

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

In the Matter of)	File No. EB-02-IH-0757
)	
Globcom, Inc.)	NAL Acct. No. 200332080015
d/b/a Globcom Global Communications)	
)	
Apparent Liability for Forfeiture)	FRN No. 0006-5620-11
)	
)	

ORDER OF FORFEITURE

Adopted: April 17, 2006

Released: April 19, 2006

By the Commission:

I. INTRODUCTION

1. In this Order of Forfeiture, we assess a monetary forfeiture of \$715,031 against Globcom, Inc. (“Globcom”) 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 Globcom willfully and repeatedly violated the Act¹ and Commission rules² by failing to contribute to the Universal Service Fund (“USF”) and the Telecommunications Relay Service (“TRS”) fund. In addition, we find that Globcom also willfully and repeatedly violated Commission rules requiring it to file complete and accurate interstate and international revenue information.³

2. Globcom’s violations strike at the core of the Commission’s mission to promote access to affordable, quality telecommunications services for all Americans. In section 254 of the Act, Congress codified the Commission’s historical commitment to universal service for consumers in all regions of the nation.⁴ In section 225 of the Act, Congress directed the Commission to ensure the availability of TRS to hearing- and speech-impaired individuals.⁵ Both services are supported by contributions by telecommunications carriers providing interstate telecommunications services. The Commission thus requires telecommunications carriers to register with the Commission, and to provide certain financial information so that the agency can determine and collect the necessary amounts to fund the programs. To

¹ 47 U.S.C. § 254.

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

³ 47 C.F.R. § 54.711(a).

⁴ “Universal service” refers to policies and programs designed to promote the access of all members of the public to telecommunications. Pursuant to section 254 of the Act, all providers of telecommunications services must contribute to a fund that supports this goal, and the Commission is charged with establishing policies for the advancement and preservation of universal service, according to Congressionally-defined principles. 47 U.S.C. § 254.

⁵ 47 U.S.C. § 225.

achieve Congress' goals, carriers subject to contribution requirements must provide all necessary information and contribute their equitable share to each of the funds. Failure to do so threatens the integrity and viability of the universal service and TRS mandates. The Commission cannot and will not tolerate any carrier's willful or repeated failure to participate in these programs as required by our rules, and will use its forfeiture authority to penalize violations, such as those committed by Globcom.

II. BACKGROUND

3. The facts and circumstances surrounding this case are set forth in the Notice of Apparent Liability and Order ("*Globcom NAL*") previously issued by the Commission, and need not be reiterated here at length.⁶ Globcom, which does business as Globcom Global Communications, is an interexchange carrier headquartered in Northbrook, Illinois that provides resale telecommunications services.⁷ As a reseller of interstate and international long-distance services, Globcom is subject to the obligations of section 254 of the Act and section 54.706(b) of our rules.⁸ The Commission's rules in effect during the time period in question required all telecommunications carriers that provided interstate telecommunications services, and certain other providers of interstate telecommunications, to contribute to the universal service fund based on their gross billed interstate and international end-user telecommunications revenues.⁹ Section 64.604(c)(5)(iii)(A) of our rules also requires Globcom to contribute to the TRS fund on the basis of its interstate end-user telecommunications revenues.¹⁰

4. The Universal Service Administrative Company ("USAC" or the "Administrator") administers the universal service support mechanisms and performs billing and collection functions.¹¹ The National Exchange Carrier Association ("NECA") administers the TRS fund. The Commission requires carriers to provide revenue information on FCC Form 499 ("Telecommunications Reporting Worksheet") on a periodic basis,¹² and the administrators use that information to determine each carrier's universal service and TRS contributions. In 2001, the Commission modified its reporting requirements for the universal service program to require carriers to file not only an Annual Worksheet,¹³ but also to file a Telecommunications Reporting Worksheet each quarter with their interstate and international

⁶ See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003).

⁷ At the time of the release of the *Globcom NAL*, Globcom's website stated that it provided a number of services, including residential and business long-distance service, local service, calling cards, and toll-free numbers. See <http://www.globcom.com/index.aspx>. The website also had Globcom's rates for international and interstate toll calls. Subsequently, Globcom filed a petition in which Globcom stated that it no longer provides telecom services because its sole underlying carrier, MCI, suspended service to Globcom. See Petition for Waiver of Section 63.71 and Section 63.19 of the Commission's Rules, dated November 1, 2005.

⁸ The Commission's rules specifically include resellers of interstate services in the definition of providers of interstate telecommunications services that must contribute to the fund. 47 C.F.R. § 54.706(a)(16).

⁹ 47 C.F.R. §§ 54.706, 54.709.

¹⁰ *Id.* § 64.604(c)(5)(iii)(A).

¹¹ 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).

¹² 47 C.F.R. § 54.711.

¹³ See *FCC Form 499-A Telecommunications Reporting Worksheet – Annual Filing*, <http://www.fcc.gov/Forms/Form499-A/499a-2003.pdf> (April 2003) ("*Annual Worksheet*").

revenues from the previous quarter.¹⁴ A carrier's failure to file the worksheets or its submission of inaccurate or untruthful information "may subject the contributor to the enforcement provisions of the Act and any other applicable law."¹⁵ The revenue information provided on the Quarterly Worksheets determines each carrier's contribution to the universal service fund on a quarterly basis, with a yearly true-up using the Annual Worksheet.¹⁶ The revenue information provided on the Annual Worksheet also determines a carrier's contributions to the TRS fund.

5. USAC bills carriers each month, including Globcom, based on their quarterly contribution amount.¹⁷ NECA bills carriers annually. The Commission's rules do not, however, condition payment on receipt of an invoice or other notice from USAC or NECA.¹⁸ A carrier that does not file an Annual or Quarterly Worksheet may fail to receive an invoice from USAC or NECA, but is nonetheless required to contribute to the TRS fund regardless and is required to contribute to the universal service fund, unless its revenues are considered *de minimis*. The instructions for the Annual and Quarterly Worksheets include tables for carriers to calculate annual contributions.¹⁹

¹⁴ See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748 (2001) ("*Quarterly Reporting Order*"). The first Quarterly Worksheet, reporting revenue data from the first quarter of 2001 (January 1 through March 31, 2001) was due May 11, 2001; thereafter, carriers report their revenues for the prior quarter by the beginning of the second month in each quarter (*i.e.*, February 1, May 1, August 1, and November 1). See *Quarterly Reporting Order*, 16 FCC Rcd at 5755, ¶ 19 & n.32. See *FCC Form 499-Q Telecommunications Reporting Worksheet – Quarterly Filing for Universal Service Contributors*, <http://www.fcc.gov/Forms/Form499-Q/499q.pdf> (April 2003) ("*Quarterly Worksheet*").

¹⁵ 47 C.F.R. § 54.713. See also *NECA Changes Order*, 12 FCC Rcd at 18442, ¶ 80 & n.165 (citing 47 U.S.C. §§ 206-209, 312, 403, 503).

¹⁶ See 47 C.F.R. § 54.709(a); "Telecommunications Carrier Registration Information Now Available Online," Public Notice, DA 01-2465 (rel. Oct. 29, 2001) ("*File Online Public Notice*"). The Commission modified its rules on carrier contributions to the universal service fund. See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay 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 (2002) ("*Interim Contribution Order*"). As of April 1, 2003, USAC bases a carrier's universal service obligation on the carrier's projected collected revenue rather than its historic gross-billed revenue. *Interim Contribution Order*, 17 FCC Rcd at 24969-74, ¶¶ 29-39.

¹⁷ 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); *Interim Contribution Order*, 17 FCC Rcd at 24971-72, ¶ 35; *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.")

¹⁸ See 47 C.F.R. §§ 54.706(b); 64.604 (c)(5)(iii)(A).

¹⁹ See "2002 FCC Form 499-A, Telecommunications Reporting Worksheet" at Instructions—page 1 "Instructions for Completing the Worksheet for Filing Contributions to Telecommunications Relay Service, Universal Service, (Continued from previous page)

6. After receiving information that Globcom had not paid its universal service fund contributions and that Globcom may have understated its revenues on its worksheets, the Enforcement Bureau (“Bureau”) initiated an investigation of these payment and reporting issues. The Bureau issued a letter of inquiry (“2003 LOI”) to Globcom on January 13, 2003.²⁰ After initially ignoring the inquiry, Globcom provided a response.²¹

7. The Commission released the *Globcom NAL* on September 30, 2003. At that time, the Administrator’s invoices showed that Globcom owed \$681,837.76 in universal service-related charges, fees, and adjustments as of the Administrator’s August 15, 2003 invoice. This amount represented Globcom’s unpaid balances for 2001 and 2002, as well as billings and various fees and adjustments for 2003, up to the date of the *Globcom NAL*. The Administrator sent Globcom monthly invoices reflecting these past due balances and current charges without receiving any response.²²

8. According to the NECA’s records,²³ Globcom also failed to pay its November 3, 2002 and July 7, 2003 interstate TRS Fund contributions and owed \$11,928 to the TRS Fund. NECA sent Globcom invoices reflecting these amounts and received no response from Globcom.²⁴

9. The *Globcom NAL* proposed a forfeiture of \$806,861 against Globcom for apparent willful and repeated failures to pay contributions to the USF and TRS fund, to file accurate revenue information,²⁵ and to file required revenue reporting information.²⁶ The Commission admonished

(continued...)

Number Administration, and Local Number Portability Support Mechanisms,” <http://www.fcc.gov/Forms/Form499-A/499a-2002.pdf> (“2002 Telecommunications Reporting Worksheet Instructions”).

²⁰ See Letter from Maureen Del Duca, Acting Division Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Glenn Kofman, Globcom, Inc., dated January 13, 2003.

²¹ Globcom provided responses to the 2003 LOI on March 14, 2003 and April 16, 2003 (collectively, “Globcom 2003 LOI Response”). See also *Globcom NAL*, 18 FCC Rcd at 19898, n. 36.

²² *Globcom NAL*, 18 FCC Rcd at 19897, ¶ 9, n. 32.

²³ NECA, the TRS administrator, bills contributors following the revenue data collection. See *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, 14 FCC Rcd 16602, 16612-13, ¶ 18 (1999) (*Consolidated Reporting Order*). All carriers providing interstate telecommunications services (including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service, access, alternative access and special access, packet-switched, WATS, 800, 900, message telephone, private line, telex, telegraph, video, satellite, international, intraLATA, and resale services) must contribute to the TRS Fund on the basis of their interstate end-user telecommunications revenues. See *Consolidated Reporting Order*, 14 FCC Rcd at 16630-34, ¶¶ 59-67; 47 C.F.R. § 64.604(c)(5)(iii).

²⁴ *Globcom NAL*, 18 FCC Rcd at 19898, ¶ 10, n. 34.

²⁵ *Id.*, at 19901-02, 19906 ¶¶ 20, 35 (finding that Globcom repeatedly understated its revenues on both its 2001 and 2002 Annual Worksheets, potentially by more than \$2 million for 2000, and by more than \$16 million in 2001, in apparent violation of section 54.711 of the Commission’s rules).

²⁶ *Id.*, at 19901, 19906, ¶¶ 21, 35, 37 (finding that with the exception of the Annual Worksheets for 2001 and 2002, and two Quarterly Worksheets, there was no record of any other revenue filings by Globcom in apparent violation of section 54.711 of the Commission’s rules).

Globcom for those apparent violations occurring beyond the statutory period.²⁷ The Commission further ordered Globcom to submit a report, supported by a sworn declaration under penalty of perjury of a corporate officer, stating its plan to come into compliance with the relevant payment and reporting rules.

10. Globcom filed its response to the *Globcom NAL* on November 21, 2003.²⁸ Globcom admits that it learned of its obligations to file telecommunications reporting worksheets and contribute to universal service and TRS funds in 2002, and that “[f]rankly, Globcom has no explanation for the discrepancy [in its revenue reporting], other than to say that the confusion it had surrounding the Worksheet was significant ...”²⁹ Furthermore, Globcom concedes it owes at least \$316,907.98 for the period January 2000 - August 2003 in overdue USF contributions.³⁰

11. In its response to the *Globcom NAL*, Globcom raises several arguments: First, Globcom asserts that its filings actually overstated its revenue, rather than understating it, that those inaccuracies were merely negligent and, therefore, that they should not be the subject of Commission action.³¹ Second, Globcom argues that despite its inaccurate revenue reporting over several years, the Administrator should give the company credit under the limited international revenue exception (“international exception”) for the entire period because its interstate revenues were below a defined percentage of its combined interstate and international revenues. (The international exception is discussed in greater detail below.³²) As such, Globcom asserts that it actually owed the Administrator less than it originally reported, which is, in Globcom’s view, a mitigating circumstance.³³ Third, Globcom asserts that, because the *Globcom NAL*’s forfeiture calculation methodology differed from the exact method used in earlier similar cases, the proposed forfeiture amount was erroneous and violates the Administrative Procedures Act. Fourth, Globcom claims that, in any event, it cannot afford to pay the forfeiture amount.³⁴ Finally, as we directed in the *Globcom NAL*, Globcom filed a Telecommunications Reporting Worksheet Compliance Plan (the “Compliance Plan”). In its Compliance Plan, Globcom agrees “on a going forward basis” to timely and accurately file Telecommunications Reporting Worksheets and revisions, and to “timely pay all properly assessed contributions related to federal universal service support mechanisms, TRS, NANPA, and LNP.”³⁵

12. After receiving Globcom’s revised revenue information in its response to the *Globcom NAL*, the Bureau issued a second letter of inquiry (“2004 LOI”), seeking information about the percentage of Globcom’s revenues that were interstate during the period in question.³⁶ Globcom responded on January

²⁷ *Id.*, at 19906, ¶ 35.

²⁸ Letter from Kemal Hawa, Chadbourne & Parke, LLP, to Maureen F. Del Duca, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Nov. 21, 2003, at 3 (“Globcom NAL Response”).

²⁹ Globcom NAL Response at 3-4, 10.

³⁰ Globcom NAL Response at 8.

³¹ Globcom NAL Response at 5-10.

³² See ¶ 37, *infra*.

³³ Globcom NAL Response at 7.

³⁴ Globcom NAL Response at 10-18.

³⁵ Globcom NAL Response, Attachment B (supported by a sworn declaration of Joe Vitale, Chief Operating Officer, Globcom, Inc.).

³⁶ See Letter from William H. Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Kemal Hawa, Chadbourne & Parke LLP, dated January 7, 2004.

20, 2004.³⁷ On March 1, 2004, Globcom filed certain new and revised revenue reporting information with the Administrator for calendar years 1997-2002, reflecting its newly asserted argument that the international exception applies. The Administrator accepted these filings with respect to calendar years 1997-2000³⁸ and 2002, and amended Globcom's debt calculation by adjusting invoices issued for April through June 2004 accordingly.³⁹ The Administrator's acceptance of these new and revised filings resulted in a net downward adjustment of \$123,922 to Globcom's USF contribution debt.⁴⁰ Under the Administrator's procedures in March 2004, however, the 2002 revised Form 499-A, covering calendar year 2001, was submitted outside the deadline for such revisions, which was twelve months from the form's original due date of April 1, 2002. The Administrator rejected the revised Form 499-A filing on April 15, 2005.⁴¹

13. On December 9, 2004, the Wireline Competition Bureau ("WCB") released the *Form 499-A Filing Revisions Order*.⁴² On a prospective basis, that order created a deadline for the acceptance of revised Form 499-A filings in instances where the revisions would result in decreased contributions to the universal service fund and directed USAC to reject revisions filed more than 12 months after the due date for the original filing.⁴³ The order, however, also directed USAC to consider any Form 499-A revisions filed with USAC prior to the release date of the order and to accept such revisions if the petitioners (1) demonstrated good cause for submitting the revision beyond the one-year revision window and (2) provided complete documentation showing how the revisions derived from corporate financial records.⁴⁴ Additionally, the order directed USAC to permit filers to supplement the record supporting their revised filings as necessary until the effective date of the order.⁴⁵ This directive created a 32-day window from the date of the order's release, December 9, 2004, until the effective date of the order, January 10, 2005,

³⁷ See Letter from Kemal Hawa, Chadbourne & Parke, LLP, to William Davenport, Deputy Chief, Investigations and Hearings Division, dated January 20, 2004 ("Globcom 2004 LOI Response").

³⁸ For calendar years 1997-98, Globcom filed Form 457, which was the pre-cursor to current Form 499-A. USAC accepted those filings as original filings. Those filings were not the subject of the *Globcom NAL* and constituted *de minimis* adjustments to Globcom's contribution obligations. Consequently, they are not material to this order.

³⁹ Under USAC's rules, it may accept original filings or revisions that result in an upward adjustment in contributions. Pursuant to the Administrator's rules, with regard to Globcom's March 1, 2004 filings, USAC accepted a 2000 Form 499-A and a 2001 Form 499-A because each of these filings constituted upward revisions to Globcom's outstanding USF balance. USAC also accepted a revised Form 499-A for 2003 as a timely revision to Globcom's original Form 499-A because it was submitted within twelve months of the April 1, 2003 due date. See Universal Service Administrative Company, Board of Directors Meeting, July 27, 1999 Minutes. <http://www.universalservice.org/board/minutes/board/072799.asp>.

⁴⁰ The filings for calendar years 1999 (2000 Form 499-A) and 2000 (2001 Form 499-A) represent upward adjustments of \$25,848 and 33,841, respectively. The revised filing for calendar year 2002 (2003 Form 499-A) represents a downward adjustment of \$183,661 based on application of the international exception.

⁴¹ Letter from USAC to Joe Vitale, Globcom, Inc., dated April 15, 2005 ("USAC Revision Letter").

⁴² See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Changes to the Board of Directors of the National Exchange Carrier Associations, Inc.*, Order, 20 FCC Rcd 1012 (Wireline Comp. Bur. 2004).

⁴³ *Id.*

⁴⁴ *Id.* at 1017-18.

⁴⁵ *Id.* at 1018.

for Globcom to file information sufficient to support the revised revenue figures reflected in its pending revised 2002 Form 499-A filing.

14. On or about December 16, 2004, Bureau staff telephoned Globcom's counsel and confirmed that Globcom knew of the release of the *Form 499-A Filing Revisions Order* and the 32-day filing window. Globcom's counsel indicated, however, that the company did not expect to make any evidentiary submission to support its pending filing.⁴⁶ Globcom did not submit any filings as of the January 10, 2005 deadline. By letter dated April 15, 2005,⁴⁷ USAC informed Globcom that its revised 2002 Form 499-A was rejected because USAC was unable, due to Globcom's failure to create an evidentiary record, to substantiate the arguments contained in the Globcom NAL Response and 2004 LOI Response as they applied to the period covered by that form.⁴⁸

15. Despite Globcom's admission that it owes at least some portion of the invoiced amounts to the USF,⁴⁹ and despite its Compliance Plan committing to make such payments to the universal service and TRS funds, Globcom has paid nothing to either fund since February 2003. Therefore, notwithstanding USAC's adjustments to Globcom's balance, due to application of the international exception, as of April 17, 2006, Globcom's unpaid balance on USF contributions has increased since the date of the *Globcom NAL* to \$1,119,921.90.⁵⁰ In addition, since the *Globcom NAL*, the company has failed to file a single timely report and has yet to file its four most recent Form 449-Qs and its most recent 2004 Form 499-A, despite assurances that it would make all such filings in a timely and accurate manner.⁵¹ Globcom has offered no explanation for these failures.

III. DISCUSSION

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.⁵² 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.⁵³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.⁵⁴

⁴⁶ Bureau staff submitted to USAC a copy of the Globcom NAL Response and the 2004 LOI Response for USAC's consideration in conjunction with the pending revised filing. Those materials, however, included no information on how Globcom derived the revenue reflected in the pending revision from corporate financial records for the 2002 period.

⁴⁷ USAC Revision Letter at 2-3.

⁴⁸ Acceptance of the revised 2002 Form 499-A would have added an additional downward adjustment to Globcom's account for the relevant period of \$274,318. By its inaction, however, Globcom failed to create an evidentiary record sufficient to support such an adjustment.

⁴⁹ Globcom NAL Response at 8. Globcom does not address its TRS obligations.

⁵⁰ This includes Globcom's outstanding accounts payable to USAC and monies owed by Globcom that were transferred pursuant to the Debt Collection Improvement Act from USAC's books to the Commission for collection.

⁵¹ Globcom NAL Response, Attachment B ("Compliance Plan").

⁵² 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

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

⁵⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) ("*SBC Forfeiture Order*") (forfeiture paid).

17. As discussed below, we find by a preponderance of the evidence that Globcom has willfully and repeatedly violated section 254(d) of the Act⁵⁵ and sections 54.706(a) and 64.604(c)(5)(iii)(A) of the Commission's rules⁵⁶ by failing to contribute to the universal service and the TRS funds. In addition, we find that Globcom willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to file complete and accurate interstate and international revenue information.⁵⁷ We credit Globcom's argument that there should be a downward adjustment in the forfeiture amount because USAC has amended its invoices since the date of the *Globcom NAL* to reflect a lower outstanding debt for the relevant period based on additional and revised revenue filings submitted by Globcom after the *Globcom NAL* was released. Therefore, we revise that portion of the forfeiture calculation to reflect USAC's revised invoicing for the relevant period and adjust the forfeiture to \$715,031.

A. Globcom Willfully and Repeatedly Failed to Make Its Universal Service Fund and TRS Fund Contributions

18. We find that Globcom willfully and repeatedly violated our rules by failing to make any USF contribution in each of the twelve months preceding the issuance of the NAL,⁵⁸ and by failing to pay the TRS invoices dated November 3, 2002 and July 7, 2003.⁵⁹ Globcom concedes that it should have -- but did not -- make universal service fund contributions.⁶⁰ Globcom's only explanation for its failure to do so is that after it received USAC's invoices, the carrier "made some general inquiries among its industry contacts regarding the invoices, and based upon those discussions, was under the impression that as a provider of international telecommunications services, it had no obligation to remit payment into the universal service fund."⁶¹ Globcom concludes that this conduct, which it deems "negligent" rather than "intentional," does not pose a sufficient "danger to Congress' and the Commission's objectives" to warrant imposition of a forfeiture.⁶²

19. Globcom misconstrues the Commission's forfeiture authority under section 503(b) of the Act. The standard for the imposition of a forfeiture is not limited to instances of "intentional" violations of the Act or our rules. Instead, the Commission may impose a forfeiture when it finds a regulated entity's conduct is "willful or repeated."⁶³ First, the Commission may assess and has assessed forfeitures for violations that are merely repeated, and not willful.⁶⁴ "Repeated" means that the act was committed or omitted more than once, or lasts more than one day.⁶⁵ In this case, we found -- and Globcom does not

⁵⁵ 47 U.S.C. § 254.

⁵⁶ 47 C.F.R. §§ 54.706(a), 64.604(c)(5)(iii)(A).

⁵⁷ 47 C.F.R. § 54.711(a).

⁵⁸ *Globcom NAL*, 18 FCC Rcd at 19901, 19903, 19904, ¶¶ 16, 24, 27.

⁵⁹ *Globcom NAL*, 18 FCC Rcd at 19901, 19904, ¶¶ 18, 28, 29.

⁶⁰ Globcom NAL Response at 8-9 (conceding that Globcom owes money to the universal service fund). Globcom wholly ignores the *Globcom NAL's* findings regarding its liability for TRS fund contributions.

⁶¹ Globcom NAL Response at 5.

⁶² Globcom NAL Response at 6.

⁶³ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

⁶⁴ See, e.g., *Callais Cablevision*, 16 FCC Rcd 1359 (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

⁶⁵ *Southern California Broadcasting*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision*, 16 FCC Rcd at 1362, ¶ 9.

dispute -- that Globcom repeatedly failed to make its universal service and TRS fund contributions.⁶⁶ Therefore, the Commission is well within the authority granted by section 503(b) in assessing a forfeiture against Globcom.

20. Second, Globcom's purported misunderstanding of the law does not protect it from a forfeiture action for willful conduct that does, in fact, violate a law or rule. The Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁶⁷ 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,⁶⁸ and the Commission has so interpreted the term in the section 503(b) context.⁶⁹ Thus, Globcom's position that it misunderstood the law and our rules is irrelevant.⁷⁰ Its violation was willful under the definition in the Act because it made an intentional decision not to pay into the fund.⁷¹

21. Third, although the "reasonableness" of Globcom's belief in its compliance is similarly irrelevant, we note that Globcom's reliance on an informal survey of unnamed "industry contacts"⁷² on a topic as important as its universal service contribution obligations is wholly unpersuasive. Our rules are clear,⁷³ and the instructions to the Annual Worksheet explicitly state that "[s]ections 54.706, 54.711, and 54.713 require *all telecommunications carriers providing interstate telecommunications services* ... to contribute to universal service and file this Worksheet once a year and the Telecommunications Reporting Worksheet (FCC Form 499-Q) four times a year."⁷⁴ The instructions further state that "[s]ection 64.604 requires that *every common carrier providing interstate telecommunications services* contribute to the Telecommunications Relay Services (TRS) Fund on the basis of its relative share of interstate end-user telecommunications services, with the calculation based on information provided in this Worksheet."⁷⁵ The instructions also explain how to calculate the limited international revenues exception.⁷⁶ Accordingly, the proposed forfeiture satisfies section 503(b).

⁶⁶ *Globcom NAL*, 18 FCC Rcd at 19900, 19901-02, ¶¶ 16, 18, 20, 21.

⁶⁷ 47 U.S.C. § 312(f)(1).

⁶⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

⁶⁹ *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.*").

⁷⁰ *See, e.g., Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861 (2002) (rejecting licensee's argument that tower lighting violation was not "willful" when licensee had no knowledge that antenna light had gone out; "It is irrelevant whether Eure knew about the light outage on its tower....").

⁷¹ We do not mean to suggest that a violation must be as deliberate as Globcom's to be "willful" under section 503(b).

⁷² Globcom Response at 5.

⁷³ *See* 47 C.F.R. §§ 54.706, 54.711, and 54.713.

⁷⁴ *See* Telecommunications Reporting Worksheet Instructions at 1, <http://www.fcc.gov/Forms/Form499-A/499a.pdf> (emphasis added).

⁷⁵ *Id.* (emphasis added).

⁷⁶ *Id.* at 26.

B. Globcom Willfully and Repeatedly Failed to File Accurate Revenue Information

22. We conclude that the record also supports our finding in the *Globcom NAL* that Globcom willfully and repeatedly filed inaccurate Annual Worksheets in violation of our rules, including one on October 10, 2002.⁷⁷ In the *Globcom NAL*, the Commission found that Globcom violated our rules by filing inaccurate revenue information and underreporting its revenues for the years 2000 and 2001.⁷⁸ The Commission found that Globcom had used different revenue amounts in its Annual Worksheet, its responses to the 2003 LOI, and in its federal income tax returns.⁷⁹ The Commission therefore admonished Globcom for its 2000 filing and assessed a forfeiture for the 2001 filing.

23. Globcom admits that it filed inaccurate information for 2000 and 2001, and appears to concede that its actions constituted a “reporting violation.”⁸⁰ Globcom does not proffer any explanation for the inaccuracies. Instead, Globcom takes the position that we should excuse its inaccurate filings because they were inadvertent. Specifically, “Globcom failed to disaggregate its revenue into separate intrastate, interstate, and international components, and instead, reported its total revenues as one lump sum.”⁸¹ In doing so, Globcom allegedly overstated the revenue subject to universal service and TRS obligations to its own detriment. Globcom points to this alleged revenue overstatement as evidence that it acted merely “negligently,” rather than intentionally.⁸²

24. Regarding the admonishment for Globcom’s failure to provide accurate information for 2000, the question of whether the violation was willful is irrelevant to whether a violation has taken place. An admonishment is simply a finding that a violation has occurred.⁸³ Globcom does not dispute that it violated our rules by providing inaccurate information for 2000. Therefore, the admonition we imposed for that filing is well-founded. We need not address whether the behavior was willful or repeated and could have served as the basis of a forfeiture.

⁷⁷ See *Globcom NAL*, 18 FCC Rcd at 19901-02, 19905, ¶¶ 20, 31.

⁷⁸ See 47 C.F.R. § 54.711(a). Section 54.711(a) provides, in part:

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

47 C.F.R. § 54.711(a). See also 47 C.F.R. § 54.713 (permitting the Administrator to assess charges to contributors for “reasonable costs incurred because of that contributor’s filing of an untruthful or inaccurate Telecommunications Reporting Worksheet....”).

⁷⁹ *Globcom NAL*, 18 FCC Rcd at 19901-2 ¶¶ 19-20.

⁸⁰ See *Globcom NAL Response* at 10 (“[G]iven that Globcom’s revenue reporting error worked to its own detriment, the reporting violation is harmless.”).

⁸¹ *Globcom NAL Response* at 4.

⁸² *Globcom NAL Response* at 5-6.

⁸³ See *Request for Extension of Time to Construct Digital Facilities for Station KXXV-DT, Waco, Texas*, Memorandum Opinion and Order, 19 FCC Rcd 15262, 15264, ¶ 7 (2004) (“*Station KXXV-DT MO&O*”) (“Admonishment is a routine sanction for violation of the Commission’s rules....”). As explained in the *Globcom NAL*, we imposed an admonishment rather than a proposed forfeiture regarding the 2000 revenue information because the statute of limitations for a forfeiture action had already elapsed. *Globcom NAL*, 18 FCC Rcd at 19902, ¶ 20 n.63.

25. Regarding the year 2001 revenue information, we proposed a forfeiture for Globcom's apparent willful and repeated violation of our rules. Pointing to its alleged overstatement of international and interstate revenues, Globcom again alleges that its violation was merely negligent, and not "willful." As noted above, however, for purposes of determining whether a forfeiture should lie for Globcom's admitted provision of inaccurate revenue information, it is irrelevant whether Globcom knew it was violating our rules when it submitted the information.⁸⁴ Globcom's conduct here was undeniably repeated and the Act is clear that the Commission may impose a forfeiture for repeated violations. In addition, the conduct here was willful despite any purported misunderstanding of the law or rules because Globcom knew it was submitting the information and the information did not comply with our rules.

C. Globcom Willfully and Repeatedly Failed to File Annual and Quarterly Worksheets

26. We conclude that the record supports the finding in the *Globcom NAL* that Globcom willfully and repeatedly violated our rules by failing to file the required Annual and Quarterly Worksheets when due, in violation of our rules.⁸⁵ Pursuant to section 54.711 of the Commission's rules, carriers must file complete and accurate Telecommunications Reporting Worksheets on a quarterly and annual basis.⁸⁶ Among other information, the worksheets require carriers to list separately their interstate and international revenues, which in turn provide the basis for the carriers' universal service fund and TRS fund contributions.

27. In the *Globcom NAL*, we concluded that Globcom had filed only two Annual Worksheets and two Quarterly Worksheets in the previous two years.⁸⁷ We found that Globcom had apparently willfully and repeatedly violated our requirements regarding filings due in the previous twelve months, and admonished Globcom for its missed filings for earlier periods.

28. Globcom does not dispute these findings or otherwise address this issue in its NAL response. We therefore affirm our initial holding. As described in the *Globcom NAL*, the company failed to file required documents a total of nine times.⁸⁸ Indeed, Globcom did not file any additional Annual or Quarterly Worksheets until after release of the *Globcom NAL* on September 30, 2003.⁸⁹

⁸⁴ See *supra* at ¶ 19

⁸⁵ Carriers must submit their quarterly Worksheet no later than February 1, May 1, August 1, and November 1 of each year. See Quarterly Worksheet Form at 1. Carriers must submit their Annual Worksheets no later than April 1 of each year. See Annual Worksheet Form at 1. The complete filing schedule is also set forth in the instructions to the Annual Worksheet. See *Telecommunications Reporting Worksheet Instructions* at 9, figure 2. As described above, Globcom filed its 2001 Annual Worksheet on May 7, 2002 and its 2002 Annual Worksheet on August 6, 2002. Late filing of revenue information harms the universal service fund because USAC and the Commission cannot accurately project the contribution base for the upcoming quarter with incomplete revenue information.

⁸⁶ 47 C.F.R. §§ 54.711, 54.713.

⁸⁷ *Globcom NAL*, 18 FCC Rcd at 19902, ¶ 21, n. 67.

⁸⁸ See *Globcom NAL*, 18 FCC Rcd at 19902, ¶ 21. Globcom untimely filed its 2001 Annual Worksheet on May 7, 2002. Globcom filed its 2002 Annual Worksheet on August 6, 2002. On October 10, 2002, Globcom refiled its 2002 Annual Worksheet to restate its 2001 revenue. Globcom filed a Quarterly Worksheet for third quarter 2002 on October 10, 2002. On January 27, 2003, Globcom filed a revised version of the third quarter 2002 filing. On February 13, 2003, Globcom filed the Quarterly Worksheet for fourth quarter 2002.

⁸⁹ As discussed above, on March 1, 2004, Globcom filed certain additional, revised and late worksheets for the period 1997-2003. USAC accepted Annual Worksheets for 1998-2001 and 2003, and rejected a revised 2002 Form (Continued from previous page)

D. Forfeiture Amount

29. We affirm the forfeiture calculation methodology set forth in the *Globcom NAL* but adjust the forfeiture amount downward in consideration of the revenue reported in Globcom's revised 2003 Form 499-A. We reject, however, Globcom's suggestions that we adjust the forfeiture downward further or that it is unable to pay a forfeiture of the original amount.

30. At the time the *Globcom NAL* was released, section 503(b)(1)⁹⁰ of the Act authorized the Commission to assess a forfeiture of up to \$120,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act or failure to act.⁹¹ In exercising such authority, we have the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations.⁹²

31. In the *Globcom NAL*, we proposed a forfeiture of \$806,861 for Globcom's apparent willful and repeated violations of section 254(d) of the Act and sections 54.706(a), 54.711(a), and 64.604 of the Commission's rules.⁹³ We reached this amount as follows:

- for Globcom's apparent failure to pay universal service contributions, we applied a base forfeiture amount of \$20,000 for 12 months of nonpayment⁹⁴ and added one-half of the total unpaid universal service contributions (\$340,918) to the base forfeiture of \$240,000, for a proposed forfeiture of \$580,918;
- for Globcom's apparent failure to pay TRS fund contributions, we applied a base forfeiture amount of \$10,000 for each of the two violations and added one-half of the total unpaid balance (\$5,943), for a proposed forfeiture of \$25,943;
- for Globcom's apparent filing of an inaccurate Annual Worksheet, we applied a forfeiture of \$50,000; and
- for Globcom's apparent failure to submit Quarterly and Annual Worksheets, we applied a forfeiture of \$50,000 for three occasions when Globcom failed to file the revenue information, for a total forfeiture of \$150,000.

(continued...)

499-A as untimely. Also, included with Globcom's March 1, 2004 filings were Quarterly Worksheets for May, August and November, 2003, and February 2004. USAC accepted only the February 2004 filing as timely. Despite its assurances in the Compliance Plan submitted with its NAL Response, Globcom has not made any filings for the following more recent periods: April 2004 Form 499-A, May 2004 Form 499-Q, August 2004 Form 499-Q, November 2004 Form 499-Q, February 2005 Form 499-Q, April 2005 Form 499-A, May 2005 Form 499-Q, August 2005 Form 499-Q.

⁹⁰ 47 U.S.C. § 503(b)(1)(B) (2001). Subsequently, in compliance with the Debt Collection Improvement Act, the Commission announced increased maximum forfeiture amounts 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. *Amendment of Section 1.80(b) of the Commission's Rules*, Order, 19 FCC Rcd 10945 (2004).

⁹¹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

⁹² *SBC Communications, Inc., v. FCC*, 373 F.3d 140, 151 (D.C. Cir. 2004); 47 U.S.C. § 503(b)(2).

⁹³ *Globcom NAL*, 18 FCC Rcd at 19904-05, ¶¶ 27-32.

⁹⁴ 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).

1. The *Globcom NAL*'s Forfeiture Calculation Methodology Is Appropriate

32. Globcom presents two challenges to the forfeiture amount proposed in the *NAL*: that the proposed forfeiture amount was erroneously calculated, and that the upward adjustment in our methodology for failure to pay into the universal service fund is arbitrary, capricious, and excessive and therefore violates the Administrative Procedures Act (the "APA") because it is higher than forfeitures assessed in previous cases.⁹⁵

33. With respect to the first challenge, the Commission did not err in calculating the forfeiture. As Globcom notes, in previous universal service nonpayment cases, we based the proposed forfeiture amount on \$20,000 for each of two months of nonpayment (\$40,000) plus one-half the unpaid universal service contribution for two months.⁹⁶ In the *Globcom NAL*, however, we stated:

The proposed forfeiture against Globcom for nonpayment of its universal service contributions consists of two components. First, applying the base forfeiture amount of \$20,000 per violation for the previous twelve months of non-payment results in a base figure of \$240,000. Second, we add an amount equal to approximately one-half of the unpaid universal service contributions.⁹⁷

Thus, we proposed a forfeiture in Globcom's case based on Globcom's entire outstanding balance, rather than two months.⁹⁸ As we explained in the *Globcom NAL*, and reiterate below, we fully intended to base Globcom's forfeiture on violations over a longer period of time than we had in the past, and the fact that we referenced earlier cases in which we took a similar approach, albeit on a smaller scale, is therefore not evidence of any error.

34. With respect to Globcom's second challenge, we find that the forfeiture calculation does not violate the APA.⁹⁹ The APA does not mandate that the Commission mechanically and rigidly apply an identical methodology in all universal service nonpayment cases, or that the result of earlier enforcement adjudications automatically dictates the outcome of all others that follow as Globcom suggests.¹⁰⁰ Rather, section 503(b)(2)(D) of the Act instructs the Commission, in establishing a forfeiture, to consider "the

⁹⁵ Globcom NAL Response at 10-18.

⁹⁶ *Id.* at 10-13 (citing cases).

⁹⁷ *Globcom NAL*, 18 FCC Rcd at 19904, ¶ 27 (citations omitted).

⁹⁸ USAC sent Globcom numerous past due notices for Globcom's 2001 and 2002 contributions, as well as current charges. On January 23, 2003, USAC sent Globcom an invoice due February 14, 2003 for \$152,769.62 in 2001 and 2002 universal service-related charges, adjustments, and fees, as well as current charges. On February 25, 2003, USAC sent Globcom another invoice informing the carrier that it owed \$305,379.87, due March 14, 2003. On March 21, 2003, USAC sent Globcom another invoice, informing the carrier that it owed \$459,059.51. On April 22, 2003, USAC sent Globcom an invoice informing the carrier that it now owed \$497,240.98. On May 22, 2003, USAC sent Globcom an invoice stating that the balance due, on June 13, 2003, was \$536,422.36. On June 20, 2003, USAC sent Globcom an invoice informing the carrier that it owed \$575,765.79, due July 15, 2003. On July 22, 2003, USAC sent Globcom an invoice stating that the balance due, \$681,837.76, was past due on August 15, 2003. See Letter from Anne Marie Trew, Director, Finance Operations and D. Scott Barash, Vice President and General Counsel, USAC to William Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 21, 2003.

⁹⁹ Globcom NAL Response at 10-18.

¹⁰⁰ *Id.* at 10-13 (citing cases).

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.”¹⁰¹ The Commission properly considered all of these factors in the *Globcom NAL*. The Commission noted that Globcom deliberately chose not to pay its universal service contributions each month for revenues derived from January 1, 2001 to the release of the *Globcom NAL*. The Commission also noted that despite Globcom’s clear obligations under our universal service rules, and despite numerous monthly communications from USAC informing the carrier of its increasing debt, Globcom did nothing to address this matter.¹⁰² As such, the Commission considered the relevant factors and its actions are not arbitrary, capricious or excessive but appropriately tailored to the case at hand.

35. Furthermore, regarding Globcom’s APA argument, we are well within our statutory authority to impose a forfeiture against Globcom using the methodology described in the *Globcom NAL*. As noted above, at the time the *Globcom NAL* was released, the Act authorized us to assess common carriers a forfeiture of up to \$120,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act or failure to act.¹⁰³ Pursuant to section 503(b) of the Act, weighing the factors set forth in the statute, the Commission may determine the appropriate forfeiture within the range permitted by the statute.¹⁰⁴ Thus, in the case of Globcom, the carrier had full notice under the APA that the maximum potential forfeiture for *each* violation could be as high as \$1,200,000.¹⁰⁵

36. Additionally, the Commission noted that in the past it had imposed increasingly larger forfeitures for USF violations because of the gravity of violations in this area and the accumulating record of non-compliance. In the first case of failure to contribute to the USF, *ConQuest*, the forfeiture assessed was relatively minor, but the Commission warned of future increases in our forfeiture methodology. The Commission assessed a forfeiture for a single month of nonpayment, even though the carrier had been delinquent for more than eight months.¹⁰⁶ In that case, the Commission stated that “in light of the accumulating record of non-compliance, we are prepared to impose substantially greater forfeitures in the future,” and “our future notices likely will cover greater periods of non-payment than a single month.”¹⁰⁷

¹⁰¹ *Globcom NAL*, 18 FCC Rcd at 19903, ¶ 24.

¹⁰² See *Globcom NAL*, 18 FCC Rcd at 19900, ¶ 15 (discussing the monthly USAC invoices and the “more than adequate notice of ConQuest’s universal service obligation”).

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

¹⁰⁴ See 47 U.S.C. § 503(b); see also 47 C.F.R. § 1.80(a), (b); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17100-01, ¶ 27 (1997) (“*Forfeiture Policy Statement*”); *recon. denied*, 15 FCC Rcd 303 (1999). Indeed, in the *Station KXXV-DT MO&O*, we held that the Media Bureau did not violate the APA by admonishing a licensee for violating digital television (DTV) build-out deadlines, even though the Commission was considering a rulemaking on the appropriate penalties for such violations. “Although the NPRM sought comment on the suitability of the entire range of sanctions that were to be imposed for failure to meet DTV build-out deadlines, at the time of the Letter [of Admonishment] the Bureau already had the power to issue an admonishment for a violation of our rules.” *KXXV-DT MO&O*, 19 FCC Rcd at 15264 ¶ 7.

¹⁰⁵ Each failure to pay the amount due each month constituted a violation that continued for more than 10 days. We also note that, although such warnings are not necessary under the APA, we repeatedly warned carriers that larger forfeitures and even revocation of operating authority might be in store for future universal service nonpayment cases. See *Globcom NAL*, 18 FCC Rcd at 19903, ¶ 25, nn.74-75 (citing cases).

¹⁰⁶ *ConQuest*, 14 FCC Rcd at 12527, ¶ 19.

¹⁰⁷ *Id.* at 12528, ¶ 20.

After the *ConQuest* decision, we increased the basis for our forfeiture calculation method to two months of nonpayment¹⁰⁸ and warned that we were prepared to take even stronger action against delinquent carriers, including substantially higher forfeitures and revocation of carriers' operating authority.¹⁰⁹

37. As we explained in the *Globcom NAL*, since the *ConQuest* decision it has become apparent that substantially larger forfeiture amounts are needed to deter carriers from violating our universal service contribution and reporting rules.¹¹⁰ The Commission specifically held that with Globcom's violations the time had come to implement a substantially greater forfeiture amount in order to deter carriers from violating our universal service contribution and reporting rules.¹¹¹ Clearly, our prior method of assessing forfeitures did not deter Globcom, which has yet to pay even the money it admits to owing.¹¹² Carrier nonpayment of universal service contributions and failure to file the required forms undermine 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.¹¹³ Universal service nonpayment threatens a key goal of Congress and one of the Commission's primary responsibilities; therefore, we properly increased the number of months of nonpayment on which we assess forfeiture amounts and the discretionary upward adjustment.¹¹⁴

38. For these reasons, we affirm the forfeiture calculation methodology for nonpayment of universal service contributions and reporting violations as set forth in the *Globcom NAL*. We again warn carriers that if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them.

2. The Forfeiture Amount is Adjusted Downward to Reflect An Amendment to the Amount Due to the Administrator for the Relevant Period

39. Globcom contends that under the international exception, its universal service fund obligations are lower than the amount calculated by USAC at the time the *Globcom NAL* was released, and therefore the forfeiture amount should be reduced.¹¹⁵ Under section 54.706(c) of the Commission's rules, a provider of interstate and international telecommunications is not required to contribute based on its international telecommunications end-user revenues if its interstate telecommunications end-user revenues constitute less than a defined percent of its combined interstate and international end-user

¹⁰⁸ *ATNC*, 15 FCC Rcd at 20906, ¶ 9; *Intellicall*, 15 FCC Rcd at 13541, ¶ 7; *PTT*, 16 FCC Rcd at 7479, ¶ 7; *Matrix*, 15 FCC Rcd at 13546-47, ¶ 8.

¹⁰⁹ See, e.g., *Intellicall*, 15 FCC Rcd at 13541, ¶ 7; *Matrix*, 15 FCC Rcd at 13546, ¶ 7.

¹¹⁰ *Globcom NAL*, 18 FCC Rcd at 19903, ¶ 25.

¹¹¹ *Globcom NAL*, 18 FCC Rcd at 19903, ¶¶ 24-26.

¹¹² *Globcom NAL*, 18 FCC Rcd at 19903-04, ¶ 26.

¹¹³ *Id.*; *SBC Communications, Inc.*, 373 F.3d at 152 ("When its competitors suffer, SBC benefits, and therefore it privately benefited from inflicting harms on its competitors. Because the amount of deterrence necessary to prevent an action from occurring depends on both a private company's revenues and the private benefit to the company of taking the action, there is a rational relationship between this factor and the seriousness of the fine the FCC imposed").

¹¹⁴ *Globcom NAL*, 18 FCC Rcd at 19903-04, ¶ 26.

¹¹⁵ *Globcom NAL Response* at 7-9.

telecommunications revenues.¹¹⁶ The purpose of this limited exception is to ensure that an entity's universal service contribution does not exceed the amount of its interstate end-user telecommunications revenues.¹¹⁷ Beginning in the second quarter of 2002, the international exception was increased from eight to twelve percent.¹¹⁸

40. Globcom contends that it erroneously included intrastate revenues with interstate revenues,¹¹⁹ and, when properly calculated, its interstate revenues for years 2000 through 2003 fall below the applicable thresholds for this exception.¹²⁰ For calendar year 2002, Globcom originally filed a 2003 Form 499-A listing interstate revenues greater than twelve percent of the sum of its interstate and international revenues combined. As a result of this filing, Globcom was ineligible for the international exception. Subsequently, on March 1, 2004, after release of the *Globcom NAL*, Globcom filed a timely revised 2003 Form 499-A that indicated Globcom's interstate revenues were less than twelve percent of its overall revenues. The Administrator downwardly adjusted Globcom's outstanding balance owed to the Administrator by \$183,661 based on the revised 2002 revenue amounts.¹²¹ After adjusting for the accepted revised 2003 Form 499-A, Globcom's outstanding universal service fund balance, for our purpose of ascertaining a forfeiture amount, should have been \$498,176 as of August 15, 2003, the last relevant date for purposes of the *Globcom NAL*.¹²²

41. As noted above, the forfeiture for Globcom's nonpayment of universal service contributions includes an upward adjustment based on one-half of the carrier's universal service debt. We applied this adjustment as an exercise of our discretion under section 503(b) of the Act based on the nature, circumstances, extent and gravity of the violations. Globcom deliberately chose not to pay its universal service contributions each month for more than one and a half years, and this choice was made in the context of numerous notices to Globcom of its obligations.¹²³ As the Commission explicitly held in the *Globcom NAL*, because of the gravity of violations in this area and the accumulating record of non-compliance, the time has come to implement substantially greater forfeiture amounts to deter future non-compliance. The exact dollar amount of the adjustment is not dictated by a specific mathematical calculation. Instead, we find that approximately one-half of the amount of overdue debt is an appropriate

¹¹⁶ 47 C.F.R. § 54.706(c).

¹¹⁷ See *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752, 3806, ¶ 125 (2002) (“February 26 Universal Service Order”).

¹¹⁸ *February 26 Universal Service Order*, 17 FCC Rcd at 3806, ¶ 125.

¹¹⁹ Globcom NAL Response at 4.

¹²⁰ Globcom NAL Response at 7-8.

¹²¹ The net change by USAC to Globcom's outstanding balance reflected both the downward adjustment for the revised 2002 revenue figures, and upwards adjustments reflecting 1999 and 2000 revenue figures. We do not consider the upward adjustments as part of our forfeiture methodology in this instance because they were not contemplated in the *Globcom NAL*. See also USAC Revision letter at 2-3.

¹²² See n. 35, *supra*.

¹²³ See ¶ 34, *supra*; *Globcom NAL*, 18 FCC Rcd at 19903, ¶¶ 24-26.

adjustment because it “illustrates that a delinquent carrier’s culpability and the consequential damage it causes to the goal of universal service may vary with the size of the contributions it fails to make.”¹²⁴

42. Based on the information available at the time of the *Globcom NAL*, we held that Globcom’s universal service balance for the period at issue was \$681,837, one half of which was \$340,918. Based on USAC’s amendments to the amount of Globcom’s unpaid USF contributions, we reduce the forfeiture amount to reflect Globcom’s revised universal service balance as of August 15, 2003, (\$498,176), one-half of which is \$249,088.

43. We reject Globcom’s argument that the forfeiture should be further adjusted because the carrier allegedly is eligible for the international exception for other periods. Such eligibility in a particular year is based upon the revenue information supplied in the relevant Form 499-A.¹²⁵ With regard to Globcom’s obligations to USF in calendar year 2001, Globcom’s original 2002 Form 499-A set forth interstate revenues that were greater than twelve percent of its combined interstate and international revenues. Thus, Globcom was ineligible for the international exception for 2001 revenue. Globcom’s argument that the figures in its original 2002 Form 499-A were inaccurate and that accurate revenue figures would make Globcom eligible for the international exception is undercut by Globcom’s repeated failure to abide by our rules and timely file a revision to its 2002 Form 499-A or to submit evidence to USAC supporting its untimely revised filing.

44. Globcom missed at least three opportunities to have its 2001 universal service contribution revised. First, under the Administrator’s practices at the time, Globcom had until December 1, 2002 to file a revised 2002 Form 499-A.¹²⁶ Globcom failed to do so. Second, after December 1, 2002, Globcom could have submitted a revised filing with an explanation of the cause for the change, and complete documentation showing how the revised figures derive from corporate financial records.¹²⁷ Globcom submitted a revised 2002 Form 499-A on March 1, 2004, 23 months after the due date for the original 2002 Form 499-A, but did not include any documentation to explain how it derived the revised figures.¹²⁸ Finally, after release of the *Form 499-A Filing Revisions Order*, Globcom had yet another opportunity to cure the inadequacies in its revised 2002 Form 499-A. In addition to the public release of this item, as a courtesy, Bureau staff telephoned Globcom’s counsel to insure that Globcom was aware of this newly opened filing window.¹²⁹ To have its revised 2002 Form 499-A accepted and evaluated with regard to the international exception, Globcom had only to submit evidence demonstrating good cause for missing the filing window and documentation showing how the figures from the revised 2002 Form 499-A were

¹²⁴ *Globcom NAL*, 18 FCC Rcd at 19901, ¶ 27 (quoting *Matrix*, 15 FCC Rcd at 13546-47, ¶ 8).

¹²⁵ “Prior to April 1, 2003, any entity required to contribute to USF whose interstate end-user telecommunications revenues comprise less than 12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the USF based only on such entity’s interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to USF whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity’s projected collected interstate end-user telecommunications revenues, net of projected contributions.” 47 C.F.R. § 54.706(c).

¹²⁶ *2002 Telecommunications Reporting Worksheet Instructions*, Instruction at 9-10.

¹²⁷ See Form 499-A Instructions at 11.

¹²⁸ USAC Revision Letter at 2.

¹²⁹ *Form 499-A Filing Revisions Order*, DA 04-3669, 2004 WL 2848147.

derived from its corporate financial records.¹³⁰ Globcom, however, did not submit any evidence to support its revised filings and the revision was rejected.¹³¹ Thus, USAC has concluded that no other adjustments in Globcom's USF payments for other periods are appropriate. Based on all the facts and circumstances in this case, including Globcom's failure to support its claimed adjustments and the egregious nature of Globcom's conduct with regard to its USF contributions overall, we conclude that no further adjustment to the forfeiture is warranted.

45. As noted above, however, Globcom has filed a revised 2003 Form 499-A that was accepted by USAC, causing a downward adjustment of its USF debt. This circumstance warrants a downward adjustment of the portion of the forfeiture penalty that was calculated based on that unpaid balance. Therefore, the forfeiture amount is reduced to \$715,031, which is calculated as follows:

- for failing to pay universal service contributions, we apply a base forfeiture amount of \$20,000 for 12 months of nonpayment and add one-half of the (recalculated) unpaid universal service contributions due as of August 15, 2003, (\$249,088) to the base forfeiture of \$240,000 for a forfeiture of \$489,088;
- for failing to pay TRS fund contributions, we apply a base forfeiture amount of \$10,000 for each of the two violations and add one-half of the unpaid balance (\$5,943), for a forfeiture of \$25,943;
- for filing an inaccurate Annual Worksheet, we apply a forfeiture of \$50,000; and
- for failing to submit Quarterly and Annual Worksheets, we apply a forfeiture of \$50,000 for three occasions when Globcom failed to file the revenue information, for a forfeiture of \$150,000.

3. Globcom Has Not Demonstrated It Is Unable to Pay the Forfeiture Amount

46. Finally, Globcom has not demonstrated an inability to pay the forfeiture. Globcom contends that it is unable to pay the proposed forfeiture amount, as demonstrated by its federal income tax returns,¹³² and that such a forfeiture could result in Globcom's insolvency.¹³³ Globcom explains that the resold international telecommunications services business is an extremely low margin business, and that "it is not uncommon for payments to underlying carriers to account for more than 80 percent of a resale international carrier's total revenues."¹³⁴

47. We reject Globcom's argument. Although ability to pay a forfeiture is a statutory factor that we may consider in setting a forfeiture amount,¹³⁵ the Commission has repeatedly held that a carrier's gross revenues are the best indicator of its ability to pay a forfeiture.¹³⁶ The financial information

¹³⁰ See *Id.*, at ¶¶ 13-14.

¹³¹ USAC Revision Letter at 2.

¹³² See Globcom 2003 LOI Response (containing Globcom's 2000 and 2001 federal tax returns); Globcom NAL Response, Attachment A (containing Globcom's federal tax returns from 2000 through 2002).

¹³³ Globcom NAL Response at 18.

¹³⁴ *Id.*

¹³⁵ *SBC Communications v. FCC*, 373 F.3d at 152.

¹³⁶ 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) ("*Hoosier*"); *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) ("*LLDF*"); *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, (Continued from previous page)

supplied by Globcom in support of its claim, including its 2000, 2001 and 2002 tax returns, shows that Globcom's gross revenues are far in excess of the forfeiture amount and that the forfeiture amount represents a smaller percentage of gross revenues than that issued in *LLDI* and *Hoosier*, and only slightly higher than *PJB*. Globcom has not produced any evidence, through affidavits or otherwise, that it will not be able to pay the total forfeiture.¹³⁷

IV. CONCLUSION

48. Globcom withheld payments to Congressionally-mandated telecommunications programs, thereby starving these programs of essential funding for an extended period of time and totaling hundreds of thousands of dollars in withheld contributions. In light of the seriousness, duration and scope of the apparent violations, and to ensure that a company with substantial revenues such as Globcom does not consider the forfeiture merely "an affordable cost of doing business,"¹³⁸ we find that the forfeiture proposed in the *Globcom NAL*, and revised as set forth above to \$715,031, is warranted. As discussed above, this forfeiture amount includes: (1) a total penalty of \$489,088 for failing to make any of its monthly universal service contributions for a period of twelve months; (2) a total penalty of \$25,943 for failing to make its 2002 and 2003 TRS program contribution when due; (3) a total penalty of \$50,000 for filing an inaccurate annual worksheet; and (4) a total penalty of \$150,000 for failing to submit quarterly and annual worksheets.

V. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Globcom, Inc. SHALL FORFEIT to the United States government the sum of \$715,031 for willfully and repeatedly violating the Act and the Commission's rules.

50. 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.¹³⁹ 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. 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 20554.¹⁴⁰

(continued...)

2089, ¶ 8 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues) ("*PJB*").

¹³⁷ 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).

¹³⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also 47 C.F.R. § 1.80(b)(4).

¹³⁹ 47 U.S.C § 504(a).

¹⁴⁰ See 47 U.S.C § 1.1914.

51. IT IS FURTHER ORDERED that copies of this ORDER OF FORFEITURE shall be sent by certified mail, return receipt requested, to Glenn Kofman, Globcom, Inc., 2100 Sanders Rd., Suite 150, Northbrook, IL 60047, and Kemal Hawa, Chadbourne and Parke, LLP, 1200 New Hampshire Avenue, NW, Washington, DC, 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary