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Carrier Relies on Ineptitude Defense; Fails

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Fines levied by the FCC in the high six figures always get our attention, but the recent \$715,031 fine imposed on Globcom, Inc. served to teach several important lessons.

The FCC discovered in 2003 that Globcom, a provider of interstate and international resale services, had failed to pay its Universal Service Fund contributions in 2001 and 2002. The amount in arrears was almost \$700,000. The FCC therefore proposed that Globcom pay the arrearage plus additional penalties adding up to over \$800,000. After initially ignoring the FCC's inquiry, the carrier responded by admitting that "frankly, [it] has no explanation for the discrepancy [in its revenue reporting] other than to say that the confusion surrounding the Worksheet was significant." Its mistake, it argued, was merely due to its own negligence and ignorance of the reporting obligations, not intentional misconduct. The carrier also argued that it had actually overstated its revenues out of negligence.

However, its attempt to correct the erroneous reports was rejected because it was beyond the time period when reports were allowed to be revised. The FCC then, however, opened a window in which late-filed revisions to reports would be accepted on a one-time basis. This would have permitted Globcom to rectify its erroneous overstatement of its revenues. The FCC staff thoughtfully called Globcom to alert it that this window to correct its earlier filing had been opened, but Globcom did not take advantage of the opportunity. The FCC noted testily that Globcom's inexplicable failure to seize this gift horse cost it about \$274,318 in downward adjustments.

Not surprisingly, the FCC rejected Globcom's reliance on its own incompetence as an excuse for failing to file the reports and pay the fees. Globcom's method of researching its USF obligations – checking around with industry contacts – was deemed "wholly unpersuasive." The Commission also found that negligence, inadvertence and ignorance were not acceptable excuses for Globcom's various rule violations, which were found to be willful and repeated. The FCC emphasized that it was time for it to implement substantially greater forfeiture amounts because its earlier lower fines had not sufficiently incited carriers to make the necessary contributions and file the required reports. It therefore awarded Globcom a bonus forfeiture of an amount equal to half of the unpaid debt.

Clearly, the FCC is adopting a get tough approach with companies who fail to comply with the USF and related reporting and contributing requirements. When negligence,

inadvertence, incompetence, and ignorance are removed as excuses for violations of the law, we are, unfortunately, left with compliance as a last resort.