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

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| In the Matter of | ) | |
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| Local Phone Services, Inc. | ) | File No. EB-05-IH-0913 |
| | ) | NAL/Acct. No. 200632080168 |
| | ) | FRN No. 0008358343 |
| Apparent Liability for Forfeiture | ) | |

## NOTICE OF APPARENT LIABILITY FOR FORFEITURE

**Adopted: August 28, 2006** **Released: August 29, 2006**

By the Commission:

## I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Local Phone Services, Inc., d/b/a Best Phone ("LPSI"), a telecommunications carrier that has been operating and at least indirectly benefiting from federal programs supporting the telecommunications industry for over two years, apparently failed to meet its statutory and regulatory obligations related to the Universal Service Fund ("USF" or "Fund"). Specifically, we find that LPSI has apparently violated section 54.711(a) of the Commission's rules by failing to timely submit certain Telecommunications Reporting Worksheets ("Worksheets"). Furthermore, we find that LPSI has apparently violated section 254(d) of the Communication's Act of 1934, as amended (the "Act"),[1] and section 54.706(a) of the Federal Communications Commission's (the "Commission") rules by willfully and repeatedly failing to contribute fully and timely to the USF. Based upon the facts and circumstances surrounding this matter, we find that LPSI is apparently liable for a total monetary forfeiture in the amount of $529,000.

## II. BACKGROUND

2. The Act 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.[2] 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."[3] 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 USF based upon their interstate and international end-user telecommunications revenues.[4] Failure by

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[1] 47 U.S.C. § 254.

[2] 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).

[3] 47 U.S.C. § 254(d).

[4] 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.*

some providers to pay their share into 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-A, also known as the annual Telecommunications Reporting Worksheets ("annual Worksheets") for the purpose of determining its USF payments,[5] and, with certain exceptions, to file quarterly short-form Worksheets ("quarterly 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.[6] Carriers are required to timely pay their monthly USF contribution invoice,[7] and the Commission's rules explicitly warn contributors that failure to file forms or submit payments potentially subjects them to enforcement action.[8] Further, under the Commission's "red light rule," action will be withheld on any application to the Commission or request for 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.[9]

4. LPSI is a telecommunications carrier that began providing long distance service in Kansas in 2002.[10] In March 2003, LPSI registered with USAC and filed an annual Worksheet in or about the same month.[11] During 2002 and 2003, LPSI's revenues were considered *de minimis* and the carrier was exempted from contributing to the USF.[12] LPSI no longer qualified for that exemption at some point

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[5] 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.

[6] 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).

[7] *See Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893,19896, ¶ 5 (2003) ("*Globcom NAL*"); 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 minimis. Globcom NAL*, 18 FCC Rcd at 19896, ¶ 5, note 22. The instructions for the Worksheet include tables for carriers to determine their annual contributions. Providers whose annual contribution is less than $10,000 are considered *de minimis* and exempted from contributing to the USF. 47 C.F.R. § 54.708. LPSI has not qualified for the *de minimis* exemption since 2004.

[8] 47 C.F.R. § 54.713.

[9] *Id*. § 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).

[10] *See* Letter from Bradford M. Berry, counsel for LPSI, to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 26, 2005, at 1 ("*Voluntary Disclosure Letter*").

[11] *See Supplemental Response*, Inquiry 4.

[12] *Id*. at Inquiry 2.

in 2004, but failed to file Worksheets and make contributions to the USF for that year as required.[13] Between July 5 and August 12, 2005, the Commission released six NALs alleging apparent failures by telecommunications carriers, among other things, to register, file worksheets, and make contributions to the USF.[14] On August 26, 2005, LPSI sent a letter to the Enforcement Bureau ("Bureau") informing the Commission of possible violations of the Commission's USF obligations of which it became aware following an internal financial audit beginning in June 2005.[15] LPSI stated that it intended to take immediate corrective measures, including filing outstanding FCC Form 499 Worksheets, no later than early October 2005, and intended to promptly pay all amounts properly invoiced by USAC and the Commission.[16]

5. Based on LPSI's representation, the Bureau initiated an investigation on October 18, 2005 by a letter of inquiry ("LOI")[17] regarding LPSI's compliance with its filing and payment obligations involving, among other things, the USF. LPSI submitted its LOI response on December 7, 2005 and supplemental response on December 23, 2005.[18] In its responses, LPSI informed the Commission it filed its first quarterly Worksheet three weeks late on November 23, 2005. Two weeks later, on December 9, 2005, LPSI submitted a revised 2003 annual Worksheet and back-filed its 2004 and 2005 annual Worksheets as well as the May 1 and August 1, 2005 quarterly Worksheets.[19] LPSI made its first USF payment on May 26, 2006.[20]

6. 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.[21] Section

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[13] *Id*.

[14] *See Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307 (2005); *InPhonic, Inc*., Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13277 (2005); *Teletronics, Inc*., Notice of Apparent Liability for Forfeiture and Order, 20 FC Rcd 13291 (2005); *Telecom Management Inc,* Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14151 (2005); *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 15131 (2005); *Communications Services Integrated, Inc*., Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 17251 (2005)

[15] *Voluntary Disclosure Letter* at 1.

[16] *Id*.

[17] Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Local Phone Services, Inc., c/o Bradford M. Berry, counsel for LPSI, dated October 18, 2005.

[18] *See* Letter from Bradford M. Berry, counsel for LPSI, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated December 7, 2006 ("*LOI Response*"); E-mail from Diana Lee, Investigations and Hearings Division, to Bradford M. Berry, counsel for LPSI (November 2, 2005, 11:26 a.m. EST) (granting LPSI's request for an 30-day extension to file *its LOI Response*); Letter from Bradford M. Berry, counsel for LPSI, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated December 23, 2005. ("*Supplemental Response*").

[19] Shortly thereafter, the Bureau began consent decree negotiations with LPSI, which failed to result in settlement of the investigation. To facilitate these discussions, LPSI executed an agreement with the Bureau in which the one-year statute of limitations set forth in 47 U.S.C. § 503(b)(6) would be tolled from March 3, 2006 until August 29, 2006. *See* Tolling Agreement at ¶ 5(a), signed by Christopher Olsen, Deputy Bureau Chief, Enforcement Bureau on March 9, 2006 and by Lawrence Edward Hisken, President, Local Phone Services, Inc. on March 3, 2006 ("LPSI Tolling Agreement"); Tolling Agreement Extension, signed by Christopher Olsen, Deputy Bureau Chief, Enforcement Bureau on May 31, 2006 and by Lawrence Edward Hisken, President, Local Phone Services, Inc. on May 25, 2006 ("LPSI Tolling Agreement Extension").

[20] *See* USAC invoice to LPSI dated June 22, 2006.

[21] 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); s*ee also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

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.[22] 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,[23] and the Commission has so interpreted the term in the section 503(b) context.[24] The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.[25] "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.[26] 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.[27] The Commission will then issue forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.[28]

7. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.[29] 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."[30]

## III. DISCUSSION

8. The fundamental issues in this case are whether LPSI apparently violated the Act and the Commission's rules by: (1) willfully or repeatedly failing to file Worksheets; and (2) willfully or repeatedly failing to make requisite contributions to the USF. We answer these questions affirmatively. Based on a preponderance of the evidence, and as discussed below, we therefore conclude that LPSI is apparently liable for a forfeiture of \$529,000 for apparently willfully and repeatedly violating section 254(d) of the Act and sections 54.706 and 54.711 of the Commission's rules.[31]

### A. Submission of Telecommunications Reporting Worksheets

9. We conclude that LPSI has apparently violated sections 54.711(a) of the Commission's rules by willfully and repeatedly failing to file on a timely basis certain Worksheets beginning in 2004

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[22] 47 U.S.C. § 312(f)(1).

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

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

[25] *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

[26] *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

[27] 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

[28] *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

[29] 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004).

[30] 47 U.S.C. § 503(b)(2)(D); *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, Report and Order, 12 FCC Rcd 17087, 17100, ¶ 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b).

[31] 47 U.S.C. §§ 254(d); 47 C.F.R. §§ 54.706(a), 54.711(a).

and continuing through November 2005. Section 54.711(a) of the Commission's rules clearly establishes a carrier's obligation to file periodic Worksheets.[32] The filing of a Worksheet prompts an accurate determination of liability for, and subsequent billing and collection of, payments by the administrator of the universal service cost recovery mechanism. The failure of a carrier, such as LPSI, to abide by its federal filing obligation has a direct and profound detrimental impact by removing from the base of USF contributions telecommunications revenues that otherwise should be included, thereby shifting to compliant carriers disproportionate economic burdens associated with the federal universal service program. Consequently, a carrier's failure to file required Worksheets thwarts the very purpose for which Congress enacted section 254(d) – to ensure every interstate carrier "contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[33] Viewed in this context, the Worksheet is not simply an administrative tool, but a fundamental and critical component of the Commission's universal service program.

10. Notwithstanding its regulatory obligations, LPSI failed to file Worksheets throughout all of 2004 and most of 2005, neglecting to timely file any quarterly or annual Worksheets despite its revenues exceeding the *de minimis* exemption in 2004.[34] The company failed to file any quarterly Worksheets in 2004 and 2005 until November 23, 2005, when it late-filed the quarterly Worksheet that was due November 1, 2005. Likewise, LPSI failed to timely file annual Worksheets until December 9, 2005, when it filed a revised 2003 annual form and late-filed 2004 and 2005 annual Worksheets, as well as the quarterly Worksheets due May 1 and August 1, 2005.

11. Based on the preponderance of the evidence, we find that LPSI apparently violated section 54.711 of the Commission's rules[35] by willfully and repeatedly failing to timely file required information with the Commission on multiple occasions since 2004, including its failure to timely file four worksheets since March 4, 2005.[36] We therefore propose a forfeiture for LPSI's failure to file the 2005 annual Worksheet due April 1, 2005 and the quarterly Worksheets due May 1, August 1, and November 1, 2005.

### B. Universal Service Contributions

12. We also conclude that LPSI apparently violated section 254(d) of the Act and section 54.706 of the Commission's rules by willfully and repeatedly failing to contribute to universal service support mechanisms.[37] Section 54.706(c) of the Commission's rules unambiguously directs that "entities [providing] interstate telecommunications to the public . . . for a fee . . . contribute to the universal service support programs."[38] LPSI was required, pursuant to section 54.706(b) of the Commission's rules, to contribute to universal service mechanisms based upon either its historical or projected revenues

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[32] 47 C.F.R. § 54.711(a).

[33] 47 U.S.C. § 254(d).

[34] Based on its LOI supplemental response, LPSI's revenues demonstrate that it falls under the *de mimimis* exemption in 2002 and 2003. *See LOI Response* at Inquiry 2. Based on the interstate and international telecommunications revenues report on its 2005 annual Worksheet (reporting 2004 revenues), however, LPSI would have lost that exemption at some point in 2004. *See id*. Given that LPSI did not file quarterly Worksheets in 2004 and February 2005, we do not have the information to further specify the particular quarter that LPSI lost that exemption.

[35] 47 C.F.R. §54.711.

[36] *See infra*, ¶ 13.

[37] 47 U.S.C. § 254(d); 47 C.F.R. § 54.706.

[38] 47 C.F.R. § 54.706(c).

beginning at some point in 2004.[39] Despite this requirement, LPSI made no universal service contributions until May 26, 2006. 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.[40]

Based on a preponderance of the evidence, we find that LPSI apparently has violated sections 254(d) of the Act and 54.706 of the Commission's rules by willfully and repeatedly failing to make its monthly universal service contribution payments since 2004, including fifteen such failures since March 4, 2005.[41] The failures include the payments due each month from March 2005 through and including May 2006.

### C. Proposed Forfeiture

13. Under section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that occurred within one year of the date of this NAL.[42] Nevertheless, section 503(b) does not bar us from assessing whether LPSI'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.[43] Notwithstanding that statutory provision, LPSI has entered into an agreement with the Bureau that tolled the one-year statute of limitations as of March 3, 2006.[44] Therefore, we propose forfeitures here only for violations that have occurred since March 4, 2005.

14. In the past, we have held that a substantial forfeiture of $50,000 is warranted for a carrier's failure to file a Worksheet for revenue reporting purposes.[45] As we noted above, a carrier's obligation to file Worksheets is directly linked to, and thus has serious implications for, administration of the USF program. By ignoring its reporting obligations, LPSI unilaterally shifted to compliant carriers and their customers the economic costs associated with the universal service program. Therefore, we find that LPSI is apparently liable for a $200,000 forfeiture for its failure to file four Worksheets, including the annual Worksheet due April 1, 2005, and quarterly Worksheets due May 1, August 1, and November 1, 2005.

15. Based on the facts above, it also appears that LPSI has failed to make requisite contributions into the USF beginning in 2004 and continuing until May 26, 2006. 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 frustrates Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of

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[39] *Id*. § 54.706(b).

[40] *Globcom NAL*, 18 FCC Rcd at 19903, ¶ 26.

[41] *See infra*, ¶ 13.

[42] 47 U.S.C. § 503(b)(6)(B); *see also* 47 C.F.R. § 1.80(c)(3); *but see supra* ¶ 5 & note 19.

[43] *See, e.g., Globcom NAL*, 18 FCC Rcd at 19903, ¶ 23; *Roadrunner Transp., Inc.,* Forfeiture Order, 15 FCC Rcd 9669, 9671, ¶ 8 (2000); *Liab. of E. Broad. Corp.*, Memorandum Opinion and Order, 10 F.C.C. 2d 37 (1967).

[44] *See generally* LPSI Tolling Agreement; LPSI Tolling Agreement Extension.

[45] *Globcom NAL*, 18 FCC Rcd at 19905, ¶ 32; *Globcom, Inc.*, 21 FCC Rcd 4710, 4727, ¶ 45 (2006) ("*Globcom Forfeiture Order*").

universal service costs among all telecommunications providers.[46] 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.[47] Consequently, we find LPSI apparently liable for a base forfeiture of $300,000 for its willful and repeated failure to make universal service contributions for fifteen months.[48] As discussed below, however, that base amount is subject to an upward adjustment.

16. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on one-half of the company's approximate unpaid contributions.[49] During the course of this investigation, LPSI filed the financial information necessary for USAC to determine the contribution amounts LPSI would have been assessed had it properly filed annual and quarterly Worksheets. Therefore, taking into account all the factors enumerated in section 503(b)(2)(D) of the Act, we propose an upward adjustment of $29,000, approximately one-half of the carrier's unpaid USF contributions accumulated by the time it made its first payment, for LPSI's apparent nonpayment violations. We thus find LPSI apparently liable for a total proposed forfeiture of $329,000 for its apparent willful and repeated failure to make contributions into the USF.

17. Although the Commission typically downward adjusts a proposed forfeiture when a company voluntarily discloses a violation of our rules, we decline to do so today. Specifically, pursuant to section 1.80(b)(4) of our rules, the Commission has adjusted downward proposed forfeitures where a target of an investigation voluntarily disclosed its violations prior to the initiation of any investigative or enforcement actions.[50] When deciding to discount a proposed forfeiture because of a regulatee's voluntary disclosure, the Commission reasonably expects the regulatee to take swift and effective corrective actions, and to comply with its Commission obligations. Here, the record evidence demonstrates that LPSI has failed to perform these expected actions.

18. Specifically, LPSI failed, until just prior to release of this item, to come into compliance since it voluntarily disclosed its violations nearly twelve months ago. As noted above, after LPSI became aware of its violations, it contacted the Bureau, disclosing its failures to file Worksheets and to contribute to the USF. LPSI explicitly defined the corrective steps that it intended to take, including the timely filing of the relevant Worksheets and making on-time payments for the USF assessments as they became due.[51] LPSI's post-disclosure compliance efforts, however, fall short of its commitments. For example, in August 2005, LPSI committed that it would file all required worksheets by the beginning of October

[46] *See* 47 U.S.C. § 254(d).

[47] *See Globcom NAL,* 18 FCC Rcd at 19903-19904, ¶¶ 25-27; *Globcom Forfeiture Order*, 21 FCC Rcd 4721-4724, ¶ 31-38.

[48] The fifteen months at issue are March 2005 to May 2006.

[49] *See, e.g., Globcom NAL*, 18 FCC Rcd at 19904, ¶ 27; *Globcom Forfeiture Order*, 21 FCC Rcd 4722, ¶ 33.

[50] *See* 47 C.F.R. § 1.80(b)(4); *see, e.g.*, *National Weather Networks, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922 (Enf. Bur. 2006); *Gilmore Broadcasting Corporation Evansville, Indiana,* Notice of Apparent Liability, 21 FCC Rcd 6284 (Enf. Bur. 2006) (downwardly adjusted the proposed aggregate forfeiture based on the target's history of compliance and prompt and voluntary disclosure of its violations); *see also, e.g., Emery Telephone*, 13 FCC Rcd 23854, ¶¶ 5, 10 (1998), *recon denied*, 15 FCC Rcd 7181 (1999) (reducing an aggregate forfeiture amount from $12,000 to $6,000 for failure to file operation notifications because carrier voluntarily disclosed the six violations and promptly filed the forms after discovering its mistake, but declining to reduce two other forfeitures for lack of voluntary disclosure); *Victoria Cellular Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 7853, 7854, ¶¶ 10-11 (1992) (reducing a proposed forfeiture from $15,000 to $6,000 for notification and filing violations because the carrier made a voluntary disclosure, by bringing the violation to the Commission's attention).

[51] *See generally Voluntary Disclosure Letter*. LPSI had paid more than $40,000 as of the end of June but, until making a belated payment on August 17, still owed a significant amount of USF payments. *See* USAC invoice to LPSI dated June 22, 2006; USAC invoice to LPSI dated July 21, 2006.

2005. While LPSI has filed Worksheets necessary to determine the carrier's USF payments, it filed these worksheets after the October deadline; filed the quarterly Worksheet due November 1, 2005 on November 23; and waited until December to file the revised 2003 annual Worksheet, the 2004 and 2005 annual Worksheets and the May and August 2005 quarterly Worksheets.

19. Of more concern is LPSI's failure to timely pay all of its USF obligations. Following LPSI's November 2005 quarterly Worksheet filing, USAC began invoicing the carrier in January 2006. From February to April, LPSI failed to make any payments to USAC. It was not until May 26, 2006 when LPSI paid the balance due on the January USAC invoice -- approximately four months after payment was due. LPSI made another payment on June 30 equal to the balances due on the February and March USAC invoices. The May and June payments, however, still left LPSI with an approximately $21,000 balance, which is comprised of a combination of past due and current obligations. Despite our rules requiring carriers to make monthly payments to USAC, and the commitment that LPSI made last year, in August 2005, to pay all of its USF obligations, LPSI still owed past-due and current USF obligations through mid-August 2006.[52]

20. Given the evidence currently before us that LPSI has failed to follow through in a timely manner on its express commitments to discharge its contribution obligationsand file required Worksheets, we decline to discount the proposed forfeiture amount for its voluntary disclosure. We recognize, however, that we may be presented with new evidence in the future as to why a downward adjustment to the proposed forfeiture is appropriate. For example, LPSI's Worksheets may demonstrate that, as a carrier with relatively small gross revenues, it has compelling, financial arguments to reduce the proposed forfeiture. The Commission will fully consider any such arguments made by LPSI in its response to this NAL. For purposes of determining the issues in the instant proceeding, however, we conclude that a proposed forfeiture of $529,000 is warranted.

## IV. CONCLUSION

21. In this NAL, we consider foremost the seriousness, duration and scope of the apparent violations and our policy to ensure that a company such as LPSI does not consider the proposed forfeiture merely "an affordable cost of doing business."[53] On the other hand, we also consider the utility of voluntary disclosures as another element in our comprehensive approach to improving the efficacy and fairness of the universal service program as well as reducing waste, fraud and abuse in the program. Based on these considerations, we find that a proposed forfeiture for $529,000 is warranted.

22. We caution that additional violations of the Act or the Commission's rules could subject LPSI to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of LPSI's operating authority, including disqualification of LPSI's principals from the provision of any interstate common carrier services without the prior consent of the Commission.[54] In addition, we note that, to the extent LPSI is ever 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 LPSI, in accordance with the agency's "red light" rules.[55]

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[52] LPSI made a substantial payment to USAC on August 17 to correct the outstanding balance, upon learning that enforcement action was imminent and being advised that the company remained out of compliance.

[53] *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, ¶ 24; *see also* 47 C.F.R. § 1.80(b)(4).

[54] *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).

[55] 47 C.F.R. § 1.1910.

## V. ORDERING CLAUSES

23. 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 Local Phone Services, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of $529,000 for willfully and repeatedly violating the Act and the Commission's rules.

24. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,[56] within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Local Phone Services, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

25. 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 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.

26. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. E-mail address: william.davenport@fcc.gov.

27. 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.

28. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.

29. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE shall be sent by certified mail, return receipt requested, to Bradford M. Berry, Wilmer, Cutler, Pickering, Hale and Dorr LLP, 2445 M Street N.W., Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[56] *See* 47 C.F.R. § 1.1914.