20, 2016) (on file in EB-IHD-15-00020019) (LOI Response).

[19] *See* Letter from Lance J.M. Steinhart, Counsel to NECC Telecom, Inc., to Mindy Littell, Investigations and Hearings Division, FCC Enforcement Bureau (dated Feb. 19, 2016) (on file in EB-IHD-15-00020019) (Supplemental LOI Response).

[20] 47 CFR § 54.712(a).

[21] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03, 63.24.

[22] *See* 47 CFR §§ 1.1154 and 1.1157(b)(1).

A. NECC Apparently Violated Section 54.712(a) of the Commission's Rules by Imposing Excessive USF Surcharges on Service for Which it Had No Contribution Obligation

7. Section 54.712(a) of the Commission's Rules prohibits USF contributors from charging more to the end-user for USF surcharges than what they pay into the fund on interstate revenues from that customer.[23] As the Commission noted when it adopted Section 54.712, such pass-throughs of USF costs are not mandatory customer surcharges, since it wanted carriers to retain the flexibility to structure their recovery of the costs of universal service.[24] However, it emphasized that contributors choosing to pass through USF contributions to customers must "include complete and truthful information regarding the contribution amount. We do not assume that contributors will provide false or misleading statements, but we are concerned that consumers receive complete information regarding the nature of the universal service contribution."[25]

8. Pursuant to Section 54.706(c),[26] NECC generally qualified for the LIRE exemption from 2012 through 2016, because its interstate revenue equaled less than 12 percent of its combined interstate and international revenue.[27] As a result, NECC was exempt from contributing to the USF based on its international revenues.[28] However, upon investigation, NECC apparently billed customers for excessive and unlawful USF surcharges for international service in December 2015, despite having no USF contribution obligation on those revenues. NECC did not report any revenues from surcharges based on international service on its Annual Worksheet reporting 2015 revenues,[29] but the sample of invoices NECC issued in 2015 indicate USF-related surcharges were imposed on some international-only customers.[30] In its LOI Response, NECC claimed that [redacted][31] The

[23] 47 CFR § 54.712(a). Specifically, the rule provides, "If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor." *Id.*

[24] *See* In the Matter of Fed.-State Joint Bd. on Universal Serv., *Report and Order,* 12 FCC Rcd 8776, 9211-12, para. 855 (1997) (Universal Service First Report and Order).

[25] *Id.*

[26] *See* 47 CFR § 54.706(c) (when an entity subject to the USF reporting requirements has quarterly interstate revenue of less than 12 percent of its combined quarterly interstate and international revenue, the carrier is eligible for the LIRE and its international revenue will not be used in determining the entity's quarterly USF contribution base obligation).

[27] With the exception of only a few quarters, NECC qualified for LIRE for most of 2012 through 2016. During 2015, NECC did not qualify for LIRE from January through June because the Company projected zero international revenue thereby disqualifying it from LIRE status. *See* E-mail from Rich Seetoo, USAC, to Mindy Littell, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 24, 2016 3:30 p.m. EDT) (providing NECC contributions data) (on file in EB-IHD-15-00020019). *See also* USAC Referral. NECC was compliant with its USF contributions obligations during the time period at issue in this NAL.

[28] *See* 47 CFR § 54.706(c).

[29] *See* 2016 Form 499-A.

[30] *See* USAC Referral and Supplemental LOI Response, Exhibits 5 and 6. Customer invoices contained a line item titled "Universal Services."

[31] *See* Supplemental LOI Response to Inquiry 20.

current owner, who took control of the Company two months before receiving the Bureau's LOI, hired a new compliance service provider and changed to a different billing contractor, which the Company stated would [redacted][32]

9. By profiting from overcharges to its customers disguised as USF fees until the new ownership learned of the problem and changed invoicing contractors, NECC apparently imposed excessive USF surcharges on customers contrary to Section 54.712(a) of the Commission's Rules. The sample of NECC's invoices examined by Commission staff indicate that surcharges purportedly for the provision of exclusively international service were imposed on at least three customers on December 2, 2015, even though NECC was not assessed and did not pay USF charges on international revenues at the time. As required by Section 503(b)(4) of the Act,[33] the following customer invoices issued by NECC apparently contain excessive USF surcharges that violate Section 54.712(a) of our Rules:

Billing Date	Account Number	Invoice Number
12/2/15	0000033380	69070047
12/2/15	0054612468	69100550
12/2/15	0056739369	69101536

We find NECC's evident carelessness in this aspect of its customer billing practices to be a serious violation of our Rules, and one that merits a significant forfeiture penalty, as discussed below.[34]

B. NECC Apparently Violated Section 214 of the Act and Sections 63.03 and 63.24 of the Rules by Failing to Obtain Prior Commission Approval for Substantial Transfers of Control of Domestic and International Telecommunications Authorizations

10. Section 214 of the Act requires telecommunications carriers to obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating, or engaging in the transmission of common carrier communications services over communications lines, and before discontinuing, reducing, or impairing service to a community.[35] In accordance with Sections 63.03 and 63.24 of the Rules, any "substantial" transfer of control of a carrier's lines or of Section 214 authority requires application to and prior approval from the Commission.[36] Sections 63.04 and 63.18 of

[32] *Id.*

[33] *See* 47 U.S.C. § 503(b)(4) (requiring a notice of apparent liability to "(i) identify each specific provision, term, and condition of any Act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, instrument, or authorization which such person apparently violated or with which such person apparently failed to comply; (ii) set forth the nature of the act or omission charged against such person and the facts upon which such charge is based; and (iii) state the date on which such conduct occurred.").

[34] *See* Section III.D, *infra*.

[35] *See* 47 U.S.C. § 214(a). In 1999, the Commission granted all telecommunications carriers blanket authority under Section 214 to provide domestic interstate services and to construct or operate any domestic transmission line. *See* 47 CFR § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.").

[36] 47 CFR §§ 63.03; 63.24. A transfer of control of domestic lines or of a domestic Section 214 authority is considered "substantial" if it results in a change in ultimate ownership or control of those lines or that authority. *See* 47 CFR § 63.03(d). A transfer of control of international lines or of an international Section 214 authority is considered "substantial" if it results in a change in the actual controlling party of those lines or that authority. 47 CFR § 63.24(a).

the Rules set forth the information that must be included in the domestic and international transfer of control applications.[37]

11. The Commission has explained that the international Section 214 review process enables the Commission to review applications for risks to competition, particularly in situations where the applicant has an affiliation with a foreign carrier with market power on the foreign end of the route that may be able to leverage that market power to discriminate against U.S. competitors to the detriment of U.S. consumers. The requirements apply to carriers that resell the service of another authorized carrier, and to domestic providers of wireless telecommunications service that also provide international telecommunications service.

12. As noted above, NECC received an authorization in 2002 pursuant to Section 214 of the Act and by operation of the Commission's Rules to provide international long distance telecommunications service both as a facilities-based service provider and on a resale basis,[38] as well as domestic telecommunications service.[39] Daniel Popa was the sole shareholder of NECC from the Company's formation in 2002 until May 14, 2010, when 51 percent of the outstanding stock of NECC was transferred to Lucia Popa pursuant to a divorce decree.[40] Control of NECC was transferred again on September 29, 2015, through a stock transaction which returned a majority stock ownership interest back to Daniel Popa.[41] Both transfers of control were consummated without obtaining prior Commission approval. Shortly after NECC received the Bureau's LOI in this case, on January 19, 2016, the Company filed a transfer of control application and request for special temporary authority to operate pending grant of its application. Both applications have been dismissed due to the company's delinquent regulatory fee debts.[42] Thus, NECC's violations of Section 214 of the Act and Sections 63.03 and 63.24 of the Rules continue under the applicable statutory limitations period until Commission approval of the transfers is granted.[43]

13. Based on the investigative record, we therefore find that NECC consummated two transfers, each involving two authorizations: (1) a domestic Section 214 authority and (2) an international Section 214 authority. Based on the preponderance of the evidence, we therefore find that NECC

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[37] *See* 47 CFR §§ 63.04, 63.18.

[38] *See* International Bureau Filing System (IBFS) File No.: ITC-214-20020830-00419 (granted Sept. 20, 2002) *available at* http://licensing fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr031b hts?q_set=V_SITE_ANTENNA_FREQ.file_numberC/File+Number/%3D/ITC2142002083000419&prepare=&column=V_SITE_ANTENNA_FREQ.file_numberC/File+Number *(*last visited Oct. 19, 2016).

[39] *See* 47 CFR § 63.01(a).

[40] *See* LOI Response to Inquiry 1. *See also* NECC Telecom, Inc., Application for Approval of a Transfer of Control, Attachment, IBFS File No.: ITC-T/C-20160119-00045 (filed Jan. 19, 2016) *available at* http://licensing fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr031b hts?q_set=V_SITE_ANTENNA_FREQ.file_numberC/File+Number/%3D/ITCT/C2016011900045&prepare=&column=V_SITE_ANTENNA_FREQ file_numberC/File+Number (last visited Oct. 7, 2016).

[41] *Id.*

[42] *See* File No. ITC-T/C-20160l19-00045 and ITC-STA-20160120-00026 (July 18, 2016) (dismissing by delegated authority NECC's international section 214 application and request for Special Temporary Authority); Letter from Daniel Kahn, Wireline Competition Bureau, FCC, to Lance J.M. Steinhart and Daniel Popa, NECC Telecom, Inc., File No. ITC-T/C-20160119-00045 (July 19, 2016) (dismissing domestic section 214 application filed on Jan. 20, 2016). *See also* Section III.C, *infra* (discussing NECC's failures to fully pay regulatory fees).

[43] *See, e.g., PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531, 11534, para. 9 (2014) (PTT Phone Cards NAL); *Unipoint Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12757, para. 13 (2012) (Unipoint NAL).

apparently willfully or repeatedly violated Section 214 of the Act and Sections 63.03 and 63.24 of the Rules by transferring substantial control of Commission authorizations a total of four times.[44]

C. NECC Apparently Violated Sections 1.1154 and 1.1157(b)(1) of the Rules by Failing to Fully Pay Regulatory Fees

14. We further conclude that NECC apparently violated Sections 1.1154 and 1.1157(b)(1) of the Rules by willfully or repeatedly failing to timely pay required regulatory fees for fiscal years 2008, 2011, and 2016. Section 9 of the Act directs the Commission to "assess and collect regulatory fees to recover the costs" of certain enumerated Commission activities, including "enforcement activities, policy and rulemaking activities, user information services, and international activities."[45] Consistent with this directive, the Commission has set forth in its Rules schedules of annual regulatory fees that entities regulated by the Commission must remit to the Commission, as well as requirements for when the fees must be paid.[46] A carrier's failure to contribute toward the costs of the regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program, and shifts to compliant service providers the economic cost associated with those programs.[47] As a provider of interstate and international telecommunications services, NECC was obligated to pay regulatory fees based on its interstate and international end-user revenues as recorded on its Annual Worksheets.[48]

15. As described above, NECC has not fully paid its regulatory fees that were due in 2008, 2011, and 2016, and it continues to be in a delinquent status with the Commission.[49] The statutory limitations period on NECC's violations continues until the debt is paid.[50] The Company has provided no explanation for its failure to pay its outstanding debt for regulatory fees. Based on the preponderance of the evidence, we find that NECC apparently violated Sections 1.1154 and 1.1157(b)(1) of the Rules by willfully or repeatedly failing to make regulatory fee payments for fiscal years 2008, 2011, and 2016.

D. Proposed Forfeiture

16. 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."[51] Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture against NECC up to $189,361 for each violation or each day of a continuing violation, up to a statutory maximum of $1,893,610 for a single act or failure to act.[52] In

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[44] *See* 47 U.S.C. § 214(a); 47 CFR §§ 63.04, 63.18.

[45] *See* 47 U.S.C. § 159(a)(1)-(2).

[46] *See* 47 C.F.R. §§ 1.1152-1.1156, 1.1157(b)(1).

[47] *RB Comm'ns, Inc., d/b/a Starfone*, Notice of Apparent Liability, 27 FCC Rcd 4393 at 4402, para. 27 (2012) (Starfone NAL), *forfeiture issued*, 29 FCC Rcd 5668 (2014), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 4720 (2015); *Omniat Internat'l Tel., LLC*, Notice of Apparent Liability, 24 FCC Rcd 4254 at 4266, para. 29 (2009) (Omniat NAL).

[48] *See* 47 C.F.R. § 1.1154.

[49] *See* Regulatory Fees Administrator 10/28/16 Memo.

[50] *See, e.g., Kajeet Inc. and Kajeet/Airlink, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16694, para. 21 (2011) (*Kajeet NAL*); *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6648, para. 28 (2012).

[51] 47 U.S.C. § 503(b).

[52] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) ($100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,000,000 for any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires

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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."[53] In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.[54] Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.[55] We may adjust a forfeiture downward under the guidelines for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[56] The Commission's forfeiture guidelines specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."[57]

17. The record shows that, on December 2, 2015, NECC imposed excessive USF surcharges on three invoices issued to individual customers containing only international service, during the time NECC qualified for LIRE and had no USF contribution obligation for that service.[58] There is no directly applicable precedent for violations of Section 54.712(a) of the Rules preventing USF contributors from charging customer excessive USF surcharges. However, the violations are similar to other cases in which telecommunications carriers imposed misleading line items or placed other types of unauthorized charges on customer bills.[59] In these cases, the Commission has assessed a base forfeiture of $40,000 per violation based on each customer invoice reviewed by the Commission.[60] Additionally, under Section 503 of the Act and our *Forfeiture Guidelines*, we must take into account the harm to consumers that resulted from NECC's careless reliance on faulty invoicing software and failing to detect the improper surcharges.[61] Telecommunications providers that contribute to USF are responsible for providing

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the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation on June 9, 2016. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016); *see also* Inflation Adjustment of Monetary Penalties, 81 Fed. Reg. 42,554 (Jun. 30, 2016) (setting August 1, 2016 as the effective date for the increases).

[53] 47 U.S.C. § 503(b)(2)(E).

[54] 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

[55] *Id*. *See also The Comm'n's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (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") (*Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[56] 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

[57] *Forfeiture Guidelines*, 12 FCC Rcd at 17109-10, para. 53.

[58] *See* Supplemental LOI Response, Exhibits 5 and 6.

[59] *See, e.g., Net One Int'l, Inc.*, Forfeiture Order, 31 FCC Rcd 2367 (2016) (*Net One Int'l)* (imposing $1.6 million penalty for improperly billing consumers for unauthorized charges and fees purportedly in connection with long distance telephone service); *Central Telecom Long Distance*, Forfeiture Order, 2016 WL 4943991 (Sept. 15, 2016) (*Central Telecom)* (assessing $3,460,000 forfeiture for, among other things, failing to clearly and plainly describe charges on telecommunications bills); *Long Distance Direct, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 3297 (2000) (*Long Distance Direct)* (affirming $2 million forfeiture penalty for improper billing and other violations).

[60] *Id.*

[61] *See* 47 U.S.C. 503(b)(2)(E); 47 CFR § 1.80(b)(8), Note to paragraph (b)(8); *Forfeiture Guidelines*, 12 FCC Rcd at 17100-01, para. 27.

customers with complete and truthful information regarding any charges that relate to universal service.[62] In no event should contributors impose USF costs on customers when they have no USF contribution obligation associated with the service being provided. NECC's actions appear to have been the result of carelessness and were improperly imposed on its international-only long distance customers for a limited period of time. Given the seriousness of NECC's conduct in deceptively billing consumers and collecting USF fees that were never paid into the USF, we propose a base forfeiture of $40,000 for each instance of excessive USF surcharges, and apply it to each of the three invoices examined by the Commission that were sent from NECC to a customer that contained an excessive overcharge. This results in a total base forfeiture of $120,000 for NECC's excessive surcharge violations.

18. Regarding NECC's unauthorized transfers of its domestic and international Section 214 authorizations to provide telecommunications service, Section 1.80 of the Rules establishes a base forfeiture amount of $8,000 for an "unauthorized substantial transfer of control."[63] The Commission has applied that same forfeiture amount to substantial transfers of international Section 214 authority.[64] The record shows that NECC transferred both its international and domestic 214 authorizations two times without prior Commission approval (for a total of 4 transfers) in violation of Section 214 of the Act and Sections 63.03 and 63.24 of the Rules.[65] Taking into account the nature and extent of the violations and applying the factors set forth in Section 503(b)(2)(E) of the Act as well as Commission precedent,[66] we find that the appropriate forfeiture amount for each unauthorized substantial transfer of control is eight thousand dollars ($8,000). Consequently, based on the facts and circumstances presented, we conclude that the appropriate forfeiture amount for the four unauthorized transfers of control is thirty-two thousand dollars ($32,000).

19. With respect to NECC's failures to timely pay its regulatory fees, we find the Company apparently violated Sections 1.1154 and 1.1157(b)(1) of the Rules on three occasions. As noted above, regulatory fees fund essential Commission activities, such as policy and rulemaking to carry out statutory mandates, the provision of user information services, and international and enforcement activities.[67] A carrier's failure to contribute toward the costs of the regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program, and unfairly forces the funding burden upon other, compliant service providers.[68] NECC has repeatedly failed to satisfy its fee payment obligations over the course of eight years and has accumulated a significant regulatory fee delinquency totaling $80,309.88.[69] To punish NECC's repeated failures to satisfy its regulatory obligations and to deter other telecommunications providers from engaging in such serious noncompliance, we hereby treble the harm NECC has caused to the Commission's regulatory fee program.[70] Thus, we find NECC is apparently liable for a forfeiture of two hundred forty thousand nine

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[62] *See Universal Service First Report and Order*, 12 FCC Rcd at 9211-12, para. 855.

[63] *See* 47 CFR § 1.80(b)(6), Note to paragraph (b)(6).

[64] *See Kajeet NAL*, 26 FCC Rcd at 16697, para. 29.

[65] *See* 47 U.S.C. § 214(a); 47 CFR §§ 63.04, 63.18.

[66] *See* 47 U.S.C. § 503(b)(2)(E); *Roman LD, Inc.*, Notice of Apparent Liability, 30 FCC Rcd 3433, 3438-39, paras. 16-17 (2015); *Stanacard LLC*, Notice of Apparent Liability, 28 FCC Rcd 82, 87, para. 14 (2013) (upwardly adjusting the forfeiture amounts for unauthorized domestic and international transfers of control to $20,000).

[67] *See* para. 14, *supra;* 47 U.S.C. § 159(a)(1)-(2).

[68] *Starfone NAL*, 27 FCC Rcd 4393 at 4402, para. 27; *Omniat NAL* 24 FCC Rcd 4254 at 4266, para. 29.

[69] *See* Regulatory Fees Administrator 10/28/16 Memo.

[70] *See generally In the Matter of Total Call Mobile, Inc*., Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 4191, 4218 (2016) (trebling the financial harm to the USF).

hundred thirty dollars ($240,930) for its willful and repeated regulatory fee payment failures in 2008, 2011, and 2016.

20. Therefore, after applying the *Forfeiture Guidelines*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of $392,930 for which NECC is apparently liable.

IV. CONCLUSION

21. We have determined it is apparent that NECC willfully and repeatedly violated Section 214 of the Act, and Sections 54.712(a), 63.03, 63.24, 1.1154 and 1.1157(b)(1) of the Rules. In light of the seriousness, duration and scope of the apparent violations, we find that a proposed forfeiture of $392,930 is warranted. As discussed, this proposed forfeiture amount includes (1) a total proposed penalty of $120,000 for NECC's imposition of excessive USF surcharges upon customers; (2) a total proposed penalty of $32,000 for NECC's apparent failure to obtain prior Commission approval for four transfers of Commission authorizations to provide telecommunications service; and (3) a total proposed penalty of $240,930 for apparent failures to fully pay regulatory fees. As such, NECC is apparently liable for a forfeiture of $392,930.

V. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act[71] and Sections 1.80 of the Rules,[72] NECC Telecom, Inc., is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Three Hundred Ninety-Two Thousand, Nine Hundred Thirty Dollars ($392,930) for willful and repeated violations of Section 214 of the Act,[73] and Sections 54.712(a), 63.03, 63.24, 1.1154 and 1.1157(b)(1) of the Rules.[74]

23. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,[75] within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, NECC Telecom, 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 27 below.

24. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. NECC Telecom, Inc., shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[76] When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

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[71] 47 U.S.C. § 503(b).

[72] 47 CFR § 1.80.

[73] 47 U.S.C. 214.

[74] 47 CFR §§ 54.712(a), 63.03, 63.24, 1.1154 and 1.1157(b)(1).

[75] 47 CFR § 1.80.

[76] An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www fcc.gov/Forms/Form159/159.pdf.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

25. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.[77] 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.

26. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.[78] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov.

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

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Lance J.M. Steinhart, Counsel to NECC Telecom, Inc., 1725 Windward Concourse, Suite 150, Alpharetta, Georgia 30005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[77] *See* 47 CFR § 1.1914.

[78] 47 CFR §§ 1.16, 1.80(f)(3).