

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

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In the Matter of	)	
	)	
Omniat International Telecom, LLC d/b/a	)	File No. EB-08-IH-1150
OMNIAT Telecom	)	
	)	NAL/Acct. No. 200932080032
	)	
Apparent Liability for Forfeiture	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: March 31, 2009**

**Released: March 31, 2009**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find that Omniat International Telecom, LLC d/b/a OMNIAT Telecom (“Omniat”)<sup>1</sup> apparently violated sections 9(a)(1), 214(a), 225(b)(1), and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”),<sup>2</sup> and sections 1.1154, 1.1157(b)(1), 52.17(a), 52.17(b), 52.32(a), 52.32(b), 63.18, 64.604(c)(5)(iii)(A), and 64.604(c)(5)(iii)(B) of the Commission’s rules<sup>3</sup> by willfully and repeatedly failing to (1) apply for and obtain authorization from the Commission to provide international telecommunications service; (2) submit annual Telecommunications Reporting Worksheets (“annual Worksheet” or “Form 499-A”); (3) contribute to the Telecommunications Relay Service (“TRS”) Fund and cost recovery mechanisms for the North American Numbering Plan (“NANP”) and local number portability (“LNP”); and (4) pay regulatory fees to the Commission. We also find that Omniat apparently violated a Commission order issued pursuant to section 4(i), 4(j), 218 and 403 of the Act, by willfully and repeatedly failing to respond to a directive of the Enforcement Bureau (“Bureau”) to provide certain information or documents.<sup>4</sup> Based on our review of the facts and circumstances surrounding this matter, we find that Omniat is apparently liable for a total forfeiture of \$330,000.

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<sup>1</sup> In 2002, an entity called “OMNIAT Telecom” obtained an FCC registration number and submitted an annual Telecommunications Reporting Worksheet, listing an address in Winter Park, Florida and Mr. Hatem Akil, President/CEO, as the contact. However, “OMNIAT Telecom” does not appear to be a corporate entity, as there is no company named “OMNIAT Telecom” or “OMNIAT Telecom, LLC” registered with the Florida Secretary of State’s Division of Corporations. Instead, Commission staff’s search of the Florida Secretary of State Division of Corporations web site found a company called Omniat International Telecom, LLC listed as an active corporation in Florida since 2002, located at the same Winter Park address and with Mr. Akil as its registered agent. *See infra* n. 30.

<sup>2</sup> 47 U.S.C. §§ 159(a)(1), 214(a), 225(b)(1), 251(e).

<sup>3</sup> 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.17(b), 52.32(a), 52.32(b), 63.18, 64.604(c)(5)(iii)(A), 64.604(c)(5)(iii)(B).

<sup>4</sup> 47 U.S.C. §§ 4(i), 4(j), 218, 403.

2. We order Omniat to submit within thirty days a report supported by a sworn statement or declaration under penalty of perjury of a corporate officer setting forth in detail its plan to come into compliance with the reporting and payment obligations discussed herein; all authorization applications required under section 214(a) to provide international telecommunications service; and a full response to the Bureau's June 2, 2008 letter of inquiry to Omniat. We further order Omniat to file with the Universal Service Administrative Company ("USAC") within thirty days all required Telecommunications Reporting Worksheets reporting accurate annual revenue from the date it began providing telecommunications service in the United States to the date of this *NAL*.

## II. BACKGROUND

### A. Requirement to Apply for Authorization to Provide International Telecommunications Service

3. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, "unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity" require, or will require, the construction, extension, or operation of the line.<sup>5</sup> Part 63 of the Commission's rules sets out the rules for providing U.S.-international service, including the requirement that a carrier seek and obtain Commission approval prior to providing international service.<sup>6</sup> The Commission has explained that the international section 214 review process serves several purposes.<sup>7</sup> It enables the Commission to review applications for risks to competition, particularly in situations where the applicant has an affiliation with a foreign carrier with market power on the foreign end of the route that may be able to leverage that market power to discriminate against U.S. competitors to the detriment of U.S. consumers.<sup>8</sup> The review process also includes consultation with the Executive Branch agencies regarding national security, law enforcement, foreign policy and trade concerns that may be unique to the provision of international service.<sup>9</sup> For these reasons, section 63.18 of the Commission's rules requires that "any party seeking authority pursuant to Section 214 . . . for the provision of common carrier communications services between the United States, its territories or possessions, and a foreign point shall request such authority by formal application."<sup>10</sup>

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<sup>5</sup> 47 U.S.C. § 214(a).

<sup>6</sup> 47 C.F.R. §§ 63.09 *et seq.* The Commission has granted "blanket" authority to carriers providing domestic service, meaning that such carriers need not apply to the Commission prior to offering domestic service. *See* 47 C.F.R. § 63.01(a) ("Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies"). Providers of international telecommunications services, however, must seek authorization from the Commission prior to offering international telecommunications services. 47 C.F.R. § 63.18.

<sup>7</sup> *See 1998 Biennial Regulatory Review of Int'l Common Carrier Regulations*, Report & Order, 14 FCC Rcd 4909, 4915-16, 4918, 4921 ¶¶ 16, 21, 27 (1999) ("1998 International Biennial Review Order"); *Personal Communications Indus. Ass'n's Broadband Personal Communications Servs. Alliance's Pet. for Forbearance for Broadband Personal Communications Servs.*, Memorandum Opinion & Order & Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16883 ¶¶ 50-51 (1998) ("PCIA Forbearance Order").

<sup>8</sup> *See 1998 International Biennial Review Order*, 14 FCC Rcd at 4914-16 ¶¶ 14-16; *PCIA Forbearance Order*, 13 FCC Rcd at 16882-83 ¶ 50.

<sup>9</sup> *1998 International Biennial Review Order*, 14 FCC Rcd at 4914-15 ¶ 14; *PCIA Forbearance Order*, 13 FCC Rcd at 16882 ¶ 50.

<sup>10</sup> 47 C.F.R. § 63.18.

**B. Requirements to Contribute to TRS, NANP, and LNP Administration, Pay Regulatory Fees, and File Periodic Revenue Information**

4. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”<sup>11</sup> To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services.<sup>12</sup> Pursuant to section 64.604(c)(5)(iii)(A) of the Commission’s rules, every provider of interstate telecommunications services must contribute to the TRS Fund based upon its end-user revenues.<sup>13</sup>

5. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.<sup>14</sup> Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements . . . shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>15</sup> In carrying out this statutory directive, the Commission adopted section 52.17 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.<sup>16</sup> In addition, the Commission adopted section 52.32 of its rules, which requires, among other things, that all telecommunications carriers contribute toward the costs of local number portability on the basis of their end-user telecommunications revenues for the prior calendar year.<sup>17</sup>

6. Pursuant to section 9(a)(1) of the Act and section 1.1151 of the Commission’s rules, providers of interstate telecommunications services and other providers must pay regulatory fees to the Commission to cover the costs of certain regulatory activities.<sup>18</sup> In particular, sections 1.1154 and

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<sup>11</sup> 47 U.S.C. § 225(b)(1).

<sup>12</sup> See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 ¶ 7 (1993). Telecommunications relay services enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users. Such services provide telephone access to a significant number of Americans who, without it, might not be able to make calls to or receive calls from voice-telephone users. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143 ¶ 5 (2000). The National Exchange Carriers Association (“NECA”) currently is responsible for administering the TRS Fund.

<sup>13</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A).

<sup>14</sup> 47 U.S.C. § 251(e)(1).

<sup>15</sup> 47 U.S.C. § 251(e)(2).

<sup>16</sup> 47 C.F.R. § 52.17(a). Carriers contribute based on a percentage of their intrastate, interstate, and international end-user telecommunications revenues. The minimum contribution amount is \$25, even if a carrier has no end-user telecommunications revenues.

<sup>17</sup> 47 C.F.R. § 52.32. Carriers contribute based on their intrastate, interstate, and international end-user revenues. Carriers that have no intrastate, interstate, or international end-user revenues derived from providing telecommunications services must contribute \$100.

<sup>18</sup> Section 9(a)(1) of the Act directs the Commission to “assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1); see also 47 C.F.R. § 1.1151. Interstate telecommunications service providers (“ITSPs”) are subject to regulatory fees based on billed (...continued)

1.1157(b)(1) of the Commission's rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.<sup>19</sup> Such fees must be paid on an annual basis,<sup>20</sup> and failure to do so subjects a carrier to late payment penalties, as well as possible revocation of its operating authority.<sup>21</sup>

7. The Commission has established specific procedures for the administration of the TRS, NANP, LNP, and other associated federal regulatory programs. A telecommunications provider is required to file FCC Form 499-A, also known as the annual Telecommunications Reporting Worksheet,<sup>22</sup> reporting revenue information for the purpose of determining its federal Universal Service Fund ("USF"), TRS Fund, LNP and NANP administration and regulatory fee payments. All telecommunications carriers providing interstate telecommunications services must file a completed FCC Form 499-A, even if they qualify for the *de minimis* exemption for USF contribution purposes,<sup>23</sup> because the 499-A triggers a determination of liability, if any, and subsequent billing and collection, for all of the regulatory programs.<sup>24</sup> For example, the National Exchange Carrier Association ("NECA"), the administrator of the TRS Fund, uses the annual filings to determine each contributor's TRS Fund contribution amount.<sup>25</sup> In

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interstate and international end-user revenues for local and most toll services. Carriers whose total regulatory fee payment obligation is less than \$10 are exempt; however, the vast majority of FCC Form 499-A filers are required to pay ITSP regulatory fees. See *Regulatory Fees Fact Sheet: What You Owe – Interstate Telecommunications Service Providers (ITSP) for FY 2008* at 7, [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-284863A3.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284863A3.pdf) (rel. Aug. 2008) ("*ITSP Regulatory Fees Fact Sheet*").

<sup>19</sup> See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

<sup>20</sup> 47 C.F.R. § 1.1157(b)(1). Section 1.1154 of the Commission's rules sets forth the schedule of annual regulatory charges and filing locations for common carrier services. See 47 C.F.R. § 1.1154.

<sup>21</sup> See 47 U.S.C. §§ 159(c)(1), (c)(3).

<sup>22</sup> See FCC Form 499-A Telecommunications Reporting Worksheet - Annual Filing, available at <http://www.fcc.gov/Forms/Form499-A/499a-2008.pdf> (February 2008).

<sup>23</sup> Under the Commission's rules, a telecommunications provider is considered *de minimis* if it is required to contribute to the federal USF, but its contribution to the USF in a given year would be less than \$10,000. Telecommunications providers that would be required to contribute to USF but meet the *de minimis* standard in a given year are not required to contribute to the USF that year. 47 C.F.R. § 54.708. *De minimis* telecommunications providers are not required to file the quarterly Telecommunications Reporting Worksheet, which is used to determine monthly universal service contribution amounts. See *Wireless Competition Bureau Reminds De Minimis Telecommunications Providers of Certain FCC Registration, Reporting, and Contribution Requirements*, Public Notice, 22 FCC Rcd 1889, 1891 (Wireline Comp. Bur. 2007) ("*De Minimis Public Notice*"). Carriers who are *de minimis* for universal service purposes may still be liable for contributions to the TRS Fund, NANP administration, and LNP administration. *Id.*, 22 FCC Rcd at 1891-1892.

<sup>24</sup> See 47 U.S.C. §§ 225(d)(3); 251(e)(2). In 1999, to streamline the administration of the programs and to ease the burden on regulatees, the Commission consolidated the information filing requirements for multiple telecommunications regulatory programs into the annual Telecommunications Reporting Worksheet. See *1998 Biennial Regulatory Review*, Report and Order, 14 FCC Rcd 16602 (1999). The next year the Commission revised the Telecommunications Reporting Worksheet slightly to collect the additional information necessary to achieve its goal of establishing a central repository for interstate telecommunications providers by the least provider-burdensome method. *Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16026 ¶ 63 (2000) ("*Carrier Selection Order*"). Regulatory fees for interstate telecommunications service providers are also calculated on the basis of information provided on Form 499-A. See *ITSP Regulatory Fees Fact Sheet* at 2-3.

<sup>25</sup> 64 C.F.R. § 64.604(c)(5)(iii)(B).

2007, the Wireline Competition Bureau issued a public notice reminding *de minimis* telecommunications providers of their obligations, and warned that the Commission would not hesitate to take appropriate action to enforce its rules against telecommunications providers who fail to satisfy their obligations.<sup>26</sup>

### C. The Commission's Investigation

8. Omniat is a Florida-based company that characterizes itself as a “prepaid card” provider.<sup>27</sup> Since at least 2002, Omniat has offered consumers the ability to place interstate and international long-distance calls from any telephone by purchasing a block of minutes in advance. To access the service, the customer dials Omniat’s toll-free number, and if not calling from a telephone number that has been “subscribed” in advance, enters a card number or personal identification number (“PIN”) associated with the account. The customer is then prompted to enter the destination number, and is connected to the intended recipient of the call.<sup>28</sup>

9. In July 2007, USAC received an anonymous complaint alleging that Omniat had been in violation of FCC regulations requiring the filing of Telecommunications Reporting Worksheets and/or payment of universal service obligations “for the last 5-10 years.”<sup>29</sup> The complaint alleged that Omniat had 10,000 to 30,000 subscribers. USAC subsequently determined that Omniat had filed an annual Worksheet in July 2002,<sup>30</sup> but had not subsequently filed any annual Worksheets. On October 31, 2007, USAC sent Omniat detailed information concerning its filing obligations, and requested that Omniat respond by November 31, 2007. To date, Omniat has not responded to USAC’s inquiry.<sup>31</sup>

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<sup>26</sup> *De Minimis Public Notice*, 22 FCC Rcd at 1893.

<sup>27</sup> See Omniat’s 2002 FCC Form 499-A Telecommunications Reporting Worksheet, Line 105, filed June 22, 2002 (“Omniat 2002 499-A”).

<sup>28</sup> See Omniat home page, <http://www.omniat.com>; Omniat Questions and Answers, <http://www.omniat.com/Questions.asp> (last visited Jan. 21, 2009). Omniat advertises interstate rates of “4.5 cents anywhere in the US,” and the “lowest international rates in the US.” *Id.*

<sup>29</sup> USAC is the administrator of the federal universal service fund. 47 C.F.R. § 54.701(a).

<sup>30</sup> Omniat’s web site refers to the company interchangeably as “OMNIAT,” “OMNIAT Telecom,” and “OMNIAT Telecom, LLC.” See Omniat Questions and Answers, <http://www.omniat.com/Questions.asp> (last visited Jan. 21, 2009). The web site lists the address of the company as 127 W. Fairbanks Avenue, Suite 322, Winter Park, FL 32789. See About OMNIAT, <http://www.omniat.com/About.asp> (last visited Jan. 21, 2009). Omniat obtained an FCC registration number and filed its 2002 499-A under the name “OMNIAT Telecom,” using the company’s Winter Park address and listing Mr. Hatem Akil, President/CEO, as the contact. See <https://fjallfoss.fcc.gov/coresWeb/searchDetail.do?frn=0007310477>; Omniat 2002 499-A. However, “OMNIAT Telecom” does not appear to be a corporate entity, as there is no company named “OMNIAT Telecom” or “OMNIAT Telecom, LLC” registered with the Florida Secretary of State’s Division of Corporations. Instead, Commission staff’s search of the Florida Secretary of State Division of Corporations web site found a company called “Omniat International Telecom, LLC” listed as an active corporation in Florida since 2002, located at the Winter Park address and with Mr. Akil as its registered agent. See Florida Secretary of State Division of Corporations Report, October 31, 2008. Accordingly, all references in this NAL to “Omniat” encompass Omniat International Telecom, LLC, Mr. Akil, and all other principals and officers of this entity, as well as any other entities through which Omniat provides the services described on its web site at <http://www.omniat.com>.

<sup>31</sup> Letter from Tracey Beaver, Universal Service Administrative Company to Trent Harkrader, Deputy Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission (Apr. 21, 2008) (“USAC Referral”); E-mail from Tracey Beaver, Universal Service Administrative Company to Trent Harkrader, Deputy Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission (Oct. 30, 2008).

10. On April 21, 2008, USAC referred Omniat to the Bureau for potential enforcement action. The Bureau initiated an investigation on June 2, 2008 by a letter of inquiry (“LOI”) to Omniat.<sup>32</sup> The LOI directed Omniat, among other things, to submit a sworn written response to a series of questions relating to Omniat’s apparent failure to register and file Telecommunications Reporting Worksheets and to make mandated federal telecommunications regulatory program payments since January 2006. Omniat failed to respond to the LOI in any manner, despite subsequent attempts by Bureau staff to contact the company regarding the LOI.

### III. DISCUSSION

11. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>33</sup> Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>34</sup> The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act<sup>35</sup> and the Commission has so interpreted the term in the section 503(b) context.<sup>36</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>37</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>38</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>39</sup> The Commission will then issue forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>40</sup>

12. The fundamental issues in this case are whether Omniat apparently violated the Act and the Commission’s rules by willfully or repeatedly failing to: (1) apply for and obtain authorization prior to providing international telecommunications service; (2) file annual Telecommunications Reporting Worksheets; (3) contribute to the TRS Fund; (4) contribute to NANP administration; (5) contribute to LNP administration; (6) pay required regulatory fees to the Commission; and (7) respond to a directive of

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<sup>32</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to Hatem Akil, President, OMNIAT International Telecom, LLC (June 2, 2008) (“LOI”).

<sup>33</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

<sup>34</sup> 47 U.S.C. § 312(f)(1).

<sup>35</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>36</sup> *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991) (“*Southern California Broadcasting Co.*”).

<sup>37</sup> *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>38</sup> *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

<sup>39</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>40</sup> *See, e.g., SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (“*SBC Forfeiture Order*”) (forfeiture paid).

the Bureau to provide certain information and documents.<sup>41</sup> We answer these questions affirmatively. Based on a preponderance of the evidence, we therefore conclude that Omniat is apparently liable for a forfeiture of \$330,000 for its apparent willful and repeated violations of sections 9(a)(1), 214(a), 225(b)(1), and 251(e)(2) of the Act and sections 1.1154, 1.1157(b)(1), 52.17(a), 52.17(b), 52.32(a), 52.32(b), 63.18, 64.604(c)(5)(iii)(A), and 64.604(c)(5)(iii)(B) of the Commission's rules.<sup>42</sup>

#### A Omniat Apparently Failed to Obtain an International Section 214 Authorization

13. We conclude that Omniat has apparently been operating as an international telecommunications service provider since 2002 without authorization from the Commission. Prepaid calling cards are telecommunications services and prepaid calling card providers are subject to regulation as telecommunications carriers.<sup>43</sup> Thus, prepaid calling card providers must obtain prior authorization before providing international telecommunications services, consistent with the requirements of section 214 of the Act and section 63.18 of the Commission's rules. Omniat has been providing prepaid international long distance services to and from the U.S. to the public as a prepaid calling card provider since at least 2002. However, the Commission's International Bureau's Filing System ("IBFS") database has no record that Omniat has applied for or obtained section 214 authorization.<sup>44</sup> Thus, we find by a preponderance of the evidence that Omniat apparently violated section 214(a) of the Act and section 63.18 of the Commission's rules by willfully and repeatedly failing to obtain section 214 authority from the Commission prior to providing international telecommunications service.

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<sup>41</sup> As discussed above, a telecommunications carrier whose contribution to the USF in a given year would be less than \$10,000 is not required to contribute to the USF. *See supra* n. 23. Any entity required to contribute to the USF whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues may contribute based only on the entity's projected collected interstate end-user telecommunications revenues. 47 C.F.R. § 54.706(c). Because Omniat characterizes itself primarily as an "international long distance provider" providing the ability to "[c]all from anywhere in the world, to anywhere in the world," we do not, at this time, have the revenue information needed to determine whether Omniat has had sufficient interstate and international revenue to be liable for USF contributions since 2003. *See* Omniat home page, <http://www.omniat.com>; About OMNIAT, <http://www.omniat.com/About.asp>; Omniat Questions and Answers, <http://www.omniat.com/Questions.asp> (last visited Jan. 21, 2009). Nevertheless, we direct Omniat in this *NAL* to file all required Telecommunications Reporting Worksheets reporting revenue from the date it began providing telecommunications service in the United States, in part so we can determine the company's USF obligations. We expressly reserve our ability to propose a forfeiture or any other enforcement action if we determine Omniat should have made USF contributions based on its reported revenue. Because *de minimis* entities are not required to file the quarterly Telecommunications Reporting Worksheet ("quarterly Worksheet"), we do not propose a forfeiture for Omniat's failure to submit quarterly Worksheets at this time, *see infra* ¶¶ 15, 26. We do, however, expressly reserve our ability to propose a forfeiture or any other enforcement action if we determine that Omniat should have filed quarterly Worksheets.

<sup>42</sup> 47 U.S.C. §§ 9(a)(1), 214(a), 225(b)(1), 251(e); 47 C.F.R. §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.17(b), 52.32(a), 52.32(b), 63.18, 64.604(c)(5)(iii)(A), 64.604(c)(5)(iii)(B).

<sup>43</sup> *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 ¶ 10 (2006) ("prepaid calling cards are telecommunications services and ... their providers are subject to regulation as telecommunications carriers.... [i]n the future, if prepaid calling card providers introduce new and different card types that they believe should be classified as information services, they may seek a declaratory ruling, a waiver, or other relief"). Prepaid calling cards provide consumers with the ability to place long-distance calls without presubscribing to an interexchange carrier ("IXC") or using a credit card. A calling card customer typically dials a number to reach the service provider's centralized switching platform and the platform requests the unique personal identification number associated with the card for purposes of verification and billing. When prompted by the platform, the customer dials the destination number and the platform routes the call to the intended recipient. The prepaid calling card is then debited based on the price of the completed call. *Id.* at ¶ 2.

<sup>44</sup> *See* <http://svartifoss2.fcc.gov/myibfs/quickSearch.do?sortBy=callsign&ssid=960021005&pgid=2>.

**B. Omniat Apparently Failed to Submit Telecommunications Reporting Worksheets**

14. We also conclude that Omniat apparently has violated sections 225(b)(1) and 251(e)(2) of the Act and sections 64.604(c)(5)(iii)(B), 52.17(b), and 52.32(b) of the Commission's rules by willfully or repeatedly failing to file annual Telecommunications Reporting Worksheets since April 2003.<sup>45</sup> Sections 64.604(c)(5)(iii)(B), 52.17(b), and 52.32(b) of the Commission's rules each clearly establish a carrier's obligation to file periodic Telecommunications Reporting Worksheets.<sup>46</sup> A carrier's failure to file these Worksheets as required has serious implications for the TRS and other programs. As discussed above, the filing of a Telecommunications Reporting Worksheet prompts a determination of liability for, and subsequent billing and collection of, payments by the administrators of the TRS and other regulatory programs. Consequently, a carrier's failure to file required Worksheets frustrates the very purposes for which Congress enacted sections 225(b)(1) and 251(e)(2) – to ensure that telecommunications relay services “are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States,”<sup>47</sup> and to ensure that the cost of establishing telecommunications numbering administration arrangements is “borne by all telecommunications carriers on a competitively neutral basis.”<sup>48</sup> Viewed in this context, the Telecommunications Reporting Worksheet is not only an administrative tool, but a fundamental and critical component of the Commission's TRS, NANP, LNP, and regulatory fee programs.

15. Since Omniat began providing interstate and international telecommunications service, it had an obligation to file annual Telecommunications Reporting Worksheets in order to participate in the applicable TRS, NANP, LNP and regulatory fee programs. USAC confirms that Omniat has failed to file any Worksheets after 2002, notwithstanding its regulatory obligations. Moreover, Omniat has failed to cure these deficiencies despite the Bureau and USAC's repeated contacts. Based on a preponderance of the evidence, we find that Omniat has apparently violated sections 64.604(c)(5)(iii)(B), 52.17(b), and 52.32(b) of the Commission's rules by willfully and repeatedly failing to file annual Telecommunications Reporting Worksheets from 2003 to the date of this *NAL*.

**C Omniat Apparently Failed to Make TRS Fund Contributions**

16. As an interstate telecommunications carrier, Omniat is obligated to contribute to the TRS Fund on the basis of its interstate end-user telecommunications revenues. A carrier's contribution to the TRS Fund is based upon its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.<sup>49</sup> NECA indicates that Omniat has failed to make any payments towards its TRS Fund obligation to date. We therefore conclude, based on a preponderance of the evidence, that Omniat has apparently violated section 225 of the Act and section 64.604(c)(5)(iii)(A) of the Commission's rules by willfully and repeatedly failing to make required TRS contributions from 2003 to the date of this *NAL*.

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<sup>45</sup> 47 U.S.C. §§ 225(b)(1), 251(e)(2); 47 C.F.R. §§ 64.604(c)(5)(iii)(B), 52.17(b), 52.32(b).

<sup>46</sup> *Id.*

<sup>47</sup> 47 U.S.C. § 225(b)(1).

<sup>48</sup> 47 U.S.C. § 251(e)(2).

<sup>49</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B). Under the Commission's rules, each subject carrier must contribute at least \$25 per year, and subject carriers must make TRS contributions on an annual basis, with certain exceptions.



**D. Omniat Apparently Failed to Make NANP Administration Contributions**

17. Omniat is also obligated to contribute to costs of numbering administration on the basis of its interstate end-user telecommunications revenues.<sup>50</sup> A carrier's contributions to support numbering administration are based upon its subject revenues for the prior calendar year and a contribution factor determined annually by the Commission.<sup>51</sup> Welch LLP, the Billing and Collection Agent for the NANP, indicates that Omniat has failed to make any payments towards its NANP administration obligations accruing from 2004 to the present.<sup>52</sup> We therefore conclude, based on a preponderance of the evidence, that Omniat has apparently violated section 251(e)(2) of the Act and section 52.17(a) of the Commission's rules by willfully and repeatedly failing to make required NANP administration contributions from 2004 to the date of this *NAL*.<sup>53</sup>

**E. Omniat Apparently Failed to Make LNP Administration Contributions**

18. As a telecommunications carrier, Omniat is also obligated to contribute to LNP cost recovery mechanisms on the basis of its end-user telecommunications revenues reported on its annual Worksheet.<sup>54</sup> Neustar, the LNP administrator, indicates that Omniat has failed to make any payments towards its LNP administration obligations to date. We therefore conclude, based on a preponderance of the evidence, that Omniat has apparently violated section 251(e)(2) of the Act and section 52.32(a) of the Commission's rules by willfully and repeatedly failing to make required LNP administration contributions.<sup>55</sup>

**F. Omniat Apparently Failed to Pay Its Regulatory Fees**

19. As an interstate telephone service provider, Omniat is required to pay regulatory fees on the basis of its interstate and international end-user revenues as reported on its Form 499-A.<sup>56</sup> The Commission's records indicate that Omniat has failed to make any regulatory fee payments to date. We therefore conclude, based on a preponderance of the evidence, that Omniat apparently violated section 9(1)(a) of the Act and sections 1.1154 and 1.1157(b)(1) of the Commission's rules by willfully and repeatedly failing to pay regulatory fees.<sup>57</sup>

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<sup>50</sup> 47 C.F.R. § 52.17(a). NANP administration contributions are due on an annual basis, with certain exceptions.

<sup>51</sup> *Id.* Under the Commission's rules, each subject carrier, including carriers with no end user telecommunications revenue, must contribute at least \$25 per year. *Id.*

<sup>52</sup> Because Omniat failed to report its revenue on Form 499-A, Welch LLP, Billing and Collection Agent for NANP, billed the company for the minimum annual NANP contribution of \$25 in each year from 2003 through 2008. Welch LLP subsequently transferred the debt to the Commission for collection. The Commission was able to collect the 2003 payment, plus interest, from Omniat in 2007.

<sup>53</sup> 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.17(a).

<sup>54</sup> 47 C.F.R. § 52.32(a). Telecommunications carriers providing telecommunications service in a region that have no end-user revenue derived from providing telecommunications service in the region are assessed a \$100 yearly contribution.

<sup>55</sup> 47 U.S.C. § 251(e)(2); 47 C.F.R. § 52.32(a).

<sup>56</sup> *See* 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

<sup>57</sup> 47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157. Payments of standard regulatory fees applicable to common carrier services must be filed in full on an annual basis. *Id.* § 1.1157(b)(1).

### G. Omniat Apparently Failed to Respond to Commission Communications

20. The Commission has broad authority to investigate the entities it regulates under, *inter alia*, sections 4(i), 4(j), 218, and 403 of the Act.<sup>58</sup> Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” Section 218 of the Act authorizes the Commission to “obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”

21. As indicated above, the Bureau directed Omniat through the June 2, 2008 LOI to provide certain documents and information in order to enable the Commission to perform its enforcement function and evaluate allegations that Omniat had violated Commission rules. Omniat received the LOI, as evidenced by return of the mail receipt to the Bureau and confirmation of the facsimile transmission. Omniat failed to respond in any manner to the LOI or to the Bureau staff’s attempts to contact the company regarding the LOI. Omniat’s willful and repeated failures to respond to the Bureau’s LOI constitute apparent violations of Commission orders.<sup>59</sup>

### H. Proposed Forfeiture

22. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.<sup>60</sup> Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act.<sup>61</sup> In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>62</sup>

23. Below, we propose the following forfeitures for Omniat’s apparent violations: (1) \$100,000 for failure to obtain international section 214 authority to provide international

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<sup>58</sup> 47 U.S.C. §§ 4, 218, 403.

<sup>59</sup> See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7600 ¶ 28; *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (“*Globcom NAL*”); *BigZoo.com Corp.*, Notice of Apparent Liability for Forfeiture and Order, 19 FCC Rcd 24437 (Enf. Bur. 2004), Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (“*BigZoo Forfeiture Order*”); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, Forfeiture Order, 19 FCC Rcd 22025 (Enf. Bur. 2004); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003).

<sup>60</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

<sup>61</sup> 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); see also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008). The Commission most recently adjusted the maximum statutory forfeiture amounts for inflation effective September 2, 2008. See 73 FR 44663-5. Apparent violations which occurred before that date were subject to lower statutory maxima.

<sup>62</sup> 47 U.S.C. § 503(b)(2)(E).

telecommunications service; (2) \$50,000 for failure to file the annual Telecommunications Reporting Worksheet due on April 1, 2008; (3) \$40,000 for failure to pay TRS Fund contributions for the 2005-2008 funding periods; (4) \$40,000 for failure to pay NANP administration contributions for the 2005-2008 funding periods; (5) \$40,000 for failure to pay LNP administration contributions for the 2005-2008 funding periods; (6) \$40,000 for failure to make regulatory fee program payments for 2005-2008; and (7) \$20,000 for failure to respond to a directive of the Bureau to provide certain information and documents.

24. We conclude that Omniat has apparently failed to obtain an international section 214 authorization from the Commission prior to providing international telecommunications service. A carrier's failure to obtain the 214 authorization undermines the Commission's ability to accomplish Congress' objectives in section 214 of the Act. Omniat has apparently operated as an international telecommunications service provider since 2002 without authorization from the Commission. We therefore find that this apparent violation of the Act and the Commission's rules was continuing. Given the unambiguous language of the Act,<sup>63</sup> the Commission's rules and decisions,<sup>64</sup> and even the Commission's web site,<sup>65</sup> it should have been apparent to Omniat that it was required to obtain section 214 authority from the Commission to provide international telecommunications service.

25. In light of the Commission's clear requirements, and the important public interest considerations involving national security, law enforcement, foreign policy and trade policy,<sup>66</sup> we find that Omniat's failure to obtain section 214 authority from the Commission prior to providing international telecommunications service was also egregious. Pursuant to the Commission's mandate from Congress to consider "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,"<sup>67</sup> we find, consistent with prior precedent for entities failing to receive prior authorization from the International Bureau, that a proposed forfeiture of \$100,000 is warranted for Omniat's apparent willful repeated failure to obtain section 214 authority from the Commission prior to providing international telecommunications service.<sup>68</sup>

26. Omniat has also failed to file annual Telecommunications Reporting Worksheets after 2002. As we noted above, a carrier's obligation to file Worksheets is directly linked to, and thus has serious implications for, administration of the TRS, NANP, LNP, and regulatory fee programs. By ignoring its reporting obligations, Omniat unilaterally shifted to compliant carriers and their customers the economic costs associated with the administration of these programs. The failure to file Telecommunications Reporting Worksheets constitutes a continuing violation for which the one-year statute of limitations for forfeiture under section 503(b)(2)(B) does not begin to run until the violation is

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<sup>63</sup> 47 U.S.C. § 214(a).

<sup>64</sup> See, e.g., 47 C.F.R. §§ 63.12, 63.18, 63.20, 63.21, 63.23; see also *1998 International Biennial Review Order*, 14 FCC Rcd 4909; *Regulation of Int'l Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992) ("*International Resale Order*").

<sup>65</sup> See International Bureau Frequently Asked Questions, <http://www.fcc.gov/ib/pd/pf/214faq.html> (last visited Jan. 21, 2009).

<sup>66</sup> See *1998 International Biennial Review Order*, 14 FCC Rcd at 4915-17 ¶¶ 15-18; *id.* at 4939-40 ¶¶ 72-74.

<sup>67</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>68</sup> *InPhonic, Inc.*, Order of Forfeiture and Further Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 8689, 8703 ¶ 35 (2007); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 09-1 ¶ 38 (rel. Jan. 14, 2009).

cured.<sup>69</sup> Consistent with precedent, however, we exercise our prosecutorial discretion here and decline to propose forfeitures for Omniat's failures to file Worksheets more than one year prior to the date of the *NAL*. In the past, we have held that a substantial forfeiture of \$50,000 is warranted for a carrier's failure to file a Telecommunications Reporting Worksheet for revenue reporting purposes.<sup>70</sup> Therefore, we find that Omniat is apparently liable for a \$50,000 forfeiture for failure to file the annual Worksheet due April 1, 2008. We caution Omniat and other carriers that future enforcement actions may consider all failures to file Worksheets as continuing violations subject to forfeiture action.

27. We also find that Omniat has apparently failed to make TRS contributions since 2003. Where a carrier fails to satisfy its TRS obligations for an extended period of time, it thwarts the purpose for which Congress established section 225(b)(1) of the Act and its implementing regulations – to ensure that telecommunications relay services “are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”<sup>71</sup> Every carrier providing interstate and international telecommunications services, which receives some revenues, must contribute at least \$25 annually to the TRS Fund.<sup>72</sup> We have previously stated that nonpayment of TRS and other contributions constitute continuing violations, and to effectively deter companies like Omniat from violating our rules governing payment into the TRS and other programs, our forfeiture calculations will reflect not only the violations that began within the last twelve months, but all such continuing violations.<sup>73</sup> The Commission has established a base forfeiture amount of \$10,000 for each instance in which a carrier fails to make required TRS contributions.<sup>74</sup> Therefore, we find Omniat apparently liable for a forfeiture in the amount of \$40,000 for its willful and repeated failure to satisfy its TRS obligations for the 2005-2008 funding periods.

28. We further find that Omniat has apparently failed to make any contributions toward NANP administration and LNP cost recovery mechanisms on the basis of its actual end-user telecommunications revenues since 2003. As with TRS, the failure of carriers to make required NANP administration and LNP contributions for an extended period of time severely hampers the Commission's ability to ensure that the cost of establishing telecommunications numbering administration arrangements is “borne by all telecommunications carriers on a competitively neutral basis” as Congress envisioned.<sup>75</sup> For the same reasons that failures to make TRS contributions are continuing violations, the failure to

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<sup>69</sup> *Telrite Corporation*, Notice of Apparent Liability for Forfeiture & Order, 23 FCC Rcd 7231, 7244 ¶ 30 (2008) (“*Telrite NAL*”).

<sup>70</sup> *Globcom NAL*, 18 FCC Rcd at 19905 ¶ 32; *Globcom, Inc.*, 21 FCC Rcd 4710, 4727 ¶ 45 (2006) (“*Globcom Forfeiture Order*”).

<sup>71</sup> 47 U.S.C. § 225(b)(1).

<sup>72</sup> 47 C.F.R. § 64.604(c)(5)(iii)(B). If a carrier contributes less than \$1,200 annually, that payment must be made at the beginning of the contribution period. Otherwise, a carrier may divide contributions into equal monthly payments. *Id.*

<sup>73</sup> *Telrite NAL*, 23 FCC Rcd at 7243 ¶ 27.

<sup>74</sup> See *Globcom NAL*, 18 FCC Rcd at 19904 ¶ 29. Consistent with precedent, the Commission generally includes an upward adjustment based on one-half of the company's approximate unpaid TRS contributions at the time the investigation was initiated when proposing forfeiture for TRS violations. See *Globcom Forfeiture Order*, 21 FCC Rcd at 4721-24 ¶¶ 31-38. We are not proposing an upward adjustment at this time, however, because we lack the revenue data needed to determine the precise scope of Omniat's TRS obligations. We expressly reserve our ability to make an upward adjustment in the forfeiture amount once the amount of Omniat's unpaid TRS obligations is determined.

<sup>75</sup> 47 U.S.C. § 251(e)(2).

make NANP administration and LNP contributions are continuing violations until they are cured by payment of all monies due.<sup>76</sup> The Commission has generally established a base forfeiture amount of \$10,000 for each instance in which a contributor fails to make required contributions to the NANP and LNP administration cost recovery mechanisms. Consequently, and consistent with precedent,<sup>77</sup> we find that Omniat is apparently liable for a forfeiture of \$40,000 for failing to timely pay contributions toward NANP administration cost recovery mechanisms from 2005 to 2008. Consistent with precedent,<sup>78</sup> we also find that Omniat is apparently liable for a forfeiture of \$40,000 for failing to timely pay contributions toward LNP administration cost recovery mechanisms from 2005 to 2008.

29. We also find that Omniat has apparently failed to make any regulatory fee payments to the Commission on the basis of its actual interstate and international end-user telecommunications revenues since 2003. A carrier's failure to contribute toward the costs of certain regulatory activities from which it benefits undermines the efficiency, equitability, and effectiveness of the regulatory fee program and accomplishment of Congress' objectives in section 9(a)(1) of the Act. As with the failure to make TRS, NANP and LNP contributions, failures to make regulatory fee payments are continuing violations until they are cured by the payment of all monies owed.<sup>79</sup> The Commission has established a base forfeiture amount of \$10,000 for failure to make required regulatory fee payments.<sup>80</sup> Therefore, we find Omniat is apparently liable for a forfeiture of \$40,000 for its willful and repeated failure to make regulatory fee payments from 2005 to 2008.

30. Finally, we find that Omniat has repeatedly and willfully failed to provide a timely and complete response to the LOI. Section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.<sup>81</sup> We find that Omniat's total failure to respond to the LOI warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in an area of critical importance to the Commission -- contributions to the USF, TRS Fund, NANP administration, and LNP administration. Prompt and full responses to Bureau inquiry letters are critical to the Commission's enforcement function. Therefore, consistent with precedent,<sup>82</sup> we propose a total forfeiture against Omniat of \$20,000 for failing to respond to the LOI.

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<sup>76</sup> *Globcom NAL*, 18 FCC Rcd at 19904 ¶ 29.

<sup>77</sup> See e.g., *Teletronics, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13291, 13303, ¶ 35 (2005) ("*Teletronics NAL*"), *consent decree entered*, 22 FCC Rcd 8681 (2007); *Telrite NAL*, 23 FCC Rcd at 7245 ¶ 33.

<sup>78</sup> See e.g., *Telrite NAL*, 23 FCC Rcd at 7245 ¶ 34.

<sup>79</sup> *Id.*, 23 FCC Rcd at 7245 ¶ 35.

<sup>80</sup> See *Telecom Management Inc.*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 14151, 14158 ¶ 22 (2005); *Teletronics NAL*, 20 FCC Rcd at 13304 ¶ 36; *Carrera Communications, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13318 ¶ 36 (2005); *Telrite NAL*, 23 FCC Rcd at 7245 ¶ 35.

<sup>81</sup> 47 C.F.R. § 1.80; *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>82</sup> See, e.g., *BigZoo Forfeiture Order*, 20 FCC Rcd at 3955 ¶ 6 (ordering \$20,000 forfeiture for failure to respond to LOI); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same); (...continued)

#### IV. CONCLUSION

31. In light of the seriousness, duration and scope of the apparent violations, we find that a proposed forfeiture in the amount of \$330,000 is warranted. As discussed, this proposed forfeiture amount includes: (1) \$100,000 for failure to obtain international section 214 authority to provide international telecommunications service; (2) \$50,000 for failure to file the annual Telecommunications Reporting Worksheet due on April 1, 2008; (3) \$40,000 for failure to pay TRS Fund contributions for the 2005-2008 funding periods; (4) \$40,000 for failure to pay NANP administration contributions for the 2005-2008 funding periods; (5) \$40,000 for failure to pay LNP administration contributions for the 2005-2008 funding periods; (6) \$40,000 for failure to make regulatory fee program payments for 2005-2008; and (7) \$20,000 for failure to respond to a directive of the Bureau to provide certain information and documents.

32. We order Omniat, within thirty days of the release of this *NAL*, to (1) submit to the Commission all authorization applications required under section 214(a) to provide international telecommunications service; (2) file with USAC all Telecommunications Reporting Worksheets required under the Commission's rules from the date it began providing telecommunications service in the United States to the date of this *NAL*; (3) submit, either as part of its response to this *NAL* or separately, a report, supported by a sworn statement or declaration under penalty of perjury of a corporate officer, stating its plan to come into compliance with the relevant authorization, payment, and reporting rules discussed herein; and (4) respond fully to the June 2, 2008 LOI.

33. We caution that additional violations of the Act or the Commission's rules could subject Omniat to further enforcement action, including potentially higher monetary forfeitures, the revocation of operating authority, and the disqualification of any Omniat principal from the provision of any common carrier services without the prior consent of the Commission.<sup>83</sup> In addition, we note that, to the extent Omniat is found to be delinquent on any debt owed to the Commission, the Commission will not act on, and may dismiss, any application or request for authorization filed by Omniat, in accordance with the agency's "red light" rules.<sup>84</sup>

#### V. ORDERING CLAUSES

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(...continued from previous page)

*Universal Telecommunications, Inc.*, Notice of Apparent Liability and Order, 21 FCC Rcd 6579, 6582 ¶ 9 (Enf. Bur. 2005) (same).

<sup>83</sup> See *CCN, Inc., et al, Order to Show Cause and Opportunity for Hearing*, Order, 13 FCC Rcd 13599 (1998) (revoking carrier's operating authority based on findings of repeated violations); see also, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc., Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

<sup>84</sup> 47 C.F.R. § 1.1910. See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996). In 2004, the Commission adopted rules implementing the DCIA requirements. See *Amendment of Parts 0 and 1 of the Commission's Rules*, Report and Order, 19 FCC Rcd 6540 (2004) ("*DCIA Order*"). In its Order, the Commission codified procedures at 47 C.F.R. § 1.1910, the "red light rule," to extend and clarify existing policies in the management of the Commission's accounts, and to withhold action on applications or other requests for benefits by delinquent debtors, and ultimately to dismiss such applications or other requests if the delinquency is not resolved. See 47 C.F.R. § 1.1910; *DCIA Order*, 19 FCC Rcd at 6541-45 ¶¶ 3-15. The DCIA rules specify that the term "Commission" includes the USF, TRS Fund, "and any other reporting components of the Commission." See 47 C.F.R. § 1.1901(b). Thus, the Commission has determined that unpaid obligations to the USF and TRS Fund are subject to the DCIA.

34. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Omniat International Telecom, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$330,000 for willfully and repeatedly violating the Act and the Commission's rules.

35. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's Rules,<sup>85</sup> within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, Omniat International Telecom, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

36. IT IS FURTHER ORDERED THAT, pursuant to sections 4(i), 9(a)(1), 214(a), 225(b)(1), and 251(e)(2) of the Act, 47 U.S.C. §§ 4(i), 159(a)(1), 214(a), 225(b)(1), 251(e)(2), and sections 64.604(c)(5)(iii), 52.17, 52.32, 1.1154, and 1.1157(b)(1) of the Commission's rules, 47 C.F.R. §§ 64.604(c)(5)(iii), 52.17, 52.32, 1.1154, and 1.1157(b)(1), within thirty days of the release of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER, Omniat International Telecom, LLC SHALL SUBMIT a report, supported by a sworn statement or declaration under penalty of perjury by a corporate officer, stating its plan promptly to come into compliance with the authorization, payment and reporting rules discussed herein, and its application for authority provide international telecommunications services. Omniat International Telecom, LLC also SHALL SUBMIT to the Universal Service Administrative Company within thirty days all Telecommunications Reporting Worksheets required under the Commission's rules from the date Omniat International Telecom, LLC began providing telecommunications service in the United States to the date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER.

37. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Omniat International Telecom, LLC will also send electronic notification within forty-eight (48) hours of the date said payment is made to Hillary.DeNigro@fcc.gov.

38. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER must be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. Omniat International Telecom, LLC also will e-mail an electronic copy of its response to Hillary.DeNigro@fcc.gov.

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<sup>85</sup> See *id.* § 1.1914.

39. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

40. IT IS FURTHER ORDERED that a copy of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER shall be sent by certified mail, return receipt requested, to Hatem Akil, President, Omniat International Telecom, LLC, 127 W. Fairbanks Avenue, Suite 322, Winter Park, FL 32789-4326.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary