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

In the Matter of	)	File No. EB-08-TC-5453
Straightel, Inc. d/b/a Idealtel.com	)	NAL/Acct. No. 201032170740
Apparent Liability for Forfeiture	)	FRN: 0010491223

ORDER OF FORFEITURE

Adopted: June 9, 2011 **Released: June 10, 2011**

By the Chief, Telecommunications Consumers Division, Enforcement Bureau:

I. INTRODUCTION AND BACKGROUND

1. In this Order of Forfeiture,[1] we assess a monetary forfeiture of twenty thousand dollars ($20,000) against Straightel, Inc. d/b/a Idealtel.com ("Straightel"). Straightel has willfully or repeatedly violated section 222 of the Communications Act of 1934, as amended (the "Communications Act" or "Act"),[2] section 64.2009(e) of the Commission's rules,[3] and the Commission's *EPIC CPNI Order*[4] by failing to timely file an annual compliance certification with the Enforcement Bureau ("Bureau") for calendar year 2007 on or before March 1, 2008.

2. Straightel is a Voice over Internet Protocol ("VoIP") and prepaid calling card carrier located in Miramar, Florida. As a telecommunications carrier, Straightel is subject to the requirements of section 222 of the Act and section 64.2009 of the Commission's rules. Section 222 imposes the general duty on all telecommunications carriers to protect the confidentiality of

[1] The Commission has the authority to assess a forfeiture against any person who has "willfully or repeatedly failed to comply with any of the provisions of this [Act] or of any rule, regulation, or order issued by the Commission under this [Act] ...." 47 U.S.C. § 503(b)(1).

[2] 47 U.S.C. § 222.

[3] 47 C.F.R. § 64.2009(e).

[4] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6953 (2007) ("*EPIC CPNI Order*"); *aff'd sub nom*. *Nat'l Cable & Telecom. Assoc. v. FCC*, 555 F.3d 996, (D.C. Cir. 2009).

their subscribers' proprietary information.[5] As part of that obligation, carriers that receive or obtain customer proprietary network information ("CPNI") through the provision of telecommunications services can only use, disclose, or allow access to that information in connection with or to provide such telecommunications services.[6]

3. The Commission adopted rules implementing section 222 of the Act.[7] Section 64.2009 of these rules requires carriers to establish and maintain a system designed to ensure that carriers adequately protect their subscribers' CPNI.[8] Prior to the *EPIC CPNI Order*, section 64.2009(e) of the Commission's rules required telecommunications carriers such as Straightel to maintain and make publicly available annual certifications of their CPNI compliance.[9] The *EPIC CPNI Order* strengthened the CPNI rules by adding additional safeguards to protect CPNI against unauthorized access and disclosure, including an obligation that carriers subject to the CPNI rules file their annual certification with the Commission on or before March 1 of each year.[10] Additionally, as part of their annual certification filing, carriers were required to provide "an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI."[11]

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[5] Section 222 of the Communications Act, 47 U.S.C § 222, provides that: "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier."

[6] The Act defines CPNI as "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service, subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship" and "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier" excluding subscriber list information. 47 U.S.C. § 222(h)(1)(A)-(B). The Act provides for certain limited exceptions to a carrier's obligation to protect CPNI. *See* 47 U.S.C. § 222(d).

[7] *See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended,* CC Docket Nos. 96-115 and 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8068-70, ¶ 7 (1998). *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket Nos. 96-115 and 96-149; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 00-257*, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002); *EPIC CPNI Order*.

[8] 47 C.F.R. § 64.2009.

[9] *See EPIC CPNI Order*, 22 FCC Rcd at 6953–54, ¶ 52.

[10] *Id.* at 6953; 47 C.F.R. § 64.2009(e).

[11] *EPIC CPNI Order*, 22 FCC Rcd at 6953.

4. On September 5, 2008, the Bureau sent a Letter of Inquiry ("LOI") to Straightel requesting copies of its timely filed CPNI compliance certificate for 2007, which was due by March 1, 2008, or an explanation as to why no certification was filed.[12] Straightel responded to the LOI by sending an email to the Bureau stating that it was unaware that the CPNI compliance certification had not been filed.[13] The Bureau concluded that Straightel failed to submit satisfactory evidence of its timely filing of the annual CPNI compliance certification. On February 24, 2009, the Bureau released the *Omnibus NAL* against numerous companies, including Straightel, proposing a monetary forfeiture of $20,000 for the apparent failure to comply with section 64.2009(e) of the Commission's rules, and the Commission's *EPIC CPNI Order*, and ordered Straightel to either pay the proposed forfeiture or file a written response within 30 days of the release date stating why the proposed forfeiture should be reduced or canceled.[14] Straightel submitted a response to the *Omnibus NAL* on March 23, 2009.[15]

II. DISCUSSION

5. Section 64.2009(e) of the Commission's rules requires telecommunications carriers such as Straightel to file annually before March 1st a CPNI compliance certification signed by an officer of the carrier.[16] By its own admission, Straightel failed to comply with this Commission rule for calendar year 2007 and is subject to forfeiture. Section 503(b) of the Communications Act authorizes the Commission to assess a forfeiture against a common carrier of up to $150,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.[17] The Commission may assess this penalty if it determines that the carrier's noncompliance is "willful or repeated."[18] For a violation to be willful, it need not be intentional.[19] In exercising our forfeiture authority, we are required 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

[12] *See* Letter from Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, Enforcement Bureau, FCC, to Straightel (Sept. 5, 2008).

[13] *See* Email from Jean-Claude Saliba to Robert Somers and Marcy Greene, Telecommunications Consumers Division, Enforcement Bureau, FCC, (Sept. 10, 2008).

[14] *Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2299 (Enf. Bur. 2009) ("*Omnibus NAL*").

[15] *See* Letter from Jean-Claude Saliba, President, Straightel, Inc., to Marlene H. Dortch, Office of the Secretary, FCC, (Mar. 23, 2009) ("NAL Response").

[16] 47 C.F.R. § 64.2009(e); *see also EPIC CPNI Order*, 22 FCC Rcd at 6953-54, ¶¶ 51-53.

[17] 47 U.S.C. § 503(b)(2)(B); *see also* 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (inflation adjustment to $150,000/$1,500,000); FCC Enforcement Advisory No. 2011-02, 26 FCC Rcd 650 (Enf. Bur. 2011). At the time the *Omnibus NAL* was released the maximum forfeiture was $130,000 for each violation of the Act or of any rule, regulation, or order issued by the Commission. *See Omnibus NAL*, 24 FCC Rcd at 2301, ¶ 5.

[18] *See* 47 U.S.C. § 503(b)(1)(B).

[19] *See, e.g., Southern California Broadcasting*, 6 FCC Rcd at 4387-88, ¶ 5.

justice may require."[20] In addition, the Commission has established guidelines for forfeiture amounts and, where there is no specific base amount for a violation, retained discretion to set an amount on a case-by-case basis.[21]

6. The Commission's Forfeiture Policy Statement does not establish a base forfeiture amount for the failure to timely file an annual CPNI certification. The $3,000 base forfeiture amount suggested in the Commission's Forfeiture Policy Statement for failure to file documents generally is inadequate when applied to failure to file CPNI certifications. The Commission adopted the annual CPNI certification filing requirement to "ensure that carriers regularly focus their attention on their duty to safeguard CPNI. . . [and] remind carriers of the Commission's oversight and high priority regarding carrier performance in this area."[22] In the *Omnibus NAL*, the Bureau took into account the statutory factors for determining a forfeiture amount, the gravity of the offense, Commission precedent involving violations of our CPNI rules, and the fact that protection of a subscriber's CPNI is an important carrier obligation and the certification filing is an important part of that obligation.[23] Taking these factors into account, the Bureau proposed a forfeiture amount in the *Omnibus NAL* of $20,000. This amount is consistent with other recent forfeiture orders.[24] Further, we have examined Straightel's response to the LOI and NAL, pursuant to the statutory factors, our rules, and the Forfeiture Policy Statement and find that no further downward adjustment from the $20,000 forfeiture amount is warranted.

7. As a preliminary matter, Straightel's failure to timely file its annual 2007 CPNI certification is not disputed. By its own admission, Straightel failed to file its CPNI certification by the March 1st filing deadline.[25] Straightel may have been unaware that it was required to file an annual CPNI certification, or unaware that it had failed to do so; however, oversight or inadvertently not filing is not a mitigating factor.[26]

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[20] *See* 47 U.S.C. § 503(b)(2)(E); *see also The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules*, 12 FCC Rcd 17087, 17100-17101, ¶ 27 (1997) ("*Forfeiture Policy Statement"*); *recon. denied*, 15 FCC Rcd 303 (1999).

[21] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, ¶ 22.

[22] *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 51.

[23] *See Omnibus NAL*, 24 FCC Rcd at 2302, ¶ 8; *see also EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 51.

[24] *See USA Teleport, Inc*., Apparent Liability for Forfeiture, EB-08-TC-5801, Order of Forfeiture, 26 FCC Rcd 2456 (Tel. Con. Div. 2011), *recon. denied*, Memorandum Opinion & Order, DA 11-802 (Enf. Bur. Apr. 29, 2011); *Think 12 Corporation d/b/a Hello Depot*, Apparent Liability for Forfeiture, EB-08-TC-5708, Order of Forfeiture, 26 FCC Rcd 2135 (Tel. Con. Div. 2011); *Nationwide Telecom, Inc*., Apparent Liability for Forfeiture, EB-08-TC-4772, Order of Forfeiture, 26 FCC Rcd 2440 (Tel. Con. Div. 2011); *Calmtel USA, Inc*., Apparent Liability for Forfeiture, EB-08-TC-3240, Order of Forfeiture, 26 FCC Rcd 2445 (Tel. Con. Div. 2011); *Diamond Phone, Inc*., Apparent Liability for Forfeiture, EB-08-TC-3704, Order of Forfeiture, 26 FCC Rcd 2451 (Tel. Con. Div. 2011).

[25] *See* LOI Response ("[Straightel] was unaware that we did not file a . . . compliance certificate for the calendar year 2007 and has taken procedural steps to assure that we file the required CPNI documents on time in the future.").

[26] *See Southern California Broadcasting*, 6 FCC Rcd at 4387, ¶ 3; *see also STI Prepaid, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17836, 17845, ¶ 20 (Enf. Bur. 2010) ("*STI Prepaid*") ("It is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture. Likewise, a violator's lack of knowledge or erroneous beliefs is not a mitigating factor warranting reduction of a forfeiture."). This case is different than where the rule was recently modified and the violation was (continued….)

8. In addition, Straightel failed to show past compliance with the Commission's CPNI certification requirements. Prior to the annual certification filing requirement, carriers were required to have a CPNI compliance plan and keep an annual CPNI compliance certificate in their files (*i.e.*, carriers were required to annually certify but were not required to file the certification with the Commission).[27] In lieu of an annual filing requirement, carriers were required to produce their annual certifications for inspection upon Commission request.[28] Straightel has failed to show that it was in compliance with the earlier certification requirement. Thus, the Commission cannot consider past CPNI compliance as a mitigating factor.[29]

9. We also note that based on the revenue information provided by Straightel, a downward adjustment is not warranted due to an inability to pay the proposed forfeiture.

III. CONCLUSION

10. In the *Omnibus NAL*, the Bureau considered several factors including the amount of forfeiture necessary to have the intended deterrent effect. The Bureau concluded that the goal of deterring future non-compliance would be met by issuing forfeitures consistent with the proposed amount. We take noncompliance with our CPNI rules very seriously. This forfeiture order should advise Straightel and other carriers that the protection of a subscriber's CPNI and the annual CPNI compliance certification filing requirements are important carrier obligations.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Straightel, Inc. d/b/a Idealtel.com **SHALL**

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due to a licensee's lack of actual knowledge of the rule change. Prior to adoption of the annual CPNI certification filing requirement, our CPNI rules already required telecommunications carriers such as Straightel to have a CPNI compliance program and to have an officer of the company certify annually that the company was in compliance with our CPNI rules. *See EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 52. As discussed in paragraph 7, Straightel failed to show it had complied with the certification filings under the old rules. Thus, any lack of knowledge in the instant case does not warrant a downward adjustment.

[27] *Omnibus NAL*, 24 FCC Rcd at 2302, ¶ 7. This prior rule is discussed in the *EPIC CPNI Order*: "each telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the Commission's CPNI rules and to make that certification available to the public." *EPIC CPNI Order*, 22 FCC Rcd at 6953, ¶ 52 (citation omitted).

[28] *Omnibus NAL*, 24 FCC Rcd at 2302, ¶ 7.

[29] Moreover, in a number of recent actions, the Commission has held that the failure to file forms is a continuing violation until cured. *See Annual CPNI Certification*, Omnibus Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 2160, 2162, ¶ 8 (Enf. Bur. 2011); *STI Prepaid, LLC*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17836, 17845, ¶ 20 (Enf. Bur. 2010); *Champaign Telephone Company d/b/a CT Communications, Inc.*, Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17814, 17818-18, ¶ 9 (Spec. Enf. Div. 2010); *Lightyear Network Solutions, LLC*, Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 16212, 16217, ¶ 12 (Spec. Enf. Div. 2010); *Alpheus Communications, LP*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8993, 8998, ¶ 12 (Enf. Bur. 2010); *Compass Global, Inc*., Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6138-39, ¶ 31 (2008); *Telrite Corp*., Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7244, ¶ 30 (2008); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, ¶ 20 (2007). Thus, Straightel continued to violate the certification filing requirement for calendar year 2007 until it filed the certification.

FORFEIT to the United States government the sum of $20,000 for willfully or repeatedly violating the Act and the Commission's rules.

12. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the rules within thirty (30) days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act. 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/Account No. and FRN 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-C 2-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 24A. Straightel will also send electronic notification on the date said payment is made to johnny.drake@fcc.gov. 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.

13. **IT IS FURTHER ORDERED** that a copy of this *Order for Forfeiture* shall be sent by Certified Mail Return Receipt Requested and First Class Mail to the company at 5065 SW 131 Ave., Miramar, FL 33027.

FEDERAL COMMUNICATIONS COMMISSION

Richard A. Hindman
Chief
Telecommunications Consumers Division
Enforcement Bureau