**Before the**
**Federal Communications Commission**
**Washington, DC 20554**

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| In the Matter of | ) | |
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| Start Wireless Group, Inc. | ) | File No.: EB-11-IH-0057 |
| d/b/a Page Plus Cellular | ) | NAL/Acct. No.: 201432080006 |
| | ) | FRN: 0016871113 |
| Apparent Liability for Forfeiture | ) | |

# NOTICE OF APPARENT LIABILITY FOR FORFEITURE

**Adopted:** December 6, 2013 **Released:** December 6, 2013

By the Chief, Enforcement Bureau:

## I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Start Wireless Group, Inc., d/b/a Page Plus Cellular (Page Plus), apparently willfully and repeatedly violated Section 43.61(a) of the Commission's rules (Rules) by failing to file annual reports of its international telecommunications traffic data (International Traffic Report).[1] Based on our review of the facts and circumstances surrounding this matter, and for the reasons discussed below, we find that Page Plus is apparently liable for forfeiture penalties totaling forty-three thousand, two hundred dollars ($43,200).

## II. BACKGROUND

2. Section 219(a) of the Communications Act of 1934, as amended (Act), authorizes the Commission to "require annual reports from all carriers subject to [the] Act . . . ."[2] Section 220(a)(1) of the Act, in pertinent part, gives the Commission "discretion [to] prescribe the forms of any and all accounts [and] records . . . to be kept by carriers subject to [the] Act, including the accounts [and] records . . . of the movement of traffic, as well as of the receipts and expenditures of moneys."[3] Section 43.61(a) of the Rules requires, in pertinent part, that "[e]ach common carrier engaged in providing international telecommunications service between the United States . . . and any country or point outside" the United States "shall file a report with the Commission not later than July 31 of each year" including specified traffic and revenue data pertaining to the common carrier's international telecommunications service provided in the preceding calendar year.[4]

[1] 47 C.F.R. § 43.61(a).

[2] 47 U.S.C. § 219(a).

[3] 47 U.S.C. § 220(a)(1).

[4] 47 C.F.R. § 43.61(a).

3. Page Plus is an Ohio corporation, incorporated on March 13, 2003.[5] As part of its business, Page Plus sells prepaid phone cards with minutes purchased from Cellco Partnership d/b/a Verizon Wireless.[6] Page Plus sells some of these prepaid phone cards directly to end-user customers through its www.pagepluscellular.com website.[7] These calling cards enable consumers to make domestic and international telephone calls.[8] Page Plus provided international telecommunications service through its calling card business from its incorporation in 2003 until 2011 without obtaining an international Section 214 authorization, as required by the Act.[9]

4. On January 19, 2012, after a thorough investigation, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture finding that, by providing international telecommunications service without first obtaining an international Section 214 authorization, Page Plus apparently willfully and repeatedly violated Section 214 of the Act, and Section 63.18 of the Rules.[10] Following the issuance of this Notice of Apparent Liability for Forfeiture, Page Plus requested further discussions regarding the Bureau's investigation. In furtherance of these discussions, the Bureau issued a Letter of Inquiry to Page Plus on June 1, 2012, seeking to refresh the record with respect to the apparent violations of Section 214 of the Act and Section 63.18 of the Rules and requesting additional information concerning Page Plus' compliance with the Rules.[11] Page Plus responded to this LOI on July 2, 2012.[12] Page Plus' 2012 LOI Response revealed that Page Plus had not filed any International Traffic Reports, as required by Section 43.61(a) of the Rules, since it began offering international telecommunications service in 2003.[13] On November 30, 2012, Page Plus filed its International Traffic Report for the 2011 reporting year[14] and, on December 6, 2012, Page Plus filed its International Traffic Report for the 2009 and 2010 reporting years.[15]

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[5] *See* Letter from Robert E. Levine, Esq., Counsel for Start Wireless Group, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 23, 2010) (on file in EB-09-SE-184) (2010 LOI Response); *see also id*. at Attachment 3.

[6] *See id.* at 3.

[7] *See id.*; *see also* www.pagepluscellular.com (last visited on June 28, 2013).

[8] www.pagepluscellular.com (last visited on June 28, 2013).

[9] *See* 2010 LOI Response at 3.

[10] *See Start Wireless Group, Inc. d/b/a Page Plus Cellular*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd. 350 (Enf. Bur. 2012)

[11] *See* Letter from Pamela S. Kane, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Robert E. Levine, Esq., Counsel for Start Wireless Group, Inc. (June 1, 2012) (on file in EB-11-IH-0057).

[12] *See* Letter from Robert E. Levine, Esq., Counsel for Start Wireless Group, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 2, 2012) (on file in EB-11-IH-0057) (2012 LOI Response).

[13] *Id.*

[14] *See* Letter from David A. Gall, Financial Manager, Start Wireless Group, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Nov. 30, 2012) (on file in EB-11-IH-0057) (2011 International Traffic Report).

[15] *See* Letters from David A. Gall, Financial Manager, Start Wireless Group, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 6, 2012) (on file in EB-11-IH-0057). Page Plus filed its report for 2012 in a timely manner.

## III. DISCUSSION

5. 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.[16] 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.[17] 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,[18] and the Commission has so interpreted the term in the Section 503(b) context.[19] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[20] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[21] 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.[22] The Commission will then issue a forfeiture if it finds, based on the evidence, that the person has willfully or repeatedly violated the Act or the Rules.[23]

6. At issue in this case is whether Page Plus violated Section 43.61(a) of the Rules by willfully or repeatedly failing to file International Traffic Reports for the 2003 – 2011 reporting years.[24]

7. We answer this question in the affirmative. As set forth below, we conclude that Page Plus is apparently liable for forfeiture for the willful and repeated violation of Section 43.61(a) of the Rules.[25] Based on the facts and circumstances before us, we therefore conclude that Page Plus is apparently liable for forfeiture penalties totaling forty-three thousand, two hundred dollars ($43,200).

### A. Page Plus Apparently Failed to File International Traffic Reports for the 2003 – 2011 Reporting Years

8. We find that Page Plus apparently violated Section 43.61(a) of the Rules by failing to file International Traffic Reports for the 2003 – 2011 reporting years.[26] Section 43.61(a) clearly directs that "[e]ach common carrier engaged in providing international telecommunications service between the

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

[17] 47 U.S.C. § 312(f)(1).

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

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

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

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

[22] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

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

[24] 47 C.F.R. § 43.61(a).

[25] *Id.*

[26] *Id.*

United States . . . and any country or point outside" the United States "shall file a report with the Commission not later than July 31 of each year" including specified traffic and revenue data pertaining to the common carrier's international telecommunications service provided in the preceding calendar year.[27]

9. In this case, Page Plus began offering international telecommunications service in 2003. Section 43.61(a) of the Rules requires that it should have begun filing International Telecommunications Reports no later than July 31, 2004, and that it should have continued filing such reports for every year in which it provided international telecommunications service.[28] Page Plus did not begin filing International Traffic Reports until November 30, 2012,[29] after being instructed to do so by the Bureau, and failed to timely file its annual International Traffic Report on nine distinct occasions — by July 31st of each year from 2004 through 2012, for service provided from 2003 through 2011.[30]

10. We therefore conclude that Page Plus apparently willfully and repeatedly violated Section 43.61(a) of the Rules.

### B. Proposed Forfeiture

11. 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.[31] 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.[32] 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

[27] *Id*.

[28] *Id*.

[29] *See* 2011 International Traffic Report.

[30] Although Page Plus filed its 2011 International Traffic Report after the due date, that violation is arguably beyond the statute of limitations and accordingly is not included in our forfeiture calculation. Accordingly, we propose a forfeiture based on eight filing violations.

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

[32] *See* 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2) (2011). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B). 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 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 in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 28 FCC Rcd 10785 (Enf. Bur. 2013); *see also* Inflation Adjustment of Monetary Penalties, 78 Fed. Reg. 49,370–01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment "shall apply only to violations that occur after the date the increase takes effect," however, we apply the forfeiture penalties in effect at the time the apparent violations took place. 28 U.S.C. § 2461 note (6). Here, because the apparent violations at issue occurred prior to September 13, 2013, the applicable maximum penalties are based on the Commission's previous inflation adjustment that became effective on September 2, 2008. *See* Inflation Adjustment of Maximum Forfeiture Penalties, 73 Fed. Reg. 44,663, 44,664 (July 31, 2008).

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,"[33] as well as our forfeiture guidelines.[34]

12. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules establish a base forfeiture amount of $3,000 for failure to file a required form.[35] As explained above, we find that Page Plus violated a clear requirement of the Commission's Rules by failing to timely file its annual International Traffic Report on eight distinct occasions. In light of the Commission's clear requirements,[36] a proposed base forfeiture of twenty-four thousand dollars ($24,000) is warranted for Page Plus' eight apparent willful, repeated, and continuing failures to timely file its annual International Traffic Report. Moreover, given the duration of the violations here, we will upwardly adjust the forfeiture amount by nineteen thousand two hundred dollars ($19,200) and therefore propose a total forfeiture of forty-three thousand, two hundred dollars ($43,200).[37]

## V. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act,[38] and Section 1.80 of the Rules,[39] Start Wireless Group, Inc., d/b/a Page Plus Cellular is hereby **NOTIFIED OF ITS APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty-three thousand, two hundred dollars ($43,200) for willfully and repeatedly violating Section 43.61(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Start Wireless Group, Inc., d/b/a Page Plus Cellular **SHALL PAY** the full amount of the proposed forfeitures or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. Start Wireless Group, Inc., d/b/a Page Plus Cellular shall send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, to Pamela S. Kane at Pamela.Kane@fcc.gov, and to Edward H. Smith II at Edward.Smith@fcc.gov on the date said payment is made. Regardless of the form of

[33] 47 U.S.C. § 503(b)(2)(E).

[34] *See* 47 C.F.R. § 1.80(b)(8); Note to Paragraph (b)(8): Guidelines for Assessing Forfeitures.

[35] *See Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

[36] 47 C.F.R. § 43.61(a).

[37] "The relative duration of a violation is a critical factor; for example, we generally would propose a substantially higher forfeiture for a violation lasting nearly a decade than for a violation lasting for two months. In doing so, we avoid creating perverse incentives" and encourage regulatees to comply with the Commission's rules in a timely manner. *See Emigrant Storage*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920, para. 9 n.26 (Enf. Bur. 2012) (citing *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303, para. 10 (Enf. Bur. 2010)).

[38] 47 U.S.C. § 503(b).

[39] 47 C.F.R. § 1.80.

payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[40] 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 regarding the form of payment:

- 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.
- 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.

16. Any request for full payment over time 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.[41] Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. 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 Rules.[42] 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 Edward H. Smith II at Edward.Smith@fcc.gov.

18. 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.

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

[41] *See* 47 C.F.R. § 1.1914.

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

19. **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 counsel for Start Wireless Group, Inc., d/b/a Page Plus Cellular: Robert E. Levine, Law Offices of Robert E. Levine, 1750 K Street, N.W., Suite 350, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau