

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

In the Matter of)	File No. EB-08-TC-5835
United World Telecom, LC)	NAL/Acct. No. 200932170861
Apparent Liability for Forfeiture)	FRN No. 0010159515

Response of United World Telecom, LC
To
Notice of Apparent Liability for Forfeiture

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SUMMARY

United World Telecom, LC (“UWT” or the “Company”), by undersigned counsel, hereby responds to the Notice of Apparent Liability for forfeiture (“Omnibus NAL”) released by the Chief, Federal Communications Commission, Enforcement Bureau, on February 24, 2009. The Omnibus NAL incorporates the above-captioned EB File Number. Through the Omnibus NAL, the Enforcement Bureau lumps UWT in with more than 600 other entities, each of which is accused of failure to comply, in varying degrees of breach, with the dictates of FCC Rule Section 64.2009(e). Each of the 666 entities listed in Appendix I of Omnibus NAL, including UWT, is tentatively fined a forfeiture in the amount of \$20,000 for these supposed breaches. As demonstrated by UWT herein, use of this “omnibus” vehicle to potentially expose more than 600 separate companies to an identical forfeiture, when neither the circumstances applicable to each -- nor the defenses available to each -- could possibly be identical, demonstrates a serious disregard by the Enforcement Bureau of Commission policy and precedent. Use of an “omnibus” NAL in the present circumstances also deprives each of the Appendix I companies of the full measure of due process which the Agency must provide. The use of an “omnibus” vehicle is particularly galling to UWT, which has previously explained to the Enforcement Bureau that the Company’s §64.2009(e) was indeed made prior to the March 1, 2008, deadline. Thus, the Company has no place within the “omnibus” carrier group.

Inasmuch as every entity listed on Appendix 1 to the Omnibus NAL has been purportedly contacted by the Enforcement Bureau pursuant to a separate EB File Number, UWT is not privy to the facts and circumstances involved in the remaining 665 cases. With respect to its own situation, however, UWT respectfully submits that the totality of the circumstances, which the Bureau is bound by rule and precedent to consider, militate against the imposition of a forfeiture against the Company in any amount. Indeed, because the Company did file the March 1, 2008 CPNI certification in February 2008, cancellation in full of the proposed forfeiture is mandatory.

Accordingly, UWT hereby respectfully requests that the tentative forfeiture against it pursuant to EB File No. 08-TC-5835 be cancelled in its entirety.

As demonstrated below, UWT has filed the annual CPNI officer's certification required of certain companies by Rule Section 64.2009(e) for both calendar year 2007(the focus of the Omnibus NAL) and calendar year 2008. The Company's initial §64.2009(e) filing was mailed to the Federal Communications Commission in February 2008; the Company's CPNI certification for calendar year 2008 was timely submitted via ECFS. Furthermore, UWT has also fully cooperated with the Enforcement Bureau's inquiry into the relevant circumstances of the 2007 §64.2009(e) filing. In fact, it was not until the Company received the Enforcement Bureau's September, 2008 Letter of Inquiry that it became aware the FCC had no record of the calendar year 2007 filing. Accordingly, the Company resubmitted its CPNI certification for the convenience of the Enforcement Bureau just days after receiving the LOI.

Throughout calendar years 2007 and 2008 the Company experienced zero attempts by data brokers to access customer CPNI. Likewise, the Company has received zero customer complaints regarding improper use or disclosure of CPNI. Thus, even if the FCC is unable to locate UWT's original February 2008 submission, UWT has caused no harm to the FCC's CPNI policies; nor has the Company damaged any individual through misuse or inadvertent disclosure of CPNI, irrespective of whether an annual officer's certification reached the FCC before or after March 1, 2008. In light of the above, the Enforcement Bureau must cancel the proposed forfeiture against UWT in its entirety, or at the very minimum reduce the forfeiture to a mere admonishment.

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I. INTRODUCTION.

United World Telecom, LC (“UWT” or the “Company”), by undersigned counsel, hereby responds to the Omnibus Notice of Apparent Liability (“Omnibus NAL”) for Forfeiture released by the Chief, Federal Communications Commission, Enforcement Bureau, incorporating in the above-captioned File Number, as well as 665 other discrete matters, on February 24, 2009. In filing this Response to the Omnibus NAL, UWT does not acquiesce to the procedural ability of the Enforcement Bureau to proceed against the Company by means of an “omnibus” NAL which lumps the Company in with more than 600 other entities. Each of the “Appendix I Companies”¹ is of necessity uniquely impacted by its own circumstances, and each is entitled to fair consideration of those circumstances by the Enforcement Bureau both prior to the issuance of a notice of apparent liability and prior to the issuance of any ultimate determination as to the appropriateness of a proposed forfeiture -- after each Respondent has availed itself of the opportunity to respond fully to the specific allegations raised in an NAL.²

¹ In the Matter of Annual CPNI Certification Omnibus Notice of Apparent Liability, File No. See Appendix A (Feb. 24, 2009) (“Omnibus NAL”), ¶ 1.

² 47 C.F.R. §1.80(f).

Accordingly, UWT will first address the procedural infirmities associated with the Enforcement Bureau's choice of proceeding by means of an "omnibus" NAL. UWT will thereafter respond to the general allegations raised against itself and the 665 other "Appendix I" companies through the Omnibus NAL. As explained more fully herein, the Enforcement Bureau's conclusions that UWT violated any Commission rule are erroneous and must be rescinded; the proposed forfeiture against UWT must be cancelled in its entirety. For the reasons more fully set forth below, UWT respectfully requests that the Enforcement Bureau dismiss the Omnibus NAL as to UWT, terminate proceeding File No. EB-08-TC-5835 and cancel in its entirety the proposed \$20,000 forfeiture against UWT.

II. THE "OMNIBUS" NAL IS A PROCEDURALLY INFIRM MEANS OF ASSESSING FORFEITURES FOR FAILURE TO COMPLY WITH FCC RULE SECTION 64.2009(e).

A. An Omnibus NAL does not provide sufficient due process protections For UWT or any of the other 665 entities listed in Omnibus NAL Appendix I

As an official agency of the United States government, the FCC is bound to adhere to fundamental principles of due process. The Enforcement Bureau, acting according to delegated authority as it does here, is likewise constrained. The Supreme Court has held that

"Due process, unlike some legal rules, is not a technical concept unrelated to time, place and circumstances. Due process is flexible and calls for such procedure protections as the situation demands."³

Furthermore,

"[I]t is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."⁴

The existing procedures of the FCC do not contemplate an omnibus NAL proceeding in which the Enforcement Bureau attempts to justify the *bona fides* of imposing 666 separate forfeitures,

³ Matthews v. Eldridge, 424 U.S. 319 (1976).

⁴ United States v. Cacaes, 440 U.S. 741, 751 (1979).

based upon 666 separate sets of facts and circumstances, against 666 diverse entities – each of which will have widely varying defenses to the allegations raised. And the Enforcement Bureau’s reminder to each of the 666 Appendix I companies to the effect that each “will have the opportunity to submit further evidence and arguments in response to this NAL”⁵ does not cure the due process shortcomings caused by its choice to proceed by means of a flawed, albeit expedient, “omnibus” document.

The instant Omnibus NAL takes more than 23 pages to do nothing more than list, at Appendix I, name after name of the entities subject to the Omnibus NAL. The Omnibus NAL itself, however, provides a mere 4 sentences which purportedly advise this 23 pages of companies what each has done to warrant a \$20,000 forfeiture:

“In this Omnibus Notice of Apparent Liability for Forfeiture (‘NAL’), we find that the companies listed in Appendix I of this Order (‘the Companies’), by failing to submit an annual customer proprietary network information (‘CPNI’) compliance certificate, have apparently willfully or repeatedly violated section 222 of the Communications Act of 1934, as amended (the ‘Act’), section 64.2009(e) of the Commission’s rules and the Commission’s *Epic CPNI Order*. . . . The companies failed to comply with the annual certification filing requirement and did not file compliance certifications on or before March 1, 2008, for the 2007 calendar year. . . . Each of the Companies failed to submit satisfactory evidence of their timely filing of their annual CPNI certifications. The Bureau has determined that as a result of the Companies’ failure to file annual CPNI certifications, the Companies are in apparent violation of section 222 of the Act, section 64.2009(e) of the Commission’s rules, and the Commission’s *EPIC CPNI Order*.”⁶

Indeed, the totality of the Omnibus NAL consists of a mere 17 paragraphs; 7 of these do nothing more than recite standard ordering paragraph language advising the 666 potentially affected companies the date upon which and to whom payment of the \$20,000 forfeiture should be made. In the remaining 10 paragraphs, the Enforcement Bureau provides a scant 2 paragraphs of

⁵ Omnibus NAL, ¶ 1.

⁶ *Id.*, ¶¶ 1, 4.

background on the FCC's CPNI proceeding (which has spanned more than 13 years) and a single paragraph entitled "discussion" which imposes the 666 lock-step forfeitures.⁷

UWT respectfully submits that issuance of this single NAL is unlikely to instill in the 666 Appendix I companies a sense that their respective information responses to the Enforcement Bureau were adequately considered by Staff prior to issuance of the Omnibus NAL.⁸ Nor does the situation now confronting the Enforcement Bureau – the necessity of analyzing and considering the various facts and circumstances presented by perhaps as many as 666 Responses to NAL – instill confidence that the Enforcement Bureau has manpower resources sufficient to give those NAL Responses anything other than the short-shrift treatment which Appendix I companies have apparently experienced up to this point.

The Enforcement Bureau's choice to proceed by means of an "omnibus" notice of apparent liability is irreconcilable with the FCC's historic commitment to "protect[] the public and ensure[] the availability of reliable, affordable communications" by considering the totality of the circumstances⁹ and by assessing the degree of harm which has actually resulted from a perceived rule violation.¹⁰ This omnibus decisional mechanism is also inconsistent with the FCC's enunciated policy expressed in the *Forfeiture Policy Statement* that it will continue to exercise its "discretion to look

⁷ The Omnibus NAL makes abundantly clear that the rich and full history of the CPNI proceeding as a whole has been almost completely ignored, as has the Enforcement Bureau's ethical obligation to diligently investigate matters prior to exercising its enforcement authority.

⁸ UWT's own response to the Enforcement Bureau's Letter of Inquiry occurred nearly six months ago. At that time, the Company believed it had adequately explained the filing mix-up to Staff and provided a follow-up filing purely for the purpose of assuring the Enforcement Bureau that the company had no data broker actions and no customer-initiated CPNI complaints in calendar year 2007.

⁹ See, e.g., *U.S. v. Neely*, --- F.Supp. 29----, 2009, WL 258886 (January 29, 2009) ("Flexibility to review the totality of circumstances" [is] "reflected in precedent and retained by the FCC in its forfeiture guidelines.")

¹⁰ In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order, CI Docket No. 95-6, FCC 97-218, ("*Forfeiture Policy Statement*"), ¶ 20.

at the individual facts and circumstances surrounding a particular violation.”¹¹ It is equally inconsistent with the Small Business Regulatory Enforcement Fairness Act’s principle (with which the FCC states its forfeiture rules are in accord) that “warnings, rather than forfeitures . . . may be appropriate in cases involving small businesses”.¹² It is further inconsistent with the Commission’s “general practice to issue warnings with first time violators . . . this type of violator would receive a forfeiture only after it has violated the Act or rules despite prior warning.”¹³

This shift away from Commission precedent as embodied in the *Forfeiture Guidelines Report and Order* and toward the issuance of “omnibus NALs” appears to be of very recent origin. The only other example of an attempt to utilize an “omnibus” proceeding to subject multiple unrelated entities to summary liability appears to be Former Chairman Martin’s recent *Omnibus NAL Against Various Companies for Apparent Violations of the Commission’s DTV Consumer Education Requirements*. Originally scheduled for consideration at the FCC’s December 12, 2008 Open Meeting (ultimately cancelled), that omnibus NAL was never considered by the Commission.¹⁴

¹¹ *Id.*, ¶ 6.

¹² *Id.*, ¶ 51. UWT and certainly a number of the other 665 Appendix I companies, satisfies the statutory definition of “small business” (“The SBA has defined a small business for Standard Industrial Classification (SIC) categories for interexchange carriers, toll resellers and prepaid calling card providers of “small if it has 1,500 or fewer employees”. In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, Report and Order and Further Notice of Proposed Rulemaking, FCC Rcd. 11275 (2007) (“*IP-Enabled Report and Order*”), ¶¶ 100, 102, 104.)

¹³ *Id.*, ¶ 23. Inasmuch as the annual certification filing set forth in §64.2009(e) was only effective for the first time as of the March 1, 2008 filing, every company impacted by the Omnibus NAL falls within the category of entities which, according to continuing Commission practice, should be subject to no more than a warning here.

¹⁴ Indeed, the FCC’s historic use of any sort of an “omnibus” proceeding has been sparse, to say the least. To Respondent’s knowledge, these few departures from a more individualized consideration of facts have not been utilized by the Agency to accomplish a purpose so broad (or so financially detrimental) as the instant NAL, which seeks to impose a significant financial forfeiture on 666 separate entities. (See, e.g., *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Chariton, Bloomfield, and Mecher, Iowa)*, MM Docket No. 89-264, 1992) (omnibus notice of proposed rulemaking); *In the Matter of Review of the Technical Assignment Criteria for the AM Broadcast Services*, MM Docket No. 87-267 (1990) (omnibus notice

The Omnibus NAL informs the Appendix I companies that in order to avoid the ripening of the proposed forfeiture into an enforceable debt collectible through government process, “each of the Companies listed in Appendix I” . . . must file “a written statement seeking reduction or cancellation of the proposed forfeiture.”¹⁵ Pursuant to FCC Rule §1.80, companies caught up in the Omnibus NAL must take this action within 30 days of the issuance of the Omnibus NAL, *i.e.*, no later than March 26, 2009 (a mere 10 days following the date upon which affected carriers were required to complete the FCC’s newly expanded Form 477 filing utilizing, for the first time, the FCC’s newly developed on-line filing system, and a mere 5 days prior to the FCC’s annual Form 499-A filing).¹⁶ FCC rules also ensure UWT’s right to petition for reconsideration of any NAL decision which may be issued following the Enforcement Bureau’s consideration of the facts set forth in this Response and, if necessary, to seek further vindication of its rights before the courts. UWT is confident that these further actions will not become necessary.

Unfortunately for the Enforcement Bureau, however, the bare existence of continuing rights to press for a legitimate factual and equitable review of circumstances at a later date cannot diminish the negative impact of the Omnibus NAL upon the Appendix I companies, required in the here-and-now to respond to allegations which should never have been raised in the first place:

of inquiry); In the Matter of Amendments of Part 73 of the Rules to Provide for an Additional FM State Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, MM docket No. 88-357 (1989) (omnibus notice); In the matter of Amendment of the Commission’s rules Regarding the Modification of FM and Television Station Licensee, MM Docket No. 83-1148 (1984) (omnibus notice); and In the Matter of Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, BC Docket No. 80-90 (1984) (omnibus notice).

¹⁵ Omnibus NAL, ¶ 13.

¹⁶ 47 C.F.R. § 1.80. This timing is most unfortunate, requiring respondent entities to take away much-needed resources from these other administrative functions; it is perhaps unavoidable, however, given that the FCC’s NAL rules would have prevented the issuance of an NAL against any entity (even one which might have no defenses available to the allegations) if the Enforcement Bureau had delayed even a few days longer before issuing the Omnibus NAL. *See, e.g.*, 47 U.S.C. §503(b)(6) (“No forfeiture penalty shall be determined or imposed against any person under this subsection if . . . the violation charged occurred more than one year prior to the date of issuance of the . . . notice of apparent liability.”)

“[L]ong-settled principles that rules promulgated by a federal agency, which regulate the rights and interests of others [must be] ‘premised on fundamental notions of fair play underlie the concept of due process.’”¹⁷

Such fundamental notions of fair play are not present within the context of the Omnibus NAL, for as the United States Court of Appeals for the District of Columbia Circuit has noted, “the mere existence of a safety valve does not cure an irrational rule”.¹⁸ The mere possibility that UWT will ultimately be vindicated at some future date cannot offset the impact of the Hobson’s Choice confronting it today: the need to expend manpower and financial resources to defend itself against the ill-considered, cookie-cutter allegations set forth in the Omnibus NAL vs. the certainty of financial harm (and FCC “red-lighting”) if no defense is mounted.

As the Enforcement Bureau is aware,

“While agency expertise deserves deference, it deserves deference only when it is exercised; no deference is due when an agency has stopped shy of carefully considering the disputed facts.’ Cities of Carlisle and Neola, 741 F.2d at 443.”¹⁹

And as more fully explained *infra.*, the Enforcement Bureau made no effort to follow up with UWT and certainly provided no indication that UWT would be subject to financial penalty even though the Company had indeed timely submitted the March 1, 2008 filing. Thus, wholly apart from its unexplained departure from Commission precedent (which would have resulted in nothing more than a warning to UWT and the 665 other entities named in Appendix I) the Enforcement Bureau has failed to satisfactorily perform the type of investigation required in order to withstand due process scrutiny. The due process concerns presented by the Omnibus NAL, however, do not end there.

As the Omnibus NAL notes, “[t]he Bureau sent Letters of Inquiry (‘LOIs’) to the Companies asking them to provide copies and evidence of their annual CPNI filings.”²⁰ UWT is

¹⁷ Montilla v. I.N.S., 926 F.2d 162, 166-167 (2nd Cir. 1991).

¹⁸ See Icore, Inc. v. FCC, 985 F.2d 1075, 1080 (D.C. Cir. 1993); ALLTEL Corp. v. FCC, 838 F.2d 551, 561 (D.C. Cir. 1988).

¹⁹ Achemar Broadcasting Co. v. FCC, 62 F.3d 1441, 1447 (1995).

aware, and the Enforcement Bureau's own records will corroborate, that numerous companies in addition to the 666 listed in Appendix I received such Letters of Inquiry. These individual entity responses to the Enforcement Bureau's Letters of Inquiry are not the subject of any "restricted" proceeding; nor are they subject to any confidentiality restrictions which the parties themselves have not voluntarily imposed.

The FCC's NAL rules presuppose a single-party action (rather than an "omnibus" proceeding);²¹ thus, those very rules preclude UWT from participating in any of the 665 other Enforcement Files of the companies listed in the Appendix I. UWT is nonetheless aware, however, through the non-confidential flow of information among industry parties, that certain entities which provided responses to the Enforcement Bureau's Letters of Inquiry have not been named in Appendix I – and therefore are not presently facing forfeiture. This, even though certain of these parties provided explanatory statements to the Enforcement Bureau which were identical in circumstance and defense to those expressed in LOI responses provided by other entities which *are* presently facing a \$20,000 forfeiture as a result of the Omnibus NAL.

This is a clear example of the impropriety of proceeding via an "omnibus" NAL. "[T]he Commission's dissimilar treatment of evidently identical cases . . . seems the quintessence of arbitrariness and caprice."²² And "[i]f the agency makes an exception in one case, then it must either make an exception in a similar case or point to a relevant distinction between the two cases."²³ Putting the best face on this dissimilarity of treatment of similarly-situated regulated entities, UWT will acknowledge that the sheer magnitude of effort required for the Enforcement Bureau to adequately analyze every response it received to its mammoth LOI undertaking must have been

²⁰ Omnibus NAL, ¶ 4.

²¹ See FCC Rule §1.80(f), every sub-element of which speaks to an NAL against a single *respondent*.

²² Colo. Interstate Gas Co. v. FERC, 850 F.2d 769, 774 (D.C. Cir. 1988).

²³ NLRB v. Washington Star Co., 7323 F.2d 974, 977 (D.C. Cir. 1984).

immense. Perhaps, then, no intentional dissimilarity of treatment or result was actually intended by the Enforcement Bureau.

The LOIs went out to companies in September, 2008. Between then and the adoption and release of the Omnibus NAL on February 24, 2009, the Enforcement Bureau had approximately 180 days to receive in the informational responses, sit down and carefully analyze each one, consider the forfeiture policy factors as those factors would apply to each individual respondent's circumstances, and then determine whether a forfeiture would be appropriate. Only after making such a determination would the Enforcement Bureau proceed to assign an appropriate forfeiture amount to each individual circumstance deemed to warrant forfeiture.²⁴

As noted above, it is a matter of industry knowledge that certain entities which received an LOI from the Enforcement Bureau have not been named in the Omnibus NAL. It is logical to assume that such entities provided informational responses to their respective LOIs, and that following review the Enforcement Bureau determined forfeiture not to be appropriate. Potentially then, the Enforcement Bureau may have been required to undertake this individualized assessment with respect to thousands of LOI responses. Assuming for the sake of argument, however, that the Enforcement Bureau only received LOI responses from those 666 entities listed on Appendix I, and further assuming those informational responses started to come in to the Enforcement Bureau immediately, Staff would have had to resolve at least three LOI responses each calendar day in favor of forfeiture. Limiting analysis to only days in which the FCC was open for business, that number would more closely approach 5-1/2 resolutions in favor of forfeiture every day. And, of course, the Omnibus NAL was not the Enforcement Bureau's only active proceeding during that six-month window, further limiting Staff's availability for review of LOI responses.

²⁴ UWT notes that the uniform imposition of \$20,000 on each of the 666 Appendix I companies does not, on its face, appear to be the result of deliberate, individual forfeiture determinations by Staff.

As articulated by the Supreme Court, an

"agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. In reviewing that explanation, we must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment."²⁵

Given the sheer magnitude of the effort necessary to hold 666 separate entities liable of rule violations severe enough to warrant the imposition of a forfeiture, it is a statistical certainty that errors have been made by the Enforcement Bureau in arriving at its Appendix I results. Indeed, the public record itself confirms as much: in at least one case an Appendix I company, fined a potential \$20,000 forfeiture for failure to file a §64.2009(e) annual certification²⁶ was issued *on the very same day* a second NAL imposing an apparent forfeiture of \$6,000. In this second NAL, the Chief of the Enforcement Bureau admits, "[o]n January 3, 2008, [the company] filed its annual CPNI certificate with the Commission."²⁷

Through the instant Response to the Omnibus NAL, UWT avails itself of the "opportunity to submit further evidence and arguments."²⁸ This supplemental information, added to the information already provided in the Company's LOI response, makes clear that imposition of a proposed forfeiture against UWT was inappropriate to begin with and must now be cancelled. Although an Enforcement Bureau decision canceling the proposed forfeiture would not eliminate

²⁵ Motor Vehicle Mfrs. Assoc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). The Supreme Court has further held that the agency decision "must not 'entirely fail[] to consider an important aspect of the problem,'" such as the unique difficulties facing companies which as a result of their particular service models oftentimes have no access to CPNI. Neither the Enforcement Bureau nor the Commission has as yet officially recognized that any efforts to file a §64.2009(e) annual certification under those circumstances would represent nothing more than the type of "mere nullity" which runs contrary to law and FCC precedent.

²⁶ Omnibus NAL, Appendix I, ("One Touch India, EB-08-TC-4014).

²⁷ In the Matter of One Touch India LLC Apparent Liability for Forfeiture, File No. EB-09-TC-137, (Feb. 24, 2009), ¶ 4.

²⁸ Omnibus NAL, ¶ 1.

the procedural infirmities and due process concerns raised by the Omnibus NAL, it would at least relieve Respondent from the obligation to pay \$20,000 when it has committed no wrong. Indeed, no logical correlation exists between the financial harm the Enforcement Bureau seeks to visit upon UWT and any harm caused to the FCC's CPNI policies and consumer protection goals. In the instant case, such harm to CPNI policies and consumer protection goals is not merely negligible, it is nonexistent.

B. The Generic Conclusions Set Forth In the Omnibus NAL Are Impermissibly Broad and Inconsistent with the Underlying Purposes of Section 222 and the Commission's CPNI Rules

1. The Enforcement Bureau Erred by Failing to Consider the Congressional Intent Underlying Section 222 and the History Of the FCC's CPNI Rules

All 666 Appendix I companies are damaged by the Omnibus NAL's cursory allegations because the Enforcement Bureau clearly has failed to consider the Congressional intent underlying Section 222 as a whole. Bearing these underlying purposes in mind is essential to reasoned decisionmaking here. Failure of the Enforcement Bureau to have done so renders the Omnibus NAL the precise form of "frenzied rhetorical excess" which "in light of the actual facts, appears to be so lacking in merit" and which "cannot but [be] view[ed] with considerable suspicion."²⁹

The FCC's CPNI proceeding was opened in 1996 "to implement section 222 of the Act, which governs *carriers' use and disclosure of CPNI*."³⁰ Prior to that time, however, CPNI-like regulations did exist and were applicable to only a small universe of entities – those deemed most capable of the anticompetitive use of highly sensitive information to disadvantage competitors. Specifically, in its Computer II, Computer III, GTE ONA and BOC CPE Relief proceedings, "[t]he Commission . . . adopted . . . CPNI requirements . . . to protect independent enhanced service

²⁹ See *WCWN Listeners Guild v. FCC*, 610 F.2 838, 849 (1979).

³⁰ *Third Report and Order*, ¶ 5.

providers and CPE suppliers from discrimination by AT&T, the BOCS and GTE.”³¹ Even these early CPNI-like regulations made a clear distinction between information which was deemed to pose no competitive threat (and, accordingly, the use of which was not restricted) -- aggregate data consisting of “anonymous, non-customer specific information.”³² The FCC was particularly

“cognizant of the dangers . . . that incumbent LECs could use CPNI anticompetitively, for example, to: (1) use calling patterns to target potential long distance customers; (2) cross-sell to customers purchasing services necessary to use competitors’ offerings (e.g., attempt to sell voice mail service when a customer requests from the LEC the necessary underlying service, call forwarding-variable); (3) market to customers who call particular telephone numbers (e.g., prepare a list of customers who call the cable company to order pay-per-view movies for use in marketing the LEC’s own OVS or cable service); and (4) identify potential customers for new services based on the volume of services already used (e.g., market its on-line service to all residential customers with a second line.”³³

With the Telecommunications Act of 1996, “Congress . . . enacted section 222 to prevent consumer privacy protections from being inadvertently swept away along with the prior limits on competition.”³⁴ While a “fundamental objective” of Section 222 was “to protect from anti-competitive conduct carriers who, in order to provide telecommunications services to their own customers, have no choice but to reveal proprietary information to a competitor,”³⁵ the FCC also

³¹ In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 8061 (1998) (“*Second Report and Order*”), ¶ 7.

³² *Id.*, fnnt. 531.

³³ *Id.*, ¶59.

³⁴ *Id.*, ¶ 1. Even within the context of the earlier Computer II, Computer III, GTE ONA and BOC CPE proceedings, however, “CPNI requirements were in the public interest because they were intended to protect legitimate customer expectations of confidentiality regarding individually identifiable information.” In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carrier’s Use of Customer Proprietary Network Information, Notice of Proposed Rulemaking (“*CPNI NPRM*”), ¶ 12.

³⁵ In the Matter of Brighthouse Networks, LLC, et al, Complainants v. Verizon California, Inc., et. al, Defendants, Memorandum Opinion and Order, 23 FCC Rcd. 10704 (1998), ¶ 22. *See also*, In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Proprietary Network Information and other Customer Information; Implementation of the

made explicitly clear a central concept from which it has never waived: CPNI must be protected because it “consists of highly personal information.”³⁶ Indeed, the FCC has confirmed that the presence of such individually identifiable information is the essential characteristic of CPNI:

“Aggregate customer information is defined separately from CPNI in section 222, and involves collective data ‘from which individual customer identities have been removed.’ . . . aggregate customer information does not involve personally identifiable information, as contrasted with CPNI.”³⁷

In 1998, the FCC identified

“[t]hree categories of customer information to which different privacy protections and carrier obligations apply – individually identifiable CPNI, aggregate customer information, and subscriber list information. . . . Aggregate customer and subscriber list information, unlike individually identifiable CPNI, involve customer information that is not private or sensitive . . .”³⁸

Furthermore, the FCC has emphasized

“[t]he CPNI regulations in section 222 are largely consumer protection provisions that establish restrictions on carrier use and disclosure of personal customer information. . . . Where information is not sensitive, . . . the statute permits the free flow or dissemination of information beyond the existing customer-carrier relationship [W]here privacy of sensitive information is by definition *not* at stake, Congress expressly *required* carriers to provide such information to third parties on nondiscriminatory terms and conditions.”³⁹

Yet even as it has admonished carriers that CPNI must be scrupulously protected, the FCC has never required them to take action which would be unnecessary to the Agency’s enunciated privacy protection goals. Indeed, the FCC has explicitly informed carriers that they need not comply

Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended, 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers; Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd. 14860 (2002) (“*Third Report and Order*”), ¶ 131 (“We reaffirm our existing rule that a carrier executing a change for another carrier ‘is prohibited from using such information to attempt to change the subscriber’s decision to switch to another carrier.’”)

³⁶ Id., ¶ 61.

³⁷ Id., ¶ 143.

³⁹ Id., ¶ 3.

with aspects of the CPNI rules in situations where such rules would have no logical effect; *i.e.*, where no danger of anticompetitive use of individually identifiable personal information is possible:

“Moreover, to the extent carriers do not choose to use CPNI for marketing purposes, or do not want to market new service categories, they do not need to comply with our approval or notice requirements.”⁴⁰

Unlike the Enforcement Bureau’s attempt to impose the §64.2009(e) annual certification requirement upon all companies (regardless of whether any CPNI is possessed or used, and without regard to whether a company is subject to Title II⁴¹), the FCC’s exercise of restraint within the context of the CPNI approval and notice requirements constitutes a valid exercise of administrative authority which is consistent with the dictates of Lynch v. Tilden Produce Co. and its progeny.⁴²

The FCC has stated that its CPNI rules represent “a careful balancing of harms, benefits, and governmental interests.”⁴³ And a review of the overall history of the CPNI proceeding reveals this to be the case. As Commissioner Robert McDowell has observed, “our rules should strike a careful balance and should also guard against imposing over-reaching and unnecessary requirements that could cause unjustified burdens and costs on carriers.”⁴⁴ The Omnibus NAL, unfortunately, falls far short of achieving the type of balanced result that the FCC has always sought (and until the Omnibus NAL has achieved) with respect to the application of its CPNI rules.

2. The Enforcement Bureau Erred By Imposing §64.2009(e) Liability Upon Entities Which Have Not Violated FCC Rules

In the Omnibus NAL, the Enforcement Bureau places much emphasis upon Section 222’s “general duty on all carriers to protect the confidentiality of their subscribers’ proprietary

⁴⁰ Id., ¶ 236.

⁴¹ The only exercise of Title I ancillary jurisdiction noted in the *EPIC CPNI Order* apparently being the inclusion of providers of interconnected VoIP services within scope of 64.2009(e).

⁴² See p. 16, *infra*.

⁴³ *Third Report and Order*, ¶ 2.

⁴⁴ *IP-Enabled Report and Order*, Statement of Commissioner Robert M. McDowell, p. 1.

information,”⁴⁵ going so far as to characterize “protection of CPNI” as “a fundamental obligation of all telecommunications carriers as provided by section 222 of the Act.”⁴⁶ UWT does not disagree that the protection of highly personal individual information may indeed be a fundamental obligation of all telecommunications carriers which actually possess such information. The Omnibus NAL altogether fails to consider – prior to imposing blanket liability upon 666 companies – whether those companies even pose a risk of CPNI disclosure (which they do not) and, if not, whether any logical basis can be found for requiring the filing of the 64.2009(e) annual certification (which there is not).

Specifically referencing the 2006 actions of “companies known as ‘data brokers’”⁴⁷ as a result of which in 2007 “the Commission strengthened its privacy rules with the release of the *EPIC CPNI Order*,”⁴⁸ the Enforcement Bureau identifies the sole focus of the Omnibus NAL – the single sub-element of §64.2009 which directs companies to file for the first time in March 2008, an officer’s certification “explaining how its operating procedures ensure that it is or is not in compliance with the rules in th[e entire] subpart”⁴⁹ of §64.2009. In assessing identical forfeitures upon each of the 666 Appendix I companies⁵⁰ the Enforcement Bureau looks no farther than to determine whether an annual certification was filed (although forfeiture has also been imposed, apparently, for failure to file on or before the March 1, 2008 deadline). The inquiry which the Enforcement Bureau has not

⁴⁵ Omnibus NAL, ¶ 2.

⁴⁶ *Id.*, ¶ 1.

⁴⁷ *Id.*, ¶ 3.

⁴⁸ *Id.*

⁴⁹ As demonstrated in the following section, this requirement in and of itself is of particular concern to any company which, as a result of its business model, does not have access to CPNI. A number of the FCC’s CPNI rules generally have no applicability to such service models and the FCC has never suggested that it expects entities to undertake a regulatory action which would only be a nullity with respect to itself. See Section III, *infra*.

⁵⁰ At different points in the Omnibus NAL, the Enforcement Bureau bases such forfeiture upon the alternate, and inconsistent, theories of failure to file and also failure to file timely – certainly both situations cannot apply to a single entity; this is yet another example of why use of an Omnibus NAL was ill-considered.

made – and one which is critical to its determinations – is whether any of these entities actually had an obligation to make that filing.

For a company which did not have access to CPNI in calendar year 2007, §64.2009 is a nullity:

“The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law, for no such power can be delegated by Congress, but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity. Lynch v. Tilden Produce Co., 265 U.S. 315, 320-322, 44 S.Ct. 488, 68 L. Ed. 1034; Miller v. United States, 294 U.S. 435, 439, 440, 55 S.Ct. 440, 79 L.Ed. 977, and cases cited. And not only must a regulation, in order to be valid, be consistent with the statute, but it must be reasonable. International R. Co. v. Davidson, 251 U.S. 506, 514, 42 S.Ct. 179, 66 L.Ed. 341. The original regulation as applied to a situation like that under review is both inconsistent with the statute and unreasonable.”⁵¹

The annual certification requirement of §64.2009(e) might indeed be consistent with the Congressional intent of Section 222 generally under some circumstances; furthermore, requiring companies which pose an actual risk to consumer privacy to make this certification may be reasonable. However, requiring entities *which possess no access CPNI* – and therefore (i) could not possibly pose the identified risk of potential misuse or unintentional release of individually identifiable personal information, (ii) could not possibly experience data broker actions; (iii) could not possibly experience customer-initiated CPNI complaints – to file the annual officer’s certification coupled with an explanation of how the entity has taken steps to comply with FCC CPNI rules (which only have real, rather than purely theoretical, application to an entity which *does* possess access to CPNI) can by no means be considered either “consistent with the statute” or “reasonable”.

⁵¹ Manhattan General Equipment Co. v. Commissioner of Internal Revenue, 297 U.S. 129, 134-135, 56 S.Ct. 397, U.S. 1936.

Accordingly, to the extent any of the 666 Appendix I companies is within this category, whether it is a wholesale provider serving only other carriers, a provider of prepaid services, a provider of services utilizing exclusively LEC billing services, or which for any other reason does not have access to CPNI, the proposed forfeiture of the Omnibus NAL must be cancelled in its entirety.

The Omnibus NAL is likewise flawed, at least with respect to UWT, because it attempts to impose liability for a rule violation which did not occur. UWT respectfully submits that had the Enforcement Bureau taken a more reasoned and rational approach to its consideration of all the LOI responses it received, it would never have issued its magnum opus “omnibus NAL.” It would have first come to understand the dilemma facing companies which do not have access to CPNI (and eliminated those companies from the master list of companies which have come to form Appendix I). With a much smaller list of potential rule violators to consider, the Enforcement Bureau then would have had the ability – and the appropriate mindset – to truly consider whether forfeiture is appropriate when a company has taken all diligent steps to comply with the rule section. In short, UWT would also have been removed from the short list of companies liable for potential forfeiture here. The proposed forfeiture against UWT must also be cancelled in its entirety.

III. UWT HAS FULLY COMPLIED WITH SECTION 64.2009

UWT actually submitted the March 1, 2008, CPNI certification and did so prior to March 1, 2008. UWT also responded promptly to the Enforcement Bureau’s inquiry into whether the Company had satisfied this inapplicable requirement (and received no indication from Staff to the contrary). Furthermore, the Company provided a second courtesy filing in order that the Enforcement Bureau might rest assured that UWT had experienced no data broker incidents or customer CPNI-related complaints during calendar year 2007. Thus, as an initial matter, the

Omnibus NAL's generic conclusion that UWT "fail[ed] to submit an annual customer proprietary network information ('CPNI') compliance certificate"⁵² is clearly erroneous and must be set aside.

It is also patently incorrect that UWT violated "section 222 of the Communications Act of 1934, as amended (the 'Act')"⁵³. The Company fully protected customer CPNI during the entirety of calendar year 2007:

Section 64.2009(a) deals with the implementation of a system which will establish a customer's CPNI approval prior to use.⁵⁴ As both UWT's initial filing and its follow-up courtesy filing make clear, the Company does not use CPNI and was fully compliant with §64.2009(a) in 2007.

Section 64.2009(b) directs carriers to train their personnel "as to when they are and are not authorized to use CPNI" and further demands the establishment of "an express disciplinary process in place."⁵⁵ UWT was likewise fully compliant with §64.2009(b) in 2007.

Section 64.2009(c) deals with the retention of records of "all instances where CPNI was disclosed or provided to third parties, or where third parties were provided access to CPNI."⁵⁶ UWT was fully compliant with §64.2009(c) in 2007.

Section 64.2009(d) deals with supervisory review of "outbound telemarketing situations."⁵⁷ UWT was fully compliant with §64.2009(d) in 2007.

And §64.2009(f), the only remaining sub-element other than the annual certification itself, directs carriers to provide written notice to the Commission "of any instance where the opt-out mechanisms do not work properly." UWT did not experience any such instance during 2007; however, if it had, it would have complied with the notification requirement of §64.2009(f).

⁵² Omnibus NAL, ¶ 1.

⁵³ *Id.*, ¶4.

⁵⁴ 47 C.F.R. §64.2009(a).

⁵⁵ 47 C.F.R. §64.2009(b).

⁵⁶ 47 C.F.R. §64.2009(c).

⁵⁷ 47 C.F.R. §64.2009(d).

Finally, as to the sole remaining allegation of the Omnibus NAL, it is also clearly false that UWT has violated FCC rules by “not fil[ing] compliance certifications on or before March 1, 2008, for the 2007 calendar year.”⁵⁸ As noted above, UWT did make this filing – and made it timely.

The Omnibus NAL in the aggregate seeks to impose \$13,200,000 in apparent liability for forfeiture. It bears repeating that the Enforcement Bureau has does this without giving any consideration to whether any of the 666 Appendix I companies has done any actual harm to the FCC’s CPNI policies in general or to any consumer in particular. Rather, the Omnibus NAL imposes upon each Appendix I company a “knee-jerk”, uniform \$20,000 forfeiture, ostensibly for failure to file a §64.2009(e) certification.⁵⁹ In UWT’s case, this allegation is simply untrue. UWT has filed a §64.2009(e) certification for calendar year 2007 – and the record in EB Docket No. 06-36 demonstrates that numerous of the other 665 Appendix I companies have done the same.

After twice asserting the Appendix I companies have “failed to file” the §64.2009(e) certification, the Omnibus NAL asserts as a separate violation that certain of the Appendix I companies “failed to §64.2009(e) certification on or before March 1, 2008.”⁶⁰ On this point as well, the Omnibus NAL is incorrect; UWT has not violated §64.2009(e) by failing to timely file an annual certification. UWT’s §64.2009(e) certification, attached hereto as Exhibit A, was indeed filed, and it was filed within mere days of receipt of the Enforcement Bureau’s LOI.

The above allegations are the totality of the charges made against UWT (and the other 665 Appendix I companies); both allegations are false, both must be rescinded and, the proposed forfeiture against UWT must be cancelled in its entirety.

58

Id.

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Omnibus NAL, ¶¶ 1, 4.

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Id., ¶4.

IV. APPLICATION OF THE FACTORS SET FORTH IN THE FCC'S FORFEITURE POLICY STANDARDS MANDATE THE CANCELLATION OF THE OMNIBUS NAL AGAINST UWT

As demonstrated above, UWT is not liable for forfeiture in any amount because the Company has not violated Section 222 of the Act, §64.2009(e) or the *EPIC CPNI Order*. However, the Company is mindful that any argument not advanced in this Response may be lost to it and therefore, it addresses below the factors from the FCC's *Forfeiture Policy Standards* which the Enforcement Bureau is obligated to take into account: "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶¹ By addressing these factors herein, UWT does not concede that any amount would be appropriate as a forfeiture; this analysis is provided only out of an abundance of caution to ensure that the Company's Response to the Omnibus NAL is deemed complete in every respect.

The FCC has stated that "[t]he mitigating factors of Section 503(b)(2)(D) will . . . be used to make adjustments in all appropriate cases."⁶² Those factors, all of which support a downward adjustment of the proposed forfeiture amount, are addressed here.

To begin with, it should be noted that none of the factors which the FCC considers most significant to retention of a proposed forfeiture in its original amount (or in truly serious situations possibly elevating the amount of a forfeiture) is at issue here.⁶³ Even in the case of a company which is subject to the §64.2009(e) annual certification filing requirement, the filing itself is a mere ministerial act. Failure to strictly meet a March 1st filing deadline can hardly be considered "egregious misconduct". Furthermore, the FCC considers whether the amount of any forfeiture is

⁶¹ 47 U.C.S. §503(b).

⁶² *Forfeiture Policy Statement*, ¶ 53.

⁶³ See *Forfeiture Policy Statement*, Adjustment Criteria for Section 503 Forfeitures ("Upward Adjustment Criteria: (1) egregious misconduct; (2) ability to pay/relative disincentive; (3) intentional violation; (4) substantial harm; (5) prior violations of any FCC requirements; (6) substantial economic gain; (7) repeated or continuous violation.")

necessary in order to constitute a “relative disincentive” to repeating rule violations in the future. UWT, which complied with §64.2009(e) as an initial matter (and which has also timely filed its CPNI certification covering calendar year 2008) needs no incentive to continue complying with FCC rules; it has been doing so voluntarily throughout its operation.

However, in today’s economy, no company can afford to spend money needlessly and UWT cannot rationally justify the expenditure of \$20,000 when it has not violated any FCC rule. Thus, there is an element of “inability to pay” in the instant situation; UWT would be hard-pressed to find an explanation acceptable to its auditors and members if it were to make such an unjustified – and unjustifiable – payment.

And because UWT believed it had successfully accomplished the March 2008 filing, the possibility of “intentional violation” of §64.2009(e) is not present here.⁶⁴ With respect to the issue of “substantial harm”, UWT has clearly demonstrated herein that the Company has caused *no harm* to the FCC’s CPNI policies and no harm to any consumer.

UWT has never received a warning or an admonishment from the FCC. Furthermore, since the filing obligation addressed in the Omnibus NAL arose only for the first time in March 2008, there is no possibility that UWT is guilty of a prior violation of §64.2009(e). Neither UWT nor any other entity stands to reap a “substantial economic gain” from refusal to timely fulfill a ministerial §64.2009(e) filing obligation; and inasmuch as the Omnibus NAL was issued prior to the second annual §64.2009(e) filing deadline, no entity – including UWT – could have been guilty of a repeated violation thereof.

⁶⁴ Indeed, no violation of an FCC rule is present here at all – intentional or otherwise.

Each of the factors which the FCC considers relevant to a *downward* adjustment of a proposed forfeiture is, however, present here.⁶⁵ And each of those factors weigh heavily in favor of a significant reduction in the proposed forfeiture, up to and including reduction of the forfeiture from a monetary fine to a mere warning or admonishment. As noted above, UWT, like many of the other 665 Appendix I companies, made a §64.2009(e) filing for calendar year 2007. Thus, even if the Company's February 2008 submission needed to be repeated later, that resubmission would constitute at most a "minor violation" of a rather arbitrarily set deadline. As to "good faith" and "voluntary disclosure", UWT's making of the original filing in February 2008 is the ultimate in good faith. And since UWT was unaware the Enforcement Bureau did not have a copy of that filing until the Company received the September 2008 LOI, it was unaware a "disclosure" of any kind was called for. After receipt of the LOI, however, UWT promptly and fully complied with Staff requests for information.

Staff is directed by §503 to also consider "such other matters as justice may require."⁶⁶ Furthermore, pursuant to FCC Rule §1.3, the FCC may waive any rule for good cause shown.⁶⁷ Thus, even if UWT's February 2008 filing did not make it to the Commission, upon the above facts the interests of justice surely support a waiver of the March 1st filing rule. Furthermore, the FCC has held that "warnings can be an effective compliance tool in some cases involving minor or first time offenses. The Commission has broad discretion to issue warnings in lieu of forfeitures."⁶⁸ Exercise

⁶⁵ See *Forfeiture Policy Statement*, Adjustment Criteria for Section 503 Forfeitures ("Downward Adjustment Criteria: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of overall compliance; (4) inability to pay.")

⁶⁶ 47 U.C.S. §503(b).

⁶⁷ 47 C.F.R. §1.3.

⁶⁸ *Forfeiture Policy Statement*, ¶31. See also 47 C.F.R. §1.89.

of that discretion, rather than imposition of a forfeiture, would certainly have been the appropriate course of action for the Enforcement Bureau in this case.⁶⁹

CONCLUSION

By reason of the foregoing, United World Telecom, LC hereby respectfully requests that the Enforcement Bureau cancel the proposed \$20,000 forfeiture against it, dismiss the Omnibus NAL in its entirety (or reduce it to a mere admonishment against UWT), terminate proceeding File No. EB-08-TC-5835, cancel the proposed \$20,000 forfeiture against UWT in its entirety or, at a minimum, severely reduce the forfeiture as set forth above.

Respectfully submitted,



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Catherine M. Hannan, Esq.
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McLean, Virginia 22101
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March 25, 2009

Counsel for United World Telecom, LC

⁶⁹ Indeed, so strong is the FCC's commitment to this policy of issuing only warnings to first time violators that it has stated its intent to apply the practice "except in egregious cases involving harm to others or safety of life issues." *Forfeiture Policy Statement*, ¶23.

CERTIFICATE OF SERVICE

I, Suzanne Rafalko, hereby certify that true and correct copies of the foregoing Response of United World Telecom, LC to Omnibus Notice of Apparent Liability for Forfeiture, were served upon the following, in the manner indicated, this 25th day of March, 2009.

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o NATEK
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002
(via Hand Delivery)

Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ATTN: Enforcement Bureau – Telecommunications Consumers Division
(via overnight courier)

Marcy Greene, Deputy Chief
Telecommunications Consumers Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20005
(Reference: NAL/Acct. No. 200932170332)
(via overnight courier and electronic transmission)


Suzanne Rafalko

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

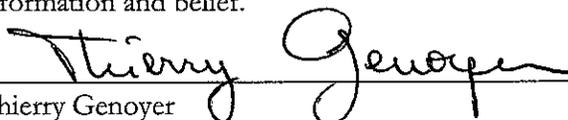
In the Matter of)
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United World Telecom, LC)
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Apparent Liability for Forfeiture)
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_____)

File No. EB-08-TC-5835
NAL/Acct. No. 200932170861
FRN No. 0010159515

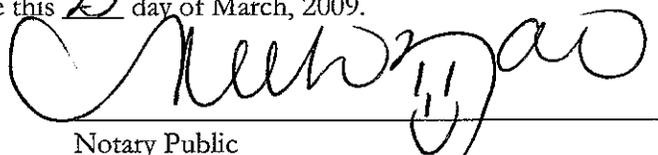
**AFFIDAVIT OF
THEIRRY GENOYER**

State of Florida)
)
County of Palm Beach)

I, Thierry Genoyer, being duly sworn according to law, depose and say that I am Chief Executive Officer and Managing Member of United World Telecom, LC ("UWT"); that I have personal knowledge of the facts and circumstances in this matter; that the facts set forth in the foregoing Response of to Omnibus Notice of Apparent Liability for Forfeiture ("Response") are true and correct to the best of my knowledge, information and belief.


Thierry Genoyer

Subscribed and sworn before me this 23 day of March, 2009.


Notary Public

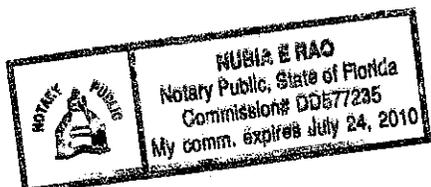


Exhibit A

UWT Letter of Inquiry Response

From: EB-TCD CPNI
To: Thierry Genoyer - United World Telecom;
Subject: RE: File No. EB-08-TC-5835
Date: Saturday, October 04, 2008 3:32:27 PM

We have received your filing. Thank you.

From: Thierry Genoyer - United World Telecom [mailto:tgenoyer@uwtcallback.com]
Sent: Wednesday, September 10, 2008 4:03 PM
To: Robert Somers; Marcy Greene
Subject: File No. EB-08-TC-5835

****resent with attachements****

I am the CEO and Managing Member of United World Telecom LC

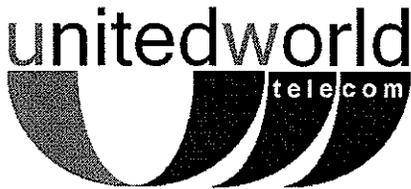
I am in receipt of your letter of inquiry dated September 5, 2008 asking whether United World Telecom LC filed a 47 CFR 64.2009(e) compliance certificate for the calendar year 2007 on or before March 1, 2008 in EB Docket 06-36, and commanding that we either provide a copy of evidence of filing or submit a detailed explanation of why not.

While we did file the above mentioned compliance certificate, I cannot provide a copy of evidence of timely filing. We mailed our compliance certificate in February 2008, but have no proof of it. Since it seems to have been lost in the mail, I resubmitted the certificate today using the Internet (see attached screen print of today's confirmation).

In order to prevent this type of problem in the future, I will from now on file the annual certificate over the Internet.

If you have any question, please contact me on my cell phone at 561 213 4637 or by return email. Thank you for your understanding.

Thierry Genoyer
CEO and Managing Member
United World Telecom
(C) 561 213 4637
(O) 561 276 7156 ext 311



United World Telecom
5300 W Atlantic Avenue, Suite 500
Delray Beach FL 33484 USA
Tel: +1 561 276-7156 - Fax: +1 561 243-2634
Email: uwt@uwcallback.com
<http://www.uwcallback.com>

September 10, 2008

Annual 64.2009 (e) CPNI Compliance Certificate for 2007

Name Of Company Covered by this Certificate: United World Telecom

Form 499 Filer ID: 823894

Name of Signatory: Thierry Genoyer

Title of Signatory: CEO and Managing Member

I, Thierry Genoyer, certify that I am an officer of the company named above, and acting as an agent of the company, that I have personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules. See 47 C.F.R. S: 64.2001 et seq.

Attached to this certification is an accompanying statement explaining how the company's procedures ensure that the company is in compliance with the requirements set forth in section 64.2001 et seq. of the Commission's rules.

The company has not taken any actions (proceedings instituted or petitions filed by a company at either state commissions, the court system, or at the Commission against data brokers) against data brokers in the past year.

The company has not received any customer complaints in the past year concerning the unauthorized release of CPNI.

Signed _____

Thierry Genoyer

Accompanying Statement to Annual Certification of CPNI

United World Telecom has not used CPNI except as included in 47 U.S.C. 222(d) exceptions.

- a) United World Telecom has not sought customer approval of the use of CPNI since CPNI is not used.
- b) United World Telecom has trained all personnel with access to CPNI as to the identification of CPNI and when CPNI may be used and has an express disciplinary process in place for any improper use of CPNI.
- c) United World Telecom has not used CPNI in any sales or marketing campaign.
- d) No outbound sales and marketing campaign can be conducted without management approval and any such campaign would require supervisory review to assure compliance with the CPNI rules.

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

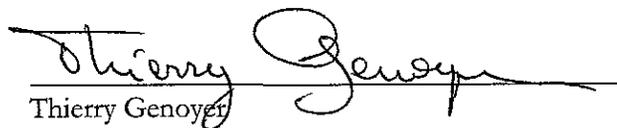
In the Matter of)
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United World Telecom, LC)
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Apparent Liability for Forfeiture)
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File No. EB-08-TC-5835
NAL/Acct. No. 200932170861
FRN No. 0010159515

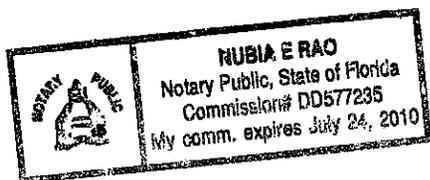
VERIFICATION

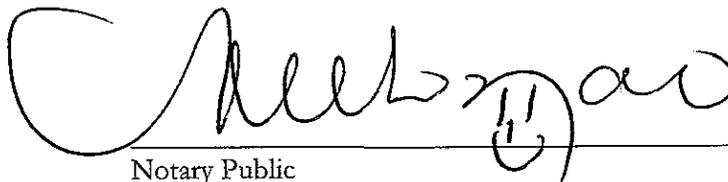
State of Florida)
)
County of Palm Beach)

I, Thierry Genoyer, being duly sworn according to law, depose and say that I am Chief Executive Officer and Managing Member of United World Telecom, LC ("UWT"); that I am authorized to and do make this Verification for it; that the facts set forth in the foregoing Response of to Omnibus Notice of Apparent Liability for Forfeiture ("Response") are true and correct to the best of my knowledge, information and belief. I further depose and say that the authority to submit the Response has been properly granted.


Thierry Genoyer

Subscribed and sworn before me this 23 day of March, 2009.




Notary Public