

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

In the Matter of)	File No. EB-08-TC-5135
Quasar Communications Corporation)	NAL/Acct. No. 200932170687
Apparent Liability for Forfeiture)	FRN No. 0009119124

PUBLIC [REDACTED] VERSION

Response of Quasar Communications Corporation
To
Notice of Apparent Liability for Forfeiture

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SUMMARY

Quasar Communications Corporation (“Quasar” 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 Quasar 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 Quasar, is tentatively fined a forfeiture in the amount of \$20,000 for these supposed breaches. As demonstrated by Quasar 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 that the Agency must provide.

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, Quasar is not privy to the facts and circumstances involved in the remaining 665 cases. With respect to its own situation, however, Quasar respectfully submits that the totality of the circumstances, that the Bureau is bound by rule and precedent to consider, militate against the imposition of a forfeiture against the Company in any amount. Accordingly, Quasar hereby respectfully requests that the tentative forfeiture against it pursuant to EB File No. 08-TC-5135 be cancelled in its entirety.

As demonstrated below, Quasar 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. Furthermore, Quasar has also fully cooperated with the Enforcement Bureau's inquiry into the relevant circumstances of the 2007 §64.2009(e) filing.

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, Quasar 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 Quasar in its entirety, or at the very minimum reduce the forfeiture to a mere admonishment.

For all the above reasons, Quasar respectfully requests that the Enforcement Bureau dismiss the NAL in its entirety as to Quasar, terminate proceeding File No. EB-08-TC-5135 and cancel the \$20,000 proposed forfeiture against Quasar.

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I. INTRODUCTION.

Quasar Communications Corporation (“Quasar” 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 the above-captioned File Number, as well as 665 other discrete matters, on February 24, 2009. In filing this Response to the Omnibus NAL, Quasar does not acquiesce to the procedural ability of the Enforcement Bureau to proceed against the Company by means of an “omnibus” NAL that 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 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, Quasar will first address the procedural infirmities associated with the Enforcement Bureau's choice of proceeding by means of an "omnibus" NAL. Quasar 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 Quasar violated any Commission rule are erroneous and must be rescinded; the proposed forfeiture against Quasar must be cancelled in its entirety. For the reasons more fully set forth below, Quasar respectfully requests that the Enforcement Bureau dismiss the Omnibus NAL as to Quasar, terminate proceeding File No. EB-08-TC-5135 and cancel in its entirety the proposed \$20,000 forfeiture against Quasar.

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 Quasar 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 that 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 that 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 that 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 that 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 background

⁵ Omnibus NAL, ¶ 1.

⁶ *Id.*, ¶¶ 1, 4.

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

Quasar 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 that 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 that 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 at the individual facts and circumstances surrounding a particular violation."¹¹ It is equally

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 Quasar's own response to the Enforcement Bureau's Letter of Inquiry occurred more than six months ago. At that time, the Company provided sufficient evidence to support its position that forfeiture is inappropriate here, and the Enforcement Bureau gave no indication to the contrary.

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.

¹¹ *Id.*, ¶ 6.

inconsistent with the Small Business Regulatory Enforcement Fairness Act's principle (with that 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

¹² *Id.*, ¶ 51. Quasar 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 that, 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, that 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 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

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 that 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 Quasar’s right to petition for reconsideration of any NAL decision that 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. Quasar 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 that should never have been raised in the first place:

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 that 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, that 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 Quasar 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

Wholly apart from its unexplained departure from Commission precedent (that would have resulted in nothing more than a warning to Quasar and the 665 other entities named in Appendix I) the Enforcement Bureau has failed to satisfactorily perform the type of investigation upon that a proposed forfeiture might 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 Quasar is 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

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

²⁰ Omnibus NAL, ¶4.

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 that 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 Quasar from participating in any of the 665 other Enforcement Files of the companies listed in the Appendix I. Quasar is nonetheless aware, however, through the non-confidential flow of information among industry parties, that certain entities that 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 that were identical in circumstance and defense to those expressed in LOI responses provided by other entities that *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, Quasar 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 immense. Perhaps, then, no intentional dissimilarity of treatment or result was actually intended by the Enforcement Bureau.

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).

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 that 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 that 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.

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

²⁴ Quasar 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.

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, Quasar 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 Quasar was inappropriate to begin with and must now be cancelled. Although an Enforcement Bureau decision canceling the proposed forfeiture would not eliminate 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,

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 circumstances more fully described in Section II.B.2 hereof. At present, neither the Enforcement Bureau nor the Commission as a whole has considered the unique difficulties facing companies that as a result of their particular service models oftentimes have no access to CPNI; and neither have 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” that 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.

no logical correlation exists between the financial harm the Enforcement Bureau seeks to visit upon Quasar 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" that "in light of the actual facts, appears to be so lacking in merit" and that "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, that 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 providers and CPE

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

³⁰ *Third Report and Order*, ¶ 5. Thus, from the very inception of Section 222, an entity that had no access to CPNI during 2007 – and that by necessary implication could neither use nor disclose CPNI, has not constituted the type of entity with which the CPNI rules is concerned.

suppliers from discrimination by AT&T, the BOCS and GTE.”³¹ Even these early CPNI-like regulations made a clear distinction between information that was deemed to pose no competitive threat (and, accordingly, the use of that 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 that 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 that 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 that 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 that 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 that 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, because it focuses exclusively on a single aspect of a single rule sub-part without considering the fuller history and purposes of the CPNI rules, 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.

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 Section IV, infra.

⁴³ *Third Report and Order*, ¶ 2.

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

2. The Enforcement Bureau Erred By Imposing §64.2009(e) Liability Upon Entities That 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 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 Quasar does not disagree that the protection of highly personal individual information may indeed be a fundamental obligation of all telecommunications carriers that 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 (that they do not) and, if not, whether any logical basis can be found for requiring the filing of the 64.2009(e) annual certification (that there is not).

Specifically referencing the 2006 actions of "companies known as 'data brokers'"⁴⁷ as a result of that 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 that 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

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 that, 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 that would only be a nullity with respect to itself. See Section III, *infra*.

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 that the Enforcement Bureau has not made – and one that is critical to its determinations – is whether any of these entities actually had an obligation to make that filing.

For a company that 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 that 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 that pose an actual risk to consumer privacy to make this certification may be reasonable. However, requiring entities *that 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 (that only have real,

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.

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

rather than purely theoretical, application to an entity that *does* possess access to CPNI) can by no means be considered either “consistent with the statute” or “reasonable”.

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 that for any other reason does not have access to CPNI, the proposed forfeiture of the Omnibus NAL must be cancelled in its entirety.

III. QUASAR HAS COMPLIED WITH SECTION 64.2009

Quasar actually submitted the calendar year 2007 CPNI certification. Quasar also responded promptly to the Enforcement Bureau’s inquiry into whether the Company had satisfied this requirement (and received no indication from Staff that any type of sanction would attach to a mere failure to file by the March 1st date). Thus, as an initial matter, the Omnibus NAL’s generic conclusion that Quasar “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, as demonstrated in Section IV, *supra*, that Quasar 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 that will establish a customer’s CPNI approval prior to use.⁵⁴ As Quasar’s calendar year 2007 CPNI certification makes 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 Quasar was likewise fully compliant with §64.2009(b) in 2007.

⁵² Omnibus NAL, ¶ 1.

⁵³ *Id.*, ¶4.

⁵⁴ 47 C.F.R. §64.2009(a).

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 Quasar was fully compliant with §64.2009(c) in 2007.

Section 64.2009(d) deals with supervisory review of “outbound telemarketing situations.”⁵⁷ Quasar 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.” Quasar did not experience any such instance during 2007; however, if it had, it would have complied with the notification requirement of §64.2009(f).

Thus, the sole remaining allegation of the Omnibus NAL is that Quasar has violated FCC rules by “not fil[ing] compliance certifications on or before March 1, 2008, for the 2007 calendar year.”⁵⁸ Having taken all reasonable efforts to respond to the Enforcement Bureau’s inquiry, including making the calendar year 2008 CPNI filing almost immediately thereafter, a \$20,000 forfeiture is not justified here.

The Omnibus NAL, that in the aggregate seeks to impose \$13,200,000 in apparent liability for forfeiture, does so without any consideration whatsoever of 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 Quasar’s case, this allegation is simply untrue. Quasar has filed a §64.2009(e) certification for calendar year

⁵⁵ 47 C.F.R. §64.2009(b).

⁵⁶ 47 C.F.R. §64.2009(c).

⁵⁷ 47 C.F.R. §64.2009(d).

⁵⁸ Id.

⁵⁹ Omnibus NAL, ¶¶ 1, 4.

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 As noted above, Quasar has done no violence to the FCC’s CPNI rules by failing to timely file an annual certification. Quasar’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. In light of the totality of the circumstances, the NAL must be rescinded and, the proposed forfeiture against Quasar must be cancelled in its entirety.

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

As demonstrated above, Quasar is not liable for forfeiture in any amount because the Company has done no harm to FCC CPNI rules or any individual. 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* that 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, Quasar 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.

⁶⁰

Id., ¶4.

⁶¹

47 U.C.S. §503(b).

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 One particular factor, Quasar’s ability to pay, is addressed in Section VI below. The remainder of the factors, all of that support a downward adjustment of the proposed forfeiture amount, are addressed here.

None of the factors that 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) are at issue here.⁶³ Even in the case of a company that 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, as applied to the specific entity before it, is sufficiently high to act as a “relative disincentive” to repeating rule violations in the future (*i.e.*, a forfeiture should constitute something more than simply a “cost of doing business” for a particularly deep-pocketed rule violator.)⁶⁴ As Section VI following makes clear, quite the opposite concern is present here, where Quasar will be severely impacted by the proposed forfeiture.

As a very small company, Quasar tries diligently to keep up with all FCC pronouncements, but operating with very few employees and on a limited budget occasional; here, the possibility of “intentional violation” of an FCC rule is not present. And, with respect to the issue of “substantial harm”, Quasar has clearly demonstrated herein that the Company has caused no harm to the FCC’s CPNI policies and no harm to any consumer.

Furthermore, since the filing obligation addressed in the Omnibus NAL arose only for the first time in March, 2008, there is no possibility that Quasar is guilty of a prior violation of

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.”)

⁶⁴ *See Forfeiture Policy Statement*, ¶19.

§64.2009(e). Neither Quasar 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 Quasar – can be guilty of a repeated violation thereof.

Each of the factors that 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, Quasar, like many of the other 665 Appendix I companies, ultimately made a §64.2009(e) filing obligation for calendar year 2007; thus, even if the Company had been required to make this filing, doing so only after the March 1, 2008, filing deadline would constitute at most a “minor violation” – a fulfillment of an obligation, albeit tardy, but still a fulfillment. As to “good faith” and “voluntary disclosure”, even now the Company believes, consistent with the legal principles addressed above, that the §64.2009(e) filing obligation cannot lawfully be imposed upon it. Thus, the voluntary filing of Quasar’s calendar year §64.2009(e) filing – as well as the timely filing of a similar certification covering calendar year 2008 – demonstrate a good faith attempt to satisfy the Enforcement Bureau.

Quasar has a history of overall compliance with FCC rules and regulations and, as demonstrated below, the Company is unable to satisfy the proposed forfeiture amount without imposing needless costs that will have to be recovered in some way, whether by reducing staff, service response or otherwise. Staff is directed by §503 to also consider “such other matters as justice may require.”⁶⁶ Thus, the Enforcement Bureau should bear in mind the following as it considers application of the forfeiture factors to Quasar’s situation. From its very inception, the

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).

Company has tried diligently to comply with all FCC rules and regulations. Furthermore, the Company commenced operations as an extremely small entity and remains so at the present time. Thus, while the Company took such compliance actions that were reasonably available to it, the more esoteric elements of the FCC's complex and sometimes confusing operating procedures may have occasionally escaped it. Upon receipt of the Enforcement Bureau's Letter of Inquiry, the Company fully and candidly responded with relevant information sufficient, in the Company's opinion, to put the matter to rest.

Pursuant to FCC Rule §1.3, the FCC may waive any rule for good cause shown.⁶⁷ The interests of justice surely would have supported a waiver of the rule under the above circumstances. 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 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

V. QUASAR WILL SUFFER FINANCIAL HARDSHIP UNLESS THE APPARENT FORFEITURE IS CANCELLED IN ITS ENTIRETY

Pursuant to FCC Rule §503(b)(2)(D), Staff must also review on an individual basis Quasar's claim of financial hardship. To facilitate that review, Quasar (subject to confidential treatment) provides at Exhibit B hereto specific financial documentation⁷⁰ that demonstrates that, in light of the

⁶⁷ 47 C.F.R. §1.3.

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

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.

⁷⁰ The Commission

"has the flexibility to consider any documentation, not just audited financial statements, that it considers probative, objective evidence of the violator's ability to pay a forfeiture. The Commission intends to continue its policy of being sensitive to the concerns of small entities who may not have the ability to pay a particular forfeiture amount or the ability to submit the same kind of documentation to

Company's financial position, the proposed forfeiture far exceeds the range previously held reasonable by the FCC. Here, a severe reduction is required simply to bring any proposed forfeiture down to the range previously considered reasonable by the FCC.

In fact, mere reduction of the forfeiture amount to a level consistent with FCC precedent would result in a forfeiture so small as to be nonexistent. As Quasar's financial documentation makes clear, Quasar would suffer an adverse financial consequence were it required to satisfy the proposed forfeiture of \$20,000. Such a result is simply untenable in light of Quasar's efforts to comply with the dictates of a new rule section. Furthermore, the Company took immediate steps to avoid adverse action by the Enforcement Bureau prior to the time the Bureau should have completed its review of Quasar's LOI response. It is evident that Quasar's LOI response was not adequately considered by the Enforcement Bureau; even a cursory consideration of Quasar's response should have either resolved the Enforcement Bureau's inquiry or generated a request for additional information – that the Company would gladly have provided. Instead, Quasar has been included among the 666 Appendix I companies notwithstanding the legal inapplicability of §64.2009(e) to it.

The draconian financial impact of imposition of the full forfeiture against Quasar is further untenable in light of the fact that the annual CPNI certification filing was required of companies actually subject to §64.2009(e) for the very first time in 2008. Thus, if the Enforcement Bureau had not departed from established *Forfeiture Policy Statement* precedent, neither Quasar nor any other Appendix I company would have received any sanction stronger than a mere warning.

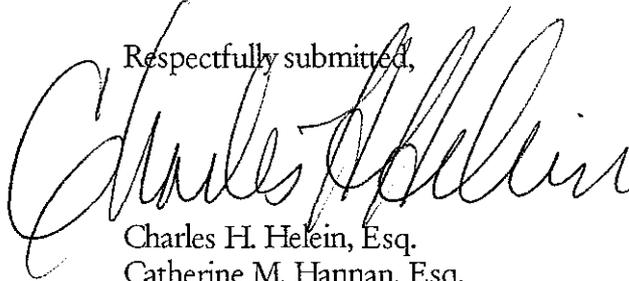
corroborate the inability to pay. This is consistent with section 503(b)(2)(D) of the Communications Act and section 1.80(b)(4) of our rules, that provides that the Commission will take into account ability to pay in assessing forfeitures, and with our longstanding case law.”

Forfeiture Policy Statement, ¶44.

CONCLUSION

By reason of the foregoing, Quasar Communications Corporation 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 Quasar), terminate proceeding File No. EB-08-TG-5135, cancel the proposed \$20,000 forfeiture against Quasar 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 Quasar Communications Corporation

CERTIFICATE OF SERVICE

I, Suzanne Rafalko, hereby certify that true and correct copies of the foregoing Response of Quasar Communications Corporation 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 mail)


Suzanne Rafalko

Exhibit A

Quasar Letter of Inquiry Response



September 19, 2008

Via Email: Robert.somers@fcc.gov
Marcy.greene@fcc.gov

I am in receipt of the FCC's September 5, 2008 letter to Quasar Communications Corporation ("Quasar"). Quasar is a small carrier offering competitive telecommunications services to low-income, low-volume long distance customers. Quasar has but a few employees and operates on a limited budget. Compared to most of our competitors, our customer base is very small. Although not an excuse, Quasar's small size and limited staff contributed to its oversight and failure to timely file its annual CPNI Certification.

Quasar recognizes the seriousness of complying with the current CPNI regulations in their entirety. Quasar has complied with all substantive CPNI regulations and has now belatedly filed its Certification in Docket 06-36.

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,


Elise Escamilla

15610 Boulder Oaks Drive
Houston, Texas 77044
Tel 800-396-6216
Fax 281-859-7747

Declaration

I, Elise Escamilla am an officer of Quasar Communications Corporation ("Quasar"). I verify, under penalty of perjury, that the information Quasar contained herein is true and accurate to the best of my knowledge, information, and belief. I further verify that all of the information requested by the letter dated September 5, 2008, directed to Quasar from the FCC's Enforcement Bureau ("Letter of Inquiry") that are in the company's possession, custody, control or knowledge have been produced.

Signed: Elise Escamilla

Quasar Communications Corporation
CEO and Founder

**STATEMENT OF POLICY IN TREATMENT OF
CUSTOMER PROPRIETARY NETWORK INFORMATION**

1. It is the policy of Quasar Communications Corporation ("Company") to not to use CPNI for any activity other than permitted by law. Any disclosure of CPNI to other parties (such as affiliates, vendors and agents) occurs only if it is necessary to conduct a legitimate business activity related to the services already provided by the Company to the customer. If the Company is not required by law to disclose the CPNI or if the intended use does not fall within one of the carve outs, the Company will first obtain the customer's consent prior to using CPNI.

2. Company follows industry-standard practices to prevent unauthorized access to CPNI by a person other than the subscriber or Company. However, Company cannot guarantee that these practices will prevent every unauthorized attempt to access, use, or disclose personally identifiable information. Therefore:
 - A. If an unauthorized disclosure were to occur, Company shall provide notification of the breach within seven (7) days to the United States Secret Service ("USSS") and the Federal Bureau of Investigation ("FBI").
 - B. Company shall wait an additional seven (7) days from its government notice prior to notifying the affected customers of the breach.
 - C. Notwithstanding the provisions in subparagraph B above, Company shall not wait the additional seven (7) days to notify its customers if Company determines there is an immediate risk of irreparable harm to the customers.
 - D. Company shall maintain records of discovered breaches for a period of at least two (2) years.

3. All employees will be trained as to when they are, and are not, authorized to use CPNI upon employment with the Company and annually thereafter.
 - A. Specifically, Company shall prohibits its personnel from releasing CPNI based upon a customer-initiated telephone call except under the following three (3) circumstances.
 1. When the customer has pre-established a password;
 2. When the information requested by the customer is to be sent to the customer's address of record; or
 3. When Company calls the customer's telephone number of record and discusses the information with the party initially identified by customer when service was initiated.

B. Company may use CPNI for the following purposes:

- To initiate, render, maintain, repair, bill and collect for services;
 - To protect its property rights; or to protect its subscribers or other carriers from fraudulent, abusive, or the unlawful use of, or subscriptions to, such services;
 - To provide inbound telemarketing, referral or administrative services to the customer during a customer-initiated call and with the customer's informed consent;
 - To market additional services to customers that are within the same categories of service to which the customer already subscribes;
 - To market services formerly known as adjunct-to-basic services; and
 - To market additional services to customers with the receipt of informed consent via the use of opt-in or opt-out, as applicable.
4. Prior to allowing access to customers' individually identifiable CPNI to Company's joint venturers or independent contractors, Company will require, in order to safeguard that information, their entry into both confidentiality agreements that ensure compliance with this Statement and shall obtain opt-in consent for a customer prior to disclosing the information. In addition, Company requires all outside Dealers and Agents to acknowledge and certify that they may only use CPNI for the purpose for which that information has been provided.
5. Company requires express written authorization from the customer prior to dispensing CPNI to new carriers, except as otherwise required by law.
6. Company does not market, share or otherwise sell CPNI information to any third party.
7. Company maintains a record of its own and its affiliates' sales and marketing campaigns that use Company's customers' CPNI. The record will include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as part of the campaign.

A. Prior to commencement of a sales or marketing campaign that utilizes CPNI, Company establishes the status of a customer's CPNI approval. The following sets forth the procedure followed by Company.

- Prior to any solicitation for customer approval, Company will notify customers of their right to restrict the use of, disclosure of, and access to their CPNI.
- Company will use opt-in approval for any instance in which Company must obtain customer approval prior to using, disclosing or permitting access to CPNI.
- A customer's approval or disapproval remains in effect until the customer revokes or limits such approval or disapproval.
- Records of approvals are maintained for at least one year.

- Company provides individual notice to customers when soliciting approval to use, disclose or permit access to CPNI.
 - The content of Company's CPNI notices comply with FCC Rule 64.2008(c).
8. Company has implemented a system to obtain approval and informed consent from its customers prior to the use of CPNI for marketing purposes. This system allows for the status of a customer's CPNI approval to be clearly established prior to the use of CPNI.
 9. Company has a supervisory review process regarding compliance with the CPNI rules for outbound marketing situations and will maintain compliance records for at least one (1) year. Specifically, Company's sales personnel will obtain express approval of any proposed outbound marketing request for customer approval of the use of CPNI by the General Counsel of Company.
 10. Company notifies customers immediately of any account changes, including address of record, authentication, online account and password related changes.
 11. Company may negotiate alternative authentication procedures for services that Company provides to business customers that have a dedicated account representative and a contract that specifically addresses Company's protection of CPNI.
 12. Company is prepared to provide written notice within five (5) business days to the FCC of any instance where the opt-in mechanisms do not work properly or to such a degree that consumers' inability to opt-in is more than an anomaly.

Annual 47 C.F.R. § 64.2009(e) CPNI Certification

Date Filed: September 19, 2008

Name of Company

Covered by this Certification: Quasar Communications, Inc.

Name of Signatory: Elise Escamilla

I, Elise Escamilla, certify that I am an officer of Quasar Communications, Inc. ("Quasar"). I attest that, as an officer of Quasar, I am authorized to execute this CPNI Compliance Certification on the company's behalf.

I have personal knowledge that Quasar's business methods and the procedures adopted and employed by Signal are adequate to ensure compliance with Section 222 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), and the Federal Communications Commission's regulations implementing Section 222 of the Act, 47 C.F.R. § 64.2005, 64.2007 and 64.2009.

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 in the past year. The company has no information to report with respect to the processes pretexters are using to attempt to access CPNI.

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

Signed:



Elise Escamilla

**STATEMENT OF POLICY IN TREATMENT OF
CUSTOMER PROPRIETARY NETWORK INFORMATION**

1. It is the policy of Quasar Communications Corporation ("Company") to not to use CPNI for any activity other than permitted by law. Any disclosure of CPNI to other parties (such as affiliates, vendors and agents) occurs only if it is necessary to conduct a legitimate business activity related to the services already provided by the Company to the customer. If the Company is not required by law to disclose the CPNI or if the intended use does not fall within one of the carve outs, the Company will first obtain the customer's consent prior to using CPNI.
2. Company follows industry-standard practices to prevent unauthorized access to CPNI by a person other than the subscriber or Company. However, Company cannot guarantee that these practices will prevent every unauthorized attempt to access, use, or disclose personally identifiable information. Therefore:
 - A. If an unauthorized disclosure were to occur, Company shall provide notification of the breach within seven (7) days to the United States Secret Service ("USSS") and the Federal Bureau of Investigation ("FBI").
 - B. Company shall wait an additional seven (7) days from its government notice prior to notifying the affected customers of the breach.
 - C. Notwithstanding the provisions in subparagraph B above, Company shall not wait the additional seven (7) days to notify its customers if Company determines there is an immediate risk of irreparable harm to the customers.
 - D. Company shall maintain records of discovered breaches for a period of at least two (2) years.
3. All employees will be trained as to when they are, and are not, authorized to use CPNI upon employment with the Company and annually thereafter.
 - A. Specifically, Company shall prohibits its personnel from releasing CPNI based upon a customer-initiated telephone call except under the following three (3) circumstances.
 1. When the customer has pre-established a password;
 2. When the information requested by the customer is to be sent to the customer's address of record; or
 3. When Company calls the customer's telephone number of record and discusses the information with the party initially identified by customer when service was initiated.

B. Company may use CPNI for the following purposes:

- To initiate, render, maintain, repair, bill and collect for services;
- To protect its property rights; or to protect its subscribers or other carriers from fraudulent, abusive, or the unlawful use of, or subscriptions to, such services;
- To provide inbound telemarketing, referral or administrative services to the customer during a customer-initiated call and with the customer's informed consent;
- To market additional services to customers that are within the same categories of service to which the customer already subscribes;
- To market services formerly known as adjunct-to-basic services; and
- To market additional services to customers with the receipt of informed consent via the use of opt-in or opt-out, as applicable.

4. Prior to allowing access to customers' individually identifiable CPNI to Company's joint venturers or independent contractors, Company will require, in order to safeguard that information, their entry into both confidentiality agreements that ensure compliance with this Statement and shall obtain opt-in consent for a customer prior to disclosing the information. In addition, Company requires all outside Dealers and Agents to acknowledge and certify that they may only use CPNI for the purpose for which that information has been provided.
5. Company requires express written authorization from the customer prior to dispensing CPNI to new carriers, except as otherwise required by law.
6. Company does not market, share or otherwise sell CPNI information to any third party.
7. Company maintains a record of its own and its affiliates' sales and marketing campaigns that use Company's customers' CPNI. The record will include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as part of the campaign.

A. Prior to commencement of a sales or marketing campaign that utilizes CPNI, Company establishes the status of a customer's CPNI approval. The following sets forth the procedure followed by Company.

- Prior to any solicitation for customer approval, Company will notify customers of their right to restrict the use of, disclosure of, and access to their CPNI.
- Company will use opt-in approval for any instance in which Company must obtain customer approval prior to using, disclosing or permitting access to CPNI.
- A customer's approval or disapproval remains in effect until the customer revokes or limits such approval or disapproval.
- Records of approvals are maintained for at least one year.

- Company provides individual notice to customers when soliciting approval to use, disclose or permit access to CPNI.
 - The content of Company's CPNI notices comply with FCC Rule 64.2008(c).
8. Company has implemented a system to obtain approval and informed consent from its customers prior to the use of CPNI for marketing purposes. This system allows for the status of a customer's CPNI approval to be clearly established prior to the use of CPNI.
 9. Company has a supervisory review process regarding compliance with the CPNI rules for outbound marketing situations and will maintain compliance records for at least one (1) year. Specifically, Company's sales personnel will obtain express approval of any proposed outbound marketing request for customer approval of the use of CPNI by the General Counsel of Company.
 10. Company notifies customers immediately of any account changes, including address of record, authentication, online account and password related changes.
 11. Company may negotiate alternative authentication procedures for services that Company provides to business customers that have a dedicated account representative and a contract that specifically addresses Company's protection of CPNI.
 12. Company is prepared to provide written notice within five (5) business days to the FCC of any instance where the opt-in mechanisms do not work properly or to such a degree that consumers' inability to opt-in is more than an anomaly.

Exhibit B

Quasar Financial Documentation

**[REDACTED – PROVIDED TO
THE ENFORCEMENT BUREAU UNDER SEAL
IN “CONFIDENTIAL” VERSION ONLY]**

