

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

In the Matter of)
) File No. EB-02-IH-0757
)
Globcom, Inc.) NAL Acct. No. 200332080015
d/b/a Globcom Global Communications)
)
Apparent Liability for Forfeiture) FRN No. 0009652801
)
)

NOTICE OF APPARENT LIABILITY
FOR FORFEITURE AND ORDER

Adopted: September 26, 2003

Released: September 30, 2003

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL") and Order, we find that Globcom, Inc. ("Globcom"), apparently violated section 254(d) of the Communications Act of 1934, as amended (the "Act"), 1 and sections 54.706(a) and 64.604(c)(5)(iii)(A) of the Commission's rules2 by willfully and repeatedly failing to contribute to the Universal Service Fund and the Telecommunications Relay Service ("TRS") Fund. We also find that Globcom apparently violated section 54.711(a) of the Commission's rules by willfully and repeatedly failing to file complete and accurate interstate and international revenue information.3 Based on our review of the facts and circumstances surrounding this matter, we find that Globcom is apparently liable for a total forfeiture of \$806,861. We further order Globcom to submit within 30 days, either as part of a response to this NAL or separately, a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, stating its plan to come into compliance with the relevant payment and reporting rules discussed herein.

II. BACKGROUND

2. The Telecommunications Act of 19964 codified the Commission's historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. Section 254 of the Act governs the assessment and recovery of universal service contributions. Section 254(d) provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory

1 47 U.S.C. § 254.

2 47 C.F.R. §§ 54.706(a); 64.604(c)(5)(iii)(A).

3 47 C.F.R. § 54.711(a).

4 The Telecommunications Act of 1996 amended the Communications Act of 1934. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁵ Consistent with this mandate, for the period covered by this NAL, the Commission assessed contributions on every qualifying carrier based on the carrier’s gross billed end-user telecommunications revenues.⁶ Under the Commission’s rules, all telecommunications carriers that provided interstate telecommunications services and certain other providers of interstate telecommunications contributed to the Universal Service Fund based on their gross billed interstate and international end-user telecommunications revenues.⁷ The Commission has authorized the Universal Service Administrative Company (“USAC”) to administer the universal service support mechanisms and to perform billing and collection functions.⁸

3. Title IV of the Americans with Disabilities Act of 1990, codified at 47 U.S.C. § 225, directs the Commission to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech impaired individuals in the United States.⁹ The Commission established the TRS Fund, currently administered by the National Exchange Carrier Association (“NECA”), to reimburse TRS providers for the costs of providing interstate TRS.¹⁰ TRS enables persons with hearing and speech disabilities to communicate by telephone with persons who may or may not have such disabilities. TRS provides telephone access to a significant number of Americans who, without it, might not be able to make or receive calls from others.¹¹ Pursuant to section 64.604 of the Commission’s rules, every carrier providing interstate telecommunications services must contribute to the TRS fund.¹² NECA invoices common carriers each year for their contribution based on their interstate revenues.¹³

4. USAC distributes, receives, and processes the Telecommunications Reporting Worksheet, which sets forth the information that carriers must submit so that the administrators of the Universal Service Fund and the Telecommunications Relay Service Fund may calculate and assess contributions.¹⁴ Prior to March 14, 2001, the Commission required carriers to file Telecommunications Reporting Worksheets twice each year for the purpose of determining their contributions.¹⁵ Carriers were required

⁵ 47 U.S.C. § 254(d).

⁶ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9206-07, ¶¶ 843-44 (1997) (subsequent history omitted). As of April 1, 2003, carrier contributions are based on carriers projected, rather than historical, revenues. See *infra* note 31.

⁷ 47 C.F.R. §§ 54.706, 54.709.

⁸ See *Amendment of Parts 54 and 69 -- Changes to the Board of Directors of the National Exchange Carriers Association, Inc.*, Report and Order and Second Order on Reconsideration, 12 FCC Rcd 18400, 18415, ¶ 25 (1997) (“*NECA Changes Order*”); 47 C.F.R. § 54.702(b).

⁹ Pub. L. No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Act).

¹⁰ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, ¶ 7 (1993) (*TRS III Order*).

¹¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order, 15 FCC Rcd 5140, 5143, ¶ 5 (2000).

¹² See 47 C.F.R. § 64.604(c)(5)(iii).

¹³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, ¶ 5 (2000).

¹⁴ *NECA Changes Order*, 12 FCC Rcd at 18442, ¶ 80.

¹⁵ See *1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, 14 FCC Rcd 16602 (1999) (“*Consolidated*

to file revenues for January through June by September 1 of each year and to file revenues for the entire calendar year by the following April.¹⁶ Beginning March 14, 2001, the Commission modified its reporting requirements to require carriers to file not only an Annual Worksheet,¹⁷ but also to file a Telecommunications Reporting Worksheet each quarter with their interstate and international revenues from the previous period (“Quarterly Worksheets”).¹⁸ A carrier’s failure to file the worksheets or submission of inaccurate or untruthful information “may subject the contributor to the enforcement provisions of the Act and any other applicable law.”¹⁹

5. USAC uses the revenue information provided on the Quarterly Worksheets to determine each carrier’s universal service contribution on a quarterly basis, with a yearly true-up using the Annual Worksheet.²⁰ USAC then bills carriers each month, based on their quarterly contribution amount.²¹

Reporting Order”). The *Consolidated Reporting Order* established one form, the Telecommunications Reporting Worksheet, in lieu of separate reporting requirements for the interstate Telecommunications Relay Services Fund, federal universal service support mechanisms, administration of the North American Numbering Plan, and the shared costs of long-term local number portability. *Consolidated Reporting Order*, 14 FCC Rcd at 16609, ¶ 10. The Commission also adopted a “short form” for September 1 Universal Service support mechanism filing. *Id.* at 16618-19, ¶¶ 33-34.

¹⁶ Prior to March 14, 2001, the Commission required semi-annual, in addition to annual reporting. Contributors were required to file revenues for January through June on September 1 of each year and annual revenues from the prior calendar year on April 1 of each year. *NECA Changes Order*, 12 FCC Rcd 18400, Appendix B; 47 C.F.R. 54.711(a) (2000) (“Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator [USAC] on a semi-annual basis. . . .”). See *NECA Changes Order*, 12 FCC Rcd at 18424, ¶ 43, 18442, ¶ 80, 18501-02, Appendix C. The Commission adopted the Worksheet and attached it as Appendix C to the *NECA Changes Order*. See also “Common Carrier Bureau Announces Release of September Version of Telecommunications Reporting Worksheet (FCC Form 499-S) for Contributions to the Universal Service Support Mechanisms,” *Public Notice*, CC Docket No. 98-171, 14 FCC Rcd 12171 (1999); “Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2000 Filing by All Telecommunications Carriers,” *Public Notice*, CC Docket No. 98-171, 15 FCC Rcd 16434 (2000).

¹⁷ See *FCC Form 499-A Telecommunications Reporting Worksheet -- Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a.pdf> (April 2003) (“Annual Worksheet Form”).

¹⁸ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) (“*Quarterly Reporting Order*”). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, carriers reported first quarter revenues on May 1 of each year. See *Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & note 32. See *FCC Form 499-Q Telecommunications Reporting Worksheet -- Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2003) (“Quarterly Worksheet Form”).

¹⁹ 47 C.F.R. § 54.713. See also *NECA Changes Order*, 12 FCC Rcd at 18442 n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

²⁰ See 47 C.F.R. § 54.709(a).

²¹ See, e.g., *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1687, ¶ 18 (1999) (“*Sixth Report and Order*”); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000) (“*Further Notice*”); *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971-72, ¶ 35 (2002) (“*Streamlined Reporting Requirements Order*”); *Changes to the Board of Directors of the National Exchange Carrier Association*,

Carriers must pay their contribution by the date shown on the invoices.²² As with the filing requirement, a carrier's failure to submit its contributions may subject the carrier to the enforcement provisions of the Act and any other applicable law.²³

6. The Commission has identified the unacceptable consequences of carriers' failure to meet their universal service obligations:

First, delinquent carriers deprive the universal service support mechanisms of the funds necessary to carry out the goals of this important statutory program. The support mechanisms cannot be fully effective if, because of carrier delinquencies, they are only partially funded. Second, by withholding their universal service payments, delinquent carriers likely enjoy a competitive advantage over those carriers that are complying with the law and our regulations and making their payments on a timely basis. We view contribution to the universal service support mechanisms as the obligation of all responsible carriers, and we will not permit carriers to shirk their responsibilities in an attempt to gain an advantage over their law-abiding competitors.²⁴

The Commission has repeatedly warned carriers that attempts to evade these important responsibilities will result in enforcement action against them.²⁵ Similar considerations are applicable to a carrier's failure to contribute to the TRS fund.

7. Globcom, which does business as Globcom Global Communications, is an interexchange carrier headquartered in Northbrook, Illinois that provides resale telecommunications services to consumers.²⁶ Globcom has only filed two Quarterly Worksheets out of the last ten quarters since the requirement went into effect.²⁷ The company has filed Annual Worksheets for two of the last three years.

Inc., Federal-State Board on Universal Service, Second Order on Reconsideration in CC Docket No. 97-21, 12 FCC Rcd 22423, 22425, ¶ 3 (1997) ("Second Reconsideration Order").

²² 47 C.F.R. § 54.711(a) ("The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and the dates by which payments must be made.") See, e.g., "Proposed Third Quarter 2003 Contribution Factor," *Public Notice*, CC Docket No. 96-45, 18 FCC Rcd 11442 (Wireline Comp. Bur. 2003) ("Contribution payments are due on the date shown on the [USAC] invoice.") Our rules do not, however, condition payment on receipt of an invoice or other notice from USAC. See 47 C.F.R. § 54.706(b). A carrier that does not file an Annual or Quarterly Worksheet may fail to receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*. The instructions for the Annual and Quarterly Worksheets include tables for carriers to determine their annual contributions. Carriers should estimate their annual contributions to determine if they are *de minimis* and therefore exempt.

²³ 47 C.F.R. § 54.713. See also *NECA Changes Order*, 12 FCC Rcd at 18442 n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

²⁴ *ConQuest Operator Services Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12518, ¶ 1 (1999) ("ConQuest").

²⁵ See, e.g., *America's Tele-Network Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20903, 20906, ¶ 8 (2000) ("ATNC"); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546, ¶ 7 (2000) ("Matrix").

²⁶ Globcom's website states that the carrier provides a number of services, including residential and commercial long-distance, calling cards, and toll-free numbers. See <http://www.globcom.com/index.aspx>. The website also offers Globcom's rates for calls to dozens of countries, as well as within the U.S.

²⁷ Globcom filed a Quarterly Worksheet for third quarter 2002 on October 10, 2002. On January 27, 2003, Globcom filed a revised version of the third quarter 2002 filing. On February 13, 2003, Globcom filed the Quarterly Worksheet for fourth quarter 2002.

In its 2001 Annual Worksheet, filed May 7, 2002, Globcom stated that its long distance revenues for year 2000 were \$5,835,818.²⁸ In its 2002 Annual Worksheet, filed August 6, 2002, Globcom initially stated that its interstate and international revenues for year 2001 were \$187,343.²⁹ On October 10, 2002, Globcom refiled its 2002 Annual Worksheet and restated 2001 revenue as \$5,187,343.³⁰ USAC has not received Globcom's 2003 Annual Worksheet with its 2002 revenues, although it was due on April 1, 2003.

8. For the period in question, the Commission's rules based a carrier's universal service contributions on the carrier's interstate and international revenue during the previous year.³¹ Thus, USAC based Globcom's universal service contributions for 2001 on Globcom's reported revenues for 2000. Similarly, USAC based Globcom's obligations for 2002 on Globcom's reported 2001 revenues.

9. According to USAC's records, Globcom has never paid its universal service contributions. Currently, Globcom is past due on \$681,837.76 in universal service-related charges, fees, and adjustments. This amount represents Globcom's unpaid balances for 2001 and 2002, as well as current monthly billings for 2003 and various fees and adjustments. USAC has sent Globcom monthly invoices reflecting Globcom's past due balances and current charges without any response from Globcom.³²

²⁸ See Globcom's 2001 Annual Worksheet, p. 5, filed on May 7, 2002. The Annual and Quarterly Worksheets require carriers to disaggregate their revenue into interstate and international revenues, but Globcom simply reported its "long-distance revenue." *Id.*

²⁹ See Globcom's 2002 Annual Worksheet, p. 5, filed on August 6, 2002. Globcom disaggregated its interstate and international revenues on its 2002 Annual Worksheet.

³⁰ See Globcom's Revised 2002 Annual Worksheet, p. 5, filed on October 10, 2002.

³¹ The Commission recently modified its rules on carrier contributions to the universal service fund. See *Federal/State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("*Interim Contribution Order*"). As of April 1, 2003, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historical gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-974, ¶¶ 29-39.

³² USAC has sent Globcom numerous past due notices for Globcom's 2001 and 2002 contributions, as well as current charges. On January 23, 2003, USAC sent Globcom an invoice due February 14, 2003 for \$152,769.62 in 2001 and 2002 universal service-related charges, adjustments, and fees, as well as current charges. On February 25, 2003, USAC sent Globcom another invoice informing the carrier that it owed \$305,379.87, due March 14, 2003. On March 21, 2003, USAC sent Globcom another invoice, informing the carrier that it owed \$459,059.51. On April 22, 2003, USAC sent Globcom an invoice informing the carrier that it now owed \$497,240.98. On May 22, 2003, USAC sent Globcom an invoice stating that the balance due, on June 13, 2003, was \$536,422.36. On June 20, 2003, USAC sent Globcom an invoice informing the carrier that it owed \$575,765.79, due July 15, 2003. Most recently, on July 22, 2003, USAC sent Globcom an invoice stating that the balance due, \$681,837.76, was past due on August 15, 2003. See Letter from Anne Marie Trew, Director, Finance Operations and D. Scott Barash, Vice President and General Counsel, USAC to William Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 21, 2003 ("*USAC Letter*"). These statements from USAC are based on Globcom's reported 2000 and 2001 revenue, as set forth in Globcom's Annual Worksheets for 2001 and 2002. Globcom did not file an Annual Worksheet for its pre-2000 revenue and has not been billed by USAC for those years. We take no action at this time regarding Globcom's failure to file or contribute prior to 2000.

10. Globcom has also failed to pay its November 3, 2002 and July 7, 2003 interstate Telecommunications Relay Service (“TRS”) Fund contributions.³³ According to NECA records, Globcom has not paid its last two invoices for contributions to the TRS fund.³⁴

11. After receiving information that Globcom had not paid its universal service contributions or filed its worksheets, and that the company may have inaccurately reported its revenue information on its Annual Worksheets, the Enforcement Bureau (“Bureau”) issued a Letter of Inquiry (“LOI”) to Globcom requesting information relating to Globcom’s universal service contributions and its reporting of income.³⁵ Globcom initially failed to respond, but after the Bureau advised Globcom that its failure to respond to the LOI placed it at risk of enforcement action,³⁶ Globcom provided responses on March 14 and April 16, 2003.³⁷

³³ NECA bills contributors following the revenue data collection. *See Consolidated Reporting Order*, 14 FCC Rcd at 16612-13, ¶ 18. All carriers providing interstate telecommunications services (including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service, access, alternative access and special access, packet-switched, WATS, 800, 900, message telephone, private line, telex, telegraph, video, satellite, international, intraLATA, and resale services) are required to contribute to the TRS Fund on the basis of the interstate portion of their services. *TRS III Order*, 8 FCC Rcd at 5302, ¶ 12. *See also Consolidated Reporting Order*, 14 FCC Rcd at 16630-34, ¶¶ 59-67.

³⁴ According to NECA’s records, on September 3, 2002, Globcom was billed \$149.87, which was paid. Globcom was billed \$100.00 for a late filing penalty, which was also paid. On November 3, 2002, Globcom was billed \$4,000 for a 2002 adjustment, after Globcom revised its Annual Worksheet. On July 7, 2003, Globcom was billed \$7,729.14, for 2003. This amount became past due July 29, 2003. Globcom’s balance due is \$11,729.14, plus late payment charges, for a total past due amount of \$11,928.14. *See* Letter from Maripat Brennan, Manager, NECA to William Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 18, 2003 (“*NECA Letter*”).

³⁵ *See* Letter from Maureen Del Duca, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Glenn Kofman, Globcom, Inc., dated January 13, 2003 (“*January 13th FCC Letter*”). The return receipt was signed on January 22, 2003.

³⁶ *See* Letter from Maureen Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Glenn Kofman, Globcom, Inc., dated February 20, 2003 (“*February 20th FCC Letter*”). We have serious concerns about Globcom’s apparent lack of cooperation with this investigation. The Bureau mailed its LOI via certified mail, return receipt requested, on January 13, 2003. Globcom’s response was due February 3, 2003; however, the carrier did not respond to the LOI or return the Bureau’s telephone calls. On February 20, 2003, the Bureau sent a second letter via facsimile and certified mail, return receipt requested, directing Globcom to respond to the LOI and warning that failure to respond to the LOI placed the carrier at risk of FCC enforcement action. After receipt of this letter, Globcom employee Joe Vitale called Bureau staff on February 26, 2003. Mr. Vitale indicated that he would respond to the LOI and would forward at least some of the requested documents “immediately.” After waiting a week for Globcom’s response, Bureau staff called and left a message for Mr. Vitale at Globcom offices on March 5, 2003; the call was not returned. On March 20, 2003, the Bureau received an incomplete response to the LOI. On April 16, 2003, the Bureau received additional information from Globcom, supplementing the initial response to the LOI. This type of dilatory and noncompliant conduct may give rise to sanctions in future cases.

³⁷ *See* Letter from Joseph A. Vitale, Chief Operating Officer, Globcom, Inc. to Mika Savir, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Mar. 14, 2003) (“*Globcom March 14, 2003 Letter*”); Letter from Glenn Kofman, CEO, Globcom, Inc. to Mika Savir, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 16, 2003) (“*Globcom April 16, 2003 Letter*”).

III. DISCUSSION

12. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁸ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³⁹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission rule.⁴⁰ As we set forth in greater detail below, we conclude under this standard that Globcom is liable for a forfeiture in the amount of \$806,861 for its apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a), 54.711(a), and 64.604 of the Commission's rules.

13. The fundamental issues in this case are whether Globcom apparently violated the Act and the Commission's rules by (1) willfully or repeatedly failing to pay its required universal service fund contributions and interstate TRS fund contributions; (2) willfully or repeatedly underreporting the interstate and international revenues that form the basis for its universal service and TRS fund contribution obligations; and (3) willfully or repeatedly failing to file its Annual and Quarterly Worksheets. As discussed below, we answer all three questions affirmatively. Based on a preponderance of the evidence, we therefore conclude that Globcom is apparently liable for a forfeiture of \$806,861 for apparently willfully and repeatedly violating section 254 of the Act and sections 54.706, 54.711, and 64.604 of the Commission's rules.⁴¹ We also admonish Globcom for its violations of these requirements beyond the one-year statute of limitations.

A. Globcom Apparently Has Willfully And Repeatedly Failed To Pay Its Universal Service Contributions.

14. Section 254(d) of the Act requires that interstate telecommunications carriers "contribute . . . to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."⁴² The Commission has implemented section 254(d) at section 54.706 of its

³⁸ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). 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. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act indicates that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision.*, 16 FCC Rcd at 1362, ¶ 9.

³⁹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴⁰ *See, e.g., SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

⁴¹ This NAL is independent of any collection action pursued by USAC, NECA, or the Commission for Globcom's outstanding balance.

⁴² 47 U.S.C. § 254(d).

rules, which states, in relevant part, “every telecommunications carrier that provides interstate telecommunications services ... shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions.”⁴³ Section 54.713 of the Commission’s rules cautions that a carrier’s failure to submit its contributions “may subject the contributor to the enforcement provisions of the Act and any other applicable law.”⁴⁴

15. As a reseller of interstate and international long-distance services, Globcom is subject to the obligations of section 254 and section 54.706(b).⁴⁵ Globcom states that it “has contributed to the universal service fund”⁴⁶ but does not identify either the amounts or dates of these alleged contributions.⁴⁷ USAC has sent numerous invoices and past due notices to Globcom informing it of its universal service obligations.⁴⁸ As of August 15, 2003, however, USAC’s records show that Globcom has not made a single payment on its debt and to date owes \$681,837.76 in universal service contributions and fees for 2001, 2002, and 2003.⁴⁹ Thus, for over two and a half years, it appears that Globcom has failed to meet its clear statutory obligations.

16. Carriers must pay their universal service contributions on a monthly basis.⁵⁰ Thus, each month that Globcom failed to make its universal service contribution constitutes a separate violation of the Commission’s rules.⁵¹ Globcom therefore apparently violated 47 U.S.C. § 254(d) and 47 C.F.R. § 54.706 each month since January 2001 by failing to pay into the fund. Based on this evidence, we find that Globcom apparently has willfully and repeatedly failed to make its required contributions in violation of section 254(d) of the Act and section 54.706 of the Commission’s rules.

B. Globcom Apparently Has Willfully And Repeatedly Failed To Pay Its Telecommunications Relay Services Contributions

17. As noted above, TRS allow individuals with hearing or speech disabilities to use interstate and intrastate telecommunications services. Section 64.604 of the Commission’s rules requires every carrier providing interstate telecommunications services to contribute to the interstate TRS fund on the basis of interstate end-user telecommunications revenues.⁵² Carriers’ contributions are based upon the

⁴³ 47 C.F.R. § 54.706(b). *See also* 47 C.F.R. § 54.709 (describing method for determining carrier contributions to the universal service fund).

⁴⁴ 47 C.F.R. § 54.713.

⁴⁵ The Commission’s rules specifically include resellers of interstate services in the definition of providers of interstate telecommunications services that must contribute to the fund. 47 C.F.R. § 54.706(a)(16).

⁴⁶ *See Globcom March 14, 2003 Letter.*

⁴⁷ USAC has no record of such payments, except for a single late payment fee. Globcom has produced no documentation of the asserted payments.

⁴⁸ *See USAC Letter.*

⁴⁹ This amount could be significantly higher once Globcom corrects its revenue information.

⁵⁰ *See, e.g., Sixth Report and Order*, 15 FCC Rcd at 1687, ¶ 18; *Further Notice*, 15 FCC Rcd at 19954, ¶ 17; *Streamlined Reporting Requirements Order*, 17 FCC Rcd at 24971-72, ¶ 35; *Second Reconsideration Order*, 12 FCC Rcd at 22425, ¶ 3.

⁵¹ *See, e.g., Intellicall Operator Services*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13539, 13541-42, ¶¶ 7-10 (2000) (“*Intellicall*”).

⁵² 47 C.F.R. § 64.604(c)(5)(iii)(A). This section specifically includes carriers -- like Globcom -- that provide resale services. *Id.*

same Telecommunications Reporting Worksheet used for calculating universal service contributions.⁵³ Each carrier must contribute at least \$25 per year; carriers whose annual contributions are less than \$1200 must pay the entire amount at the beginning of the contribution period.⁵⁴ Otherwise, carriers may divide their contributions into equal monthly payments.⁵⁵ Carriers must make their TRS contributions on at least an annual basis. Thus, Globcom apparently violated the Commission's rules each time it failed to make its annual contributions in 2002 and 2003.

18. According to NECA's records, Globcom has a past due balance for 2002 of \$4,000.00, as well as a past due balance for 2003 of \$7,729.14. Globcom's overdue balance therefore is \$11,729.14, plus late payment charges, for a total of \$11,885.18.⁵⁶ Based on this evidence, we find that Globcom apparently has willfully and repeatedly failed to make its required contribution to the TRS fund in violation of section 64.604 of the Commission's rules.

C. Globcom Apparently Has Willfully and Repeatedly Failed To File Accurate Revenue Information

19. Pursuant to section 54.711 of the Commission's rules, carriers must file on a quarterly and annual basis complete and accurate Telecommunications Reporting Worksheets.⁵⁷ Among other information, the worksheets contain the carriers' interstate and international revenues, which are the basis for the carriers' universal service contributions, as well as their TRS fund contributions. In Globcom's 2001 Annual Worksheet, the company stated that its long distance revenues during 2000 were \$5,835,818.⁵⁸ In its 2002 filing, Globcom initially stated that its interstate and international revenues for 2001 were \$187,343. Following informal Commission staff inquiries about the dramatic dip in revenue from 2000 to 2001, Globcom amended its Annual Worksheet to state that it had \$5,187,343 in interstate and international revenues in 2001.⁵⁹

20. Globcom's responses to the LOI, however, contradict these figures. Globcom concedes that its actual combined interstate and international revenues for 2000 and 2001 were \$7,931,497 and

⁵³ 47 C.F.R. § 64.604(c)(5)(iii)(B).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ The 2002 invoice for \$4000 sent to Globcom on November 3, 2002 is past due. NECA sent the 2003 invoice on July 7, 2003, which became past due on July 29, 2003.

⁵⁷ 47 C.F.R. §§ 54.711, 54.713. Section 54.711(a) provides, in part:

An officer of the contributor must certify to the truth and accuracy of the Telecommunications Reporting Worksheet, and the Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet at the discretion of the Commission. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. [USAC] shall advise the Commission of any enforcement issues that arise and provide any suggested response.

47 C.F.R. § 54.711(a).

⁵⁸ See Globcom's 2001 Annual Worksheet at 5. Globcom did not disaggregate its 2000 revenue into interstate and international revenues, so we refer to them as generally "long-distance revenues."

⁵⁹ See Globcom's 2002 Annual Worksheet at 5.

\$21,099,070, respectively.⁶⁰ Thus, Globcom appears to have repeatedly understated its revenues on both its 2001 and 2002 Annual Worksheets, potentially by more than \$2 million for 2000,⁶¹ and by more than \$16 million in 2001.⁶² Based on this evidence, we find that Globcom has apparently violated section 54.711 of the Commission's rules by willfully and repeatedly underreporting its interstate and international revenues on its Annual Worksheets.⁶³

D. Globcom Apparently Has Willfully And Repeatedly Failed To File Its Annual And Quarterly Worksheets

21. As noted above, the Commission requires carriers to file Annual and Quarterly Worksheets with USAC.⁶⁴ With the exception of the apparently incorrect Annual Worksheets for 2001 and 2002, and two Quarterly Worksheets,⁶⁵ USAC has no record of any other revenue filings by Globcom. Nor has Globcom provided us with any evidence that it filed the required information.⁶⁶ In addition, Globcom has failed to file its Annual Worksheet for 2003, which was due April 1, 2003. Thus, since 2001, Globcom apparently has violated the filing requirements of the Commission's rules a total of nine times.⁶⁷ Based on a preponderance of the evidence, we conclude that Globcom apparently has violated section 54.711 of the Commission's rules by willfully and repeatedly failing to file its revenue information.

E. Proposed Action

1. Proposed Forfeiture Amount

22. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act or failure to act.⁶⁸ In determining the appropriate forfeiture amount, we

⁶⁰ See *Globcom April 16, 2003 Letter*. Globcom disaggregated the year 2000 revenues as \$1,586,299 for interstate and \$6,345,197 for international. This disaggregation was omitted from the Annual Worksheet. Globcom's 2000 federal tax return lists \$5,835,818 in gross revenues. Globcom's 2001 federal income tax return lists gross revenues of \$21,406,048.

⁶¹ $\$7,931,497$ (2000 revenue, per LOI) - $\$5,835,818$ (2000 revenue, per 2001 Annual Worksheet) = $\$2,095,679$ underreported revenue.

⁶² $\$21,099,070$ (2001 revenue, per LOI) - $\$5,187,343$ (2001 revenue, per 2002 Annual Worksheet) = $\$16,218,705$ underreported revenue.

⁶³ Under section 503(b)(6) of the Act and section 1.80(c)(3) of the Commission's rules, the statute of limitations for this violation is one year. 47 U.S.C. § 503(b)(6); 47 C.F.R. § 1.80(c)(3). Therefore, as discussed below, we will only impose a forfeiture for the revised 2002 Annual Worksheet, which Globcom filed on October 10, 2002.

⁶⁴ See 47 C.F.R. §§ 54.711, 54.713.

⁶⁵ On October 10, 2002, Globcom filed a Quarterly Worksheet for third quarter 2002, which it subsequently revised on January 27, 2003. Globcom filed a Quarterly Worksheet for fourth quarter 2002 on February 13, 2003.

⁶⁶ The Bureau's LOI requested, among other things, copies of Globcom's Annual and Quarterly Worksheets, also known as "Form 499s." In the *Globcom March 14th Letter*, Globcom stated that it was enclosing the Annual Worksheets, but failed to do so. In the *Globcom April 16th Letter*, Globcom stated that it "cannot provide the FCC with copies of Globcom's 499 forms."

⁶⁷ In addition to the 2001 and 2002 instances discussed above, Globcom failed to file the 2003 Annual Worksheet, the first quarter 2003 Quarterly Worksheet (due May 1), and the second quarter 2003 Quarterly Worksheet (due Aug. 1).

⁶⁸ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); see also *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000).

consider the factors enumerated in section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”

23. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that accrued within one year of the date of this NAL.⁶⁹ Nevertheless, section 503 does not prohibit us from assessing whether Globcom’s conduct prior to that date apparently violated the Act or our rules and we may consider Globcom’s other violations in determining the appropriate forfeiture amount for those violations within the statute of limitations.⁷⁰ Therefore, although we find that Globcom apparently violated the Act and our rules in multiple years, we discuss forfeitures here for only the last year of violations. We admonish Globcom for the violations that occurred beyond the statute of limitations.

24. Based on the facts above, it appears that Globcom deliberately chose not to pay its universal service contributions each month for revenues derived from January 1, 2001 to the present. Despite Globcom’s clear obligations under our universal service rules, and despite numerous monthly communications from USAC informing the carrier of its increasing debt, Globcom has done nothing to address this matter.⁷¹

25. Previously, even in cases of longstanding failures to pay universal service contributions, we assessed forfeitures on only a portion of the violations. Thus, in *ConQuest*, we assessed a forfeiture only for a single month of nonpayment, even though the carrier had been delinquent for more than eight months.⁷² We warned, however, that “in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future,” and explicitly noted that “our future notices likely will cover greater periods of non-payment than a single month...”⁷³ Approximately one year later, we assessed forfeitures for two months of nonpayment.⁷⁴ In addition, we have repeatedly stated that we are prepared to take even stronger action against delinquent carriers, including substantially higher forfeitures and revocation of carriers’ operating authority.⁷⁵ More than three years have passed since the *ConQuest* decision, and the time has come to implement a substantially greater forfeiture amount in order to deter carriers from violating our universal service contribution and reporting rules.

26. The present case clearly demonstrates that our prior method of assessing forfeitures has not adequately deterred carriers from violating our universal service contribution and reporting rules. Such conduct concerns us greatly, particularly in view of the clear state of the law and our repeated warnings that we intend to exercise our enforcement authority to the fullest extent of that law. Carrier nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules. We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission’s primary responsibilities. Therefore, we are now

⁶⁹ 47 U.S.C. § 503(b)(6). *See also* 47 C.F.R. § 1.80(c)(3).

⁷⁰ 47 C.F.R. § 1.80(b)(4).

⁷¹ *See, e.g., ConQuest*, 14 FCC Rcd at 12522, ¶ 9 (discussing the monthly USAC invoices and the “more than adequate notice of ConQuest’s universal service obligation”).

⁷² *ConQuest*, 14 FCC Rcd at 12527, ¶ 19.

⁷³ *Id.* at 12528, ¶ 20.

⁷⁴ *ATNC*, 15 FCC Rcd at 20906, ¶ 9; *Intellicall*, 15 FCC Rcd at 13541, ¶ 7; *Matrix*, 15 FCC Rcd at 13546-47, ¶ 8.

⁷⁵ *See, e.g., Intellicall*, 15 FCC Rcd at 13542, ¶ 10.

increasing the number of months of nonpayment on which we assess the forfeiture amount.⁷⁶ We will now propose substantial forfeitures for each of Globcom's universal service-related violations within the past year.⁷⁷

27. The proposed forfeiture against Globcom for nonpayment of its universal service contributions consists of two components. First, applying the base forfeiture amount of \$20,000 per violation for the previous twelve months of non-payment results in a base figure of \$240,000.⁷⁸ Second, we add an amount equal to approximately one-half of the unpaid universal service contributions.⁷⁹ As the Commission has observed, this component of the forfeiture "illustrate[s] that a delinquent carrier's culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contribution it fails to make."⁸⁰ As of August 15, 2003, Globcom owed \$681,837 in universal service contributions and fees. Adding half this amount (\$340,918) to the base figure of \$240,000 results in a proposed forfeiture of \$580,918.

28. In addition, it appears that Globcom deliberately chose not to pay its contributions to the TRS Fund. Globcom paid the first invoice of \$149.87, plus a late payment fee, but has not paid the November 3, 2002 and July 7, 2003 invoices. The TRS fund depends on carriers' timely payment of contributions. Carriers that violate the contribution requirements undermine the TRS fund and may obtain an unfair advantage over their competitors.

29. The Commission has not established a base forfeiture amount for failure to pay TRS fund contributions. We find that this violation is similar to the failure to pay universal service contributions, for which the base forfeiture amount is \$20,000. TRS fund contributions are, however, relatively smaller than carriers' universal service contributions. Therefore, we conclude that the TRS fund nonpayment should have a base forfeiture amount of \$10,000. In addition, as we did for the universal service nonpayment, we are adding one-half the unpaid balance to the base forfeiture amount. In this manner, as with forfeitures for universal service nonpayment, the forfeiture reflects the amount of the carrier's delinquency. As described above, Globcom apparently violated our TRS contribution requirements twice within the last year, and currently owes \$11,885. Under our formula, we find that Globcom is liable for an additional proposed forfeiture of \$25,943 for its apparent failure to make TRS contributions.⁸¹

30. We view Globcom's apparent submission of inaccurate revenue information and its failure to file its Quarterly and Annual Worksheets as similarly grave. The size and scope of the universal service and TRS programs impose a monumental burden on the Commission, USAC, and NECA to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers' compliance with our rules. Where a carrier ignores the statute, our rules, and repeated past due notices, it undermines the foundation of the universal service and TRS programs.

⁷⁶ See *ConQuest*, 14 FCC Rcd at 12518, ¶ 1.

⁷⁷ See 47 U.S.C. § 503(b)(6) (establishing a one-year statute of limitations for non-broadcast forfeiture actions). See also 47 C.F.R. § 1.80(c)(3).

⁷⁸ *ConQuest*, 14 FCC Rcd at 12527, ¶ 19.

⁷⁹ See, e.g., *ATNC*, 15 FCC Rcd at 24393, ¶ 7; *Intellicall*, 15 FCC Rcd at 13541-42, ¶¶ 7-8; *Matrix*, 15 FCC Rcd at 13546-47, ¶¶ 7-8; *PTT Telekom*, 16 FCC Rcd at 7479, ¶ 7.

⁸⁰ *Matrix*, 15 FCC Rcd at 13546-47, ¶ 8.

⁸¹ \$10,000 for each of the two violations, plus \$5,943 (half of the unpaid balance) is \$25,943.

31. The Commission's *Forfeiture Policy Statement* and implementing rules establish \$3,000 as the base forfeiture for failing to provide required forms or information.⁸² We find that a substantial upward adjustment is appropriate here, however, because Globcom's failure appears to have been egregious.⁸³ The Commission's rules state that an "officer of the contributor must certify to the truth and accuracy of the Telecommunications Worksheet..."⁸⁴ Despite this safeguard, as explained above, the October 10, 2002 Annual Worksheet filed by Globcom understated the company's revenues by more than \$16 million. Globcom has offered no explanation for this discrepancy, which is so dramatic that we cannot attribute it to inadvertence. Accordingly, applying the *Forfeiture Policy Statement* and the statutory factors listed above to the instant case, we conclude that Globcom is apparently liable for a \$50,000 forfeiture for the inaccurate Annual Worksheet filed in October 2002.⁸⁵

32. With respect to Globcom's apparent failure to submit the Quarterly and Annual Worksheets, we find that a similar upward adjustment from the \$3,000 base amount is appropriate. Even though the Commission had clear rules requiring carriers to provide revenue information on an annual and quarterly basis, Globcom has done so only intermittently for more than two years. Moreover, when it did submit information, it understated its interstate and international revenues. Taking into account the factors listed in section 503(b)(2)(D) of the Act and Commission precedent, we find that Globcom is apparently liable for a \$50,000 forfeiture for each of the three occasions it failed to file its revenue information within the past year, for a total forfeiture of \$150,000.⁸⁶

2. Admonishment

33. As noted above, we also admonish Globcom for its violations of our rules and the Act that occurred outside the one-year statute of limitations. Although we propose forfeitures for Globcom's apparent violations within the last year, admonishment for violations beyond the statute of limitations is appropriate here to note the full scope and scale of Globcom's departure from our rules.

34. We therefore admonish Globcom for repeatedly violating section 254(d) of the Act and section 54.706(a) of our rules through its failure to pay any of its universal service debt each month going back to January 1, 2000. We also admonish Globcom for its violations of section 54.711(a) of the Commission's rules through filing inaccurate Annual Worksheets in May and August of 2002, and through failing to file Quarterly Worksheets going back to May 2001, when the Quarterly Worksheet requirement began.⁸⁷

⁸² 47 C.F.R. § 1.80(4).

⁸³ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17117, Appendix A, Section II.

⁸⁴ 47 C.F.R. § 54.711(a).

⁸⁵ We note that our action is independent of any criminal prosecution that might be brought "under the criminal provisions of Title 18 of the United States Code." 47 C.F.R. § 54.711(a). *See, e.g.*, 18 U.S.C. § 1001.

⁸⁶ As discussed above, Globcom failed to file the 2003 Annual Worksheet and the first and second quarter 2003 Quarterly Worksheets.

⁸⁷ *See infra* note 18. We note that some of the Worksheets submitted by Globcom were filed late. Carriers must submit their quarterly Worksheet no later than February 1, May 1, August 1, and November 1 of each year. *See* Quarterly Worksheet Form at 1. Carriers must submit their Annual Worksheets no later than April 1 of each year. As described above, Globcom filed its 2001 Annual Worksheet on May 7, 2002 and its 2002 Annual Worksheet on August 6, 2002 (amended October 10, 2002). Late filing of revenue information harms the universal service fund because USAC and the Commission cannot accurately project the contribution base for the upcoming quarter with incomplete revenue information. Globcom and other carriers should note that we may assess forfeitures for late filing in future enforcement actions.

IV. CONCLUSION

35. We conclude that Globcom is apparently liable for the following proposed forfeitures: (1) \$580,918 for failure to make timely universal service contributions; (2) \$25,943 for failure to make timely TRS contributions; (3) \$50,000 for its apparent failure to file complete and accurate revenue information on its Annual Worksheet; and (4) \$150,000 for its apparent failure to file its 2003 Quarterly and Annual Worksheets. In sum, we hold that Globcom is apparently liable for a total proposed forfeiture of \$806,861. We also admonish Globcom for violations beyond the statute of limitations; specifically, failing to pay its universal service contributions, and failing to file complete and accurate revenue information in its Annual and Quarterly Worksheets.

36. Future violations of the Commission's universal service rules and TRS rules will constitute additional violations subjecting Globcom to possible increased enforcement action. Such enforcement action could take the form of higher forfeitures and/or potential revocation of Globcom's operating authority, including disqualification of Globcom's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁸⁸ In this regard, we order Globcom to submit within 30 days, either as part of a response to this NAL or separately, a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, stating its plan to come into compliance with the relevant payment and reporting rules discussed here.

V. ORDERING CLAUSES

37. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Globcom, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$806,861 for willfully and repeatedly violating the Act and the Commission's rules.

38. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY AND ORDER, Globcom, Inc. SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or shall file a written statement seeking reduction or cancellation of the proposed forfeiture.

39. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 219(b), and 254(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 219(b), and sections 54.706(a), 54.711(a), and 64.604(c)(5)(iii) of the Commission's rules, 47 C.F.R. §§ 54.706(a), 54.711(a), 64.604(c)(5)(iii), within thirty days of the release date of this NOTICE OF APPARENT LIABILITY AND ORDER, Globcom, Inc. SHALL SUBMIT a report, supported by a sworn statement or declaration under perjury of perjury by a corporate officer, stating its plan promptly to come into compliance with the universal service and Telecommunications Relay Service payment and reporting rules discussed herein.

40. Payment of the forfeiture may be made by check or similar instrument, payable to the order of the Federal Communications Commission. Such remittance should be made to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above and FRN No. 0009652801.

⁸⁸ See *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Order to Show Cause, Notice of Opportunity for Hearing, 18 FCC Rcd 6952 at ¶ 27 (2003); *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881 at ¶ 36 (2003).

41. The response, if any, to this NOTICE OF APPARENT LIABILITY AND ORDER must be mailed to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. The report discussed above should be mailed to Ms. Del Duca at the same address.

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

43. Requests for payment of the full amount of this NAL under an installment plan should be sent to Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸⁹

44. Under the Small Business Paperwork Relief Act of 2002, Pub.L.No. 107-198, 116 Stat. 729 (June 28, 2002), the Commission is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within 30 days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division, Enforcement Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list in Attachment A of this NAL. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to section 503(b) of the Communications Act. If you have any questions regarding any of the information contained in Attachment A, please contact the Commission’s Office of Communications Business Opportunities at (202) 418-0990.

45. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY AND ORDER shall be sent by certified mail, return receipt requested, to Glenn Kofman, Globcom, Inc., 2100 Sanders Rd., Suite 150, Northbrook, IL 60047.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁸⁹ See 47 C.F.R. § 1.1914.

ATTACHMENT A

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	

International Public Fixed Radio (Public and Control Stations)	\$12.5 Million in Annual Receipts or Less
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	

	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	
Instructional Television Fixed Service	\$12.5 Million in Annual Receipts or Less
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	
Audio and Video Equipment Manufacturers	750 Employees or Fewer
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)