

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

| | | |
|-------------------------------|---|---|
| In the Matter of |) | File No.: EB-IHD-13-00011665 ¹ |
| |) | |
| Unipoint Technologies, Inc. |) | NAL/Acct. No.: 201332080001 |
| d/b/a Comfi.com |) | |
| d/b/a masterbell.com |) | FRN No.: 0016749186 |
| d/b/a pushline.com |) | |
| a/k/a Communications Fidelity |) | |

FORFEITURE ORDER

Adopted: February 11, 2014

Released: February 11, 2014

By the Commission:

I. INTRODUCTION

1. In this Forfeiture Order, we assess a monetary forfeiture of one hundred seventy-nine thousand dollars (\$179,000) against Unipoint Technologies, Inc., d/b/a Comfi.com, a/k/a Communications Fidelity (Unipoint or the Company).² We find that Unipoint willfully violated Section 214(a) of the Communications Act of 1934, as amended (Act),³ and Sections 43.61, 52.17(b), 52.32(b), 54.711, 63.18, and 64.604(c)(5)(iii)(A)–(B) of the Commission’s rules (Rules)⁴ by failing to: (1) apply for and obtain authorization from the Commission to provide international telecommunications service; (2) timely file its 2007 annual Telecommunications Reporting Worksheet (Form 499-A); (3) timely make required contributions to the Telecommunications Relay Service (TRS) Fund; and (4) timely file annual traffic and revenue reports for service between the United States and overseas points (i.e., international telecommunications traffic reports).

II. BACKGROUND

2. The facts and circumstances upon which this *Forfeiture Order* are based are set forth in detail in the Notice of Apparent Liability for Forfeiture the Commission previously issued against Unipoint (*Unipoint NAL*),⁵ and need not be repeated here at length. Unipoint is a Massachusetts corporation⁶ that, through the trade name Comfi.com, operates as a prepaid calling card provider reselling international and domestic telecommunications services.⁷ Unipoint offers “a wide range of calling cards

¹ This investigation, initiated under File No. EB-09-IH-1945, was subsequently assigned to File No. EB-IHD-13-00011665.

² Comfi.com is also known as Communications Fidelity. During the period covered by the Commission’s investigation, Unipoint has listed this trade name on its annual Telecommunications Reporting Worksheets. Unipoint also operates using the trade names masterbell.com and pushline.com

³ 47 U.S.C. § 214(a). See Unipoint Technologies, Inc., 2007–2011 Form 499-A Telecommunications Reporting Worksheet, at Item 112 (on file in EB-IHD-13-00011665).

⁴ 47 C.F.R. §§ 43.61, 52.17(b), 52.32(b), 54.711, 63.18, 64.604(c)(5)(iii)(A)–(B).

⁵ See *Unipoint Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751 (2012). The *Unipoint NAL* is incorporated by reference herein.

⁶ *Unipoint NAL*, 27 FCC Rcd at 12754, para. 8.

⁷ *Id.*

for destinations around the globe.”⁸ To become a customer, an end user must register an on-line account with, and agree to make payment to, Comfi.com.⁹ The customer then receives an access number, a personal identification number (PIN), and dialing instructions via e-mail.¹⁰ The customer places a call by dialing his or her access number, followed by the PIN, and then the phone number of the party that the customer wants to reach.¹¹ Unipoint sells refillable and non-refillable cards.¹² A refillable card gives the customer the ability to reuse a PIN, as well as the option of PIN-less dialing by registering a phone number with Comfi.com that is linked to the customer’s Comfi.com account.¹³

3. On October 11, 2012, the Commission adopted the *Unipoint NAL*, which found that Unipoint had apparently violated: (1) Section 214 of the Act and Section 63.18 of the Rules by failing to obtain international Section 214 authority before providing international telecommunications service; (2) Sections 52.17(b), 52.32(b), 54.711, and 64.604(c)(5)(iii)(A)–(B) of the Rules by failing to timely file its 2007 Telecommunications Reporting Worksheet; (3) Section 64.604(c)(5)(iii)(A)–(B) of the Rules by failing to timely make required TRS contributions for 2007 and 2008; and (4) Section 43.61 of the Rules by failing to timely file its 2008, 2009, and 2011 international telecommunications traffic reports.¹⁴ The Commission also found that each of these apparent violations had been willful or repeated.¹⁵ The Commission proposed forfeiture penalties totaling \$179,000.¹⁶

4. On January 10, 2013, Unipoint filed its response to the *Unipoint NAL*.¹⁷ Unipoint does not dispute that it violated the Act and the Rules. Rather, Unipoint contends that its violations were not willful and that the proposed forfeiture of \$179,000 is excessive, and requests that we reduce the forfeiture amount to \$55,000.¹⁸

III. DISCUSSION

5. In the *Unipoint NAL*,¹⁹ the Commission proposed a forfeiture penalty in accordance with Section 503(b)(1) of the Act, Section 1.80 of the Rules, and the forfeiture guidelines set forth in the Commission’s *Forfeiture Policy Statement*.²⁰ Section 503(b)(1)(B) provides that any person who “willfully or repeatedly” violates the Act or the Rules “shall be liable . . . for a forfeiture penalty.”²¹ In

⁸ *Id.* at 12754–55, para. 8 (quoting “Comfi.com Becomes Most Visited Phone Card Site on the Internet!,” ComFi.com Press Release (Feb. 22, 2007), available at <http://www.comfi.com/references/COMFI-MOST-VISITED-PHONE-CARD-SITE> (last visited Nov. 6, 2013)).

⁹ *Id.* at 12755, para. 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 12757–60, paras. 13–16.

¹⁵ *Id.*

¹⁶ *See id.* at 12751, para. 1.

¹⁷ *See* Dan Lubarsky, CEO, Unipoint Technologies, Inc., Response to Notice of Apparent Liability for Forfeiture (filed Jan. 10, 2013) (on file in EB-IHD-13-00011665) (NAL Response).

¹⁸ *Id.* at 1–2.

¹⁹ *Unipoint NAL*, 27 FCC Rcd at 12760–62, paras. 17–22.

²⁰ *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80, *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

²¹ 47 U.S.C. § 503(b)(1)(B).

assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²² 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.²³ The legislative history to Section 312(f)(1) clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,²⁴ and the Commission has so interpreted the term in the Section 503(b) context.²⁵

6. We have examined Unipoint’s response to the *Unipoint NAL* in light of the aforementioned statutory factors, our Rules and precedent, and the *Forfeiture Policy Statement*. After consideration of all relevant information, including the information in Unipoint’s response to the *NAL*, we conclude that a forfeiture of \$179,000 properly reflects the seriousness, duration, and scope of Unipoint’s violations as well as Unipoint’s ability to pay. We therefore conclude that Unipoint is liable for a forfeiture of \$179,000.

A. The Record Establishes that Unipoint Willfully Violated the Act and the Rules

7. Based on our review of the record in this investigation, we find that Unipoint violated the Act and the Rules as alleged in the *Unipoint NAL*, and that each of Unipoint’s violations was willful.²⁶ Unipoint does not dispute that it committed the violations identified in the *Unipoint NAL*.²⁷ Unipoint violated Section 214 of the Act and Section 63.18 of the Rules by providing international telecommunications service for more than three years before obtaining Section 214 authority to provide such service. Unipoint continued to provide international telecommunications service between April 22, 2009, when the Company finally applied for international Section 214 authority,²⁸ and May 8, 2009, when the Commission granted Unipoint that authority, even though Unipoint neither requested nor obtained special temporary authority (STA) to provide such service.²⁹ Unipoint violated Section 64.604(c)(5)(iii)(A)–(B) of the Rules by making a \$13,553.05 contribution to the TRS Fund for 2007 nearly twenty-seven months late,³⁰ and by making a \$33,614.22 contribution to the TRS Fund for 2008

²² *Id.* § 503(b)(2)(E).

²³ *Id.* § 312(f)(1).

²⁴ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of Section 312, and for any other relevant section of the act (e.g., Section 503) As defined . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

²⁵ See, e.g., *Application for Review of S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California Broadcasting*).

²⁶ We note that Unipoint misstates the law to the extent it argues that a statutory or Rule violation must be both willful and repeated in order for us to impose a forfeiture. See NAL Response at 1. On the contrary, as Section 503(b)(1)(B) of the Act states, our forfeiture authority extends to any person that has “willfully or repeatedly” violated any provision of the Act or the Rules. 47 U.S.C. § 503(b)(1)(B).

²⁷ See NAL Response at 1–2.

²⁸ See International Bureau Filing System (IBFS) File No.: ITC-214-20090422-00173 (filed Apr. 22, 2009), available at <http://licensing.fcc.gov/myibfs/> (last visited Nov. 7, 2013).

²⁹ See *International Authorization Granted – Section 214 Applications (47 C.F.R. 63.18); Section 310(b)(4) Requests*, Public Notice, Report No. TEL-01361, 24 FCC Rcd 5779 (Int’l Bur. 2009).

³⁰ The 2007 contribution was due on July 26, 2007, but Unipoint did not submit payment until October 20, 2009. See E-mail from Marina Aparicio, National Exchange Carriers Association, TRS Fund Administrator, to Robert Krinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 14, 2010, 11:33

(continued....)

approximately fifteen months late.³¹ These international Section 214 and TRS contribution violations were willful because they resulted from Unipoint's conscious and deliberate actions or omissions.

8. Unipoint violated Sections 52.17(b), 52.32(b), 54.711, and 64.604(c)(5)(iii)(A)–(B) of the Rules by failing to file its 2007 Telecommunications Reporting Worksheet, due April 1, 2007, until September 22, 2009, approximately twenty-nine months late.³² Unipoint also violated Section 43.61 of the Rules by failing to timely file its 2008, 2009, and 2011 international telecommunications traffic reports. Specifically, Unipoint did not file: (a) its 2008 international telecommunications traffic report until March 31, 2010, approximately 20 months after its July 31, 2008 due date;³³ (b) its 2009 international telecommunications traffic report until March 31, 2010, approximately eight months after its July 31, 2009 due date;³⁴ and (c) its 2011 international telecommunications traffic report until August 18, 2011, 18 days after its July 31, 2011 due date.³⁵ These Telecommunications Reporting Worksheet and international telecommunications traffic report filing failures were willful because they resulted from Unipoint's conscious and deliberate omissions.³⁶

B. A \$179,000 Forfeiture Properly Reflects the Seriousness, Duration, and Scope of Unipoint's Violations As Well As Unipoint's Ability To Pay

9. The Commission's *Forfeiture Policy Statement* specifies that the Commission shall impose a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(E) of the Act,³⁷ such as "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."³⁸ In this case, taking all of these factors into consideration, we find that Unipoint is liable for a total forfeiture of \$179,000. This total reflects forfeitures of \$100,000 for providing international telecommunications service without Section 214 authority, \$50,000 for failing to timely file an annual Telecommunications Reporting Worksheet, \$20,000 for failing to timely make required TRS contributions, and \$9,000 for failing to timely file international telecommunications traffic reports.

10. We reject Unipoint's suggestion that the Commission did not properly consider the factors set forth in Section 503(b)(2)(E) of the Act.³⁹ The Commission carefully considered each of those

(Continued from previous page) _____

AM EDT) (*Aparicio Apr. 14, 2010, E-mail*); E-mail from Marina Aparicio, National Exchange Carriers Association, TRS Fund Administrator, to Elizabeth Mumaw, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 1, 2010, 3:22 PM EDT) (*Aparicio Mar. 1, 2010, E-mail*).

³¹ The 2008 contribution was due on July 28, 2008, but Unipoint did not submit payment until October 20, 2009. See *Aparicio Apr. 14, 2010, E-mail supra* note 30; *Aparicio Mar. 1, 2010, E-mail supra* note 30.

³² See *Unipoint NAL*, 27 FCC Rcd at 12755, para. 10 (citing Universal Service Administrative Company, *Unipoint – Form 499* (on file in EB-IHD-13-00011665)).

³³ See Letter from Gary Norden, Unipoint Technologies, Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 31, 2010) (on file in EB-IHD-13-00011665) (filing Unipoint's 2008 international telecommunications traffic report).

³⁴ See Letter from Gary Norden, Unipoint Technologies, Inc., to Marlene H. Dortch, Secretary, FCC (Mar. 31, 2010) (on file in EB-IHD-13-00011665) (filing Unipoint's 2009 international telecommunications traffic report).

³⁵ See Letter from Cheng-yi Liu, Counsel for Unipoint Technologies, Inc., Law Offices of Thomas K. Crowe, P.C., to Marlene H. Dortch, Secretary, FCC (Aug. 18, 2011) (on file in EB-IHD-13-00011665) (filing Unipoint's 2011 international telecommunications traffic report).

³⁶ See *supra* para. 5.

³⁷ 47 U.S.C. § 503(b)(2)(E).

³⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01, para. 27.

³⁹ See NAL Response.

factors in the *Unipoint NAL*,⁴⁰ and we do so again here. We find no basis for reducing the proposed forfeiture, which is the sum of the base forfeiture amounts that our Rules and precedent establish for each violation. Although Unipoint asserts an inability to pay the full forfeiture,⁴¹ the documentation that it has presented fails to support that claim. We conclude, on balance, that the forfeiture of \$179,000 properly reflects the seriousness, duration, and scope of Unipoint's violations as well as Unipoint's ability to pay.

11. We now turn to Unipoint's specific arguments for reduction of the proposed forfeiture.

1. Unipoint's Alleged Reliance on the Representations of a Third Party Does Not Release the Company from Responsibility for Compliance with the Act and the Rules

12. Like other resellers, Unipoint purchases from a third party the facilities-based transmission services underlying the Company's telecommunications services. Unipoint argues that the forfeiture amount should be reduced because its transmission services provider misled the Company into believing that the provider's licenses and filings were sufficient to meet Unipoint's obligations under the Act and the Rules.⁴² Even if we were to accept that Unipoint received erroneous or misleading compliance information from a transmission services provider, that fact provides no basis for reducing the forfeiture. It is well-established that an entity regulated by the Commission "is expected to know and to comply with all of the Rules and regulations and it will not be excused for violations thereof by acts of omission of its contract[ors]."⁴³ This continues to be the law.⁴⁴ Unipoint concedes that it failed to comply with the requirements noted above. Its attempt to shift the responsibility for these failures to its transmission services provider is unavailing. Unipoint alone is responsible for these violations.

2. Unipoint's Failure to Heed Established Precedent Does Not Warrant a Reduced Forfeiture

13. Unipoint also asserts that there was "no clear definition of whether [it] was subject to [the Commission's] filing requirements."⁴⁵ We disagree.

14. The Commission has broad jurisdiction over all common carriers engaged in interstate or foreign communication by wire or radio. The Commission's jurisdiction does not change when a

⁴⁰ See *Unipoint NAL*, 27 FCC Rcd at 12760–62, paras. 17–22.

⁴¹ NAL Response at 2.

⁴² *Id.* at 1.

⁴³ See, e.g., *Sundial Broad. Corp., Licensee of Station KDFC, San Francisco (FM), Calif.*, Memorandum Opinion and Order, 30 FCC2d 949, 949, para. 4 (1971) (declining to rescind or reduce a forfeiture for violation of a broadcast equipment performance regulation in response to licensee's argument that it had relied on a contract engineer who had failed to make proper measurements); see also *Eure Family Ltd. P'ship.*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863–64, paras. 6–7 (2002) (finding an antenna structure owner responsible for compliance with tower lighting regulations and declining to reduce a forfeiture in response to the licensee's argument that its contractor had failed to monitor outages); *Triad Broad. Co., Inc.*, Memorandum Opinion and Order, 96 FCC2d 1235, 1242, para. 16 (1984) (rejecting violator's contention that the forfeiture amount should be reduced because the violator was the unwitting victim of bad advice from its attorney/engineer).

⁴⁴ See *USA Teleport, Inc.*, Order on Review, 28 FCC Rcd 525, 528, para. 7 (2013) ("As we have repeatedly held, 'administrative oversight,' 'lack of knowledge,' or 'erroneous beliefs' are not factors that warrant a forfeiture's reduction.") (internal citations omitted); *Dexter Blake, Mount Vernon, New York*, Memorandum Opinion and Order, 27 FCC Rcd 15087, 15088, para. 5 (Enf. Bur. 2012) ("It is well established that the Commission does not consider ignorance of the law or reliance on erroneous or misleading advice or information from third parties as mitigating circumstances that can justify cancellation or reduction of a forfeiture . . ."); *Phoneco, LP*, Forfeiture Order, 22 FCC Rcd 15155, 15157, para. 8 (Enf. Bur. 2007) (rejecting request to reduce or cancel a forfeiture based on misplaced trust in outside counsel).

⁴⁵ NAL Response at 1.

common carrier is a reseller, or when a common carrier charges for its service via prepaid calling card. The Commission's authority to regulate entities that resell common carrier telephone service through prepaid phone cards was well-established long before Unipoint began providing its prepaid calling card service.⁴⁶ The Commission's Common Carrier Bureau discussed this authority at length in its November 1995 Order in *Time Machine, Inc., Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*.⁴⁷ Therein, the Common Carrier Bureau concluded that "interstate telecommunications services associated with debit card services," including those provided by resellers, are "interstate communications services" subject to the Commission's jurisdiction.⁴⁸

15. In its February 2005 *Prepaid Calling Card Declaratory Ruling*, the Commission cited the *Time Machine* decision in support of its observation that "[t]o date, calling card services have been regulated by the Commission as telecommunications services because they provide transmission of information, without change in form or content for a fee directly to the public."⁴⁹ These pronouncements from the Common Carrier Bureau and the Commission provided Unipoint with at least constructive notice that its entry into the provision of prepaid calling card services would subject it to Commission regulation.

16. The scope of that regulation clearly encompassed the obligation to obtain international Section 214 authority prior to reselling international telecommunications service. In 1996, the Commission adopted Section 63.18 of the Rules, which provides that "any party seeking authority pursuant to Section 214 of the Communications Act of 1934, as amended, to . . . engage in transmission . . . for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application . . ." ⁵⁰ This rule, which in pertinent part has remained in place since 1996, includes specific provisions applicable to entities seeking "authority to resell the international services of authorized common carriers."⁵¹ Thus, at the point when Unipoint began reselling international telecommunications services through prepaid calling cards, its obligation to obtain international Section 214 authority from the Commission was "unambiguous."⁵²

⁴⁶ In light of a pending request for confidential treatment, and given that the Commission's jurisdiction over telecommunications resellers providing service through a prepaid arrangement with customers was established long before Unipoint was established in 1997, we need not disclose the specific date on which Unipoint began providing interstate and international telecommunications services. See Unipoint Technologies, Inc., The Company, available at <http://www.unipointhome.com/company.html> (last visited Nov. 25, 2013) (explaining that Unipoint an international company based in Boston, Massachusetts and established in 1997).

⁴⁷ *Time Machine, Inc., Request for a Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*, Memorandum Opinion and Order, 11 FCC Rcd 1186 (Com. Car. Bur. 1995) (*Time Machine*).

⁴⁸ See *id.* at 1190, para. 25 & n.59 (internal footnotes omitted).

⁴⁹ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4827, para. 4 (2005) (*Prepaid Calling Card Declaratory Ruling*) (citing *Time Machine*, 11 FCC Rcd at 1192-93, para. 40).

⁵⁰ See 47 C.F.R. § 63.18 (1996); *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996).

⁵¹ See, e.g., 47 C.F.R. § 63.18(e)(2).

⁵² See *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability, 22 FCC Rcd 8689, 8705, para. 41 (2007) (proposing a \$100,000 forfeiture for operating without an international Section 214 authorization against a reseller of international telecommunications service); see also *RB Commc 'ns., Inc. d/b/a Starfone*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4396, 4400, paras. 8 n.26, 21 (2012) (proposing, based on "unambiguous" statutory and Rules language, a \$100,000 forfeiture for reselling international "prepaid and
(continued....)

17. Unipoint's obligations to file annual Telecommunications Reporting Worksheets and to contribute to the TRS fund also were clear. Before Unipoint began reselling international telecommunications services, the Commission stated, in its February 2005 *Prepaid Calling Card Declaratory Ruling*, that it "require[d] carriers to report revenues from prepaid calling cards on the forms submitted to the Universal Service Administrative Company (USAC) for purposes of universal service contributions."⁵³ These forms include the annual Telecommunications Reporting Worksheet. The instructions to that form for 2007 made clear that prepaid calling card providers were required to complete it.⁵⁴

18. The annual Telecommunications Reporting Worksheet requires the submission of financial data used to determine a carrier's required contribution to, among other cost recovery mechanisms, the TRS Fund. At all times pertinent to Unipoint's regulatory obligations, the Rules required every carrier that provides "interstate services, including . . . international and resale services," to contribute to that Fund.⁵⁵ Unipoint thus had at least constructive notice that it was required to contribute to the TRS Fund for 2007 and 2008. The Rules in place during that period also specified that each carrier's required contribution was to be based on the information reported on the carrier's Telecommunications Reporting Worksheet.⁵⁶ Based on data that Unipoint ultimately submitted on its annual Telecommunications Reporting Worksheets, the Company was required to make a \$13,553.05 TRS contribution for 2007 and a \$33,614.22 TRS contribution for 2008.⁵⁷ Unipoint's failure to pay these contributions by their due dates was the result of the Company's failure to comply with clear regulatory directives.

19. Unipoint's obligation to timely file its 2008, 2009, and 2011 international telecommunications traffic reports also was clear. The Rules required "[e]ach common carrier engaged in providing international telecommunications service" to file its annual international telecommunications traffic report by July 31.⁵⁸ Unipoint is such a carrier.⁵⁹

(Continued from previous page) _____

post-paid calling services based on an online pinless calling card system" without international Section 214 authority); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4161–62, paras. 2, 27–28 (2011) (assessing a \$100,000 forfeiture for not having an international Section 214 authorization against a reseller of international telecommunications services through the use of prepaid calling cards); *Teleplus, LLC*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7666, 7670–77, para. 12 (2009) (same) (*Teleplus*).

⁵³ *Prepaid Calling Card Declaratory Ruling*, 20 FCC Rcd at 4827 para. 4 (citing Telecommunications Reporting Worksheet, Form 499-A, Line 411).

⁵⁴ See Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, at 14 (2007) *available at* <http://transition.fcc.gov/Forms/Form499-A/499a-2007.pdf> (last visited May 23, 2013) (stating that a provider must mark the "Prepaid Card" box on Form 499-A if it "provides prepaid calling card services by selling prepaid calling cards to the public or to retailers" and that "[p]repaid card providers typically resell the toll service of other carriers and determine the price of the service by setting the price of the card and controlling the number of minutes that the card can be used for").

⁵⁵ 47 C.F.R. § 64.604(c)(5)(iii)(A). This rule took effect long before Unipoint began reselling international prepaid calling card services. See *Telecommunications Relay Service and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5307, Appendix B (1993) (adopting amendments to Section 64.604(c)(4) providing, in pertinent part, that effective July 26, 1993: "Every carrier providing interstate telecommunications services shall contribute to the TRS Fund . . . Contributions shall be made by made by all carriers who provide interstate services, including . . . international and resale services").

⁵⁶ 47 C.F.R. § 64.604(c)(5)(iii)(B).

⁵⁷ See *Unipoint NAL*, 27 FCC Rcd at 12756, para. 10.

⁵⁸ See, e.g., 47 C.F.R. § 43.61(a). We note that the Commission is in the process of revising and consolidating its reporting requirements for international telecommunications service providers, including those in Section 43.61 of the Rules into a new Rule, Section 43.62. Those changes have not yet taken effect. See *Reporting Requirements for* (continued....)

20. Unipoint asserts that the Rules did not clearly apply to reseller prepaid calling card providers. This is not accurate. At all times pertinent to Unipoint's violations, the Rules made clear that international telecommunications service providers, such as Unipoint, were required to obtain international Section 214 authority before offering international prepaid calling card services, to timely file annual Telecommunications Reporting Worksheets, to timely make required TRS contribution, and to timely file international telecommunications traffic reports.

3. Unipoint's Alleged Lack of Intent to Violate the Act and Rules Provides No Basis for Reducing the Forfeiture

21. Unipoint seeks a reduction in the forfeiture amount because it had "no intent to violate [the Act or the Rules] or to defraud" the Commission.⁶⁰ The Act, however, does not make intent to engage in a violation a condition precedent to imposition of a forfeiture.⁶¹ Instead, the violation need only be willful *or* repeated, as defined by the Act.⁶² It is immaterial whether Unipoint's violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.⁶³ Such excuses do not warrant a downward adjustment of the forfeiture.⁶⁴ While Unipoint may not have undertaken the provision of international telecommunications services with specific intent to violate the Act and Rules, it provided those services for several years without obtaining required Section 214 authority and without complying with other obligations under the Rules. In these circumstances, we find that Unipoint's alleged lack of intent provides no basis for reducing the forfeiture.

4. Unipoint Failed to Meet the Commission's Standard for a Forfeiture Reduction for Voluntary Disclosure and Did Not Act Quickly to Come Into Compliance with the Act and the Rules

22. Unipoint seeks a reduction in the forfeiture amount because the Company asserts it voluntarily disclosed its violations to the Commission and because once it discovered them, it made "fast steps to get into full compliance."⁶⁵ The record demonstrates that Unipoint fails to meet the Commission's standard for a forfeiture reduction based on voluntary disclosure and that the Company did not, in fact, move quickly to cure its violations.

23. The Commission considers voluntary disclosure of a violation of the Act or Rules to be a mitigating factor warranting a downward adjustment of base forfeiture amounts only if two conditions are
(Continued from previous page) _____

U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04-112, First Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 7274 (2011); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, 78 Fed. Reg. 15615 (2013).

⁵⁹ See *Amendment of Section 43.61 of the Commission's Rules to Update and Simplify the Required Traffic Data Reports Filed by International Telecommunications Carriers*, Report and Order, 100 FCC 2d 578, 595, para. 53 (1985) (observing, in response to the "suggestion that international resellers should be required to file Section 43.61 reports," that "international resale common carriers are already required to file" them).

⁶⁰ NAL Response at 1.

⁶¹ See *Southern California Broadcasting*, 6 FCC Rcd at 4388, para. 5; *supra* para. 5.

⁶² 47 U.S.C. § 503(b)(1)(B).

⁶³ See NAL Response at 1.

⁶⁴ See *Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999) ("[I]nadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.") (quoting *Southern California Broadcasting*, 6 FCC Rcd at 4387, para. 3); *Cascade Access, LLC*, Forfeiture Order, 28 FCC Rcd 141, 145, para. 9 (Enf. Bur. 2013) (rejecting argument that forfeiture should be reduced because the violation was unintentional).

⁶⁵ NAL Response at 1.

met: (1) the disclosing company has taken corrective measures *prior* to a Commission inquiry or initiation of an enforcement action;⁶⁶ and (2) there cannot have been a lengthy delay between the time that the company learned of the violation and the time it brought the violation to the Commission's attention.⁶⁷ The Commission has consistently denied requests for a forfeiture reduction on the basis of a voluntary disclosure without prompt remedial action.⁶⁸

24. The record makes clear that Unipoint's remedial actions were anything but prompt. Unipoint began providing international telecommunications services substantially earlier than April 22, 2009, the date on which it filed its application for international Section 214 authority—indeed, that application may have come up to two years too late.⁶⁹ Nor did the Company attempt to cure its noncompliance as quickly as possible by requesting an STA allowing it to continue operating while its application was pending. We emphasize that the Company should have requested an STA in these circumstances, and its failure to do so reinforces our conclusion that a downward adjustment is unwarranted.⁷⁰ Moreover, the Company did not disclose its prior unauthorized operations at the time it filed that application. Instead, Unipoint failed to self-disclose its unauthorized international service until August 17, 2009,⁷¹ nearly four months after it filed its application for international Section 214 authority. The Commission has previously rejected downward adjustments where “lengthy delays” in attempting to cure a violation “evinced a lack of diligence,”⁷² and the Enforcement Bureau has done so where

⁶⁶ See, e.g., *Emery Tel.*, 13 FCC Rcd at 23858, para. 10 (1998) (reduced forfeiture because carrier voluntarily disclosed violations and promptly cured its deficiency); *AllCity Paging, Inc.*, Notice of Apparent Liability for Forfeiture, 9 FCC Rcd 6485, 6486, para. 5 (1994) (reduced forfeiture due to voluntary disclosure and other factors). *Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920, para. 9 (Enf. Bur. 2012) (downward adjustment for voluntary disclosure where “[e]fforts to come into compliance preceded the Bureau’s investigation and the initiation of enforcement action”); *Cricket Commc’ns, Inc.*, Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 989, 994, para. 10 (Enf. Bur. Spectrum Enf. Div. 2011) (reducing forfeiture “because Cricket [had] made voluntary disclosures to Commission staff . . . and [had undertaken] corrective measures after learning of its violations, but prior to any Commission inquiry or initiation of enforcement action.”).

⁶⁷ See, e.g., *Local Phone Servs., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9980–81, paras. 17–20 (2006) (no downward adjustment for self-disclosure because violator had failed to timely cure its violations); *Mitchell Elec. Membership Coop., Camilla, Georgia*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541, para. 11 (Enf. Bur./Spectrum Enf. Div. 2007) (denying downward adjustment of forfeiture for voluntary disclosure because the company allowed six months to elapse before taking remedial action).

⁶⁸ See, e.g., *CB Radio, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 8836, 8839–40, para. 9 (2007) (“It is well established that post-investigational efforts to correct a violation do not mitigate the forfeiture or warrant a reduction in the assessed forfeiture amount.”); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC2d 699, 700, para. 6 (1966) (rejecting licensee’s argument for reduction of a forfeiture where the “violations were not corrected until detected by the Commission”).

⁶⁹ Compare International Bureau Filing System (IBFS) File No.: ITC-214-20090422-00173 (filed Apr. 22, 2009), available at <http://licensing.fcc.gov/myibfs/>, with *Aparicio Apr. 14, 2010, E-mail* (filing Unipoint’s 2007 annual Telecommunications Reporting Worksheet).

⁷⁰ See *Teleplus*, 24 FCC Rcd at 7669, para. 8 (Enf. Bur. 2009) (finding, where a carrier provided international service without authorization, its failure to seek an STA while a Section 214 application was pending “further aggravat[ed] its apparent violation”).

⁷¹ See E-mail from Cheng-yi Liu, Counsel for Unipoint Technologies, Inc., Law Offices of Thomas K. Crowe, P.C., to Trent Harkrader, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Aug. 17, 2009, 5:51 PM EDT) (on file in in EB-IHD-13-00011665).

⁷² *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (also noting that delayed remediation efforts are not the type “of good faith efforts to comply that would entitle [the company] to . . . mitigation of the assessed forfeiture amount”).

disclosure came fewer than four months after discovery of a violation.⁷³ Under these circumstances, Unipoint's self-disclosure does not warrant a downward adjustment of the \$100,000 forfeiture for unauthorized international telecommunications service operations.

25. Unipoint was also dilatory in curing its other violations.⁷⁴ The Commission has held that it would be "contrary to the public interest" to reduce a forfeiture where there has been a "postponement" of corrective action.⁷⁵

5. The Extent and Gravity of Unipoint's Violations and the Company's Culpability Warrant a \$179,000 Forfeiture

26. Unipoint seeks a reduced forfeiture based on assertions that the "extent [and] gravity" of its violations and its "degree of culpability" were "minimal."⁷⁶ Unipoint offers no evidence to support these assertions. On the contrary, the extent and gravity of Unipoint's violations and the Company's culpability for them warrant imposition of the \$179,000 forfeiture proposed in the *Unipoint NAL*. In the *Unipoint NAL*, the Commission specifically explained the reasons that Unipoint's violations were both serious and extensive.⁷⁷ The Commission also cited evidence of Unipoint's sole culpability for these violations.⁷⁸ The extent and gravity of Unipoint's violations and its degree of culpability for the violations do not support a downward adjustment of the forfeiture proposed in the *Unipoint NAL*.

6. Unipoint is Responsible for the Full Forfeiture Regardless of Its Staff Resources

27. Unipoint seeks mitigation of the forfeiture on the basis that it is a "small company [that is] not able to retain and sustain legal support necessary for all FCC requirements."⁷⁹ This argument is unavailing. Staffing problems simply "do not relieve [entities regulated by the Commission] of their responsibility to comply with the Rules and procedures."⁸⁰ Telecommunications carriers are expected to comply with the applicable provisions of the Act and the Rules.

⁷³ See, e.g., *Miller Breweries East, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 127, 130–31, para. 12 (Enf. Bur./Spectrum Enf. Div. 2008) (allowing no reduction when three months passed between filing of an application and disclosure, and five months passed between discovery and disclosure); *Steamboat Ski & Resort Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 15168, 15171–72, para. 11 (Enf. Bur./Spectrum Enf. Div. 2007) (allowing no reduction when 46 days passed between discovery and disclosure).

⁷⁴ Unipoint did not file its 2007 annual Telecommunications Reporting Worksheet until September 22, 2009. The Company did not make the TRS contributions due July 26, 2007 and July 28, 2008 until October 20, 2009. It did not file its 2008 and 2009 annual international telecommunications traffic reports until March 31, 2010. See *supra* paras. 7–8; see also *Unipoint NAL*, 27 FCC Rcd at 12756, para. 10. Unipoint committed its final violation—not timely filing its annual international telecommunications traffic reports for 2011—after the Bureau launched its investigation. See *id.*

⁷⁵ *Int'l Broad. Corp.*, Order on Review, 25 FCC Rcd 1538, 1540, para. 6 (2010).

⁷⁶ NAL Response at 1.

⁷⁷ *Unipoint NAL*, 27 FCC Rcd at 12760–62, paras. 18–22.

⁷⁸ *Id.*

⁷⁹ NAL Response at 1.

⁸⁰ See, e.g., *Corpus Christi Church and School, New York, New York*, Order, 20 FCC Rcd 7968, 7969, para. 3 (Wireline Comp. Bur., Telecom. Access Policy Div. 2005); *Request for Waiver by Hancock County Public Library, Sneedville, Tennessee*, Order, 17 FCC Rcd 19521, 19523, para. 5 (Wireline Comp. Bur., Telecom. Access Policy Div. 2005).

7. Unipoint is Able to Pay the Full Forfeiture Amount

28. Unipoint seeks a reduction of the proposed forfeiture because of an asserted inability to pay.⁸¹ Unipoint argues that it has not had been profitable since 2008, that it has had to reduce the staff at the Company, and that paying the full forfeiture amount would jeopardize its ability to continue operating.⁸²

29. In analyzing financial hardship claims, the Commission's long-established standard is to consider a company's gross revenues. The Commission has found that "[i]n general, gross revenues are the best indicator of [a company's] ability to pay a forfeiture."⁸³ While the Commission has noted that "in some cases other financial indicators, such as net losses, may also be relevant," if "gross revenues are sufficiently great . . . the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture."⁸⁴

30. Based on Unipoint's financial documentation, we find that it has not demonstrated an inability to pay a \$179,000 forfeiture. On the contrary, Unipoint's financial documents for the most recent three-year period (2010–2012) demonstrate an ability to pay that forfeiture. Unipoint's representations regarding profitability and reduced employment fail to indicate an inability to pay. The proposed forfeiture expressed as a percentage of gross revenues is significantly less than the threshold used to determine an inability to pay reduction, and the other information the Company submitted fails to show that paying that percentage of its gross revenues would undermine its financial position.⁸⁵

31. The Bureau has previously observed that if a company "could escape meaningful sanctions for violations of the Rules by seeking an inability to pay reduction that is unsupported by its gross revenues, it would be in a position to undermine the remedial purposes of Section 503 of the Act."⁸⁶ In setting forfeiture amounts, the Commission is "guided by Congress's stated goal of imposing forfeitures that are 'sufficiently high to deter violations and constitute a meaningful sanction.'"⁸⁷ Based on our review of Unipoint's financial condition, we conclude that the Company is able to pay a forfeiture penalty of \$179,000.

IV. CONCLUSION

32. In view of the seriousness, duration and scope of Unipoint's violations, we find that a forfeiture in the amount of one hundred seventy-nine thousand dollars (\$179,000) is warranted, including: (1) one hundred thousand dollars (\$100,000) for providing international telecommunications service without Section 214 authority; (2) fifty thousand dollars (\$50,000) for failure to timely file a 2007 annual Telecommunications Reporting Worksheet; (3) twenty thousand dollars (\$20,000) for failure to timely make required TRS contributions in 2007 and 2008; and (4) nine thousand dollars (\$9,000) for failure to timely file international telecommunications traffic reports in 2008, 2009, and 2011.

⁸¹ NAL Response at 2.

⁸² *Id.*

⁸³ See *PBJ Communc'ns. of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2088, para. 8 (1992).

⁸⁴ *Id.*; see also *Sunstar Travel and Tours, Inc.*, Forfeiture Order, 25 FCC Rcd 13804, 13808, para. 14 (2010) (citing *Coleman Enterprises, Inc. d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 n.24 (2000), *recon denied*, 16 FCC Rcd 10023, 10025, paras. 5–6 (2001)).

⁸⁵ See *Side By Side, Inc.*, Forfeiture Order, 23 FCC Rcd 7393, 7395–96, para. 8 (Enf. Bur. Spectrum Enf. Div. 2008), *aff'd*, 27 FCC Rcd 11132, 11136, para. 9 (Enf. Bur. 2012).

⁸⁶ See, e.g., *id.* (citing *Frank Neely*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1436, para. 8 (Enf. Bur. 2007)).

⁸⁷ See *Radio X Broad., Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 12209, 12217, para. 19 (2006) (quoting S. Rep. No. 580, 95th Cong. 1st Sess. 3 (1978), reprinted in 1978 U.S.C.C.A.N. 109, 111)).

V. ORDERING CLAUSES

33. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁸⁸ and Section 1.80 of the Commission's rules,⁸⁹ Unipoint Technologies, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one hundred seventy-nine thousand dollars (\$179,000) for willfully or repeatedly violating Section 214(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(a), and Sections 43.61, 52.17(b), 52.32(b), 54.711, 63.18, and 64.604(c)(5)(iii)(A)–(B) of the Commission's rules, 47 C.F.R. §§ 43.61, 52.17(b), 52.32(b), 54.711, 63.18, 64.604(c)(5)(iii)(A)–(B) .

34. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release of this Forfeiture Order.⁹⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.⁹¹ Unipoint Technologies, Inc. shall send electronic notification payment to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov on the date said payment is made.

35. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced in the caption to this Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁹² When completing the 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 you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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 insure 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.
- Any request for full payment 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 20554.⁹³ If you have questions regarding payment

⁸⁸ 47 U.S.C. § 503(b).

⁸⁹ 47 C.F.R. § 1.80.

⁹⁰ *Id.*

⁹¹ 47 U.S.C. § 504(a).

⁹² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Forms159/159.pdf>.

⁹³ *See* 47 C.F.R. § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

36. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to: Dmitry V. Lubarsky, Chief Executive Officer, Unipoint Technologies, Inc., 34 Washington Street, Suite 201, Wellesley, MA 02481.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary