

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

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

ORDER OF FORFEITURE

Adopted: May 15, 2008

Released: May 19, 2008

By the Commission:

I. INTRODUCTION

1. In this *Order of Forfeiture*, we impose a forfeiture of \$436,765 against Local Phone Services, Inc., d/b/a Best Phone (“LPSI”). The *Order of Forfeiture* follows a *Notice of Apparent Liability for Forfeiture* issued on August 29, 2006.¹ Herein we find that LPSI willfully or repeatedly violated section 54.711(a) of the Commission’s rules² by failing to timely submit certain Telecommunications Reporting Worksheets. We also find that LPSI willfully or repeatedly violated section 254(d) of the Communications Act of 1934, as amended (the “Act”),³ and section 54.706(a) of the Commission’s rules⁴ by failing to timely contribute to the Universal Service Fund (“USF” or the “Fund”).

2. LPSI’s failure to pay Congressionally-mandated USF contributions strikes 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 historical commitment to universal service for consumers in all regions of the nation. The universal service programs are supported by contributions from telecommunications carriers and certain other providers of telecommunications.⁵ Entities subject to USF contribution requirements must provide certain necessary information and contribute their equitable share to support the federal universal service programs. Failure to do so threatens the integrity and viability of this Congressional mandate. The Commission cannot and will not tolerate any entity’s failure

¹ *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006) (“*LPSI NAL*” or “*NAL*”).

² 47 C.F.R. § 54.711(a).

³ 47 U.S.C. § 254(d). The Telecommunications Act of 1996 amended the Communications Act of 1934, *see* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ 47 C.F.R. § 54.706(a).

⁵ 47 C.F.R. § 254(d); *see Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) (“*2006 Interim Contribution Methodology Order*”), *petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007). The universal service support mechanisms include the following programs: (1) Lifeline/Link-Up, (2) High-Cost, (3) Schools and Libraries, and (4) Rural Health Care. *See generally* 47 C.F.R. Part 54, subparts D-G; <http://www.fcc.gov/cgb/consumerfacts/universalservice.html>.

to contribute to the USF as required by our rules, and we will use our forfeiture authority to penalize and deter violations such as those at issue in this *Order of Forfeiture*.

II. BACKGROUND

A. Requirements To File Periodic Revenue Information And Contribute To The USF

3. The Universal Service Administrative Company (“USAC”) administers the universal service support mechanisms and performs billing and collection functions.⁶ The Commission requires telecommunications providers, such as LPSI, to provide revenue information on FCC Form 499, the Telecommunications Reporting Worksheet (“Worksheet”), on a periodic basis, and USAC uses that information to determine each provider’s universal service contribution obligations.⁷ A provider’s failure to file 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.”⁸

4. Section 254(d) of the Act, section 54.706(a) of the Commission’s rules, and Commission Orders further require all telecommunications carriers that provide interstate telecommunications services, including telecommunications carriers such as LPSI, and interconnected VoIP providers, to contribute to the USF.⁹ This obligation is generally calculated as the product of a contribution factor and a contributor’s interstate and international telecommunications revenues.¹⁰ USAC bills contributors each month based on their quarterly contribution amount.¹¹ Failure by some providers to pay their share into the Fund skews the

⁶ 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).

⁷ 47 C.F.R. § 54.711. Contributors file revenue information on both an annual and quarterly basis, using FCC Form 499-A (annual Worksheet) and FCC Form 499-Q (quarterly Worksheet), respectively. *Id.* Contributors project quarterly revenues on FCC Form 499-Q and report the previous year’s revenue on FCC Form 499-A.

⁸ 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).

⁹ See 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a). See also *supra* note 5.

¹⁰ When a contributor’s projected collected interstate end-user telecommunications revenue is less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenue, the contributor only pays the product of the contribution factor and its projected collected interstate end-user telecommunications revenues. 47 C.F.R. § 54.706(c). If a contributor’s payment would be less than \$10,000 in any given year, the contributor is considered to be *de minimis* and not required to submit a contribution for that year. See 47 C.F.R. § 54.708.

¹¹ See, e.g., *Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration in CC Docket No. 96-45, Eighth Report and Order in CC Docket No. 96-45, and Sixth Report and Order in CC Docket No. 96-262, 15 FCC Rcd 1679, 1687, ¶ 18 (1999); *Federal-State Board on Universal Service*, Further Notice of Proposed Rulemaking and Order, 15 FCC Rcd 19947, 19954, ¶ 17 (2000); *Federal-State Joint Board on Universal Service*, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971-72, ¶ 35 (2002) (“Interim Contribution Order”); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, *Federal-State*

(Continued...)

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

B. The Commission's Investigation

5. The facts and circumstances upon which the *Order of Forfeiture* is based are set forth in the *LPSI NAL*, and need not be repeated here at length. LPSI is a telecommunications carrier that began providing long distance service in Kansas in 2002.¹² LPSI provides both interstate and international telecommunications service.¹³ Between July 5 and August 12, 2005, the Commission released six NALs for apparent failures by telecommunications service providers to register, file Worksheets, and make contributions to the USF, among other apparent violations.¹⁴ On August 26, 2005, LPSI informed the Commission that although LPSI began providing telecommunications service in 2002, it had “not paid universal service or other federal regulatory fees or assessments based on its revenues from interstate and international telecommunications service.”¹⁵ LPSI stated that it intended to take immediate corrective measures, including filing outstanding Worksheets no later than “early October 2005,” and intended to “promptly” pay all amounts properly invoiced by USAC and the Commission.¹⁶

6. The Enforcement Bureau (“Bureau”) initiated an investigation on October 18, 2005 by a letter of inquiry (“*LOI*”)¹⁷ regarding LPSI’s compliance with its filing and payment obligations involving federal regulatory programs, including the universal service fund. LPSI submitted its LOI response on December 7, 2005 and supplemental response on December 23, 2005.¹⁸ In its responses, LPSI informed

(Continued from previous page)

Board on Universal Service, Second Order on Reconsideration, 12 FCC Rcd 22423, 22425, ¶ 3 (1997). Contributors must pay by the date shown on the invoice from the administrator. 47 C.F.R. § 54.711(a); *See, e.g.*, “Proposed Second Quarter 2008 Universal Service Contribution Factor,” Public Notice, CC Docket No. 96-45, DA 08-576 (Office of Managing Dir. rel. March 14, 2008) (“Contribution payments are due on the date shown on the administrator invoice.”).

¹² *See* Letter from Bradford M. Berry, Esq., Wilmer Cutler Pickering Hale and Dorr, LLP, to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (dated August 26, 2005) at 1 (“Voluntary Disclosure Letter”).

¹³ *See* Letter from Bradford M. Berry, Esq., Wilmer Cutler Pickering Hale and Dorr, LLP, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (dated December 23, 2005) (“Supplemental Response”) at 1.

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

¹⁵ Voluntary Disclosure Letter at 1.

¹⁶ *Id.*

¹⁷ Letter of Inquiry from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Local Phone Services, Inc., c/o Bradford M. Berry, Esq., Wilmer Cutler Pickering Hale and Dorr, LLP (dated October 18, 2005) (“*LOI*”).

¹⁸ *See* Letter from Bradford M. Berry, Esq., Wilmer Cutler Pickering Hale and Dorr, LLP, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (dated December 7, 2005) (“LOI Response”); Supplemental Response, *supra* note 13.

the Commission it filed its November 1, 2005 Worksheet three weeks late on November 23, 2005. On December 9, 2005, LPSI untimely filed with USAC 2004 and 2005 annual Worksheets, May 1 and August 1, 2005 quarterly Worksheets, and a revised 2003 annual Worksheet. LPSI made its first USF payment on May 26, 2006. On August 16, 2006, nearly an entire year after it brought its failures to the Commission's attention, LPSI paid outstanding USF contributions due through July 2006.¹⁹

7. On August 29, 2006, the Commission released the *LPSI NAL* in which it proposed a forfeiture of \$529,000 against LPSI for its apparent violations of section 54.711(a) of the Commission's rules by failing to file Worksheets, and LPSI's apparent violations of section 254(d) of the Act and section 54.706(a) of the Commission's rules by failing to contribute to the USF.²⁰ Specifically, the Commission proposed a forfeiture of \$50,000 for each of LPSI's four apparent failures to timely submit Worksheets for a proposed forfeiture of \$200,000. The Commission also proposed a base forfeiture of \$20,000 per month for the 15 months in which LPSI failed to pay universal service contributions, and added an upward adjustment of one-half of LPSI's total unpaid universal service contributions (\$29,000) to the base forfeiture of \$300,000, for a proposed forfeiture of \$329,000.

8. LPSI filed its response to the *NAL* on September 27, 2006.²¹ LPSI does not deny that it engaged in each of the violations described in the *NAL*, or that it deliberately, intentionally, and repeatedly engaged in the acts that constitute its violations. Yet, LPSI argues that the forfeiture proposed in the *NAL* must be eliminated. First, LPSI argues that its voluntary disclosure of its violations of the Act and Commission rules was unrelated to other universal service enforcement actions taken in the summer of 2005.²² Second, LPSI argues that it disclosed to Bureau staff that it would fail to file its Worksheets by October 2005. Third, LPSI argues that the forfeiture is excessive when compared to the amount of USF contributions that it owed. Fourth, LPSI argues that because it voluntarily disclosed its violations, the Commission should rescind the *NAL* and a forfeiture in this instance will serve to discourage companies from making voluntary disclosures. Finally, LPSI states that it "is a small company and cannot afford the services of an attorney to prepare and submit a full-fledged response to the *NAL*."²³

9. In September 2007, based on late-filed Worksheets from LPSI, USAC determined that LPSI was a *de minimis* carrier in 2006.²⁴ USAC therefore credited LPSI for amounts that USAC invoiced LPSI for 2006 USF contributions. USAC further determined that through 2005, LPSI owed a total of \$73,529.26 in outstanding USF contributions.²⁵

III. DISCUSSION

¹⁹ See Letter from L.E. Hiskin, President, Local Phone Services, Inc. to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (dated September 27, 2006) at 2 ("NAL Response").

²⁰ See *supra* note 1.

²¹ See *supra* note 19.

²² See *supra* note 14 (citing Commission enforcement actions).

²³ NAL Response at 1.

²⁴ Providers whose annual USF contribution would be less than \$10,000 are considered *de minimis* and exempt from contributing to the USF. 47 C.F.R. § 54.708; see also *supra* note 10.

²⁵ See e-mail from Tracey Beaver, USAC, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, dated Sept. 28, 2007.

10. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁶ 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.²⁷ 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 Act²⁸ and the Commission has so interpreted the term in the section 503(b) context.²⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.³⁰ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.³¹ 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.³² The Commission will then issue forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.³³

11. We find by a preponderance of the evidence that LPSI willfully or repeatedly engaged in the violations described in the *NAL*. More specifically, we find that LPSI willfully or repeatedly violated section 54.711(a) of the Commission’s rules by failing to file Worksheets on multiple occasions. We also find that LPSI willfully or repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission’s rules by failing to contribute to the USF on a timely basis on multiple occasions. As explained below, we reject each of LPSI’s arguments that we should cancel or reduce the forfeiture. Based on new information received from USAC in September 2007, however, we reduce the imposed forfeiture to \$436,765.

A. Voluntary Disclosure

12. We find that LPSI’s voluntary disclosure does not require us to rescind the proposed forfeiture. LPSI argues that the Commission should rescind the proposed forfeiture given its voluntary disclosure of its violations, and that a forfeiture in this instance would discourage companies from

²⁶ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

²⁷ 47 U.S.C. § 312(f)(1).

²⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503).... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

²⁹ *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.*”).

³⁰ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

³¹ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

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

³³ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

voluntarily disclosing violations of the Act and the Commission's rules.³⁴ In establishing a forfeiture amount, the Commission takes into consideration the existence of many factors, one of which is whether the company in question has voluntarily disclosed its violations.³⁵ Voluntary disclosure by itself, however, is not enough to prevent a forfeiture proceeding. When the company, as here, does not diligently take action to correct its violations, the Commission may decline to discount a forfeiture amount for the company's voluntary disclosure.³⁶

13. As previously noted, LPSI notified the Commission of apparent violations of the Act and Commission's rules on August 26, 2005.³⁷ At that time, LPSI stated that it intended to file its required Worksheets no later than "early October 2005," and intended to "promptly" pay all outstanding federal regulatory obligations.³⁸ LPSI, however, did not file its first quarterly Worksheet until late November 2005, and filed other outstanding Worksheets in early December 2005. Of greater concern, LPSI did not make a USF payment until May 26, 2006, and did not pay outstanding USF contributions until nearly a full year after its August 26, 2005 Disclosure Letter.³⁹ LPSI's lengthy delay in filing its outstanding Worksheets and making required regulatory payments does not demonstrate diligent efforts to cure its federal regulatory compliance failures. Under these circumstances, we find that LPSI's voluntary disclosure does not merit consideration as a mitigating factor. In so doing, we disagree with LPSI's assertion that our refusal to discount the forfeiture because of its voluntary disclosure discourages voluntary disclosure by other companies. To the contrary, our decision is consistent with our rules and encourages companies to voluntarily disclose violations and promptly correct violations.⁴⁰

14. Our decision to impose a forfeiture here, despite LPSI's voluntary disclosure, is unrelated to other universal service *NALs* issued before LPSI's disclosure.⁴¹ In the *LPSI NAL*, the Commission noted that LPSI's voluntary disclosure came two weeks after the Commission released a series of USF enforcement items.⁴² Whether LPSI disclosed its violations "because it believed that was the right thing to do,"⁴³ as it claims, or because it became aware that the Commission was undertaking monitoring and enforcement measures, is irrelevant, given that LPSI failed to demonstrate it was committed to a good faith effort to comply promptly with its filing and contribution obligations under the Commission's regulatory programs.

15. We also note LPSI's communications with Commission staff to the effect that the company would be unable to file the required Worksheets do not require the Commission to rescind the proposed forfeiture. LPSI claims that it apprised Commission staff that the company would continue

³⁴ NAL Response at 1.

³⁵ See 47 C.F.R. § 1.80(b)(4).

³⁶ *LPSI NAL*, 21 FCC Rcd at 9980-81, ¶¶ 17-20.

³⁷ Voluntary Disclosure Letter, *supra* note 12.

³⁸ *Id.* at 1.

³⁹ LPSI finally paid outstanding USF contributions owed through July 2006 on August 16, 2006. See *supra* para. 6.

⁴⁰ While the forfeiture guidelines list voluntary disclosure as a downward adjustment factor, the "Commission and its staff retain the discretion to issue a higher or lower forfeiture than provided in the guidelines" 47 C.F.R. § 1.80(b)(4) note.

⁴¹ See NAL Response at 1.

⁴² *LPSI NAL*, 21 FCC Rcd at 9976, ¶ 4 & n.14.

⁴³ NAL Response at 1.

failing to file Worksheets beyond October 2005, and suggests that this should excuse LPSI's failures to promptly remedy its federal regulatory filing and payment obligations.⁴⁴ Contrary to LPSI's suggestion, a company's obligation to timely file Worksheets is not relieved by informing Commission staff that the company will not fulfill this important requirement.

B. LPSI Has Not Demonstrated An Inability To Pay

16. We next conclude that LPSI has failed to demonstrate it is unable to pay the proposed forfeiture. In establishing a forfeiture amount, one of the numerous factors that the Commission takes into consideration is a company's ability to pay the forfeiture.⁴⁵ LPSI states that it "is a small company and cannot afford the services of an attorney to prepare and submit a full-fledged response to the NAL."⁴⁶

17. Although LPSI did not explicitly seek rescission or reduction of the forfeiture amount based on LPSI's ability to pay, we presume that was its intention in making this statement,⁴⁷ and conclude that LPSI has failed to demonstrate an inability to pay the forfeiture. LPSI provided no information demonstrating its inability to pay. In analyzing economic-hardship claims, the Commission generally looks to a violator's gross revenues from the three most recent tax years as a reasonable and appropriate yardstick to determine its ability to pay an assessed forfeiture.⁴⁸ Undocumented statements of a regulatee's size and financial condition do not meet the requirement of a particularized showing of financial hardship or inability to pay. We find that LPSI has failed to demonstrate an inability to pay the forfeiture.

C. The Forfeiture Is Not Excessive

18. We also conclude that the forfeiture proposed in the *NAL* was not excessive. LPSI states that "despite the fact that LPSI voluntarily disclosed this matter and had paid all amounts invoiced by USAC, the Commission has proposed to fine LPSI . . . a sum that dwarfs the amount that LPSI is alleged to have owed."⁴⁹ With regard to the forfeiture proposed in the *NAL*, whether LPSI's payments were current at the time the *NAL* was released is irrelevant. We proposed a forfeiture amount based on LPSI's failures to timely file four Worksheets and timely pay monthly USF contributions, repeated failures that occurred over a substantial time period prior to the release of the *NAL*.

19. In determining the appropriate forfeiture amount, we considered the factors enumerated in section 503(b)(2)(E) 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

⁴⁴ *Id.*

⁴⁵ See 47 C.F.R. § 1.80(b)(4).

⁴⁶ NAL Response at 1.

⁴⁷ See *James Lee Gaskey*, Forfeiture Order, 15 FCC Rcd 25309, 25311-12, ¶¶ 12-13 (Enf. Bur. 1999) (presuming that respondent's submission of tax returns and statement of income were intended to demonstrate inability to pay the forfeiture, even though the response to the Notice of Apparent Liability did not explicitly seek rescission or reduction of the forfeiture amount, and concluding that respondent failed to provide sufficient justification for reducing the forfeiture).

⁴⁸ *Frank Neely Licensee*, Memorandum Opinion and Order, 22 FCC Rcd 1434, 1435, ¶ 5 (Assistant Chief, Enf. Bur. 2007) (citing *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd. 2088, 2089 (1992)); see also *Forfeiture Policy Statement*, 12 FCC Rcd. at 17106-07, ¶ 43; *LPSI NAL*, 21 FCC Rcd at 9982, ¶ 27.

⁴⁹ NAL Response at 2.

such other matters as justice require[d].”⁵⁰ As set forth in the *LPSI NAL*,⁵¹ we have recounted at length the vital policy considerations that underlie the forfeiture of LPSI’s failure to file its Worksheets and make USF contributions on a timely basis. LPSI states the forfeiture is excessive given the amounts it has owed. We rejected a similar argument raised in *Global Teldata II*,⁵² where the company argued that the total proposed forfeiture was 27 percent of its telecommunications revenues in a particular year and therefore excessive and unjust.⁵³ Just as we found no merit in the carrier’s argument in *Global Teldata II*,⁵⁴ we find no merit in LPSI’s unsupported, blanket assertion that the forfeiture proposed in the *LPSI NAL* is excessive.

D. Adjustment of Total Forfeiture Amount Based on Late-Filed Revenue Data Provided by LPSI to USAC

20. At the time the Commission released the *NAL*, LPSI’s projected collected revenue, as reported on LPSI’s quarterly Worksheets, had indicated that LPSI owed USF contributions in 2006. On May 31, 2007, however, LPSI filed its 2007 annual Worksheet.⁵⁵ Based on the historical revenue reported in LPSI’s 2007 annual Worksheet, USAC determined that under section 54.708 of the Commission’s rules,⁵⁶ LPSI was a *de minimis* carrier and therefore exempt from USF contributions in 2006. Thus, USAC credited LPSI for the amounts that USAC invoiced LPSI for 2006 contributions.⁵⁷

21. When calculating the total proposed forfeiture in the *NAL*, we assessed forfeitures of \$20,000 per month for LPSI’s failure to make monthly USF contributions between March 2005 and May 2006.⁵⁸ Because USAC has determined, based on LPSI’s late-filed 2007 annual Worksheet, that LPSI was *de minimis* in 2006, we rescind the forfeitures assessed in the *NAL* for LPSI’s failure to make USF contributions between January and May 2006. We only impose forfeitures for LPSI’s failure to make ten monthly contributions between March and December 2005. The Commission has established a base forfeiture amount of \$20,000 for each month in which a carrier has failed to make required universal service contributions.⁵⁹ Consequently, we conclude that LPSI is liable for a base forfeiture of \$200,000 for its willful and repeated failure to make universal service contributions for ten months. As discussed below, however, that base amount is subject to an upward adjustment.

22. In the past, we have calculated upward adjustments to forfeitures for failure to make USF payments based on one-half of the company’s approximate unpaid contributions.⁶⁰ Based on LPSI’s financial information filed at the time we released the *NAL*, we estimated that LPSI’s outstanding USF contributions were approximately \$58,000. Taking into account all the factors enumerated in section

⁵⁰ 47 U.S.C. § 503(b)(2)(E). See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b).

⁵¹ *LPSI NAL*, *supra* note 1.

⁵² *Global Teldata II, LLC*, Order of Forfeiture, 22 FCC Rcd 8710 (2007) (“*Global Teldata II*”).

⁵³ *Id.* at 8720, ¶ 26.

⁵⁴ *Id.*

⁵⁵ LPSI’s annual Worksheet, which reported historical revenue for 2006, was due April 1, 2007.

⁵⁶ See 47 C.F.R. § 54.708.

⁵⁷ See *supra* para. 9.

⁵⁸ See *LPSI NAL*, 21 FCC Rcd 9974, 4722, ¶ 15 & n. 48.

⁵⁹ See *Globcom Forfeiture Order*, 21 FCC Rcd 4721-4724, ¶ 31-38.

⁶⁰ See, e.g., *id.* at 4722, ¶ 33.

503(b)(2)(E) of the Act, we therefore assessed an upward adjustment of \$29,000 for LPSI's apparent nonpayment violations.⁶¹ Based on LPSI's most recent Worksheets, USAC has determined that as of December 2005, the last month of LPSI's payment failures within the scope of this forfeiture proceeding, LPSI owed \$73,529.26 for USF contributions. Accordingly, based on LPSI's late-filed revenue information submitted to USAC, and again taking into account all the factors enumerated in section 503(b)(2)(E) of the Act, we modify our upward adjustment to \$36,765, and conclude that LPSI is liable for a total forfeiture of \$236,765 for its apparent willful and repeated failure to make monthly contributions into the USF.

E. Conclusion

23. In sum, based upon a preponderance of the evidence, we find that LPSI failed to file four Worksheets in violation of section 54.711(a) of the Commission's rules⁶² and failed to make ten monthly contributions to the USF in violation of section 254(d) of the Act⁶³ and section 54.706(a) of the Commission's rules.⁶⁴ We therefore impose a total forfeiture of \$436,765, which includes forfeitures of (1) \$200,000 for LPSI's failure to timely file required Worksheets;⁶⁵ and (2) \$236,765 for LPSI's failure to make required USF contributions. As discussed above, we find no reason to cancel the forfeiture based on LPSI's response to the *NAL*. Based on LPSI's most recent Worksheets, and USAC's assessment of the reported revenue in LPSI's Worksheets, however, we conclude that the forfeiture imposed on LPSI should be reduced to \$436,765.

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁶⁶ and section 1.80 of the Commission's rules,⁶⁷ Local Phone Services, Inc. IS LIABLE FOR A MONETARY FORFEITURE in the amount of \$436,765 for willfully or repeatedly violating the Act and the Commission's rules.

25. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the 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.⁶⁸ 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*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance

⁶¹ See *LPSI NAL*, 21 FCC Rcd at 9980, ¶ 16.

⁶² 47 C.F.R. at § 54.711(a). See *LPSI NAL*, 21 FCC Rcd at 9977-78, ¶¶ 9-11.

⁶³ 47 U.S.C. § 254(d).

⁶⁴ 47 C.F.R. § 54.706(a).

⁶⁵ See *LPSI NAL*, 21 FCC Rcd at 9979, ¶ 14.

⁶⁶ 47 U.S.C. § 503(b).

⁶⁷ 47 C.F.R. § 1.80.

⁶⁸ 47 U.S.C. § 504(a).

Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

26. IT IS FURTHER ORDERED that copies of this ORDER OF FORFEITURE shall be sent by certified mail, return receipt requested, to L.E. Hisken, President, Local Phone Services, Inc., 815 N. West Street, Wichita, KS 67203-1216; and Judith A Riley, Regulatory Agent, Best Phones, 2912 Lakeside Drive, Oklahoma City, OK 73120.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary