

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

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

ORDER OF FORFEITURE

Adopted: September 14, 2006

Released: September 15, 2006

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$1,133,761 against OCMC, Inc. ("OCMC") for willful and repeated violations of the Communications Act of 1934, as amended (the "Act"), and our rules. For the reasons set forth below, we find that OCMC willfully and repeatedly violated the Act¹ and Commission rules² by failing to contribute to the Universal Service Fund ("USF").

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability and Order ("OCMC NAL") previously issued by the Commission, and need not be reiterated here at length.³ OCMC is an operator service provider ("OSP"), interexchange carrier and toll reseller.⁴ As an OSP and reseller of interstate and international long-distance services, OCMC is subject to the obligations of section 254 of the Act and section 54.706(b) of our rules.⁵ Section 254(d) of the Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and non-discriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."⁶ Section 54.706 of the Commission's rules requires all telecommunications carriers that provide interstate telecommunications services, and certain other providers of interstate telecommunications, to contribute to the USF based on

¹ 47 U.S.C. § 254.

² 47 C.F.R. § 54.706(a).

³ See OCMC, Inc., Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 14160 (2005) ("OCMC NAL").

⁴ 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").

⁵ The Commission's rules specifically include OSPs and resellers of interstate services in the definition of providers of interstate telecommunications services that must contribute to the fund. See 47 C.F.R. § 54.706(a)(3), (16).

⁶ 47 U.S.C. § 254(d).

their projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.⁷

3. The Universal Service Administrative Company (“USAC”) administers the universal service support mechanisms and performs billing and collection functions.⁸ The Commission requires carriers to provide revenue information to USAC on FCC Form 499 (“Telecommunications Reporting Worksheet”) on a quarterly and annual basis,⁹ and USAC uses that information to determine the amount of each carrier’s universal service contributions on a quarterly basis, with a yearly true-up using the Annual Worksheet.¹⁰ USAC bills carriers, including OCMC, each month based on their quarterly contribution amount.¹¹

4. On September 16, 2004, USAC referred OCMC to the Enforcement Bureau (“Bureau”) for investigation concerning OCMC’s possible failure to contribute fully and on a timely basis 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 the USF.¹² The LOI directed OCMC to provide specified documents and information. OCMC responded on October 18, 2004.¹³ A supplemental LOI was issued on December 16, 2004,¹⁴ and OCMC responded on December 21, 2004.¹⁵

⁷ 47 C.F.R. §§ 54.706, 54.709.

⁸ See *Changes to the Board of Directors of the National Exchange Carrier 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 47 C.F.R. § 54.711.

¹⁰ See 47 C.F.R. § 54.709(a).

¹¹ 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); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Federal-State Joint Board on Universal Service*, 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, 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, 24971-72, ¶ 35 (2002); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State Board on Universal Service*, Second Order on Reconsideration (in CC Docket No. 97-21), 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Carriers must pay by the date shown on the invoice from the Administrator. 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 (Wireline Comp. Bur. 2003) (“Contribution payments are due on the date shown on the administrator invoice.”).

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

¹³ See LOI Response.

¹⁴ Letter from Hillary S. DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Robert Young, OCMC, Inc. (Dec. 16, 2004) (“Supplemental LOI”).

5. The Commission released the *OCMC NAL* on August 12, 2005. We concluded in the *OCMC NAL* that OCMC apparently violated section 254(d) of the Act and section 54.706(a) of our rules by willfully and repeatedly failing to contribute fully and on a timely basis to the USF.¹⁶ At that time the Administrator's invoices showed that OCMC owed \$2,047,521 in universal service-related charges, fees, and adjustments. We proposed a forfeiture of \$1,133,761 against OCMC for apparent willful and repeated failures to pay contributions to the USF.¹⁷

6. OCMC filed its response to the *OCMC NAL* on September 12, 2005.¹⁸ OCMC does not dispute our conclusions as to its violations, but instead argues for a reduction of the proposed forfeiture amount for those violations. OCMC contends that the proposed forfeiture amount is inequitable and contrary to Commission precedent. OCMC also argues that given its current financial condition as set forth in financial statements and recently revised Worksheets, as well as its "good faith compliance" before we issued the LOI, a downward adjustment of the forfeiture amount is warranted.

7. 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.¹⁹ 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.²⁰ 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,²¹ and the Commission has so interpreted the term in the section 503(b) context.²² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²³ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.²⁴ 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.²⁵ 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 order or rule.²⁶

¹⁵ Letter from Ann Bernard, OCMC, Inc., General Counsel, to Christopher Shields, Investigations and Hearings Division, Enforcement Bureau, FCC (December 20, 2004) ("Supplemental LOI Response").

¹⁶ See 47 U.S.C. § 254; 47 C.F.R. § 54.706(a).

¹⁷ *OCMC NAL*, 20 FCC Rcd at 14165-66, ¶¶ 14-19.

¹⁸ *Response to Notice of Apparent Liability*, submitted by Ann C. Bernard, General Counsel, OCMC, Inc., dated Sept. 12, 2005 ("NAL Response").

¹⁹ 47 U.S.C. § 503(b)(1)(B).

²⁰ 47 U.S.C. § 312(f)(1).

²¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²² See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) ("*Southern California Broadcasting Co.*").

²³ 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) ("*Callais Cablevision, Inc.*")

²⁴ *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

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

²⁶ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

8. 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, 2004.²⁷ 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.”²⁸

III. DISCUSSION

9. As discussed below, we find by a preponderance of the evidence that OCMC has willfully and repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission’s rules by failing to contribute fully and timely to the USF.²⁹ OCMC does not dispute that it failed to satisfy its payment obligations as set forth in the *OCMC NAL*.³⁰ Consequently, we find that OCMC willfully and repeatedly violated our rules by failing to make any USF contribution in two of the twelve months preceding the issuance of the NAL, and by making only partial payments in seven of the twelve months preceding the issuance of the NAL.³¹

10. In the *OCMC NAL*, we proposed a forfeiture of \$1,133,761 for OCMC’s apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a) of the Commission’s rules.³² We calculated this amount as follows. For OCMC’s apparent failure to pay universal service contributions, we applied a base forfeiture amount of \$20,000 for each of two months of nonpayment.³³ For OCMC’s apparent submission of partial payment contributions,³⁴ we applied a base forfeiture amount of \$10,000 for each of seven months of partial payments.³⁵ We then added one-half of the more than \$2 million of total unpaid universal service contributions (\$1,023,761) to the base forfeiture of \$110,000, for a proposed forfeiture of \$1,133,761. As explained below, we reject OCMC’s various arguments to reduce the forfeiture. We therefore impose the forfeiture of \$1,133,761 proposed in the NAL.

²⁷ 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, 19 FCC Rcd 10945 (2004).

²⁸ 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).

²⁹ *See* 47 U.S.C. § 254; 47 C.F.R. § 54.706(a).

³⁰ NAL Response at 3.

³¹ *OCMC NAL*, 20 FCC Rcd at 14163-64, ¶¶ 8-13.

³² *OCMC NAL*, 20 FCC Rcd at 14165-66, ¶¶ 14-19.

³³ As set forth in the *OCMC NAL*, the two violations for non-payment of USF obligations occurred on March 15 and June 15, 2005. *OCMC NAL* 20 FCC Rcd at 14164, ¶ 17.

³⁴ As set forth in the *OCMC NAL*, the seven violations for partial payment of USF obligations occurred on August 13, September 15, October 15, and November 15, 2004, and February 15, April 15, and May 13, 2005. *OCMC NAL* at 14166, ¶ 18.

³⁵ Under section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we have a one-year statute of limitations for non-broadcast forfeiture actions; *see also* 47 C.F.R. § 1.80(c)(3).

11. As explained below, we reject OCMC's arguments to reduce the forfeiture proposed in the *OCMC NAL*. We conclude that, contrary to OCMC's claims, the *OCMC NAL* conforms to our precedent and is equitable. We also conclude that neither OCMC's purported efforts to pay down part of its outstanding USF balance before we issued the LOI nor its revised Worksheets justify a downward adjustment of the forfeiture. Indeed, while it is true that OCMC has revised its Worksheets since the NAL was issued, its revisions have *increased* its revenue for 2004, such that OCMC actually owed *more* to the USF at the time of the NAL than the amount referenced therein.

A. The Proposed Forfeiture Amount Is Consistent with Precedent

12. We reject OCMC's argument that an upward adjustment of one-half of its unpaid USF contributions is "inequitable" and "contrary to precedent."³⁶ As support for its argument, OCMC reviews other NALs involving USF contribution violations that used the same theory for upward adjustments,³⁷ and states that "[t]he violations in those cases demonstrate a flaunting of Commission rules and disregard of requirements that contrasts dramatically with OCMC's conduct,"³⁸ in that the carriers that were the subject of those NALs had other violations beyond the failure to contribute to USF.

13. OCMC's position fails to recognize, however, that in the cases it cites, the Commission also proposed forfeitures for each of the other violations. In other words, while it is true that each of the carriers OCMC references did, in fact, appear to violate additional rules, it is not true, as OCMC implies, that the only additional penalty these carriers faced was an upward adjustment for their failures to contribute to the USF. Rather, we assessed forfeitures for each of these carriers' additional violations, some in the hundreds of thousands of dollars. For example, in addition to the forfeiture we proposed for one carrier's failure to contribute to the USF, we also proposed a forfeiture against the carrier of \$100,000 for its failure to register with the Commission as required by section 64.1195 of our rules; \$250,000 for its failure to file five Telecommunications Reporting Worksheets with the Commission; \$10,000 for its failure to contribute to the Telecommunications Relay Service fund, plus an upward adjustment of one-half of its unpaid contributions to that fund; \$10,000 for failure to contributing to the North American Numbering Plan Administration fund; and \$10,000 for failure to pay regulatory fees.³⁹ In short, in all of the NALs that OCMC references, we proposed separate penalties for each of the carrier's additional violations.

14. The precedent OCMC cites confirms, instead, that we are treating OCMC the same as other carriers that committed the same violation—failure to contribute to USF. Our approach to the upward adjustment to the forfeiture for the failure to contribute to USF in each of these cases was the same and was based on one-half of the carrier's outstanding obligations to the fund. As a result, our approach to OCMC's upward adjustment for failure to contribute to USF is equitable when compared to other instances when we have imposed forfeitures for such violations and fully consistent with precedent.

³⁶ NAL Response at 6.

³⁷ OCMC cites to four NALs we released in July and August 2005: *Telecom Management, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 14151 (2005); *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 13 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 FCC Rcd 13291 (2005) ("*Teletronics*").

³⁸ NAL Response at 7.

³⁹ See *Teletronics*.

B. The Forfeiture Amount Is Equitable Given OCMC's Revenues

15. We also reject OCMC's argument that it does not have substantial revenues, and as a result, an upward adjustment of one-half of its unpaid USF balance is unnecessary to deter the company from future USF violations. As an initial matter, OCMC's objection to our characterization of its revenues as "substantial" in the NAL is unavailing. The company's response to the NAL, and its Worksheets, indicate that its gross revenues are in the tens of millions of dollars, and have been for several years.⁴⁰ As a result, we reject OCMC's claims that "[t]he Commission erroneously assumes that OCMC is a company with 'substantial revenues,'"⁴¹ and that "the NAL fails to explain the basis for the Commission's conclusion that OCMC is a company with substantial revenues."⁴²

16. To the extent that OCMC argues that its *profitability* is too insubstantial to justify an upward adjustment of one-half of its unpaid USF balance, its argument appears to be a challenge to our general theory for upward adjustments for USF violations, at least as applied to the company. Our approach to the upward adjustment is tied specifically to the impact of a company's failure to pay USF contributions and therefore necessarily changes with the amount of a carrier's outstanding obligations to the fund, meaning that we assess a higher forfeiture amount against carriers that owe more to the fund than to carriers that owe less. As the Commission has stated repeatedly in cases involving failures to contribute to USF, we believe that this approach is appropriate because "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."⁴³ Moreover, at the time we established our current methodology for basing the upward adjustment for USF violations on one-half of a carrier's total overdue obligations, we explained that "the time has come to implement a substantially greater forfeiture amount in order to deter carriers from violating our universal service and reporting rules."⁴⁴ Thus, OCMC's upward adjustment is over \$1 million simply because the company owed more than \$2 million to USF, meaning that the company's misconduct deprived this Congressionally-sanctioned fund of this significant amount. Our theory for upward adjustments generally, and as applied to OCMC specifically, is fully consistent with the mandate of section 503(b)(2)(D) that "[i]n determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁴⁵

C. Pre-LOI Efforts by OCMC Did Not Constitute Good Faith Compliance with Our Rules

17. We also reject OCMC's allegation that we should adjust the proposed forfeiture downward because the company demonstrated good faith by paying down its overdue universal service contributions prior to the LOI.⁴⁶ Initially, we note that our forfeiture methodology already takes into account any effort by OCMC to pay down its balance before we issued the LOI, because the upward adjustment is dependent

⁴⁰ NAL Response at 5-6.

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

⁴³ *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546-47, ¶ 8 (2000); *see also Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19904, ¶ 27 (2003) ("*Globcom*").

⁴⁴ *Globcom* at 19903, ¶ 25 (2003).

⁴⁵ 47 U.S.C. § 503(b)(2)(D).

⁴⁶ NAL Response at 11-12.

on the amount of the outstanding USF balance. Where a carrier such as OCMC pays down that balance through pre-enforcement action efforts, the forfeiture is proportionately diminished.

18. Secondly, as noted in the *OCMC NAL*, the record is clear that between September 2003 and the date of the 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.⁴⁷ As a result of this misconduct, OCMC has consistently maintained balances with USAC that exceed \$1 million. Thus, regardless of OCMC's purported pre-LOI efforts, large gaps remain in OCMC's compliance. The excessively high balances maintained by OCMC demonstrate that the forfeiture should not be reduced.

19. Finally, in responses to the Bureau's inquiries, OCMC provided information concerning a billing dispute with USAC as grounds for its contribution failures. OCMC implied 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.⁴⁸ 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 2003.⁴⁹ Thus, OCMC's billing dispute does not warrant a reduction in the forfeiture.

D. OCMC Has Not Demonstrated It Is Unable to Pay the Forfeiture Amount

20. OCMC also has not demonstrated an inability to pay the forfeiture. OCMC claims that the company lost money overall from 2003 through 2004, providing audited financial statements for those years as support,⁵⁰ and states that it currently lacks sufficient resources to pay the proposed forfeiture, providing financial statements current as of July 2005 as support.⁵¹ Although ability to pay is a statutory factor that we must consider in setting a forfeiture amount,⁵² the Commission has repeatedly held that a carrier's gross revenues are the best indicator of its ability to pay a forfeiture.⁵³ The financial information supplied by OCMC in support of its claim, including its 2002-2004 financial statements and year-to-date 2005 financials, shows that OCMC's gross revenues are far in excess of the forfeiture amount, and that the forfeiture amount represents a smaller percentage of OCMC's gross revenues than that deemed not to be excessive by the Commission in other cases. OCMC has not produced any evidence, through

⁴⁷ *OCMC NAL*, 20 FCC Rcd at 14163, ¶ 9.

⁴⁸ 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.").

⁴⁹ 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.").

⁵⁰ See NAL Response at 12 and Exhibit A.

⁵¹ See NAL Response at 12 and Exhibit C.

⁵² "In determining the amount of . . . a forfeiture penalty, the Commission or its designee shall take into account . . . ability to pay." 47 U.S.C. § 503(b)(2)(D).

⁵³ See, e.g., *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Coleman Enterprises d/b/a Local Long Distance, Inc.*, Order on Reconsideration, 16 FCC Rcd 10,016 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089, ¶ 8 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

affidavits or otherwise, that it will not be able to pay the total forfeiture.⁵⁴

E. The Forfeiture Should Not Be Adjusted Downward Due to OCMC's Revised Worksheets

21. Finally, we reject OCMC's argument that we should adjust downward the forfeiture proposed in the NAL as a result of "clerical errors" in the Worksheets the company filed in 2005.⁵⁵ OCMC revised its annual Worksheet at about the same time that it responded to the NAL, and claimed that the balances USAC would recalculate from these revisions "will be significantly lower than the more than \$2 million balance identified in the NAL," such that "any penalty assessed by the Commission for partial or non-payment of USF contributions should be based on the actual, lower balance owed, rather than an artificially inflated amount resulting from clerical error."⁵⁶ In fact, although OCMC did revise its annual Worksheet for 2005 at about the same time it filed its response to the NAL, USAC has indicated to Commission staff that it identified problems with that submission, and as a result, the company revised its Worksheet a second time. The net effect of these revisions is that OCMC has *increased* its reported revenue for calendar year 2004, such that the amount of the company's outstanding balance at the time of the NAL was actually *higher* than the amount discussed therein. While we agree with OCMC that we should base our forfeiture on its actual USF balance, that approach does not result in decreasing the company's forfeiture. As a result, the forfeiture will not be reduced due to OCMC's revisions to its Worksheets.

IV. CONCLUSION

22. OCMC withheld payments to the Congressionally-mandated universal service program, thereby depriving the program of essential funding for an extended period of time and totaling millions of dollars in withheld contributions. In light of the seriousness, duration and scope of the apparent violations, we find that the forfeiture of \$1,133,761 proposed in the *OCMC NAL* is warranted.

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 OCMC, Inc. SHALL FORFEIT to the United States government the sum of \$1,133,761 for willfully and repeatedly violating the Act and the Commission's rules.

24. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁵⁷ 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

⁵⁴ See *Webnet Communications, Inc.*, Order of Forfeiture, 18 FCC Rcd 6870, 6878, ¶ 16 (2003); *America's Tele- Network Corporation*, Order of Forfeiture, 16 FCC Rcd 22350, 22356-56, ¶ 16 (2001).

⁵⁵ NAL Response at 12.

⁵⁶ *Id.* at 12-13.

⁵⁷ 47 U.S.C § 504(a).

account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director - Financial Operations, 445 12th St, SW, Room 1A625, Washington, DC 20554.⁵⁸

25. IT IS FURTHER ORDERED that copies of this ORDER OF FORFEITURE shall be sent by certified mail, return receipt requested, to Ann C. Bernard, General Counsel, OCMC, Inc., 801 Congressional Boulevard, Suite 100, Carmel, IN 46032.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁸ See 47 U.S.C § 1.1914.