

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

In the Matter of	)	File No. EB-04-IH-0454
	)	
	)	
OCMC, Inc.	)	NAL/Acct. No. 200532080141
	)	
	)	
Apparent Liability for Forfeiture	)	FRN No. 0006176879
	)	

**NOTICE OF APPARENT LIABILITY  
FOR FORFEITURE**

**Adopted: August 12, 2005**

**Released: August 12, 2005**

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that OCMC, Inc. (“OCMC”), a telecommunications carrier that has been operating and at least indirectly benefiting from federal programs supporting the telecommunications industry for years, apparently failed to meet its statutory and regulatory obligations related to the Universal Service Fund (“USF”). Specifically, we find that OCMC has apparently violated section 254(d) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and section 54.706(a) of the Federal Communications Commission’s rules<sup>2</sup> by willfully and repeatedly failing to contribute fully and timely to the USF. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that OCMC is apparently liable for a total monetary forfeiture in the amount of \$1,133,761.

**II. BACKGROUND**

2. The Telecommunications Act of 1996 codified Congress’s historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services.<sup>3</sup> In particular, section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”<sup>4</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to contribute to the Universal Service Fund based upon their interstate and international end-user telecommunications revenues.<sup>5</sup> Failure by some providers to pay their share into

<sup>1</sup>47 U.S.C. § 254.

<sup>2</sup>47 C.F.R. § 54.706(a).

<sup>3</sup>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) (“1996 Act”).

<sup>4</sup>47 U.S.C. § 254(d).

the Fund skews the playing field by giving non-paying providers an economic advantage over their competitors, who must then shoulder more than their fair share of the costs of the Fund.

3. The Commission has established specific procedures to administer the universal service program. A carrier is required to file FCC Form 499-As, also known as the annual Telecommunications Reporting Worksheets (“Worksheets”) for the purpose of determining its USF payments,<sup>6</sup> and, with certain exceptions, to file quarterly short-form Worksheets to determine monthly universal service contribution amounts. These periodic filings trigger a determination of liability, if any, and subsequent billing and collection, by the entities that administer the regulatory programs. For example, the Universal Service Administrative Company (“USAC”), the administrator of the USF, uses the revenue projections submitted on the quarterly filings to determine each carrier’s universal service contribution amount.<sup>7</sup> Carriers are required to pay their monthly USF contribution by the date shown on their invoice.<sup>8</sup> The Commission’s rules explicitly warn contributors that failure to file their forms or submit their payments potentially subjects them to enforcement action.<sup>9</sup> Further, under the Commission’s “red light rule,” action will be withheld on any application to the Commission or authorization made by any entity that has failed to pay when due its regulatory program payment, such as USF contributions, and if payment or payment arrangements are not made within 30 days from notice to the applicant, such applications or requests will be dismissed.<sup>10</sup>

4. OCMC is an operator service provider, interexchange carrier and toll reseller.<sup>11</sup> On September 16, 2004, USAC referred OCMC to the Enforcement Bureau (“Bureau”) for investigation concerning OCMC’s possible failure to fully and timely contribute to the USF. Thereafter, by letter dated September 28, 2004, the Bureau initiated an investigation into whether the company violated section 54.706 of the Commission’s rules, which requires entities that provide interstate telecommunications to the public to contribute to USF.<sup>12</sup> The LOI directed OCMC to provide certain specified documents and

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<sup>5</sup>47 C.F.R. § 54.706(b). Beginning April 1, 2003, carrier contributions were based on a carrier’s projected, rather than historical, revenues. *Id.*

<sup>6</sup>Upon submission of a Form 499-A registration, the carrier is issued a filer identification number by USAC, which is then associated with further filings by the company and is used to track the carrier’s contributions and invoices.

<sup>7</sup>Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *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”); 47 C.F.R. § 54.709(a).*

<sup>8</sup>*See Globcom, Inc., Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19896 (2003) (“Globcom”); 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, 18 FCC Rcd 11442 (Wir. Comp. Bur. 2003) (“Contribution payments are due on the date shown on the [USAC] invoice.”) The Act and our rules, however, do not condition payment on receipt of an invoice or other notice from USAC. *See* 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(b). A carrier that does not file may not receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimus*. The instructions for the Telecommunications Reporting Worksheet include tables for carriers to determine their annual contributions.**

<sup>9</sup> 47 C.F.R. § 54.713.

<sup>10</sup>47 C.F.R. § 1.1910. The rule went into effect on November 1, 2004. *See* “FCC Announces Brief Delay in Enforcement of Red Light Rule,” *Public Notice, 19 FCC Rcd 19452 (2004).*

<sup>11</sup>OCMC’s 2005 FCC Form 499-A Telecommunications Reporting Worksheet. *See also* Letter from Ann Bernard, OCMC, Inc., General Counsel, to Christopher Shields, Investigations and Hearings Division, Enforcement Bureau, FCC (October 18, 2004) (“LOI Response”).

<sup>12</sup>Letter from Hillary S. DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Robert Young, OCMC Telecom, Inc. (Sept. 28, 2004) (“LOI”).

information. OCMC responded on October 18, 2004. A supplemental LOI was issued on December 16, 2004, and OCMC responded December 21, 2004.<sup>13</sup>

### III. DISCUSSION

5. Under section 503(b)(1)(B) 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.<sup>14</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>15</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>16</sup> As set forth in greater detail below, we conclude under this standard that OCMC is apparently liable for forfeiture for its apparent willful and repeated violations of section 254(d) of the Act<sup>17</sup> and section 54.706(a) of the Commission's rules.<sup>18</sup>

6. The fundamental issue in this case is whether OCMC apparently violated the Act and the Commission's rules by willfully and repeatedly failing to timely pay in full the required universal service contributions. Based on a preponderance of the evidence, we conclude that OCMC is apparently liable for a forfeiture of \$1,133,761 for apparently willfully and repeatedly violating section 254(d) of the Act and section 54.706(a) of the Commission's rules.<sup>19</sup>

7. Specifically, we propose base forfeitures of \$20,000 for each of two apparent violations for non-payment of USF invoices, and \$10,000 for each of seven apparent violations for submitting only a partial payment of USF invoices, within the last year. Additionally, consistent with past Commission precedent,<sup>20</sup> we propose an upward adjustment to this \$110,000 base forfeiture of \$1,023,761, which is one-half the outstanding balance owed on OCMC's USF account. Although we propose forfeitures only for apparent violations within the last year, we discuss below the history of OCMC's noncompliance in prior years to demonstrate the scope of OCMC's misconduct and to provide sufficient context for the misconduct that is within the statute of limitations period and thus covered by this NAL.

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<sup>13</sup>Letter from Ann Bernard, OCMC, Inc., General Counsel, to Christopher Shields, Investigations and Hearings Division, Enforcement Bureau, FCC (December 20, 2004) ("Supplemental LOI Response").

<sup>14</sup>47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). 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 clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97<sup>th</sup> 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 Co.*"). 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) (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. *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

<sup>15</sup>47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>16</sup>See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

<sup>17</sup>47 U.S.C. § 254(d).

<sup>18</sup>47 C.F.R. §§ 54.706(a).

<sup>19</sup>47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

<sup>20</sup>*Globcom*, 18 FCC Rcd at 19904.

### A. Universal Service Contributions

8. We conclude that OCMC has apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully or repeatedly failing to contribute fully and timely to universal service support mechanisms.<sup>21</sup> Section 54.706(c) unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."<sup>22</sup> "Interstate telecommunications" include, among other things, "resale of interstate services" such as those provided by OCMC.<sup>23</sup>

9. Notwithstanding its contribution obligations, for years OCMC has made irregular and unsatisfactory payments to the USF. The record is clear that between September 2003 and the date of this NAL, OCMC failed to make any monthly payment whatsoever to USAC on eight occasions, and made contributions that were insufficient to satisfy the total amount of its outstanding USF balance on twelve occasions, including eight instances where its payments were not sufficient to cover even its current month's charges. Specifically, USAC's invoices show that OCMC failed to make any payment on invoices due October 15, November 14, and December 15, 2003; January 15, February 13, March 15 and June 15, 2004; and March 15 and June 15, 2005. The records demonstrate that OCMC made payments that were insufficient to satisfy the total amount of its outstanding balance on invoices due April 15, May 14, July 15, August 13, September 15, October 15, November 15, and December 15, 2004; and January, February 15, April 15, and May 13, 2005. Of these twelve partial payments, the record further demonstrates that OCMC made payments that were not sufficient to cover even its current month charges on invoices due May 14, August 13, September 15, October 15, and November 15, 2004, and February 15, April 15 and May 13, 2005. As a result of this misconduct, OCMC has consistently maintained large overdue balances with USAC, with the result that it now owes more than \$2 million.

10. As we previously have stated,

[c]arrier 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.<sup>24</sup>

Based on the preponderance of the evidence, we find that OCMC has apparently violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by willfully and repeatedly failing to contribute fully and timely to the USF on multiple occasions between October 2003 and June 2005. Within the last twelve months specifically, which is the time period covered by this NAL, OCMC failed to remit any contribution toward its USF obligations for the payment due by March 15 and June 15, 2005, and contributed less than even the amount of its monthly obligation for the payments due by August 13, September 15, October 15, and November 15, 2004, and by February 15, April 15, and May 13, 2005.

11. In this NAL we have chosen to propose liability only for the months within the twelve-month limitations period<sup>25</sup> in which OCMC failed to pay at least the amount due for the current month by

<sup>21</sup>47 U.S.C. § 254(d); 47 C.F.R. § 54.706(c).

<sup>22</sup>47 C.F.R. § 54.706(c).

<sup>23</sup>See 47 C.F.R. § 54.706(a)(16).

<sup>24</sup>*Globcom, Inc.*, 18 FCC Rcd at 19903 ¶ 26.

<sup>25</sup> 47 U.S.C. § 503(b)(6).

the due date stated on the USAC invoice and not for months in which OCMC paid at least the current month's charges<sup>26</sup> because those months represent the most egregious examples of misconduct. Due to the accumulating record of contributors making only partial payments on USAC invoices, however, we may take a more expansive approach and include additional monthly violations in the future in appropriate circumstance.<sup>27</sup>

12. In responses to the Bureau's inquiries, OCMC provides information concerning a billing dispute with USAC as grounds for its contribution failures. OCMC implies that it withheld certain monthly contributions and submitted other insufficient monthly contributions because USAC's invoices did not reflect OCMC's view of the proper resolution of that dispute. In January 2004, OCMC disputed a USAC invoice, maintaining it was owed \$310,703 in credits as a result of the true-up of its 2002 revenues.<sup>28</sup> OCMC, in subsequent correspondence to USAC in August 2004, admitted that the amount in dispute was, in fact, properly credited to OCMC's account in 2003.<sup>29</sup>

13. After reviewing all the facts and circumstances, we find that the existence of this billing dispute does not excuse OCMC's violations for several reasons. First, a carrier may not engage in self-help.<sup>30</sup> A carrier may not unilaterally decide to withhold universal service contributions pending the resolution of a billing dispute. Such a reading of Section 254 of the Act and our rules would encourage every contributor making USF payments to suspend such contributions by simply filing a dispute. Moreover, even if such self-help were permitted, OCMC suspended its contribution payments beginning in October 2003, but did not submit its billing dispute until February 2004. OCMC's delay undercuts its claim that its failures to contribute resulted from the dispute. In addition, the amount at issue in the dispute, \$310,703, is far exceeded by the overdue balances incurred by OCMC during the period, which at times exceeded \$1 million. Additionally, OCMC had no reasonable basis for disputing its invoices. The credits that OCMC alleged it was owed were clearly set forth in the USAC invoices for September – November 2003. Finally, OCMC conceded its position on the dispute as early as August 2004, yet continued to carry a massive outstanding balance and to make insufficient payment on its USAC invoices after that time. For all of these reasons, we reject OCMC's position that the existence of a billing dispute with USAC excuses its failures. Based on these facts, it appears that OCMC deliberately chose not to pay its USF contributions despite its clear obligations under our universal service rules, and despite numerous monthly invoices it received from USAC informing the carrier of its increasing debt.<sup>31</sup>

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<sup>26</sup> Therefore, OCMC payments on invoices due April 15, July 15, August 13, and December 15, 2004 and January 2005 do not form the basis for liability in this NAL although those payments were insufficient to satisfy the total amount of its outstanding balance.

<sup>27</sup> The Commission's forfeiture authority might apply to additional months, because it is USAC's practice to apply partial payments to the oldest debt carried on USAC's books first, and not the current billed amount. *See North American Telephone Network, LLC*, Forfeiture Order, 16 FCC Rcd 4838, ¶ 8 & n. 12 (2001); *Intellicall Operator Services*, Forfeiture Order, 15 FCC Rcd 21,771, at 21,772, ¶ 6 and n.8 (2000).

<sup>28</sup> Supplemental LOI Response, Attachment dated Feb. 10, 2004 (reading, in part, as follows: "This is to dispute, and request to review the records documenting, the \$310,703.48 demanded in your letter dated January 22, 2004").

<sup>29</sup> Supplemental LOI Response, Attachment dated Aug. 5, 2004 (reading, in part: "Thanks you for your reply. The amount, originally in dispute, has been satisfied. As per your mention of the credits").

<sup>30</sup> *See Application for Review of the Denial of Vista Communications, Inc.'s Request for Waiver of the Installment Payment Rules for the 218-219 MHz Service*, Memorandum Opinion and Order, 18 FCC Rcd 16,957 (2003) (Commission denied application for review that challenged decision that alleged confusion regarding the payment rules and payment schedule did not justify Interactive Voice and Data Service licensee's assumption that it could withhold payments).

<sup>31</sup> *See, e.g., Conquest Operator Services Corp.*, Forfeiture Order, 14 FCC Rcd 12,518, at 12,522, ¶ 9 (discussing the monthly USAC invoices and the "more than adequate notice of ConQuest's universal service obligation").

## B. Proposed Forfeiture

14. Section 503(b)(1)(B) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.<sup>32</sup>

15. For the apparent violations in this case, 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 \$1.2 million for a single act or failure to act for violations occurring before September 7, 2004, and up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1.325 million for a single act or failure to act for violations occurring on or after September 7, 2004.<sup>33</sup> In determining the appropriate forfeiture amount, we 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.”<sup>34</sup>

16. 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.<sup>35</sup> Nevertheless, section 503(b) does not bar us from assessing whether OCMC’s conduct prior to that time period apparently violated the Act or our rules in determining the appropriate forfeiture amount for those violations within the statute of limitations.<sup>36</sup> Therefore, although we find that OCMC apparently violated the Act and our rules on numerous occasions over the past several years, we propose forfeitures here only for violations that occurred within the last year.

17. Based on the facts above, it appears that OCMC has failed to make the requisite contributions into the USF on numerous occasions over the past several years. Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier’s failure to make required universal service contributions hampers realization of Congress’ policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.<sup>37</sup> The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.<sup>38</sup> Consequently, we initially find that OCMC is apparently liable for a base forfeiture of \$40,000 for its failures to make any universal service contributions with respect to the payments due by March 15 and June 15, 2005 on its USF account.

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<sup>32</sup>47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

<sup>33</sup>47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2). The Commission recently amended its rules to increase the maximum penalties to account for inflation since the last adjustment of the penalty rates. *See Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000). However, the new rates apply to violations that occur or continue after September 7, 2004. *See Amendment of Section 1.80(b) of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

<sup>34</sup>47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100, ¶ 27; 47 C.F.R. § 1.80(b).

<sup>35</sup>47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3).

<sup>36</sup>*See, e.g., Globcom, Inc.*, 18 FCC Rcd at 19903; *Roadrunner Transp., Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

<sup>37</sup>*See* 47 U.S.C. § 254(d).

<sup>38</sup>*See Globcom, Inc.*, 18 FCC Rcd at 19903-19904, ¶¶ 25-27.

18. The Commission has not set a base forfeiture amount in a case in which a carrier repeatedly paid less than the current month's contribution amount by the due date stated on the USAC monthly invoice, resulting in an overdue balance on that carrier's account. As in the case of non-payment, such violations of our rules severely hamper realization of Congress's universal service goals as expressed in section 254 of the Act. We thus find that this violation is similar to, although less egregious than, a carrier's failure to make any universal service contributions in a specific month. Consequently, we find that OCMC is apparently liable for a forfeiture of \$10,000 for each of the instances in which it failed to make a payment sufficient to satisfy the current charges on August 13, September 15, October 15, and November 15, 2004 and February 15, April 15 and May 13, 2005. Consequently, OCMC is apparently liable for a base forfeiture of \$70,000 for these partial payments and a total base forfeiture of \$110,000 after including the partial payment base forfeiture with the nonpayment base forfeiture. That base forfeiture amount is, however, subject to an upward adjustment.

19. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on one-half of the company's unpaid contributions.<sup>39</sup> When we began this investigation, OCMC owed approximately \$1.7 million on its USF account. During the course of this investigation, however, OCMC's apparent continued violations of our rules caused its USF account debt to increase to \$2,047,521. Therefore, taking into account all the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of one-half of the company's unpaid contributions, \$1,023,761 for OCMC's apparent nonpayment and partial payment violations. We thus find OCMC liable for a total proposed forfeiture of \$1,133,761 for its apparent willful and repeated failure to make full and timely contributions into the USF.

#### IV. CONCLUSION

20. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as OCMC does not consider the proposed forfeiture merely "an affordable cost of doing business,"<sup>40</sup> we find that a proposed forfeiture of \$1,133,761 is warranted.

21. We caution that additional violations of the Act or the Commission's rules could subject OCMC to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of OCMC's operating authority, including disqualification of OCMC's principals from the provision of any interstate common carrier services without the prior consent of the Commission.<sup>41</sup> In addition, we note that, to the extent OCMC is found to be delinquent on any debt owed to the Commission (e.g., has failed to pay all of its USF contributions), the Commission will not act on, and may dismiss, any application or request for authorization filed by OCMC, in accordance with the agency's "red light" rules.<sup>42</sup>

#### V. ORDERING CLAUSES

22. 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 OCMC, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A

<sup>39</sup> See, e.g., *Globcom, Inc.*, 18 FCC Rcd at 19904.

<sup>40</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also 47 C.F.R. § 1.80(b)(4).

<sup>41</sup> See *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

<sup>42</sup> 47 C.F.R. § 1.1910.

FORFEITURE in the amount of \$1,133,761 for willfully and repeatedly violating the Act and the Commission's rules.

23. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,<sup>43</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, OCMC, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

24. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

25. The response, if any, to this NOTICE OF APPARENT LIABILITY must be mailed to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above.

26. 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.

27. Requests for payment of the full amount of this NAL under an installment plan should be sent to Chief, Credit and Management Center, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>44</sup>

28. 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 Ann Bernard, General Counsel for OCMC, Inc., 801 Congressional Boulevard, Carmel, Indiana, 46032.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>43</sup>See 47 C.F.R. § 1.80(f)(3).

<sup>44</sup>See 47 C.F.R. § 1.1914.