

liability of \$71.39 in current charges. The total amount due (\$2,664.19) was paid in full by Compass on May 11, 2007.²⁰ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

During March 2007, following discussions with Ms. Loretta Edwards, Mr. Cary also made contact with Ms. Tecora Sollers of the FCC to discuss structuring a payment plan for Compass' outstanding TRS invoice.

April 2007

Compass received USAC Invoice No. UBDI0000245424, dated 04/20/07, showing a balance due of \$18,353.89.²¹ The total amount due was paid in full by Compass on May 11, 2007. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received Invoice No. M-10281605, dated 04/30/07, from Neustar, reflecting a LNP liability of \$2,986.60 in current charges and Invoice No. M-10281604, reflecting a SOW liability of \$72.35 in current charges. The total amount due (\$3,058.95) was paid in full by Compass on June 8, 2007.²¹ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

During April 2007, Mr. Cary again contacted Ms. Tecora Sollers, providing information concerning the Company and again requesting assistance in establishing a payment plan for Compass' outstanding TRS balance. As a result of his discussions with Ms. Sollers, Mr. Cary had the understanding that no enforcement action would be taken by the FCC with respect to the outstanding TRS invoice which was the subject of negotiation between the Company and the FCC. Compass had not, at this point in time, retained telecommunications counsel and, therefore, did not take action to formally halt debt transfer.

²⁰ Compass overpayment of up to \$38,950.08. See, Exhibit 9 hereto.

²¹ Compass overpayment of up to \$21,412.14. See, Exhibit 10 hereto.

May, 2007

Compass received USAC Invoice No. UBDI0000249374, dated 05/22/07, showing a balance due of \$16,615.83. The total amount due was paid in full by Compass on June 13, 2007. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received Invoice No. M-10285690, dated 05/31/07, from Neustar, reflecting a LNP liability of \$2,349.95 in current charges and Invoice No. M-10285689, reflecting a SOW liability of 72.36 in current charges. The total amount due (\$2,422.31) was paid in full by Compass on July 13, 2007.²² The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

On May 7, 2007, IHD opened File No. EB-06-IH-3060. Upon receipt of the letter of inquiry in this matter, Compass realized that IHD Staff had obviously not communicated with Mr. Gupta, as it appeared not to have been aware of either the established September 5, 2006 filing deadline for Compass' Forms 499-A for 2005 and 2006 or Compass' compliance with that deadline. In response to the letter of inquiry, Compass provided IHD (on June 29, 2007) with requested information concerning the Company's corporate structure, tax filings, and written explanations of Compass' legal position that it is not subject to the FCC's reporting and contribution rules. Compass also provided IHD with evidence of its timely (pursuant to the Gupta filing deadline extension) submission of the Company's FCC Registration and 2005 and 2006 Form 499-As.

It was also only upon receipt of the IHD letter of inquiry, and the Company's subsequent retention of outside legal counsel, that Compass became aware of revenue reporting errors in the 2005 and 2006 499-As filed September 5, 2006.²³ In accordance with USAC's policy of processing

²² Compass overpayment of up \$19,038.14. See, Exhibit 11 hereto.

²³ Whether or not the Commission accepts that EWS is not a "telecommunications service," as explained at Sections IV.E, *infra*, at a minimum, the 2005 and 2006 499-As misreported as retail (and

downward reductions within 12 months of the submission date of the filing, Compass determined to file revised Forms 499-A for 2005 and 2006 within 12 months of the original filing date of those forms, calculated from the September 5, 2006, filing date established by Mr. Gupta. Moreover, given the circumstances of the original filings, denial of Compass' right to file a downward revision within 12 months of the September 5, 2006 filing date would deprive the Company of its due process rights.

June, 2007

Compass received NANP Invoice No. INT015066, dated 06/12/07, in the amount of \$671.78 reflecting the "Annual share of cost for the Numbering Administration in North America for 2007". The total amount due was paid in full by Compass on July 12, 2007. The Commission's tentative conclusion in NAL paragraph 24 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Also in June 2007, Mr. Cary again contacted Ms. Tecora Sollers concerning Compass' request for assistance in establishing a payment plan for Compass' outstanding TRS balance. On June 13, 2007, Ms. Sollers informed Mr. Cary that she would soon be forwarding documents for execution by Compass in connection with the establishment of a payment plan. On that date, Ms. Sollers also advised Mr. Cary that Compass, which had been placed on the Commission's red-light display system, had been removed from that system. Furthermore, Ms. Sollers confirmed that Compass would not be subject to potential red-lighting throughout the pendency of Compass' establishment of a payment plan for its TRS invoice amount. Documentation in connection with establishment of a payment plan was forwarded to Compass several days later.

Compass received USAC Invoice No. UBDI0000253386, dated 06/22/07, showing a balance due of \$16,615.83. The total amount due was paid in full by Compass on July 13, 2007.

subject to the Contribution Bases) revenue which is certifiably and demonstrably "wholesale" (and exempt from the Contribution Bases).

The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received Invoice No. M-1289756, dated 06/30/07, from Neustar, reflecting a LNP liability of \$2,779.66 and Invoice No. M-10289755, reflecting a SOW liability of \$67.30. The total amount due (\$2,846.96) was paid in full by Compass on August 13, 2007.²⁴ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

As noted above, it was around this period of time that Compass became aware, by virtue of the IFD's issuance of a letter of inquiry, that its 499-A revenue figures were reported in error. Although it could not definitively determine the "proper" TRS contribution resulting from its submission of revised 2005 and 2006 Form 499s, Compass recognized that the outstanding TRS invoice amount was inaccurate and materially inflated. The Company could not, therefore, consistent with good business practice, execute a Promissory Note in the full amount of the inflated TRS invoice, as was required under the Commission's "Payment Plan" requirements.

July, 2007

Compass received USAC Invoice No. UBDI0000258838, dated 07/02/07, showing a balance due of \$12,350.45. The total amount due was paid in full by Compass on July 31, 2007. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received a NECA credit invoice, Invoice No. TRS0049326, dated July 4, 2007, showing a *credit balance* in the amount of \$104,534.31. The line item description merely reflects "2007 Adjustment".

²⁴ Compass overpayment of up to \$20,534.57. See, Exhibit 12 hereto.

Compass received a separate NECA invoice, TRS0046258, also dated July 4, 2007, in the amount of \$250,611.40. The line item description merely reflects "2007 Invoice".

On July 30, 2007, Compass provided a supplementary response to IHD, setting forth the nature of its service model in even greater detail. As part of this supplemental submission, Compass informed IHD that it would shortly be revising its 2005 and 2006 499-As, which it did on September 4, 2007 (*i.e.*, within 12 months from the original filing date of the submissions).

Also on July 30, 2007, Compass submitted a revised Form 499-A for 2007; this submission was made within 12 months of the form's original filing date, April 1, 2007.

On July 31, 2007, NECA issued a Statement of Account reflecting a balance forward in the amount of the \$250,611.40, set forth in Invoice No. TRS0046258, plus a late payment charge of \$240.31 (via Invoice line item FC-41641). By this point in time, Compass had no idea what amount NECA actually believed was outstanding and owed. And, despite Compass' requests, NECA has not provided information since that time which would resolve this uncertainty.

Compass received Invoice No. M-10298374, dated 07/31/07, from Neustar, reflecting a LNP liability of \$3,337.21 in current charges and Invoice No. M-10298373, reflecting a SOW liability of \$87.40 in current charges. The total amount due (\$3,424.61) was paid in full by Compass on September 14, 2007.²⁵ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

August, 2007

Compass received USAC Invoice No. UBDI0000264813, dated 08/22/07, showing a balance due of \$9,179.39. The total amount due was paid in full by Compass on September 14, 2007. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

²⁵ Compass overpayment of up to \$15,775.06. See Exhibit 13 hereto.

Compass received Invoice No. M-10302604, dated 08/31/07, from Neustar, reflecting a LNP liability of \$1,770.85 in current charges and Invoice No. M-10302603, reflecting a SOW liability of \$50.28 in current charges. The total amount due (\$1,821.13) was paid in full by Compass on October 12, 2007. The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Despite receipt of the July 4th credit invoice in the amount of \$104,534.31, Compass also received a NECA Statement of Account, dated 08/31/07, showing a balance forward in the full amount of \$250,851.71, also adding a late payment charge (via Invoice line item FC-42549) in the amount of \$1,489.94.²⁶

September, 2007

On September 4, 2007, Compass submitted to USAC its revised Form 499-As for 2005 and 2006. On September 11, 2007, USAC unlawfully rejected those revisions as untimely as "not filed within one year of the original submission."²⁷

On September 19, 2007, Compass submitted through Fee Filer a payment in the amount of \$92,587.00 for Bill No. 07RE007326, in satisfaction of the Company's calculation of regulatory fees for 2007.²⁸ The Commission's tentative conclusion in NAL paragraph 26 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

²⁶ Compass overpayment of up to \$11,000.52. See, Exhibit 14 hereto.

²⁷ Compass notes that USAC's rejection justification is unsupported. The revised forms were indeed filed "within one year of the original submission" – the September 5, 2006, filing deadline established by Mr. Gupta.

²⁸ While Compass continues to believe that it is not subject to the payment of Regulatory Fees, this payment was made out of an abundance of caution, since by September, 2007, the Company was justifiably wary that IHD might attempt to sanction the Company for amounts not paid – even if those amounts were not rightfully imposed upon the Company. It is unclear whether the FCC has actually taken the earmarked funds from the Company's corporate account, perhaps evidencing the Agency's uncertainty as to the applicability of Regulatory Fees to the Company. This payment may represent a Compass overpayment of up to \$92,587.00. See, Exhibit 15 hereto. (Per discussions with FCC Staff, it appears that the amount which Compass should have submitted via Fee Filer is actually closer to \$53,000.00).

Compass received USAC Invoice No. UBDI0000270351, dated 09/21/07, showing current charges in the amount of \$9,179.39. The total amount due in current charges was paid in full by Compass on October 18, 2007. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

On September 24, 2007, Ms. Sollers informed Mr. Cary via e-mail that since Compass had not made a 10% "good faith payment" on the outstanding TRS invoice balance which had been the subject of payment plan discussions, TRS Bill No. 07TR002539 (in the amount of \$169,089.24) would be re-opened and payment in full was now expected. Therefore, to the extent applied to any period prior to September 24, 2007, the Commission's tentative conclusion in NAL paragraph 23 is premature and incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received a notice from NECA, dated 09/28/07, indicating the portion of Compass' account 826216 which was then past due was \$250,611.40. Apparently, this invoice did not reflect the July 4, 2007, credit adjustment in the amount of \$104,534.31. Compass' obligation on TRS0046258 (with an accounting date of 07/01/2007) was thus presumably \$146,077.09. However, Compass has been unable to obtain confirmation of this amount from NECA.

On September 28, 2007, NECA advised Compass, through Invoice No. FC-41611, of a charge (identified only as "FC") in the amount of \$240.31.

Compass received Invoice No. M-10306936, dated 09/30/07, from Neustar, reflecting a LNP liability of \$2,571.25 in current charges and Invoice No. M-10306935, reflecting a SOW liability of \$51.32 in current charges. The total amount due (\$2,622.57) was paid in full by Compass on November 14, 2007.²⁹ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

²⁹ Compass overpayment of up to \$11,801.96. See Exhibit 15 hereto.

By invoice dated two days later, September 30, 2007, NECA advised Compass of a late payment charge (via Invoice line item FC-43412) in the amount of \$1,441.87 based on a balance forward of \$252,341.65.

October, 2007

Compass received USAC Invoice No. UBDI0000275208, dated 10/22/07, showing a balance due of \$3,966.41. However, as of the invoice due date (11/15/07), Compass maintained a *credit balance* with USAC. Thus, the Company reflected on its books a reduction in the November 15, 2007 credit balance in this amount. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

By invoice dated October 30, 2007, NECA advised Compass of a late payment charge (via Invoice line item FC-42549) in the amount of \$1,489.94. No balance forward is reflected on this notice; thus, Compass has been unable to determine to what it applies. Compass has also been unable to determine whether the full amount stated is in addition to, or merely a slight increase in, the late payment charge invoiced to Compass in September 2007.

Compass received Invoice No. M-10311213, dated 10/31/07, from Neustar, reflecting a LNP liability of \$2,936.51 in current charges and Invoice No. M-10311212, reflecting a SOW liability of \$51.38 in current charges. The total amount due (\$2,987.87) was paid in full by Compass on January 8, 2008.³⁰ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

³⁰ Compass overpayment of up to \$2,987.87. See Exhibit 16 hereto.

Compass received NANP Credit Note, CN001240, dated 10/31/07, crediting Compass with the amount of \$277.60, reflecting "Adjustment of 2007 annual share of cost for the Numbering Administration in North America."³¹

By Statement of Account dated one day later, October 31, 2007, NECA advised Compass of (i) a balance forward of \$253,783.52, (ii) the application of a Credit Memo in the amount of \$104,534.31, and (iii) the imposition of a charge of unknown origin in the amount of \$31,051.00. To Compass' knowledge, this final amount had not previously been reflected on any NECA Invoice or Statement received by the Company.

November, 2007

On November 6, 2007, Compass filed its pending appeal with the Universal Service Administrative Company.³²

Compass received NANP Invoice No. IN015449, dated 11/12/07, reflecting a charge in the amount of \$3.78 for "Adjustment of 2005 annual share of cost for Numbering Administration in North America" and adding a \$100.00 "Late filing fee for FCC Form 499A".³³

Compass received a "Credit Balance Refund Banking Information Request" from USAC, dated 11/15/07, in which USAC indicates "Compass Global, Inc. is due a Credit Balance Refund in the amount of \$2,260.99 from the Universal Service Fund."

Shortly thereafter, Compass received USAC Invoice No. UBDI0000280099, dated 11/22/07, showing a *credit balance* of \$9,179.39. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

³¹ While this Credit Adjustment may reflect a systematic refund by NANPA to all carriers which had contributed to NANP costs, it nonetheless demonstrates an overpayment by Compass with respect to NANP funding obligations.

³² A copy of Compass' pending USAC appeal is attached hereto as Exhibit 17.

³³ Pursuant to the filing deadline waiver granted by Mr. Gupta, Compass' Form 499-A for 2005 was not late-filed; thus, this \$100.00 late filing fee is inappropriate; the full amount of \$103.78 may represent an overpayment by Compass. See, Exhibit 18 hereto.

Compass received Invoice No. M-10315463, dated 11/30/07, from Neustar, reflecting a LNP liability of \$3,253.49 in current charges and Invoice No. M-10315462, reflecting a SOW liability of \$51.30 in current charges. The total amount due (\$3,304.79) was paid in full by Compass on January 8, 2008. The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass also received a NECA Statement of Account, dated 11/30/07, reflecting a *credit balance* in the amount of \$73,483.31.³⁴

December, 2007

Compass received USAC Statement of Account, Invoice No. UBDI0000284716, dated 12/21/07, reflecting a *credit balance* of \$15,406.79. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Compass received Invoice No. M-10320012, dated 12/31/07, from Neustar, reflecting a LNP liability of \$2,922.95 in current charges and Invoice No. M-10320011, reflecting a SOW liability of \$47.69 in current charges. The total amount due (\$2,970.64) was paid in full by Compass on February 12, 2008.

Compass also received a subsequent NECA Statement of Account, dated 12/31/07, which continued to reflect a *credit balance* in the amount of \$73,483.31.³⁵

³⁴ Thus, in November, 2007, Compass maintained, or was entitled to, credits for overpayments from the various federal support funds in the total amount of \$84,923.69; Compass overpayment of up to \$3,304.79. See, Exhibit 18 hereto.

³⁵ Thus, in December, 2007, Compass maintained, or was entitled to, credits for overpayments from the various federal support funds in the total amount of \$88,890.10; Compass overpayment of up to \$2,970.64. See, Exhibit 19 hereto.

January, 2008

On January 9, 2008, ten days following Compass' receipt of a NECA Statement of Account reflecting a *credit balance* in excess of \$73,000.00, the Company received a Notice of Debt Transfer which indicated "[t]he Commission has determined that the outstanding Debt, including presently accrued interest, administrative costs, and penalties owed to the TRS is \$268,820.20 to date." The attached bill remittance sheet, which reflected a Bill Number of 08TR000515, broke down this amount as two separate line items - \$253,783.52 and \$15,036.68; beyond providing the bare amount, however, neither charge was explained in any fashion.³⁶

Also on January 9, 2008, Compass received a return of funds from USAC in the amount of \$2,260.99; this entry bore a notation "Nov 2007 # 826216 Red Light Release."

Compass received NANP Credit Note, CN001240, dated 01/11/08, crediting Compass with the amount of \$586.61, reflecting "Adjustment of 2005 annual share of cost for the Numbering Administration in North America."³⁷

Compass received USAC Statement of Account, Invoice No. UBDI0000288281, dated 01/22/087, reflecting a *credit balance* of \$13,722.65.

Compass received Invoice No. M-10326870, dated 01/31/08, from Neustar, reflecting a LNP liability of \$4,328.65 in current charges and Invoice No. M-10326869, reflecting a SOW liability of \$51.38 in current charges. The total amount due (4,380.03) was paid in full by Compass

³⁶ To the Company's knowledge, it has never received a TRS bill identified as 08TR000515. Indeed, if the single page "Remittance Advice" sheet is actually bill 08TR000515, it does not provide detail by which Compass might determine the *bona fides* of these charges.

³⁷ Compass does not include this \$586.61 credit balance in the overall amount of the Company's overpayments since this credit was reversed by NANP in March, 2007, at which time NANP asserted (without explanation) that this original credit had been issued in error.

on March 12, 2008.³⁸ The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Finally, Compass received NECA Statement of Account, dated 01/31/08 – 22 days later than the Notice of Debt Transfer demanding \$268,820.20 in outstanding Debt. The January 31st Statement of Account reflected an ultimate amount due and outstanding from Compass of \$31,628.63.³⁹

February, 2008

Compass filed an administrative appeal of the January 9th Notice of Debt Transfer on February 8, 2008.⁴⁰

Compass received USAC Invoice No. UBDI0000292254, dated 02/22/08, showing a balance due of \$20,871.92. This amount was paid in full by Compass on March 12, 2008. The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

Less than a month after receiving a Notice of Debt Transfer for \$268,820.20 in outstanding TRS Debt, Compass received another Notice of Debt Transfer from the FCC, dated 02/28/08, which stated, "[t]he Commission has determined that the outstanding Debt, including presently accrued interest, administrative costs, and penalties owed to the TRS is \$154,841.72 to date." The attached bill remittance sheet, which reflected a Bill Number of 08TR001768, broke down this

³⁸ In December, 2007, Compass maintained, or was entitled to, credits for overpayments from the various federal support funds in the total amount of \$13,722.65; Compass overpayment of up to \$4,380.03. See, Exhibit 20 hereto.

³⁹ Among other line items reflected on this Statement of Account was a Credit Memo, dated 01/18/08, by which NECA credited back to Compass, apparently *sua sponte*, an amount equal to the \$31,051.00 charge which had appeared on NECA Statement of Account dated 10/31/07 without explanation or documentary support.

⁴⁰ Compass' February 8, 2008, TRS Appeal is attached hereto as Exhibit 21.

amount as two separate line items - \$146,077.09 and \$8,764.63, neither of which correspond to any amount previously invoiced to Compass.⁴¹

Compass received Invoice No.M-10332019, dated 02/29/08, from Neustar, reflecting a LNP liability of \$2,119.28 in current charges and Invoice No. M-10332018, reflecting a SOW liability of \$32.94 in current charges. The total amount due (\$2,152.22) was paid in full by Compass on April 14, 2008.⁴² The Commission's tentative conclusion in NAL paragraph 25 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

March, 2008

Compass received NANP Invoice No. IN015485, dated 03/03/08, through which NANP reversed a previously granted credit refund in the amount of \$586.61 and which also imposed a \$25.00 charge identified as "Annual share for 2005 of cost of the Numbering Administration of North America." Upon questioning, NANP personnel could not provide Compass with an explanation for either the original credit refund or the reversal thereof.

Compass received NECA Invoice TRS0055511, dated 03/04/08, identified as "2007 Adjustment," in the amount of \$20,085.60. Compass believes this amount to represent a "mid-funding year adjustment" pursuant to which TRS is assessing additional amounts on contributing entities in order to avoid a shortfall in TRS disbursements to eligible entities through the end of the present Fund year. However, inasmuch as this mid-year adjustment would have been predicated upon 499-A revenue figures which have not yet been adjusted to accurate levels, this assessment is, to a certain degree, inappropriately high. Thus, pending resolution of Compass' ongoing TRS and USAC appeals, Compass has included this amount in the Company's TRS appeal filed March 28,

⁴¹ To the Company's knowledge, it has never received a TRS bill identified as 08TR000515. If the single page "Remittance Advice" sheet is actually bill 08TR001768, it does not provide detail by which Compass might determine the *bona fides* of these charges.

⁴² Compass overpayment of up to \$23,024.14. See, Exhibit 22 hereto.

2008. The Commission's tentative conclusion in NAL paragraph 23 is premature and incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

On March 28, 2008, Compass filed its second TRS-related administrative appeal. Therein, Compass also requested that the FCC refrain from taking any further debt collection action against the Company with respect to any potential TRS-related indebtedness until such time as NECA has verified the existence of a valid and enforceable debt which has been reliably quantified.⁴³ The Commission's tentative conclusion in NAL paragraph 23 is premature and incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

By Statement of Account, dated 03/31/08, NECA imposed upon Compass a late payment charge (via Statement line item FG-48940) in the amount of \$19.26, related to the mid-year TRS adjustment.

Finally, also dated 03/31/08, the FCC issued another Notice of Debt Transfer which stated, "[t]he Commission has determined that the outstanding Debt, including presently accrued interest, administrative costs, and penalties owed to the TRS is \$33,491.69 to date." The attached bill remittance sheet, which reflected a Bill Number of 08TR001942, broke down this amount as two separate line items - \$31,628.63 and \$1,863.06, neither of which correspond to any amount previously invoiced to Compass.⁴⁴ Compass considers its March 28, 2008 TRS appeal to be sufficiently broad as to encompass not only this Notice of Debt Transfer but any other similar notice which the FCC may issue prior to resolution of the outstanding issues in Compass' pending USAC and TRS appeals. The Commission's tentative conclusion in NAL paragraph 23 is premature and incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

⁴³ Compass' March 28, 2008 TRS Appeal is attached hereto as Exhibit 23.

⁴⁴ To the Company's knowledge, it has never received a TRS bill identified as 08TR000515. If the single page "Remittance Advice" sheet is actually bill 08TR001768, it does not provide detail by which Compass might determine the *bona fides* of these charges.

April, 2008

Compass received USAC Invoice No. UBDI0000300249, dated 04/22/08, showing current charges of \$1,590.54. This amount was paid in full by Compass on May 15, 2008.⁴⁵ The Commission's tentative conclusion in NAL paragraph 22 is incorrect; the proposed forfeiture is, therefore, improper and must be cancelled.

By notice dated April 30, 2008, NECA advised Compass of an outstanding balance of \$20,085.60, the original amount of the mid-year TRS adjustment. The notice made no reference to the late payment charge of \$19.26 which had appeared on Compass' March 31, 2008, Statement of Account.

Compass also received two notices from the Department of the Treasury, both dated April 30, 2008, indicating that the Company's purported TRS debt had been transferred by the FCC for collection *despite* the Company's demonstration in its March 28th TRS appeal that the amount purportedly owed is not a debt which is legally enforceable and for which collection, pursuant to the Debt Collection Improvement Act of 1996, is unavailable. The amounts due reflected on these notices were \$156,811.75 and \$155,659.14, respectively.

As the foregoing chronology demonstrates, Compass has timely paid all invoiced USF, LNP and NANP support payments and annual FCC regulatory fee amounts by the invoice due dates. Compass has done so despite its resolute belief that such invoiced amounts may not be lawfully imposed upon it. *See* Sections IV.A through F, *infra*. Compass has even done so despite knowing that many of the invoiced amounts were calculated using the erroneously reported revenue figures set forth in the original 2005 and 2006 Forms 499-A, filed September 5, 2006.⁴⁶

And, not once, but three times, the Company has exercised its rights to pursue administrative reviews of actions by USAC and NECA. Both NECA appeals remain pending and

⁴⁵ Compass overpayment of up to \$1,590.54. *See*, Exhibit 24 hereto.

⁴⁶ Compass sought to correct these reporting errors within 12 months.

Compass will be filing a petition for review of USAC's June 2, 2008 Administrator's Decision on or before August 1, 2008; thus, all amounts outstanding have been lawfully placed into dispute (and remain so) consistent with the procedures specifically directed by the Commission and afforded under any measure of due process, the FCC has transferred alleged debts for collection which can neither be adequately quantified nor explained by NECA.

It is only with respect to the large lump-sum invoiced amount associated with TRS that the Company has been required, consistent with sound business practices, to refrain from paying in full or agreeing to a payment plan that mandates a 10% down payment (at a significantly inflated rate of interest) based as it were on the "full" amount allegedly owed. In this case, especially in light of the dramatically changing amounts reflected by NECA as due and owing from one month to the next, Compass has been compelled to repeatedly request information and assistance from the fund administrator to determine the nature and actual amount of unidentified charges and/or credits.

While, by its history of actions, Compass has clearly demonstrated its willingness to pay such USF, NANP and NANP support payments and regulatory fee amounts as may be lawfully (or as Compass argues, unlawfully) imposed upon it, the amount that is ultimately, allegedly owed by Compass to the TRS Fund can only be established by fully and finally resolving all questions raised in the Company's USAC and TRS appeals and its soon to be filed petition for review of the June 2nd Administrator's Decision. At this point in time, based upon the above record, it is impossible for any entity to assert with certainty that any specific amount is actually due. Yet, nevertheless, the FCC has apparently prematurely and, therefore, unlawfully transferred one of two specific amounts -- either \$156,811.75 or \$158,659.14, for collection by the Department of Treasury.

III. ISSUANCE OF THE NAL IS IMPERMISSIBLE, PREMATURE AND DEPRIVES COMPASS OF ESSENTIAL DUE PROCESS

As an official agency of the United States government, the FCC is bound to adhere to fundamental principles of due process. The Supreme Court has held that

“Due process, unlike some legal rules, is not a technical concept unrelated to time, place and circumstances. Due process is flexible and calls for such procedure protections as the situation demands.”⁴⁷

In the present situation, the Company has repeatedly requested assistance from the various fund administrators, particularly NECA, in an effort to accurately determine what amount, if any, may be owed by the Company in federal support contributions. Despite the filing of numerous appeals to resolve underlying threshold issues, no such assistance or information has been forthcoming. Furthermore, until the Company's appeals are fully and finally resolved, Compass may not proceed to the next steps in its rights to administrative review, as specifically provided by the Commission's own rules and regulations. Compass respectfully submits that a very high degree of procedural protection is called for here, where the Company is facing a debt collection action initiated by the Department of the Treasury as a direct result of the FCC's refusal to honor its established rules and regulations governing the federal support programs and administrative review of fund Administrator's Decisions.⁴⁸

Furthermore, the courts have held that

“[i]t is a wholesome and necessary principle that an administrative agency must pursue the procedures and rules enjoined upon it in the performance of its function and show a substantial compliance therewith to give validity to its actions.”⁴⁹

⁴⁷ *Matthews v Eldridge*, 424 U.S. 319 (1976).

⁴⁸ The Supreme Court has also held that “[t]he legal right of a taxpayer to decrease the amount which would otherwise have been his taxes, or altogether to avoid them, by means which the law permits, cannot be doubted.” *Gregory v Heberling*, 293 U.S. 465, 469-470, 70 L.Ed. 596, 599 (1935). Compass submits that this principle applies with equal force to the present situation, where the Company is seeking to compel USAC to fulfill its lawful obligation to process the Company's revised Form 499-As for 2005 and 2006 in order that federal support contributions may be brought down to an appropriate level.

⁴⁹ *Wichita R. & Light Co. v Public Utilities Commission*, 260 U.S. 48, 43, S.Ct. 51 (1922).

It is true that the Agency has an obligation "[t]o ensure that debtors have all appropriate due process rights, including the ability to verify, challenge and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States."⁵⁰ And this obligation is at least tantamount in importance to the FCC's obligation to promote the goal of universal service, the mandate embodied in Section 254 of the Act. It is in pursuit of this Section 254 goal that the FCC takes enforcement action, when appropriate, against entities which have been conclusively determined to be contributing less than their statutory fair share to federal support mechanisms. Whenever it takes such action, however, the FCC remains bound by its underlying due process obligations, including the obligation to act fully in accord with its own rules and regulations:

"[I]t is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."⁵¹

Furthermore,

"[T]he seeds of the doctrine [expressed in footnote 14 of Cacares] are found in the long-settled principles that rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency . . . the rule requiring an agency to abide by its own policies and regulations [is] 'premised on fundamental notions of fair play underlying the concept of due process and that 'its ambit is not limited to rules attaining the status of formal regulations.'"⁵²

In this instance, regardless of whether Compass may be characterized as an entity which is legally obligated to make such funding contributions (which it is not), the principles of due process, to which the FCC must adhere, render the issuance of a NAL against Compass, inappropriate and unenforceable. The FCC has established specific procedures to guarantee its continuing oversight of USAC and NECA actions, as well as all aspects of the federal support mechanisms, and has

⁵⁰ Public Law 104-134, 110 Stat. 1321-58 (Apr. 26, 1996), Debt Collection Improvement Act of 1996, Sec. 31001(b)(5).

⁵¹ *United States v. Cacares*, 440 U.S. 741, 751 (1979), *ftnt.* 14.

⁵² *Montilla v. I.N.S.*, 926 F.2d 162, 166-167 (2nd Cir. 1991).

specifically set forth appeals processes by which “affected parties should have the option of seeking redress from a Committee of the Board or, if the matter concerns a billing, collection, or disbursement matter that falls outside of the jurisdiction of a particular committee, from the full USAC Board.”⁵³ Indeed, the FCC has “encourage[d] parties to seek redress from Committees of the Board for matters that involve straightforward application of the Commission’s rules”⁵⁴ – precisely the action taken by Compass here, although that action has not insulated the Company from escalating levels of financial exposure.

The FCC has appointed USAC as permanent administrator for all universal service support mechanisms.⁵⁵ NECA, which has responsibility for the Interstate Telecommunications Relay Fund, “had been administering the high cost support mechanism for more than a decade when Congress passed the Telecommunications Act of 1996.” Thus, according to the FCC, “Congress was aware of NECA’s role when it adopted section 254, which affirmed and expanded the Commission’s authority to direct the administration of universal service and, therefore, implicitly affirmed the Commission’s authority to employ an independent entity to administer universal service.”⁵⁶

Even as it has authorized independent entities to address issues raised and appeals filed by entities affected by their respective determinations, the FCC has been careful to acknowledge that “the Commission retains ultimate control over the operation of the federal universal service support mechanisms through its authority to establish the rules governing the support mechanisms and through its review of administrative decisions that are appealed to the Commission.”⁵⁷ The FCC has

⁵³ *In the Matters of Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, FCC 98-306, (rel. Nov. 19, 1998) (“Third Report and Order”), ¶ 67.*

⁵⁴ *Id.*

⁵⁵ *Third Report and Order, ¶ 5.*

⁵⁶ *Id., ¶ 14.*

⁵⁷ *Id., ¶ 17.* The FCC has further supported its delegation of review authority to the Wireline Competition Bureau as “consistent with the Commission’s authority under section 5(c) of the Act

also said that “[w]e do not believe, as some commenters suggest, that the committees’ ability to bind the Board would somehow diminish the Commission’s ultimate responsibility for administration of the universal service support mechanisms.”⁵⁸ In short, the FCC acknowledges that under all circumstances, the ultimate responsibility for enforcement of its federal contribution mechanism rules lies with itself. Consistent with the above-described due process obligations, the FCC is obligated in this case to honor Compass’ invocation of its administrative appeals rights with regard to these federal contribution mechanisms, and also to take steps to counteract its inappropriate referral of a purported, but as-yet unsubstantiated, debt to the Department of Treasury for collection.

On November 6, 2007, Compass commenced an appeal action before the USAC seeking to compel the acceptance and processing of the Company’s revised Forms 499-A for 2005 and 2006. Under the current state of law, and consistent with FCC policy pronouncements, Compass is entitled to such relief. Furthermore, by virtue of FCC Rule section 54.719, Compass is also afforded the right to challenge USAC’s decision before the Commission itself, if necessary, to protect its rights.⁵⁹ And, pursuant to FCC Rule section 54.724, Compass would be entitled to the issuance of a decision by the Wireline Competition Bureau or the FCC within 90 days of the filing of that appeal.⁶⁰ Even months following the date upon which Compass filed its USAC appeal, the USAC Administrator still had rendered no decision thereon. On the very eve of the filing of Compass’ Response to the instant NAL – on June 2, 2008, the USAC Administrator finally issued an

(47 U.S.C. §5(c))” because such Bureau decisions will be “subject to the filing of applications for review with the Commission. . . . As with other decisions made by the Bureau acting pursuant to its delegated authority, parties may seek Commission review of any Bureau decision.” *Id.*, ¶ 68.

⁵⁸ *Id.*, ¶ 40.

⁵⁹ 47 C.F.R., § 54.719.

⁶⁰ 47 C.F.R. § 54.724.

"Administrator's Decision on Contributor Appeal."⁶¹ USAC had the benefit of a protracted period of time during which it should have carefully considered all aspects of the pending appeal, leading to rational conclusions fully supported by fact and law. However, even a cursory review of the Administrator's Decision reveals numerous factual errors, upon which USAC has premised faulty and unsupportable conclusions. In order to address these factual errors and the legal conclusions set forth in the Administrator's Decision, which are against the weight of the evidence in this matter and erroneous as a matter of law, Compass will be pursuing its right, under FCC Rule Sections 54.719 and 54.722, to have all of the Company's USAC appeal issues reviewed *de novo* by the full Commission.⁶² Pursuant to FCC Rule Section 54.720, Compass has up to and including August 1, 2008, to petition for review of the Administrator's Decision by the FCC and will do so.⁶³

The Commission has stated that "[t]he filing of an appeal to a Committee of the Board or the full Board will toll the time period for filing an appeal with the Commission."⁶⁴ The persistent refusal of the USAC Administrator to act -- choosing instead to issue a flawed decision on the very eve of Compass' Response to the instant NAL -- has, in and of itself, diminished Compass' due

⁶¹ Letter from USAC to Jonathan S. Marshlian, Esq., "Administrator's Decision on Contributor Appeal", dated June 2, 2008 ("Administrator's Decision").

⁶² 47 C.F.R. § 54.719(c) ("Any person aggrieved by an action taken by a division of the Administrator, as defined in Sec. 54.701(g), a Committee of the Board of the Administrator, as defined in Sec. 54.705, or the Board of Directors of the Administrator, as defined in Sec. 54.703, may seek review from the Federal Communication Commission, as set forth in Sec. 54.722."); 47 C.F.R. § 54.722(a) ("Requests for review of Administrator's Decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission."); *see also*, 47 C.F.R. § 54.723(b) ("The Federal Communications Commission shall conduct a *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy.")

⁶³ 47 C.F.R. § 54.720(a) ("An affected party requesting review of an Administrator's Decision by the Commission pursuant to Sec. 54.719(c) shall file such request within sixty (60) days of the issuance of the decision by a division or Committee of the Board of the Administrator."). Similar 60-day provisions are applicable to appeals filed pursuant to Sections 54.719(a) and (b) as well. The Administrator's Decision is dated June 2, 2008; 60 days therefrom is August 1, 2008.

⁶⁴ *Third Report and Order*, ¶ 82; 47 C.F.R. § 54.720(d) ("The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.703, shall toll the time period for seeking review from the Federal Communications Commission.").

process rights. The Company has been effectively stalled at this stage of its pursuit of administrative review. Now that USAC has issued an Administrator's Decision, albeit a factually and legally flawed one, the Company is finally free to pursue its further appeals rights under the FCC's rules. That the Company is afforded a full 60 days from the June 2, 2008 issuance of the Administrator's Decision in which to do so is conclusive evidence of the prematurity of the issuance of the NAL; per the FCC's own rules, all matters raised in Compass' USAC appeal are still live and continue to be vigorously advanced by the Company.

Furthermore, in the seven months since the filing of Compass' USAC appeal, the Company has been subject to a number of Notices of Debt Transfer and is now required to defend itself against a Department of Treasury federal debt collection action, which should not have been initiated in the first place. Resolution of Compass' USAC appeal will impact not only every element of purported liability for forfeiture set forth in the NAL, but this federal debt collection action, as well. Thus, issuance of the NAL prior to full and final resolution of the issues raised in Compass' USAC appeal terminates Compass' "access to its remaining administrative appeals procedures" with respect to the questions raised therein. It also deprives Compass of the "ability to verify, challenge and compromise claims" levied against it through the NAL by forcing the Company to respond before it has received answers that are essential to its defense of each and every allegation of either "underpayment" or "non-payment" of USF, TRS, LNP, NANP and FCC regulatory fees throughout the entire 22-month period for which forfeiture liability is sought.

FCC rules also provide Compass with the right to petition for reconsideration of any NAL decision issued by the FCC and, if necessary, to seek further redress of a Petition for Reconsideration decision before the courts. Compass' diminished ability to present its best defense in this NAL proceeding will necessarily follow through to any later review proceedings, placing the Company in a similarly disadvantaged posture in the event of a petition for reconsideration or court

action. It is precisely this type of unfair disadvantage which the FCC is bound, through application of general principles of due process, to prevent.

And, as the FCC has been advised, the very provisions of the Debt Collection Improvement Act affirmatively prevent the transfer of any purported debt for collection against Compass.

Pursuant to 31 C.F.R. § 285.12,

“A debt is considered 180 days delinquent for purposes of [transfer of debts to Financial Management Service, a bureau of the Department of the Treasury] if it is 180 days past due and *is legally enforceable*. . . . A debt is legally enforceable if there has been a final agency determination that the debt, *in the amount stated*, is due and there are no legal bars to collection. Where, for example, a debt is the subject of a pending administrative review process required by statute or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable . . . and is not to be transferred even if the debt is more than 180 days past-due.”⁶⁵

Thus, the above due process considerations apply with equal force to Compass' pending TRS appeals. On February 8, 2008, Compass was required to protect its due process rights by timely filing an administrative appeal of the January Notice of Debt Transfer.⁶⁶ In that appeal, Compass specifically requested that the Commission review the pertinent facts and NECA records to determine the correct debt owed, if any. Compass also requested that the FCC refrain from taking any further debt collection action until such time as the FCC had verified the existence of a valid and enforceable debt which had been reliably quantified.

Additionally, the FCC's own pronouncements provide that:

⁶⁵ 31 C.F.R. § 285.12(c)(3)(i), Title 31, Part 285 – Debt Collection Authorities Under the Debt Collection Improvement Act of 1996. (Emphasis added.)

⁶⁶ Indeed, the FCC itself has held that “where an applicant has filed a timely administrative appeal, or a contested judicial proceeding, challenging either the existence of, or the amount of, a debt, such debt shall not be considered delinquent.” *In the Matter of Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, Report and Order*, MD Docket No. 02-339 (rel. April 13, 2004), ¶6.

“where an applicant has filed a timely administrative appeal, or a contested judicial proceeding, challenging either the existence of, or the amount of, a debt, such debt shall not be considered delinquent for purposes of the red light rule.”⁶⁷

Compass had done all that was necessary to preserve the Company's due process rights and prevent the unjust imposition of an arbitrary debt which neither NECA, USAC nor the FCC had adequately substantiated -- and which remain unsubstantiated today. Rather than acting in accordance with its own rules and regulations, however, less than one month later -- February 28, 2008 -- the FCC issued a Second Notice of Debt Transfer, showing an amount due of \$154,841.72. However, neither the February 28th Notice of Debt Transfer nor the one-page Remittance Advice Bill for Collection attached thereto identifies the outstanding amount as attributable to any particular TRS funding year; furthermore, amounts reflected as line items on the Remittance Advice -- \$146,077.09 and \$8,764.62 -- do not correspond to amounts listed on any NECA Interstate TRS Fund invoice received by Compass to date. Thus, even as of the date of this Response, it is impossible for the Company (or the FCC) to determine what these charges represent and what impact they would have on any TRS liability Compass may or may not have.

The FCC's due process constraints thus compel the dismissal of the NAL, the expeditious resolution of Compass' USAC and TRS appeals,⁶⁸ and the taking of actions by the FCC to put in motion the dismissal of the pending Department of Treasury federal collection action against Compass.

⁶⁷ *In the Matter of Amendment of Parts 0 and 1 of the Commission's Rules, Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors, Report and Order*, MD Docket No. 02-339 (rel. April 13, 2004), ¶ 6. It goes without saying that if a debt under appeal will not subject an entity to “red-lighting” at the FCC, neither may that appealed debt support a debt collection action during the pendency of the appeal.

⁶⁸ Pursuant to FCC Rule §54.724(b), the Commission's decision on Compass' anticipated appeal of the Administrator's Decision will issue within ninety days of the filing of Compass' appeal. (“The Commission shall issue a written decision in response to a request for review of an Administrator's Decision that involves novel questions of fact, law, or policy within ninety (90) days.”); NECA, however, is under no such compulsion and, thus, Compass requests Commission intervention to ensure a prompt NECA decision on the Company's pending TRS appeals following the ultimate resolution of the USAC appeals issues.

IV. THE TENTATIVE CONCLUSIONS WHICH CLASSIFY COMPASS' SERVICES AND REVENUE AS "TELECOMMUNICATIONS SERVICES" AND "TELECOMMUNICATIONS SERVICES REVENUE" SUBJECT TO FEDERAL SUPPORT PROGRAM CONTRIBUTION BASES, AS SET FORTH IN THE NAL, ARE INCORRECT AS A MATTER OF LAW.

In the preceding Sections, Compass demonstrates the falsity, premature, and ultimately unenforceable nature of the Commission's tentative conclusions regarding Compass's alleged failure to pay or underpayment of contributions and fees during the 22-month period relevant to the NAL. For these reasons alone, as further elaborated in Sections IV.G through I, *infra*, the Commission should cancel the NAL. In the event the Commission fails to do so, and even if it does, Compass is compelled to rebut the following tentative conclusions:

- 1.) That Compass provided "telecommunications services" as far back as 1998;
- 2.) That Compass was the type of provider required to register, file Telecommunications Reporting Worksheets (Forms 457 and, subsequently, Forms 499-A and Q) and report revenue therein;
- 3.) That Enhanced Wholesale Service is a "telecommunications service";
- 4.) That Enhanced Platform Service is a "telecommunications service"; and
- 5.) That the revenue derived by Compass from EWS and/or EPS, which Compass reasonably believed and booked as wholesale, is somehow subject to USF, TRS, NANP, LNP and/or FCC regulatory fee contribution bases whereby any failure to fully or timely pay contributions during the past 22-months resulted in a violation of Commission rules and communications laws.

As demonstrated herein, the aforementioned tentative conclusions are incorrect as a matter of fact and law and are wholly unsustainable.

A. PROVIDERS OF TELECOMMUNICATIONS SERVICES OFFERED ON A COMMON CARRIER BASIS ARE SUBJECT TO REPORTING AND USF CONTRIBUTION OBLIGATIONS.

1. Carriers That Are Required To File Telecommunications Reporting Worksheets and Contribute to USF

The relevant statutory provision governing a carrier's obligation to contribute to the USF is 47 U.S.C. § 254(d), which states: