

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

In the Matter of)	File No.: EB-IHD-13-00011132 ¹
)	
Globalcom, Inc.)	Acct. No.: 201032080022
)	
Apparent Liability for Forfeiture)	FRNs: 0004325320, 0003764487

ORDER

Adopted: March 14, 2014

Released: March 14, 2014

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and First Communications, LLC, successor to Globalcom, Inc. (Globalcom).² The Consent Decree resolves and terminates an investigation by the Commission into Globalcom's possible violations of Section 254(d) of the Communications Act of 1934, as amended (Act),³ and Sections 54.706(a) and 54.711(a) of the Commission's rules (Rules),⁴ in connection with Globalcom's apparent failures to make required regulatory filings and to contribute fully and timely to the Universal Service Fund.⁵

2. A copy of the Consent Decree negotiated by the Bureau and Globalcom is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude the investigation raises no substantial or material questions of fact as to whether Globalcom possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,⁶ and Sections 0.111 and 0.311 of the Rules,⁷ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ This investigation, initiated under File No. EB-09-IH-1176, was subsequently assigned to File No. EB-IHD-13-00011132.

² Since the Commission issued a Notice of Apparent Liability to Globalcom, the company was merged into its parent corporation, First Communications, LLC, 3340 W. Market St., Akron, OH 44333. Globalcom's FRN was 0004325320 and First Communications, LLC's FRN is 0003764487.

³ 47 U.S.C. § 254(d).

⁴ 47 C.F.R. §§ 54.706(a), 54.711(a).

⁵ See *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479 (2010).

⁶ 47 U.S.C. §§ 154(i), 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first-class mail and certified mail, return receipt requested, to Steven A. Augustino, Counsel for Globalcom, Kelley Drye & Warren LLP, 3050 K Street, NW, Suite 400, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Globalcom, Inc.)	Acct. No.: 201032080022
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Apparent Liability for Forfeiture)	FRNs: 0004325320, 0003764487

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and First Communications, LLC, successor to Globalcom, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible violations by Globalcom of Section 254(d) of the Communications Act of 1934, as amended (Act),² and Sections 54.706(a) and 54.711(a) of the Commission's rules (Rules),³ in connection with required regulatory filings and contributions to the Universal Service Fund.⁴

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Globalcom is subject by virtue of its business activities.
 - (f) "Company" shall mean Globalcom, Inc. and, as its successor, First Communications, LLC.
 - (g) "Compliance Plan" means the compliance obligations and program described in this Consent Decree at paragraph 13.
 - (h) "Covered Employees" means all employees and agents of Globalcom who perform, or supervise, oversee, or manage the performance of, duties that relate to Globalcom's responsibilities under the Communications Laws, including the Federal Regulatory Reporting and Contribution Rules.
 - (i) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ This investigation, initiated under File No. EB-09-IH-1176, was subsequently assigned to File No. EB-IHD-13-00011132.

² 47 U.S.C. § 254(d).

³ 47 C.F.R. §§ 54.706(a), 54.711(a).

⁴ See *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479 (2010) (*Globalcom NAL*).

- (j) “Federal Regulatory Reporting and Contribution Rules” means Section 254(d) of the Act,⁵ Sections 54.706 and 54.711 of the Rules,⁶ and other provisions of the Act, the Rules, and Commission orders governing related federal regulatory reporting and contribution obligations.
- (k) “First Communications” means First Communications, LLC, as successor to Globalcom.
- (l) “Globalcom” means Globalcom, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (m) “Investigation” means the investigation initiated by the Bureau in File Nos. EB-09-IH-1176 and EB-IHD-13-00011132 regarding Globalcom’s possible violations of the Federal Regulatory Reporting and Contribution Rules.
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Globalcom to implement the Compliance Plan.
- (o) “Parties” means the Company and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Telecommunications,” “Telecommunications Carrier,” or “Telecommunications Service” have the meanings set forth in Sections 3(50), 3(51), and 3(53) of the Act.⁷
- (r) “USAC” means the Universal Service Administrative Company.
- (s) “USF” means the Universal Service Fund.

II. BACKGROUND

3. Pursuant to Section 254(d) of the Act and Sections 54.706 and 54.711 of the Rules, Telecommunications Service providers that provide interstate Telecommunications Services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and FCC Forms 499-Q) and contribute to the federal USF.⁸

4. Until July 31, 2013, Globalcom was an Illinois corporation that provided Telecommunications Services in 31 states.⁹ As a facilities-based provider of voice and data services, Globalcom provided local and long distance services primarily to small and medium-sized businesses.¹⁰ On July 31, 2013, Globalcom was merged into its corporate affiliate, First Communications,¹¹ an Ohio limited liability company providing Telecommunications Service throughout the United States.¹²

⁵ 47 U.S.C. § 254(d).

⁶ 47 C.F.R. §§ 54.706, 54.711.

⁷ 47 U.S.C. §§ 153(50), 153(51), 153(53)

⁸ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711.

⁹ See Globalcom, Inc., Telecommunications Reporting Worksheet, 2013 FCC Form 499-A (filed Apr. 2, 2013); see also Response of Globalcom, Inc. to the Enforcement Bureau’s August 6, 2009 Letter of Inquiry at Response to Inquiry 2 (filed Sept. 22, 2009) (*LOI Response*).

¹⁰ *Id.* at Response to Inquiry 4.

¹¹ See Public Notice, “International Applications Granted,” DA 13-1924, ITC-ASG-20130826-00227 (Int’l Bur. Sept. 19, 2013).

¹² See First Communications, LLC, Telecommunications Reporting Worksheet, 2013 FCC Form 499-A (filed April 2, 2013).

5. In July 2009, USAC referred Globalcom to the Bureau for potential enforcement action, alleging that Globalcom had failed to comply with the Commission's rules requiring Telecommunications Carriers to contribute to the USF.¹³ The Bureau initiated the Investigation against Globalcom on August 6, 2009, issuing a letter of inquiry (LOI) to Globalcom seeking information about Globalcom's compliance with the Commission's USF contribution rules and other related regulatory obligations.¹⁴ Globalcom submitted a response to the LOI on September 22, 2009.¹⁵ The Commission released the *Globalcom NAL* on March 30, 2010, which found that Globalcom had apparently violated Section 254(d) of the Act and Sections 54.706(a) and 54.711(a) of the Rules by willfully and repeatedly failing to contribute fully and timely to the USF from December 2008 to December 2009,¹⁶ and failing to timely submit two Telecommunications Reporting Worksheets (2009 FCC Form 499-A and FCC Form 499-Q) necessary for the administration of universal service support mechanisms.¹⁷

6. On July 12, 2010, Globalcom filed its response to the *Globalcom NAL*.¹⁸ Among other things, Globalcom contested liability and requested a reduction in the proposed forfeiture under the factors in Section 503(b)(2)(D) of the Act.¹⁹ Thereafter, the Parties engaged in discussions aimed at resolving the issues associated with the Investigation.

7. As of the Effective Date, the Company has paid all invoiced amounts to the USF, Telecommunications Relay Fund, and cost recovery mechanisms for the North American Numbering Plan and Local Number Portability administration, and all invoiced regulatory fees.

III. TERMS OF AGREEMENT

8. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

9. **Jurisdiction.** The Company agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence

¹³ See 47 C.F.R. § 54.706(a).

¹⁴ See Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, to Raymond Hexamer, Chief Executive Officer, First Communications d/b/a Globalcom, Inc. (Aug. 6, 2009) (on file in EB-IHD-13-00011132) (*LOI*).

¹⁵ See *LOI Response supra* note 9.

¹⁶ See *Globalcom NAL*, 25 FCC Rcd at 3483, 3485, paras. 10–11, 15 (finding nine complete failures to pay, and four partial payments to the USF, during the relevant time period).

¹⁷ See *id.* at 3484, para. 13.

¹⁸ See Response of Globalcom, Inc. (filed July 12, 2010) (on file in EB-IHD-13-00011132).

¹⁹ 47 U.S.C. § 503(b)(2)(D).

of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against the Company concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Federal Regulatory Reporting and Contribution Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Federal Regulatory Reporting and Contribution Rules, the Company shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees must follow to help ensure the Company's compliance with the Federal Regulatory Reporting and Contribution Rules. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Federal Regulatory Reporting and Contribution Rules. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Federal Regulatory Reporting and Contribution Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Federal Regulatory Reporting and Contribution Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Federal Regulatory Reporting and Contribution Rules. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the Federal Regulatory Reporting and Contribution Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the Federal Regulatory Reporting and Contribution Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training

Program within sixty (60) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** The Company shall report any noncompliance with the Federal Regulatory Reporting and Contribution Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 3-C330, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov.

15. **Compliance Reports.** The Company shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Federal Regulatory Reporting and Contribution Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²⁰
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that the Company has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted

²⁰ 47 C.F.R. § 1.16.

electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act²¹ against the Company or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Company with the Communications Laws.

18. **Voluntary Contribution.** The Company agrees that it will make a voluntary contribution to the United States Treasury in the amount of Five Hundred Thirty-Seven Thousand One Hundred Twenty-Seven dollars (\$537,127) (Voluntary Contribution) within thirty (30) calendar days of the Effective Date. The Company shall send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov on the date said Voluntary Contribution payment is made.

19. The Voluntary Contribution Payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number referenced above and FRN 0003764487.²² Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions regarding the form of payment:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

²¹ 47 U.S.C. § 208.

²² Globalcom's FRN was 0004325320 and First Communications, LLC's FRN is 0003764487.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Waivers.** The Company waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined in this Consent Decree. The Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²⁴ relating to the matters addressed in this Consent Decree.

21. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which the Company does not expressly consent) that provision will be superseded by such Commission rule or order.

23. **Successors and Assigns.** The Company agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute and shall not be construed as either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws. The Parties also agree that this Consent Decree does not constitute an admission of liability by the Company or a concession by the Commission that its Investigation was not well-founded.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

26. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

27. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

28. **Counterparts.** This Consent Decree may be signed in counterpart (including by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

²⁴ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Mark Sollenberger
Chief Financial Officer
First Communications, LLC

Date