

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

In the Matter of)	File No. EB-06-IH-0902
)	
Compass, Inc. d/b/a Compass Global, Inc. f/k/a)	NAL/Acct. No. 200732080006
Forva, Inc.)	
)	
Apparent Liability for Forfeiture)	FRN No. 0010611416

**NOTICE OF APPARENT LIABILITY
FOR FORFEITURE AND ORDER**

Adopted: December 22, 2006

Released: December 27, 2006

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Compass, Inc., d/b/a Compass Global, Inc. (“Compass Global”), has apparently failed to meet its statutory and regulatory obligations related to payphone compensation. Based upon our review of the facts and circumstances in this matter, we find that Compass Global is apparently liable for a total forfeiture of \$466,000.

2. Specifically, as discussed in detail below, we find that Compass Global has apparently violated: (1) sections 64.1310(a)(1) and 64.1320(c)(1) of the Commission’s rules, by willfully and repeatedly failing to establish, on a timely basis, a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion;¹ (2) section 64.1320 of the rules, by willfully and repeatedly failing to have its call tracking system audited, to file a System Audit Report, or to comply with any of the Commission’s audit-related requirements in the payphone rules;² (3) sections 64.1300 and 64.1310(a)(2) of the rules, by willfully and repeatedly failing to compensate payphone service providers (“PSPs”) for each completed payphone call;³ (4) section 64.1310(a)(4) of the rules, by willfully and repeatedly failing to provide to PSPs call data reports that satisfy the Commission’s requirements;⁴ and (5) section 64.1310(a)(3) of the rules, by willfully and repeatedly failing to make available to PSPs a sworn statement from its Chief Financial Officer certifying payment accuracy and completeness.⁵ In addition, we find that Compass Global apparently violated a Commission order by willfully failing to respond on a timely basis to a directive of the Enforcement Bureau to provide certain information and documents.

¹ 47 C.F.R. §§ 64.1310(a)(1), 64.1320(c)(1).

² 47 C.F.R. § 64.1320.

³ 47 C.F.R. §§ 64.1300, 64.1310(a)(2).

⁴ 47 C.F.R. 64.1310(a)(4).

⁵ 47 C.F.R. § 64.1310(a)(3).

3. We order Compass Global to submit a report within thirty (30) days, either as part of its response to this NAL or separately. Compass Global's report must be supported by a sworn statement or declaration under penalty of perjury of a corporate officer, and must set forth in detail its plan to come into compliance promptly with the relevant payphone compensation rules discussed herein. We also order Compass Global to correct its past failures by having its call tracking system audited in compliance with Commission rules, by compensating each PSP for each payphone call it has completed and for which payment was already due, by filing with each PSP any overdue call data reports for payphone calls it has completed, and for providing each PSP any overdue statements of an officer certifying payment accuracy and completeness.

II. BACKGROUND

A. Payphone Compensation Regime

4. In the Telecommunications Act of 1996,⁶ Congress added section 276, captioned "Provision of Payphone Service," to the Communications Act of 1934, as amended (the "Act").⁷ Section 276(b) directed the Commission to adopt implementing regulations "[i]n order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public." In particular, section 276(b)(1) directed the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone."⁸

5. The Commission adopted its current rules in 2003,⁹ with some modifications on reconsideration in 2004,¹⁰ and they became effective on July 1, 2004.¹¹ As envisioned in section 276, the rules govern the manner in which a PSP is compensated for a "subscriber toll-free call," (e.g., 800-FLOWERS), and a "coinless access code call," (e.g., 800-CALL-ATT).

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ 47 U.S.C. § 276.

⁸ 47 U.S.C. § 276. *See* Conf. Rep. No. 104-458 at 158. The Conference Report explains: "In place of the existing regulatory structure, the Commission is directed to establish a new system whereby all payphone service providers are fairly compensated for every interstate and intrastate call made using their payphones, including, for example, "toll-free" calls to subscribers to 800 and new 888 services and calls dialed by means of carrier access codes. In crafting implementing rules, the commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act." The quoted language comes from the House amendment to the Senate bill. The Conference agreement indicates that Congress adopted the House provision with some changes.

⁹ *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 18 FCC Rcd 19975 (2003), (subsequent history omitted) (*Second Payphone Order*). The Commission had earlier adopted different rules, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (subsequent history omitted).

¹⁰ *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 19 FCC Rcd 21457 (2004) (subsequent history omitted).

¹¹ 60 Fed. Reg. 26825 (May 14, 2004); 69 Fed. Reg. 71383 (Dec. 9, 2004).

6. As a general matter, the rules require “Completing Carriers” to compensate PSPs for completed payphone calls at a rate agreed upon by contract,¹² or in the absence of such an agreement, “at a per-call rate of \$.494.”¹³ A “Completing Carrier” is defined as “a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.”¹⁴ In other words, a Completing Carrier is a facilities-based long distance carrier, including a switch-based reseller (“SBR”), or a local exchange carrier that completes a toll-free payphone call. The Commission imposed the compensation obligation on Completing Carriers and SBRs because they “are the primary economic beneficiaries of coinless payphone calls transferred to their switch and because they possess the most accurate call completion information for such calls.”¹⁵

7. To ensure that Completing Carriers compensate PSPs for each and every completed payphone call, a Completing Carrier must establish a call tracking system that (among other requirements) accurately tracks all toll-free payphone calls to completion.¹⁶ The deadline for establishing such a call tracking system was July 1, 2004.¹⁷

8. As an additional safeguard, the call tracking system must be audited and verified to comply with the Commission’s defined requirements.¹⁸ A “System Audit Report” regarding the Completing Carrier’s compliance with the call tracking system requirements must conform to certain standards, and was to be filed with the Commission, PSPs, and Intermediate Carriers by the effective date of the rules.¹⁹ At the same time it filed its System Audit Report, a Completing Carrier was also required to file a statement that includes its name, as well as the name, address, and phone number of the persons responsible for handling its payphone compensation and for resolving disputes with PSPs; any change must be updated within sixty days of the change.²⁰ The call tracking system must be audited, and corresponding reports must be filed, at annual intervals thereafter.²¹ Completing carriers must permit PSPs to inspect documents, including workpapers, underlying a System Audit Report.²²

9. Central to implementing the core and express requirement of section 276(b), the rules require each Competing Carrier, on a quarterly basis, to compensate all PSPs for each completed coinless access code or subscriber toll-free payphone call.²³ To ensure that the payment tendered is accurate and

¹² 47 C.F.R. § 64.1300(b).

¹³ 47 C.F.R. § 64.1300(c).

¹⁴ 47 C.F.R. § 64.1300(a).

¹⁵ *Second Payphone Order*, 18 FCC Rcd at 19988, ¶ 26.

¹⁶ 47 C.F.R. §§ 64.1310(a)(1), 64.1320(c)(1). Section 64.1320(c) sets forth nine specific requirements with which the call tracking system must comply, and for which an independent third-party auditor must verify compliance.

¹⁷ The Commission’s current rules became effective July 1, 2004. *See supra* at ¶ 5. Because, as discussed below, the rules explicitly required a Completing Carrier to file an audit report regarding its compliance with section 64.1310(a)(1) by the effective date of the rules, a Completing Carrier needed to establish a call tracking system that satisfies the Commission’s requirements by the effective date.

¹⁸ 47 C.F.R. §§ 64.1320(a), 64.1320(c).

¹⁹ 47 C.F.R. §§ 64.1320(b), 64.1320(d).

²⁰ 47 C.F.R. § 64.1320(e).

²¹ 47 C.F.R. § 64.1320(f).

²² 47 C.F.R. § 64.1320(g).

²³ 47 C.F.R. § 64.1310(a)(2).

complete, Completing Carriers must, on a quarterly basis, submit to each PSP a call data report that contains certain information about the calls the Completing Carrier completed from that PSP's payphone(s) during the quarter.²⁴ Each Completing Carrier also must, on a quarterly basis, provide a sworn statement of its Chief Financial Officer certifying that the compensation paid for a quarter is accurate and complete.²⁵

10. As an additional measure to ensure that all payphone call activity is traced and accounted for, the Commission's rules also impose requirements on carriers that carry payphone traffic but do not themselves complete those calls. An "Intermediate Carrier" is defined as a "facilities-based long distance carrier that switches payphone calls to other facilities-based long distance carriers."²⁶ An Intermediate Carrier also must, on a quarterly basis, submit a call data report to each PSP that contains certain information about the calls that the Intermediate Carrier switched to other long distance carriers.²⁷ The quarterly reports provided by Intermediate Carriers, if accurate and complete, help PSPs ensure that they are getting appropriate compensation from Completing Carriers.

11. The current payphone compensation regime thus is an interdependent one that relies on the cooperation of Completing and Intermediate Carriers with PSPs to ensure that the goals of section 276 are realized. In adopting its current rules, the Commission expressly warned that noncompliance could result in "substantial forfeitures," and that egregious cases could lead to "an Order to Show Cause why we should not revoke a[n] SBR's section 214 authority, and possibly bar the company's principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission."²⁸ In a recent Public Notice, we again warned carriers about the consequences of noncompliance, stating that we "reiterate that the Commission will not hesitate to take enforcement action, including forfeitures, should Completing Carriers and Intermediate Carriers fail to comply with their compensation and reporting obligations under the payphone rules."²⁹ Today's action against Compass Global is the first enforcement action the Commission will take to address

²⁴ 47 C.F.R. § 64.1320(a)(4). Each quarterly report must be in computer readable format and include: (1) a list of the coinless access code and subscriber toll-free calls dialed and completed by the Completing Carrier from the PSP's payphone, and the Automatic Number Identification (ANI) for each payphone; (2) the total volume of calls completed for each of these numbers; (3) the name, address, and phone number of the individuals responsible for handling the Completing Carrier's payphone compensation; and (4) the carrier identification code ("CIC") of all facilities-based long distance carriers that routed calls to the Completing Carrier, organized by access code and toll-free number.

²⁵ 47 C.F.R. § 64.1320(a)(3). In lieu of providing such a statement to each PSP, a Completing Carrier may instead provide a single statement addressed to all PSPs to which compensation is tendered, and may electronically notify PSPs of the existence of the statement by either sending the report or posting it on the website of the Completing Carrier or a clearinghouse. *Id.*

²⁶ 47 C.F.R. § 64.1310(b).

²⁷ 47 C.F.R. § 64.1310(c). Each quarterly report must be in computer readable format and include: (1) a list of all facilities-based long distance carriers to which the Intermediate Carrier switched access code and toll-free calls dialed from the PSP's payphone; (2) a list of all access code and toll-free numbers dialed from each PSP's payphones that local exchange carriers delivered to the Intermediate Carrier and the Intermediate Carrier switched to the identified long distance carrier; (3) the total volume of calls switched to each of these numbers; and (4) the name, address, and phone number of the individuals for each identified long distance carrier who serves as the Intermediate Carrier's contact at the identified carrier. *Id.*

²⁸ *Second Payphone Order*, 18 FCC Rcd at 19998, ¶ 44.

²⁹ Wireline Competition Bureau Reminds Carriers of Their Obligations Under the Payphone Compensation Rules, Public Notice, DA 06-1862, rel'd Sept. 13, 2006.

noncompliance with the payphone compensation rules. We intend it to serve as an example of the Commission's resolve to fully enforce compliance with its payphone compensation rules.

B. Compass Global and the FCC Investigation

12. Compass Global is a privately held New Jersey-based telecommunications provider that describes itself as "predominantly a switch based international wholesale reseller."³⁰ It began completing "long distance subscriber toll free calls" in August 2003.³¹

13. In 2005, after the current payphone rules had been in effect for a number of months, Commission staff became concerned about potential noncompliance of certain carriers with the payphone rules. The Commission's Enforcement Bureau ("Bureau") initiated investigations of a number of carriers.

14. On March 6, 2006 the Bureau sent Compass Global a Letter of Inquiry ("LOI") seeking certain documents and information related to the company's compliance with the payphone rules.³² The LOI directed Compass Global, within 30 days, to submit (among other things) a sworn written response to a series of questions relating to its apparent failure to comply with the payphone rules. Compass Global did not respond in any way within the applicable time period. On April 19, 2006, Bureau staff contacted Compass Global by telephone, and its principal stated that the company had never received the LOI. Later that same day, the Bureau reissued the LOI to Compass Global.³³ After receipt, Compass Global's principal contacted Bureau staff by telephone and reported that the company had, in fact, received the March 6 LOI, but had set it aside to address other priorities. Bureau staff then sent Compass Global a letter on April 20, 2006 noting this course of events, reminding the company that "failure to respond to an LOI in and of itself constitutes a violation of the Act and the Commission's rules," and stating that "failure to respond to the March 6, 2006 LOI has already exposed [Compass Global] to potential enforcement action, including a forfeiture."³⁴ On May 6, 2006, Compass Global responded fully to the LOI.³⁵

15. As explained below, Compass Global's LOI Response indicates that the company is a Completing Carrier for payphone calls;³⁶ that it has, after nearly three years of service, only recently established a call tracking system that reliably tracks calls to completion;³⁷ that it has not engaged any third party auditor or filed initial or annual audit reports or otherwise complied with any of the

³⁰ Letter from Dean Cary, President/CEO Compass Global, to Raelyn Tibayan Remy, Attorney, Investigations and Hearings Division, Enforcement Bureau, FCC, dated May 6, 2006, at 1 ("LOI Response").

³¹ *Id.*

³² Letter from Hilary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Dean Cary, President, Compass Global, Inc., dated March 6, 2006 ("LOI" or "March 6 LOI").

³³ Letter from Hilary S. DeNigro, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Dean Cary, President, Compass Global, Inc., dated April 19, 2006 ("April 19 LOI").

³⁴ Letter from Hilary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Dean Cary, President/CEO Compass Global, dated April 20, 2006.

³⁵ See LOI Response, *supra* note 30. This response was filed within the new time frame established in the April 19 LOI.

³⁶ Compass Global LOI Response at Inquiry 5.

³⁷ *Id.* at Inquiries 7, 8.

Commission's audit requirements;³⁸ that it has made only partial compensation to the PSPs for which it has completed the highest volume of calls, and has made no compensation whatsoever to other PSPs;³⁹ that it has failed to submit to each PSP the quarterly call data reports required by the Commission's rules;⁴⁰ and that it has never provided a sworn statement of an officer certifying to payment accuracy and completeness.⁴¹

C. Forfeiture Authority

16. 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.⁴² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁴³ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁴⁴

17. 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 \$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.⁴⁵ 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."⁴⁶

³⁸ *Id.* at Inquiry 8 b.

³⁹ *Id.* at Inquiry 13.

⁴⁰ *Id.* at Inquiry 9.

⁴¹ *Id.* at Inquiry 13 b.

⁴² 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, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting 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.

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

⁴⁴ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

⁴⁵ 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2).

⁴⁶ 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).

18. Under section 503(b)(6) of the Act, we may propose forfeitures only for apparent violations that accrued within one year of the date of the NAL.⁴⁷ Nevertheless, section 503 does not bar us from assessing whether conduct occurring 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.⁴⁸

III. DISCUSSION

19. As explained below, we find that Compass Global has apparently failed to comply with our payphone compensation rules. Based on its conduct, we find that Compass Global is apparently liable for a total forfeiture of \$466,000.

A. Compass Global's Payphone Rule and Other Violations

20. As a preliminary matter, we conclude that Compass Global is a Completing Carrier under the Commission's rules – indeed, Compass Global acknowledges as much. In its LOI Response, Compass Global states that it is “predominantly a switch based international wholesale reseller,” and that it completes “long distance subscriber toll free calls.”⁴⁹ Compass Global further states that it began completing such calls in August 2003, and that it has continuously completed these types of call since that time.⁵⁰ As a result, Compass Global, as a Completing Carrier, is required to establish a call tracking system;⁵¹ to have that system audited in compliance with the Commission's rules;⁵² to compensate PSPs, on a quarterly basis, for each payphone call it completes;⁵³ to file with PSPs, on a quarterly basis, call data reports for the payphone calls it completes;⁵⁴ and to provide PSPs, on a quarterly basis, with a statement of its Chief Financial Officer certifying payment accuracy and completeness.⁵⁵ As set forth in detail below, Compass Global has failed to satisfy any of these requirements.

1. Failure to Establish Call Tracking System

21. We first conclude that Compass Global has apparently violated sections 64.1310(a)(1) and 64.1320(c)(1) of the Commission's rules by failing to establish, on a timely basis, a call tracking system that accurately tracks calls to completion. Compass Global has created a call tracking system, but admits that the system was not reliable until very recently. In its LOI Response, Compass Global explained that it “began creating the Toll Free Call Tracking System in October of 2004,” and that the software evolved through different phases “until it reached the final version completed just last month” (April 2006).⁵⁶ Compass Global further stated that the software “has only recently been completed to the

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

⁴⁸ *See* 47 C.F.R. § 1.80(b)(4).

⁴⁹ LOI Response to Inquiries 3, 4.

⁵⁰ LOI Response to Inquiry 6.

⁵¹ 47 C.F.R. §§ 64.1310(a)(1), 64.1320(c)(1).

⁵² 47 C.F.R. § 64.1320(c).

⁵³ 47 C.F.R. § 64.1310(a)(2).

⁵⁴ 47 C.F.R. § 64.1310(a)(4).

⁵⁵ 47 C.F.R. § 64.1310(a)(3).

⁵⁶ LOI Response to Inquiry 8.

point where the company is confident with the software's accuracy," and that previously "Compass Global did not have a Call Tracking Software in place that was sufficiently reliable or accurate enough to provide firm data to payphone service providers in the form of a report."⁵⁷

22. Compass Global's conduct falls far short of the Commission's requirement to establish an accurate call tracking system by July 1, 2004. Indeed, Compass Global did not even begin to create a call tracking system until October 2004, and in the absence of filing the Commission-required audit of the call tracking system (discussed separately below) it is still not clear that Compass Global has fulfilled its obligation. As a result, we find that Compass Global apparently violated sections 64.1310(a)(1) and 64.1320(c)(1) of the Commission's rules by failing to establish by July 1, 2004 a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion, and that it has presented no reliable evidence that its violation does not continue to the present.

2. Failure to Satisfy Audit-Related Requirements

23. We next conclude that Compass Global has apparently violated each provision of section 64.1320 of our rules by failing to satisfy any of the audit-related requirements for its call tracking system. Section 64.1320 sets forth a comprehensive, detailed scheme for auditing the call tracking system.⁵⁸ As a Completing Carrier,⁵⁹ Compass Global had an obligation to comply with all of these audit-related requirements. To date, it has complied with none. In its LOI Response, Compass Global stated that due to the difficulties with its call tracking system, "the company has not yet finalized an agreement with an independent, third-party auditor to verify the accuracy and reliability of its call tracking system."⁶⁰ Nearly two years after Compass Global was required to have its call tracking system audited and to have filed the System Audit Report that addressed specific requirements, Compass Global explains that "the company is researching such entities, and has [been] engaging in conversations with several entities to perform this audit."⁶¹ To date, Compass Global has not filed its System Audit Report with the Commission – or presumably with the PSPs for which it completes calls, or the long distance carriers from which it receives payphone calls. As a result, we conclude that Compass Global has apparently violated section 64.1320 by failing to satisfy any audit-related requirements for its call tracking system, and that its violation continues to this day.

3. Failure to Compensate PSPs for Each Completed Call

24. We further conclude that Compass Global has apparently violated sections 64.1300 and section 64.1310(a)(2) of our rules by willfully and repeatedly failing to compensate PSPs for each toll-free payphone call that it has completed. Compass Global acknowledges as much.⁶² Due to problems with the accuracy of its call tracking system, Compass Global stated as of the date of its LOI Response that it had only made "good faith estimated payments" of approximately \$125,000 to PSPs that Compass Global says are associated with 90% of the toll-free payphone calls it completed.⁶³ Compass Global has also stated, however, that these PSPs have submitted claims for additional compensation, that "[t]he

⁵⁷ LOI Reponse to Inquiry 9.

⁵⁸ 47 C.F.R. § 64.1320.

⁵⁹ *See supra* n.14.

⁶⁰ LOI Response to Inquiry 8.

⁶¹ *Id.*

⁶² *See* LOI Response to Inquiries 9 and 13.

⁶³ *Id.*

company is currently behind by approximately one or two quarters in those payments,” and that it is “in the process of making payments . . . to these largest providers for the remaining balances just as soon as it possibly can.”⁶⁴ With respect to the PSPs associated with smaller call volume, Compass Global plainly admits that “the company has not yet made payments to these service providers.”⁶⁵ These admissions establish that Compass Global has not compensated each PSP for each completed call. Indeed, it appears that the degree of Compass Global’s misconduct may be greater than it has described. Call data provided with Compass Global’s LOI Response suggests the traffic carried by the two carriers to which it has made occasional and partial payment does not appear to comprise 90% of traffic for which Compass Global owes compensation,⁶⁶ and payment to these and the other carriers appears to be much more than “a quarter or two” overdue.⁶⁷ In light of Compass Global’s LOI Response, we find that Compass Global has apparently violated sections 64.1300 and 64.1310(a)(2) of the Commission’s rules by failing to compensate each PSP for each toll-free payphone call it completed, since the July 1, 2004 effective date of the current rules.

4. Failure to Provide Quarterly Reports

25. Compass Global has also apparently violated section 64.1320(a)(4) of our rules by willfully and repeatedly failing to submit call data reports to PSPs that satisfy the Commission’s requirements. By its own admission, Compass Global has not complied with the quarterly reporting requirement: in its LOI response, the company stated that “Compass Global has not made available or provided to payphone service providers the reports of completed calls required by section 64.1310(a)(4) of the Commission’s rules.”⁶⁸ The company explained that it has not provided these reports due to the problems associated with the accuracy and reliability of its call tracking system, but that now it “is in the process of providing these payphone service providers with these reports, as well as CDRs (call detail records) for all completed calls originated from the ANI’s they identified as belonging to them.”⁶⁹ Thus, we find that Compass Global has apparently violated section 64.1320(a)(4) of our rules by failing to

⁶⁴ LOI Response to Inquiry 13.

⁶⁵ LOI Response to Inquiry 13.

⁶⁶ As part of its LOI Response, Compass Global attached a chart that appears to show amounts due and payments made for the last two quarters of 2004 and all four quarters of 2005 (no data for 2006). The chart suggests that Compass Global made at least partial payments to APCC in March and July 2005, and to Verizon in September 2005. These two entities, of seven named by Compass Global, comprise some \$376,000 due (before any payment), while the other five named, and some unnamed (set forth as “No ANI Ownership Information”), total some \$181,000 due. See Compass Global LOI Response at Attachment. Thus it appears that the two entities to which some payment has been made account for about two thirds of the traffic for which Compass Global owes payphone compensation, and that the last time Compass Global made any payment was about a year ago.

⁶⁷ Since it filed its LOI Response, Compass Global has not provided any information indicating that it has made any additional payments to PSPs. Given the company’s continuing obligation to produce additional information responsive to the LOI as it becomes available, see LOI at 3, the absence of any such additional information suggests that Compass Global’s only payments to PSPs are those partial payments noted above, in March, July, and September 2005. In addition, in recent conversations between Bureau staff and Compass Global, the principal confirmed that the company had not made any payments other than those described in the LOI Response.

⁶⁸ LOI Response to Inquiry 9.

⁶⁹ *Id.* Since it filed its LOI Response, Compass Global has not provided any information indicating that it has submitted reports. Given the company’s continuing obligation to produce additional information responsive to the LOI as it becomes available, see LOI at 3, the absence of any such additional information suggests that Compass Global still has not submitted any reports to PSPs. In a recent telephone conversation with staff, Compass Global’s principal stated that the company has recently provided certain call data to some of its major PSPs, but did not characterize this data as the quarterly report required by our rules.

submit to each PSP call data reports that satisfy the Commission's requirements since the effective date of the rules, and that its violation continues to this day.

5. Failure to Provide CFO Sworn Statement

26. Compass Global has also apparently violated section 64.1310(a)(3) of the Commission's rules by willfully and repeatedly failing to provide to PSPs a sworn statement by its Chief Financial Officer (CFO) certifying payment accuracy and completeness. As with Compass Global's other apparent violations, there can be no dispute, and Compass Global itself acknowledges, that the company failed to comply with the requirement to provide a sworn statement certifying payment accuracy and completeness. In its LOI Response, Compass Global admits that "[t]he company has not provided to all payphone service provider [sic] a sworn statement from the company's Chief Financial Officer that the amount for that quarter is accurate and is based on 100% of all completed calls that originated from that payphone service provider's payphones."⁷⁰ As with its other violations, Compass Global explains that its failure to comply with this requirement is a result of its inadequate call tracking system. We find that Compass Global has apparently violated section 64.1310(a)(3) by failing to submit to any PSP a sworn statement certifying that the payment is accurate and based on 100% of calls that Compass Global completed from that PSP's payphones.

6. Failure to Provide Timely Response

27. Finally, we also conclude that Compass Global has apparently violated a Commission order by willfully failing to respond on a timely basis to a directive of the Enforcement Bureau to provide certain documents and information. As indicated above,⁷¹ Compass Global failed to respond in any way to the Bureau's March 6 LOI within the time frame allotted. When the Bureau had not received a response several days after that time frame closed, staff contacted Compass Global. The company denied having received the LOI, and staff directed another LOI to it again on April 19, 2006. After receiving the LOI again, Compass Global acknowledged that it had actually received the March 6 LOI, but had decided to prioritize other matters over responding to the LOI. It was only on May 6, 2006, nearly one month after the original due date, that Compass Global responded to the LOI. As a result, we find that Compass Global has apparently violated a Commission order by willfully failing to respond on a timely basis to the Bureau's March 6 LOI, which directed it to provide certain documents and information within thirty days.

B. Proposed Forfeiture

28. Although the Commission has acted on numerous formal complaints in the payphone compensation arena, we have not issued an NAL against a carrier for a violation of our current payphone compensation rules, which became effective July 1, 2004. As such, in calculating the appropriate penalty for Compass Global's violations of these rules, we consider the factors set forth in section 503(b)(2)(D), and our forfeiture guidelines.

29. The misconduct for which the forfeiture guidelines establish a base forfeiture that most closely approximates Compass Global's is failure to file required forms or information. The base forfeiture is \$3,000 for this conduct. The guidelines explicitly state, however, that "[t]he Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines."⁷² The guidelines explicitly identify several factors to adjust a base forfeiture upward, and among these are

⁷⁰ LOI Response to Inquiry 13.

⁷¹ See *supra* ¶ 14.

⁷² 47 C.F.R. § 1.80 (b)(4), Note, Guidelines for Assessing Forfeitures.

“egregious misconduct,” “substantial harm,” “substantial economic gain,” and “repeated or continuous violation.”⁷³ When it adopted its current payphone rules, the Commission explicitly warned that it would consider aggravating factors and fully utilize its enforcement power in penalizing violations: “We note that the current base penalty for failure to file required forms or information with the Commission is \$3,000; however, we have the discretion to impose substantially higher forfeitures based on the factors listed in our rules.”⁷⁴ The Commission explained that “late payment or non-payment to PSPs could result in substantial forfeitures: up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation.”⁷⁵ (These figures were then the statutory maximums.) The Commission further warned that “[i]n egregious cases, we may issue an Order to Show Cause why we should not revoke a SBR’s section 214 authority, and possibly bar the company’s principals from participating in interstate telecommunications business activities without first obtaining explicit permission from the Commission.”⁷⁶ In short, the Commission clearly indicated that it would not tolerate noncompliance with its rules, and would use the full range of its enforcement powers to penalize violators.

30. Although we acknowledge and encourage Compass Global's reported efforts to implement its tracking system and settle past-due accounts with its PSPs, we find that each of Compass Global’s violations of our payphone rules discussed above – failure to establish a call tracking system, failure to comply with audit-related requirements, failure to compensate PSPs for each and every completed call, failure to submit call data reports to PSPs, and failure to submit a sworn statement attesting to the completeness of payment – warrants upward adjustment from the base forfeiture of \$3,000. Our conclusion is based on the determination that each of the violations involves egregious misconduct, has been continuous or repeated since our current payphone rules became effective, and involves substantial harm to each of the PSPs who have been deprived of compensation from Compass Global. The rules required Compass Global to have established a call tracking system, to have that system audited and to have filed a System Audit Report in accordance with certain defined standards, all by no later than July 1, 2004. As discussed above, Compass Global only recently established a call tracking system that appears to be reliable, and has not yet subjected that system to audit. In addition, although Compass Global states that it has paid the PSPs that deliver the highest call volume to the company, it acknowledges that it is behind in its payments to those PSPs, and has never paid the PSPs that deliver smaller call volume. Compass Global further admits that it has failed to submit to each PSP the quarterly call data reports required by the Commission’s rules, and has never made available a sworn statement attesting to the accuracy of the payments it has tendered. As a result, Compass Global’s violations of the payphone rules are egregious, have been continuous or repeated, and have caused substantial harm to PSPs. A substantial upward adjustment of the forfeiture amounts is therefore warranted.⁷⁷

31. As explained below, the rules Compass Global apparently violated are fundamental and necessary to the Commission’s payphone compensation regime, which rests on intercarrier cooperation. Failures to comply with these requirements thwart realization of the statutory command of section 276 of the Act that PSPs be compensated “for each and every completed intrastate and interstate call using their payphone.” Thus, we propose base forfeiture amounts consistent with the overarching import of the rule violations. We also find that the forfeitures proposed are reasonable when compared to similar forfeitures

⁷³ *Id.*, Section II., Adjustment Criteria for Section 503 Forfeitures (criteria (1), (4), (6) and (7)).

⁷⁴ *Second Payphone Order*, 18 FCC Rcd at 19998, ¶ 44.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ As explained below, we impose a forfeiture of \$6,000 for Compass Global’s failure to respond to the March 6 LOI on a timely basis.

in our Universal Service Fund (“USF”) enforcement actions.⁷⁸ Finally, we warn carriers that we may impose harsher fines in future enforcement actions if we determine that those proposed here are insufficient to deter others from engaging in the same misconduct.

1. Failure to Establish Call Tracking System

32. We find that an appropriate penalty for the failure to establish, on a timely basis, a call tracking system that accurately tracks calls to completion is \$50,000. This requirement is a fundamental and necessary precursor to compliance with the Commission’s compensation and other payphone requirements; indeed the entire payphone compensation regime rests on inter-carrier compliance and cooperation. The Commission’s rules do not require carriers to report to, or even file with, the Commission; instead, they provide to each other the information and compensation required by our rules.⁷⁹ Failure to establish an accurate call tracking system on a timely basis is, thus, a serious dereliction of a Completing Carrier’s responsibilities because it prevents the carrier from fulfilling any of the other payphone requirements, including the core statutory requirement of compensating PSPs for each and every payphone call the carrier completes. Indeed, as Compass Global itself explains, it is the failure to establish an accurate and reliable call tracking system that has rendered it difficult if not impossible for the company to comply with any of the other payphone requirements. As a result, this failure should be associated with a significant penalty.

2. Failure to Satisfy Audit-Related Requirements

33. We also find that \$50,000 is an appropriate penalty for Compass Global’s failure to have its call tracking system audited in compliance with the requirements of section 64.1320. Failure to complete an audit in conformity with section 64.1320 is another element of the fundamental requirements in the payphone rules that are designed to ensure the accuracy and reliability of a Completing Carrier’s call tracking system (and, consequently, the amount of compensation paid to each PSP). Although this \$50,000 fine relates to Compass Global’s failure to comply with *any* provision of section 64.1320 in the Commission’s rules, we warn carriers that compliance with some but not all of the provisions of that section will still result in forfeitures. For example, a Completing Carrier that has had its call tracking system audited and filed a System Audit Report but fails to file a statement identifying the person responsible for handling its payphone compensation – or fails to update the statement if any change occurs – violates section 64.1320(e) and is potentially subject to forfeiture. Likewise, a Completing Carrier that fails to engage an auditor to evaluate its call tracking system annually violates section 64.1320(f) and is also subject to forfeiture. All components of the audit requirements are critical and must be satisfied. We also find that a \$50,000 proposed forfeiture for Compass Global’s failure to establish a call tracking system in a timely fashion and a \$50,000 proposed forfeiture for its failure to have the call tracking system audited in compliance with Commission requirements are appropriate penalties, particularly when compared to the Commission’s treatment of a carrier’s failure to register in our USF enforcement cases, given that these specific payphone rules, like a carrier’s failure to register, impose such fundamental requirements.⁸⁰

3. Failure to Compensate PSPs for Each Completed Call

⁷⁸ See, e.g., *Global Teldata II, Inc.*, Notice of Apparent Liability for Forfeiture & Order, 20 FCC Rcd 17264 (2005) (“*Global Teldata NAL*”); *InPhonic, Inc.*, Notice of Apparent Liability for Forfeiture & Order, 20 FCC Rcd 13277 (2005); *Telecom House, Inc.*, Notice of Apparent Liability for Forfeiture & Order, 20 FCC Rcd 15131 (2005); *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture & Order, 20 FCC Rcd 13291 (2005).

⁷⁹ See para. 11, *supra*.

⁸⁰ 47 C.F.R. § 64.1195(a).

34. With respect to the failure of a Completing Carrier to compensate PSPs for each and every toll-free payphone call it completes, we find an appropriate penalty to be \$50,000 per quarter. A Completing Carrier's failure to pay PSPs violates the fundamental goal of section 276 of the Act that all PSPs be "fairly compensated for each and every completed intrastate and interstate call using their payphone," just as a carrier's failure to contribute to the USF violates the requirement in section 254(d) that "[e]very telecommunications carrier that provides interstate services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission." We also note that this violation is similar to the failure to contribute to the USF.⁸¹ We therefore propose a forfeiture of \$50,000 for each of the four quarters within the past twelve months that Compass Global failed to compensate PSPs for each and every toll-free payphone call it completed, for a total forfeiture of \$200,000.

4. Failure to Provide Call Data Reports

35. We find that an appropriate penalty for Compass Global's failure to provide call data reports that satisfy the Commission's requirements is \$20,000 per quarter. A Completing Carrier's provision of call data reports is an important obligation, the failure of which is correspondingly important. This violation is similar to the failure to file Telecommunications Reporting Worksheets in the USF context, which results in a proposed forfeiture of \$50,000 for each missed filing with the Commission.⁸² The impact of the failure to file the call data reports upon which payphone compensation is based, however, is less than the failure to file Worksheets, on which a carrier's contribution to multiple regulatory programs is based. In addition, other requirements in the payphone context, such as the audit, serve as additional safeguards to ensure the accuracy of reports. We therefore propose a forfeiture of \$20,000 for each quarter within the past twelve months that Compass Global failed to submit call data reports to PSPs. The total proposed forfeiture is therefore \$80,000.

5. Failure to Provide CFO Sworn Statement

36. We likewise find that an appropriate penalty for Compass Global's failure to provide a sworn statement of an officer attesting to the accuracy of the compensation it tenders to PSPs is \$20,000 per violation. This failure is similar to the failure to file a Telecommunications Reporting Worksheet that is accurate and complete in all material respects. The Commission has assessed a \$50,000 penalty for the misreporting by a carrier of its revenues on a Worksheet, which as noted above is the same penalty as the Commission has assessed for failure to file a Worksheet at all.⁸³ The penalty for failure to file the sworn statement pursuant to the payphone rules, however, should be less than the failure to file an accurate Worksheet, given that failure to file the sworn statement impacts only PSPs rather than an industry-wide fund like the USF. In addition, there are other requirements in the payphone context, such as the call data reports, that serve to reinforce the accuracy of the payment. We therefore propose a penalty of \$20,000 for each of the four quarters within the past twelve months that Compass Global failed to provide the sworn statement of an officer attesting to the accuracy of the compensation it tendered to PSPs. The total proposed forfeiture is therefore \$80,000.

6. Failure to Provide Timely Response

⁸¹ See, e.g., *id.* at 17275, ¶¶ 26-27.

⁸² See, e.g., *id.* at 17274-75, ¶ 25.

⁸³ See *Globcom Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003), *Globcom Inc., Order of Forfeiture*, FCC 06-49.

37. Finally, we find that Compass Global's failure to respond to the Bureau's March 6, 2006 LOI warrants a penalty of \$6,000. The base forfeiture for failure to respond to Commission communications is \$4,000.⁸⁴ We have imposed higher penalties, however, for failure to respond to LOIs at all (\$20,000),⁸⁵ and for incomplete and untimely responses to LOIs (*e.g.*, \$8,000).⁸⁶ Since Compass Global ultimately responded in full to the LOI when the Bureau reissued it, we find its conduct less egregious than the failure to respond at all or both incompletely and untimely, and therefore propose a smaller upward adjustment of \$2,000 to the base forfeiture of \$4,000 for failure to respond to Commission communications.

IV. CONCLUSION

38. In light of the seriousness, duration and scope of the apparent violations, we find that a proposed forfeiture in the amount of \$466,000 is warranted. This proposed forfeiture amount includes: (1) \$50,000 for failure, in apparent violation of sections 64.1310(a)(1) and 64.1320(c)(1) of the Commission's rules, to establish, on a timely basis, a call tracking system that accurately tracks calls to completion; (2) \$50,000 for failure, in apparent violation of section 64.1320 of the rules, to undergo a system audit and comply with other audit-related requirements; (3) \$200,000 for failure, in apparent violation of section 64.1310(a)(2) of the rules, to compensate PSPs for each and every payphone call completed for the four quarters within the last year; (4) \$80,000 for failure, in apparent violation of section 64.1310(a)(4) of the rules, to submit to each PSP the required call data reports for the four quarters within the last year; (5) \$80,000 for failure, in apparent violation of section 64.1310(a)(3), to make available sworn statements from an officer attesting to accuracy of payments tendered to PSPs for the four quarters within the last year, and (6) \$6,000 for failure to respond to the Bureau's March 6 LOI.

39. We caution that additional violations of the Act or the Commission's rules could subject Compass Global to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of Compass Global's operating authority, including disqualification of Compass Global's principals from the provision of any interstate common carrier services without the prior consent of the Commission.⁸⁷ In addition, we note that, to the extent Compass Global is found to be delinquent on any debt owed to the Commission, the Commission will not act on, and may dismiss, any application or request for authorization filed by Compass Global, in accordance with the agency's "red light" rules.⁸⁸ We order Compass Global to submit within thirty (30) days, either as part of its response to this NAL or separately, a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, stating its plan to come into compliance promptly with the relevant payment and reporting rules discussed herein. We also order Compass Global to correct its past failures by having its call tracking system audited in compliance with Commission rules, by compensating each PSP for each payphone call it has completed and for which payment was already due, by filing with each PSP any overdue call data reports for payphone calls it has completed, and for providing each PSP any overdue statements of an officer certifying payment accuracy and completeness.

⁸⁴ 47 C.F.R. § 1.80(b).

⁸⁵ See, *e.g.*, *BigZoo.com Corp.*, Order of Forfeiture, 20 FCC Rcd 3954 (2005); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (2005).

⁸⁶ *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture & Order, 20 FCC Rcd 13307 (2005).

⁸⁷ 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).

⁸⁸ 47 C.F.R. § 1.1910.

V. ORDERING CLAUSES

40. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁸⁹ and section 1.80 of the Commission's rules,⁹⁰ that Compass Global, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$466,000 for willfully and repeatedly violating the Act and the Commission's rules.

41. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,⁹¹ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Compass Global, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

42. IT IS FURTHER ORDERED THAT, pursuant to section 4(i) of the Act, 47 U.S.C. § 4(i), within thirty days of the release of this NOTICE OF APPARENT LIABILITY AND ORDER, Compass Global, Inc. SHALL SUBMIT a report, supported by a sworn statement or declaration under penalty of perjury by a corporate officer, stating its plan to come into compliance promptly with the payment and reporting rules discussed herein. Compass Global, Inc. also SHALL HAVE its call tracking system audited in compliance with Commission rules, SHALL PAY overdue compensation to PSPs, SHALL FILE overdue call reports to PSPs, and SHALL PROVIDE to PSPs overdue statements of an officer certifying payment accuracy and completeness.

43. 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 911-6229.

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

45. 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.

46. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Federal Communications Commission, Deputy Chief Financial Officer, Room 1-A637, 445 12th Street, S.W., Washington, D.C. 20554.⁹²

⁸⁹ 47 U.S.C. § 503(b).

⁹⁰ 47 C.F.R. § 1.80,

⁹¹ See 47 C.F.R. § 1.80(f)(3).

⁹² See 47 C.F.R. § 1.1914.

47. 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 Dean Cary, President/CEO, Compass Global, Inc., 50 Tice Blvd., Woodcliff Lake, NJ 07677.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary