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July 16, 2012

BY ELECTRONIC SUBMISSION

Mr. Jim Ball
Chief
Policy Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Reply to Response to Opposition to Application for STA of Rubard LLC d/b/a Centmobile; File No. ITC-STA-20120703-00168

Dear Mr. Ball:

Stanacard, LLC (“Stanacard”), by its undersigned counsel, hereby replies to Rubard LLC’s (“Rubard’s”) July 13, 2012 response to Stanacard’s Opposition to Application for Special Temporary Authority (“STA”)¹ as well as Rubard’s July 12, 2012 Supplemental Letter.²

A. Grant of the STA in this Case is Clearly Unwarranted

Rubard’s Response to STA Opposition claims that “Stanacard has not shown that Centmobile knowingly, deliberately or intentionally violated Commission rules.” Not only has Stanacard shown this, but Stanacard has established a *prima facie* case that Rubard’s international Section 214 application must be denied. Stanacard’s Reply to Opposition to Petition to Deny International Section 214 Application of Rubard LLC d/b/a/ Centmobile, submitted on July 12, 2012 (“Stanacard 214 Reply”) (a copy of which is attached hereto and incorporated herein by reference) in conjunction with its Petition to Deny in the underlying 214 proceeding,³ clearly establish a *prima facie* case favoring denial of Rubard’s international

¹ See Rubard Response to STA Opposition, File No. ITC-STA-20120703-00168 (filed July 13, 2012) (“Response to STA Opposition”).

² See Rubard Supplemental Letter, File No. ITC-STA-20120703-00168 (filed July 12, 2012) (“Supplemental Letter”).

³ *In the Matter of Rubard LLC d/b/a Centmobile*, Petition to Deny, File No. ITC-214-20120518-00134 (filed June 20, 2012) (“Petition to Deny”).

Section 214 application. Because Rubard has not refuted this showing, its STA also must not be granted.

Stanacard has shown the following, *inter alia*, to establish a *prima facie* case:

- that Rubard has been intentionally and knowingly operating in violation of FCC requirements, including the requirement to obtain international Section 214 authorization, for a substantial period of time;
- that Rubard likely began providing international service well before April 2011, the date cited in a declaration appended to its Opposition to Petition to Deny in the Section 214 matter as well as the Opposition itself;
- that Rubard's operations have been characterized by a history of across-the-board non-compliance with FCC requirements,⁴ serious apparent misrepresentation issues,⁵ and a demonstrated willingness to only comply when compelled to.⁶

As Stanacard has established a *prima facie* case that Rubard's international Section 214 application must be denied on the merits, it would unduly harm consumers to grant the associated STA request (thereby allowing Rubard to expand its customer base and collect even more prepaid deposits).⁷

⁴ Petition to Deny at 7-10.

⁵ As Stanacard indicates, not only is Rubard's declaration not consistent with the statements made in its Opposition as to its start date, but the declaration only offers a start date of "approximately April 2011." Despite these statements, Stanacard shows convincingly that Rubard was offering service as early as 2010 under its Centmobile.com website and identifying Paypal as a payment method. Stanacard 214 Reply at 9-11. *See, e.g., In re Applications of Liberty Cable Co., Inc.*, Decision, 15 FCC Rcd 25050, 25071 (2000) ("[T]he duty of candor requires applicants to be fully forthcoming as to all facts and information that may be decisionally significant to their applications"); *RKO v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981) ("As a licensing authority, the commission is not expected to 'play procedural games with those who come before it in order to ascertain the truth.'").

⁶ *See infra* at 4.

⁷ It must be noted that while Rubard attempted to cure the technical deficiencies in its initial STA request by submitting its July 12, 2012 Supplemental Letter, the request nonetheless remains clearly deficient under the Commission's STA rules. *See* 47 C.F.R. §63.25(b). For example, Section 63.25(b) requires that "[r]equests must set forth...how these points are currently being served by the applicant or other carriers" and that "the need for the proposed service" be shown. Rubard's STA request and submissions plainly fail to address these mandatory provisions.

B. Rubard Fails to Show that Discontinuance Would Harm the Public Interest

Rubard's Supplemental Letter was submitted in an attempt to supply a public interest showing which had been absent from its July 3, 2012 STA request. Rubard argues that the STA is necessary to prevent its existing customers from losing international service under their prepaid Centmobile plans.⁸ Viewed more closely, this is not a case in which discontinuance would impose any disadvantage whatsoever were the company to cease operations. The Company's service is not a primary service such as 1+/local service or a major wireless calling service. Rather, it is a prepaid, international-only supplemental service.⁹ Since the service is prepaid, Rubard could readily refund account balances to its customers. Customers would not be disadvantaged as they could easily turn to other international Section 214 authorized providers in the highly competitive prepaid international calling services market.

Such a result in fact would serve the public interest as consumers would then have the protection of receiving service from a licensed provider that willingly operates in compliance with FCC regulations and requirements, including CPNI obligations. This is of particular importance in the case of prepaid services, such as those provided by Rubard, where customer funds must be maintained by the provider in a fiduciary capacity. As shown above, since Stanacard has established a *prima facie* case in the international Section 214 proceeding, Rubard will invariably be required to cease operations. Delaying such discontinuance until weeks or potentially months from now will only serve to increase the number of consumers impacted (assuming Rubard's customer base is growing).

Moreover, Commission precedent makes it clear that the continuance of otherwise illegal service is not a sufficient public interest showing. The International Bureau has stated:

...it is not our practice to grant routinely requests for temporary authorization (STA). Our authority to grant temporary authority is governed by the Communications Act which states that the Commission may grant an STA 'if it finds that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of such temporary operations would seriously prejudice the public interest....' Convenience to the applicant . . . generally is not considered to be sufficient to meet this public interest standard.¹⁰

⁸ According to Centmobile, an STA is necessary to prevent its existing customers from being disadvantaged if their service provider must discontinue service. *See* July 12, 2012 Supplemental Letter.

⁹ Indeed, such customers often have more than one such prepaid international calling service in addition to a primary service.

¹⁰ *International Bureau Announces Minor Change in IBFS Code for Identifying International Telecommunications Special Temporary Authority (STA) and Reminds Applicants of Appropriate Use for STA*, Public Notice, 15 FCC Rcd 18717, DA 00-1252 (2000); *see also In the Matter of Stratos Mobile Networks (USA), LLC*, Order, 14 FCC Rcd 5056, 5058 (1999) (finding

The Commission has further ruled, “[t]he assertion that any company is operating in the U.S. illegally and without Commission authorization ... is not a justification for grant of special temporary authority.”¹¹

C. Other Arguments Advanced by Rubard Are Without Merit

Alluding to the fact that Stanacard is “only a competitor,” Rubard argues that the “Bureau should not allow a commercial rivalry to unnecessarily expend its resources....”¹² First, to be clear, any agency resources expended in connection with processing Rubard’s international Section 214 application or flawed STA request can only be attributed to Rubard. Had the company applied for both international Section 214 authority and STA on a timely and full disclosure basis, the Bureau would not be addressing issues of Rubard’s compliance. Second, Stanacard, as a competitor, has a strong interest in fair competition and a level playing field. Businesses, of which Rubard is one, which operate under the regulatory radar until detected, only serve to drive up costs for competitors which endeavor to fully comply with FCC requirements.

Rubard also alleges that “[i]t is long-standing Commission policy not to involve itself with private contract disputes.”¹³ The specific issues raised in the underlying international Section 214 application matter and STA proceeding do not involve a private contract dispute. Rather, the issues raised involve serious concerns which directly impact the public interest (*see supra* at 2).

Rubard makes the mysterious, yet telling, claim that “the STA would not have been necessary but for the Petition to Deny Stanacard filed.”¹⁴ First, this statement is simply incorrect, as Rubard would nonetheless have been required to apply for and obtain an STA if it wished to continue operations during the pendency of its international Section 214 application.¹⁵ Second, the statement implies a disturbing bent towards non-compliance on Rubard’s part, consistent with the arguments advanced by Stanacard in the underlying international Section 214 proceeding.

that an applicant has a “threshold burden of demonstrating the *urgent need* for grant of [a] request for special temporary authority”) (emphasis added).

¹¹ *In the Matter of Comsat Corporation*, Order, 13 FCC Rcd 319, 319 (1998).

¹² Response to STA Opposition at 1.

¹³ *Id.*

¹⁴ *Id.* at n. 4.

¹⁵ *See, e.g., In the Matter of Teleplus, LLC; Apparent Liability for Forfeiture*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7666, 7669 (2009).

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Should you require further information, please contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', with a stylized flourish at the end.

Thomas K. Crowe
Cheng-yi Liu,
Counsel for Stanacard, LLC

Attachment

cc: David Krech (david.krech@fcc.gov)
George Li (george.li@fcc.gov)
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ATTACHMENT

**(Reply to Opposition to Petition to Deny International
Section 214 Application of Rubard LLC d/b/a/ Centmoble)**

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

In the Matter of)	
)	
Rubard LLC d/b/a Centmobile)	
)	File No. ITC-214-20120518-00134
Streamlined International)	
Section 214 Application)	

**REPLY TO OPPOSITION TO PETITION TO DENY INTERNATIONAL
SECTION 214 APPLICATION OF RUBARD LLC D/B/A CENTMOBILE**

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July 12, 2012

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SUMMARY OF RESPONSE

Rubard is and has been intentionally operating in violation of federal law, despite its owners and officers having specific and documented knowledge of applicable Commission requirements, and thus lacks the necessary character and fitness to obtain Commission authorization for the provision of regulated international telecommunications services. The Opposition is simply an attempt to divert the Commission's attention from this reality.

Rubard's international Section 214 application (the "Application") is a clear attempt to conceal the Applicant's lengthy period of unauthorized operations. Rubard has admitted to unlawfully providing international telecommunications services and cannot deny that Artur Zaytsev, both an owner and officer of the company, had specific knowledge of federal regulatory requirements applicable to Rubard. In other words, Rubard fully understood its obligations but chose to deliberately and intentionally violate federal laws regardless. This is an intentional offense which speaks to the Applicant's lack of character and fitness, and requires the Commission to deny the Application.

The Opposition claims that Rubard's commitment to "meeting its past and present obligations... is the reason for its present application." This is a disingenuous claim because Rubard clearly made no attempt to actually comply with any other known Commission requirements at the time of the Application. On the other hand, Rubard's failure to disclose the fact of its unauthorized operations in the Application or through other filings shows that the Application was an attempt to conceal its noncompliance. Rubard continues its trend of untruthfulness by claiming in the Opposition that the Application "did not hide this fact, and was in all respects truthful." The Commission must not condone unlawful operations and deceptive applications, and must deny the Application.

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

In the Matter of)	
)	
Rubard LLC d/b/a Centmobile)	
)	File No. ITC-214-20120518-00134
Streamlined International)	
Section 214 Application)	

**REPLY TO OPPOSITION TO PETITION TO DENY INTERNATIONAL
SECTION 214 APPLICATION OF RUBARD LLC D/B/A CENTMOBILE**

Pursuant to Section 63.20(d) of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules,¹ Stanacard, LLC (“Petitioner” or “Stanacard”), by its attorneys, respectfully submits this reply to Rubard LLC d/b/a Centmobile’s (“Rubard’s” or “Applicant’s”) Opposition to Petition to Deny (the “Opposition”).² The Opposition amounts to nothing more than a subterfuge intended to divert the Commission from the only reasonable conclusion that can be reached: Rubard is and has been intentionally operating in violation of federal law, despite its owners and officers having specific and documented knowledge of applicable Commission requirements, and thus is unqualified to obtain Commission authorization for the provision of regulated international telecommunications services.³ The Commission must not condone such deliberate, illegal operations which blatantly flout its regulatory authority.

¹ See 47 C.F.R. § 63.20(d).

² *In the Matter of Rubard LLC d/b/a Centmobile*, Opposition to Petition to Deny, File No. ITC-214-20120518-00134 (July 5, 2012). The Opposition was in response to Stanacard’s Petition to Deny International Section 214 Application of Rubard LLC, d/b/a Centmobile filed under File No. ITC-214-20120518-00134 on June 20, 2012 (“Petition to Deny”).

³ See Petition to Deny at 2 (the lack of necessary character and fitness is material to the Commission’s determination that Applicant is unqualified to hold an international Section 214 authorization).

I. THE UNDISPUTED FACTS SHOW THAT RUBARD’S INTERNATIONAL SECTION 214 APPLICATION IS NOT TRUTHFUL AND ATTEMPTS TO CONCEAL RUBARD’S UNLAWFUL OPERATIONS

Rubard’s international Section 214 application (the “Application”)⁴ must be denied because it is not “in all respects truthful” as Rubard claims.⁵ In fact, the Application is a clear attempt to conceal the Applicant’s lengthy period of unauthorized operations—an act that is far from truthful. As admitted in the Opposition,⁶ Rubard had been unlawfully providing international telecommunications services for (at least) “approximately fourteen months” before filing the Application.⁷ Rubard “regrets this *error*,”⁸ implying its violations of federal laws were simply unintentional oversights or mistakes due to ignorance. On the contrary, the undisputed facts show that Rubard’s illegal operations were clearly deliberate and intentional and the Applicant made no attempt to be forthright about its noncompliance in the Application or the Opposition.

Artur Zaytsev (“Zaytsev”), both an owner and officer of Rubard,⁹ is a former officer of Petitioner and had specific knowledge of, as well as documented involvement with FCC

⁴ *In the Matter of Rubard LLC d/b/a Centmobile*, International Section 214 Application, File No. ITC-214-20120518-00134 (May 18, 2012).

⁵ Opposition at 1.

⁶ *Id.* at 1 and 5.

⁷ This admission is in direct contradiction to Rubard’s claim that it does not have a longstanding pattern of violating the Commission’s rules. Opposition at 5. Fourteen months is certainly a long enough duration to be considered “longstanding,” and the time period of admitted non-compliance encompasses enough missed regulatory filing deadlines (and failures to remit contributions to various federal telecommunications funding mechanisms) to establish a pattern of violations. *See* Petition to Deny at 8 – 10.

⁸ Opposition at 1 (emphasis added).

⁹ *Id.* at 6 (stating that Zaytsev “continues to serve as an officer for Centmobile”).

regulatory requirements applicable to an international telecommunications service provider.¹⁰ Because of Zaytsev's involvement, Rubard simply cannot claim that it was unaware of its federal regulatory obligations,¹¹ including obtaining international Section 214 authorization prior to providing international telecommunications services. Rubard's failure to comply with Commission requirements (of which it was aware) is not a simple error for which forgiveness (in the form of an international Section 214 authorization) can be granted due to an insincere plea of regret. Rubard fully understood its obligations but chose to deliberately and intentionally violate federal laws regardless.¹² This is an intentional offense which speaks to the Applicant's lack of character and fitness, and requires the Commission to deny the Application.

Rubard claims that its commitment to "meeting its past and present obligations... is the reason for its present application."¹³ This is a disingenuous claim, given that Rubard made no efforts documented on the public record at the time of its Application to disclose its unauthorized operations or comply with other Commission requirements. At the time of the Application,

¹⁰ Petition to Deny at 5, n. 18 and n. 20. In addition to having documented involvement on Section 214 related obligations, the Commission can easily verify that Zaytsev was also the signatory on Petitioner's initial FCC Form 499-A registration, the signatory on several subsequent FCC Form 499-A registration update filings and revenue reports, the senior officer identified as the contact (*i.e.*, systems security and integrity representative) on Petitioner's initial CALEA SSI Plan, and the signatory on more than one Section 43.61(a) report of international telecommunications traffic.

¹¹ Indeed, the Opposition makes no attempt to deny that Rubard was specifically aware of the applicable regulatory requirements nor does it show that any attempt was made to comply with known requirements at the time of the Application. *See id.*; *see also* Petition to Deny at 9.

¹² This directly contradicts Rubard's claim that it has not willfully and repeatedly violated Commission rules. Opposition at 5. In fact, Section 312(f)(1) of the Communication Act of 1934, as amended (the "Act"), defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). Rubard can make no truthful claim that its admitted fourteen month failure to obtain international Section 214 authority or its failure to comply with any other Commission requirements was anything short of willful.

¹³ Opposition at 1.

Rubard made no attempt to obtain Special Temporary Authority (“STA”) and chose to simply continue with its unauthorized operations.¹⁴ A timely application for STA would have disclosed to the Commission that Rubard had been operating without authorization, and would have been a more reliable indicator that Applicant had intended to meet its past and present obligations in good faith. Rather, Rubard chose to aggravate its existing violation by not applying for STA,¹⁵ and then presumably hope that its unauthorized operations went undetected under a streamlined international Section 214 application process. In fact, Rubard made no attempt to apply for STA until July 3, 2012,¹⁶ more than a month and a half after filing of the Application and only after the Petition to Deny had already exposed Applicant’s unauthorized operations.

Furthermore, Rubard failed to file an FCC Form 499-A registration—another important Commission prerequisite for the provision of both interstate and international telecommunications services—at the time of its Application.¹⁷ A company intent on meeting its past and present obligations should certainly be willing to take the very minimal amount of time required to complete and mail a registration form which requests primarily contact information.¹⁸

¹⁴ Again, Zaytsev had specific knowledge that an applicant which had been operating without international Section 214 authority would be required to obtain STA. *See* Petition to Deny at 5 and n. 20.

¹⁵ *See, e.g., In the Matter of Teleplus, LLC; Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7666, 7669 (2009) (“Teleplus NAL”)* (finding failure to apply for STA to be an aggravating factor where a company continued to operate while its international Section 214 application was pending).

¹⁶ *See* File No. ITC-STA-20120703-00168. Stanacard filed an opposition to Rubard’s application for STA on July 9, 2012.

¹⁷ Searches for “Rubard” and “Centmobile” in the FCC Form 499-A Filer Database, reflecting filings received by USAC as of June 8, 2012, indicated no FCC Form 499-A registration had been filed by Rubard through at least June 8, 2012. *See Exhibit A.*

¹⁸ Of note, the FCC Form 499-A registration also requires a filer to disclose the month and year in which the filer first began providing telecommunications services. While this information is not publicly available, the Commission can easily ascertain from this record (if truthful) whether

Yet, Rubard chose not to take this step—again, with Zaytsev’s specific knowledge that it would be required—at the time it claims to have started providing service in April 2011 and again in May 2012 when it claims to have filed the Application with an intent to meet its past and present obligations.¹⁹ There is no good faith intent that can be discerned from this deliberate delay of compliance.²⁰

The Application is not “in all respects truthful” in light of the documented facts in the Commission’s records,²¹ and based upon Applicant’s own admissions of unlawful operations. Rubard’s after-the-fact attempts at concocting a semblance of good faith compliance only further expose that the Application was simply an attempt to conceal at least fourteen months of violating federal laws. At the time of its Application, Rubard could have easily (and should have) disclosed to the Commission, through an application for STA or FCC Form 499-A registration, that it had been providing unauthorized international telecommunications services.

a filer has been providing services prior to filing the registration. Overall circumstances would seem to suggest that Rubard did not timely file its Form 499-A registration in hopes it would be able to pick a less conspicuous start date after its Application was granted.

¹⁹ There was also no record in the FCC Form 499-A Filer Database, prior to July 5, 2012 when the database was last updated, of Rubard having filed its FCC Form 499-A registration. Since the Opposition fails to state the exact date when Rubard’s FCC Form 499-A registration was filed, the only reasonable conclusion is that no such filing was made until after the Petition to Deny. Regardless, it is clear that Rubard made no attempt to comply with this important Commission requirement at the time of its Application in May 2012.

²⁰ At the time of the Petition to Deny, searches of the Commission’s publicly available databases (*e.g.*, ECFS) also conspicuously yielded no results for any apparent compliance filings by Rubard. *See* Petition to Deny at 9 and n. 9.

²¹ Rubard falsely accuses Petitioner of violating 47 C.F.R. §§ 1.17(a)(2), (b)(2) and 63.20(d) by not providing truthful statements of fact or supporting such statements with an affidavit. Opposition at 6 – 7. Rubard clearly overlooks the exception in rule 63.20(d) for facts which are in the Commission’s records and for which official notice may be taken. Rubard also fails to understand the distinction between facts and conclusions. The first is a necessary truth, the latter is merely a reasoned judgment or inference. Petitioner has not violated any duty of candor or truthfulness simply because Rubard disagrees with the conclusions drawn in the Petition to Deny.

However, Rubard chose not to make such a disclosure through these additional filings or in the Application itself. Thus, the Opposition misleadingly claims that the Application “did not hide this fact, and was in all respects truthful.”²² The plain facts show that Rubard chose to continue operating under the Commission’s radar and, through omission of information and deliberate non-action, effectively concealed the nature of its unauthorized operations on the Application. The Application is not truthful and must therefore be denied.

II. ZAYTSEV’S TRANSFER REQUIRED FCC APPROVAL DESPITE RUBARD’S FAILURE TO OBTAIN INITIAL INTERNATIONAL SECTION 214 AUTHORITY AT THE TIME THE TRANSFER OCCURRED

Rubard admits that it did not seek approval for the transfer of 90.1% ownership interest from Zaytsev to Alexander Dzerneyko (“Dzerneyko”) “because Centmobile was not yet authorized to provide international common carrier telecommunications services.”²³ This suspect interpretation of Commission authority implies that Rubard believes compliance with all other FCC requirements can be evaded simply by virtue of choosing to operate illegally without the necessary authorization.²⁴ This interpretation defies both reason and established Commission precedent.²⁵ Since Rubard was providing international telecommunications services,²⁶ it would have been required to obtain international Section 214 authorization and FCC approval for the transfer from Zaytsev to Dzerneyko. Rubard has not sought such approval, either permanently or

²² Opposition at 1. This can only be seen as a violation of the Applicant’s duty of candor to make truthful statements to the Commission. *See* 47 C.F.R. §§ 1.17(a) and (b)(1).

²³ Opposition at 3.

²⁴ *See id.* at n. 8.

²⁵ *See, e.g., In the Matter of FTTH Communications, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12890 (2011) (discussing steps taken by an applicant to obtain STA and approval for a transfer of control even prior to having obtained an initial international Section 214 authorization).

²⁶ *See* Section III, *infra* at 9.

through STA, resulting in a misrepresentation of the true nature of its ownership structure on the Application.

Rubard also attempts to bypass the transfer of control requirement by claiming in the Opposition that “[i]t was not until two months after the transfer, in April 2011, that Centmobile was approved for a merchant account and began providing common carrier telecommunications services *through that account*.”²⁷ Suspiciously, the assertion in the Opposition is qualified differently than the assertion in Dzerneyko’s declaration, which reads:

Centmobile began providing international common carrier telecommunications service in *approximately* April 2011. On April 4, 2011, Centmobile was first approved for a merchant account with Chase Bank, which was a practical prerequisite for the broad sale of telecommunications services to the general public.²⁸

On one hand, the assertion in the Opposition only goes so far as saying telecommunications services were not provided through the Chase Bank merchant account until April 2011. The approval of a merchant account in April 2011 does not equate with the provision of international telecommunications services, and strong evidence exists to suggest that Rubard provided international telecommunications services prior to this time using other means of payment processing, such as Paypal or TelPay,²⁹ which would not necessarily require a merchant

²⁷ Opposition at 3 (emphasis added).

²⁸ Declaration of Alexander Dzerneyko (“Dzerneyko Declaration”) at ¶ 7 (emphasis added).

²⁹ The Centmobile.com website, in November and December of 2010, identified PayPal as a payment method and describes next to the copyright footer that “CentMobile is a service of TelPay Inc.” TelPay is a payment processing company based out of Canada, and is clearly not a telecommunications service provider. See <http://www.telpay.ca/about/english> (last accessed July 12, 2012). The apparently fully functional nature of the website in 2010, including the posting of rates, calling instructions and alternative payment methods shows that Rubard apparently began providing international telecommunications service (as defined by the Act) prior to 2011. See Section III, *infra* at 9.

account.³⁰ On the other hand, the Dzerneyko Declaration only asserts April 2011 to be the approximate start date for Rubard's provision of international telecommunications service. Surely, April 2011 is not so far back in time that Rubard cannot accurately and more specifically determine from its own records—and consistently assert in its Opposition—when it actually began providing international telecommunications services. In fact, all Rubard would need to do—if indeed it was providing international telecommunications services only through the merchant account—is to verify the date it first received payment for services through the merchant account to know that no international telecommunications services could have been provided prior to that date. These inconsistent and loose assertions as to Rubard's start date for the provision of international telecommunications services, combined with the apparently fully functional nature of the Centmobile.com website in 2010,³¹ raise serious concerns regarding the veracity of the Opposition and the Dzerneyko Declaration.³² In short, evidence strongly suggests that Rubard apparently began providing international telecommunications services well before the February 2011 transfer and, as a result, FCC approval for a transfer of control was and still is required.

³⁰ A merchant account, such as one obtained through Chase Bank, would only be necessary for a company to directly accept and process credit and debit cards without utilizing another third-party payment processor. *See, e.g.,* https://www.chase.com/index.jsp?pg_name=ccpmapp/smallbusiness/merchant_services/page/paymentech (last accessed July 12, 2012).

³¹ *See supra* at n. 30; Section III, *infra* at 9.

³² These concerns regarding truthfulness further illustrate Applicant's apparent lack of character and fitness.

III. RUBARD APPARENTLY BEGAN PROVIDING INTERNATIONAL TELECOMMUNICATIONS SERVICES PRIOR TO 2011

The Commission need not rely solely upon the inconsistent assertions of start date in the Opposition and Dzerneyko Declaration to determine that Rubard began providing international telecommunications services prior to 2011. The Centmobile.com website,³³ through which Rubard provides telecommunications services, has been documented to be in functional existence since at least November of 2010. The Internet Archive Wayback Machine has archived versions of the main Centmobile.com page dating to December 2010,³⁴ as well as archived versions of various subpages, all in substantially the same form as exists today, dating to November 2010.³⁵ Specifically, the following archived pages support a conclusion that Centmobile.com was offering international telecommunications services as early as November 2010.³⁶

- “How to Use – Frequently Asked Questions (FAQ)” page from November 7, 2010 describing, among other things, that: (a) PayPal payments sent to paypal@centmobile.com were accepted; (b) calls could also be made from countries other than the U.S. and Canada because CentMobile had access numbers all over the world; (c) customers could sign up and begin using the service instantly; and (d) TelPay was apparently utilized as another payment option because the page footer indicates “CentMobile is a service of TelPay Inc.”³⁷

³³ A search at any online domain registrar will show that the Centmobile.com domain name was registered as of July 13, 2009. *See, e.g.*, <http://www.networksolutions.com/whois-search/centmobile.com> (last accessed July 12, 2012).

³⁴ *See* <http://web.archive.org/web/20101230114927/http://www.centmobile.com/> (last accessed July 12, 2012).

³⁵ The fact that earlier versions of Centmobile.com do not exist in the Internet Archive Wayback Machine archive does not necessarily rule out that the website was in existence and operational prior to November 2010.

³⁶ Note that the conclusion here is that Centmobile.com had offered international telecommunications services as early as November 2010. As Rubard will certainly be quick to point out, the company itself was not formally organized until December 2010.

³⁷ http://web.archive.org/web/20101107190451/http://www.centmobile.com/how_to_use.aspx?id=1 (last accessed July 12, 2012).

- “How to Use” page from November 8, 2010 explaining how calling a local number in the U.S. (click on the example in step 3) allows a customer to be “connected to the international number corresponding to your Local CentMobile number.”³⁸
- “Call Rates” page from November 7, 2010 displaying rates for calls to numerous international destinations.³⁹

These archived pages clearly show that Centmobile.com was, at the very least, offering international telecommunications services to the public as of November 2010.⁴⁰ Thus, upon its formation in December 2010, assuming it was operating the Centmobile.com website at that time, Rubard was also offering international telecommunications services to the public in 2010, well before its asserted start date of approximately April 2011.⁴¹

Finally, to further refute Applicant’s unreliable assertions that it did not provide international telecommunications services until approximately April 2011, two declarations have been enclosed to further refute Rubard’s assertions as to the start date of its international telecommunications services. The first is a declaration signed by Michael Choupak (“Choupak”), the former Managing Member of Stanacard, attesting to having personal knowledge that Zaytsev and his known colleague, Aleksandr Palatkevich (“Palatkevich”), have been obtaining international telecommunications services for resale from at least one underlying

³⁸ http://web.archive.org/web/20101108022348/http://www.centmobile.com/how_to_use.aspx (last accessed July 12, 2012).

³⁹ <http://web.archive.org/web/20101107220255/http://www.centmobile.com/Callrates.aspx> (last accessed July 12, 2012).

⁴⁰ The Act defines “telecommunications service” to mean “the *offering* of telecommunications for a fee directly to the public...” 47 U.S.C. § 153(53) (emphasis added).

⁴¹ If Rubard claims it was not the owner and operator of Centmobile.com in December 2010, then it must somehow show that its later acquisition of the website and any associated customer base from another provider of telecommunications services was not an unsanctioned transfer of control.

provider (with which Choupak has a professional relationship) since 2009.⁴² Specifically, Zaytsev and Palatkevich have been obtaining international telecommunications services for resale on behalf of Rubard and, prior to Rubard's formation, on behalf of another corporate entity known as Omnitel Communications Corp. ("Omnitel"). Because of the involvement of the same individuals in both Rubard and Omnitel, it is highly likely that Zaytsev and Palatkevich were operating Centmobile.com through Omnitel prior to the formation of Rubard. Choupak's declaration is further supported by a confidential declaration provided by the underlying provider.⁴³ The underlying provider's declaration attests to facts corroborating Choupak's declaration, including the fact that Zaytsev personally requested the underlying provider allow Rubard to assume the contract between Omnitel and the underlying provider. The information in these declarations further corroborates the assertions that Rubard and Centmobile.com have been providing international telecommunications services since prior to 2011.

IV. THE OPPOSITION ADVANCES OTHER UNFOUNDED ARGUMENTS AND ACCUSATIONS IN AN ATTEMPT TO DIVERT THE COMMISSION FROM THE TRUE ISSUES

Rubard questions Petitioner's motives,⁴⁴ accuses it of anticompetitive behavior,⁴⁵ and of misrepresenting facts "in an attempt to exact retribution against a would-be competitor."⁴⁶ Stanacard encourages and invites healthy, lawful competition in the international telecommunications service market by service providers which operate in compliance with Commission requirements. However, any service provider that is willing to deliberately flout

⁴² See Declaration of Michael Choupak.

⁴³ See Confidential Declaration of Underlying Provider, enclosed as Exhibit B.

⁴⁴ Opposition at 2.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 7.

federal laws and operate outside of the Commission’s authority cannot claim to legitimately benefit a competitive market. In fact, deliberately operating without authorization and violating other Commission requirements creates an unequal playing field which gives companies like Rubard an unfair and anticompetitive advantage over lawfully operating service providers. In this regard, Rubard is not a “would-be competitor” because it currently seeks Commission authorization—it is an existing competitor which has been operating unlawfully to the detriment of the entire competitive telecommunications market, of all the federal funding mechanisms to which it has avoided making required contributions, and of all the consumers who have been deceived into signing up for service with a noncompliant, unauthorized provider.

As Rubard seems to have a proclivity for doing, it has misunderstood and mischaracterized statements and conclusions contained in the Petition to Deny. For example, Petitioner does not attempt to show Rubard’s “bad intent in listing the South Dakota address by *citing to the address listed on the contact page of Centmobile’s public website.*”⁴⁷ The bad intent is inferred from the fact that Rubard exhibits a great hesitance in making known its true place of business on its website (which uses a Delaware registered agent address) or the Application (which uses the South Dakota P.O. Box address).⁴⁸ The Opposition correctly points out that Petitioner also utilizes a similar South Dakota address. However, unlike Rubard, Petitioner has not represented this as its place of business or provided this as its only address on applications to the Commission. Finally, the Opposition clearly misinterprets and quotes out of context footnote

⁴⁷ Opposition at 4.

⁴⁸ At the time of the Petition to Deny, there was no publicly available evidence in the Commission’s Form 499 Filer Database to show that Rubard had provided a true corporate business address to the Commission. *See supra* at n. 17.

17 of the Petition to Deny.⁴⁹ Petitioner made absolutely no claim that Zaytsev is not a U.S. citizen. In fact, footnote 17 clearly states “the involvement of *other* individuals” and specifically contemplates the possibility that Palatkevich, a non-U.S. citizen according to Petitioner’s records, is likely to be involved with Applicant because he is a known colleague of Zaytsev (a fact also documented in the Commission’s records).⁵⁰ Again, Rubard’s emphasis on mischaracterizing these issues is a clear attempt to create subterfuge and divert the Commission’s attention from the true issues (*i.e.*, Rubard’s intentional violations of the law and lack of character and fitness) which require denial of the Application.


⁴⁹ Opposition at 6.

⁵⁰ *See* Petition to Deny at n. 18.

V. CONCLUSION

For the aforementioned reasons, the Commission must disregard the diverting arguments advanced in the Opposition and deny the Application.

Respectfully submitted,



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Cheng-yi Liu

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COUNSEL FOR STANACARD, LLC

July 12, 2012

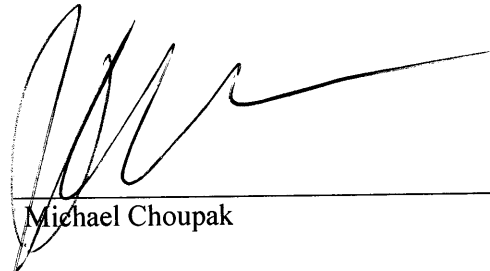
DECLARATION OF MICHAEL CHOUPAK

I, Michael Choupak, do hereby declare as follows:

1. I am the former Managing Member of Stanacard, LLC ("Stanacard") and I have personal knowledge of the facts set forth herein.
2. I have a professional relationship with an underlying provider of wholesale international telecommunications services.
3. Through my professional relationship, I discovered information indicating the underlying provider was providing international telecommunications services for resale to Omnitel Communications Corp. ("Omnitel") since August 2009.
4. From this information, I recognized that two individuals known to me through my former involvement with Stanacard, Artur Zaytsev ("Zaytsev") and Aleksandr Palatkevich ("Palatkevich"), were involved in the operations of Omnitel.
5. I also discovered information indicating that Zaytsev and Palatkevich later, in January 2011, were involved in the shift of Omnitel's operations to an entity known as Rubard LLC d/b/a Centmobile ("Rubard").
6. Based on this overall information, I believe that Zaytsev and Palatkevich were operating the Centmobile.com website, first through Omnitel and then later through Rubard.
7. When I was the Managing Member of Stanacard, I hired Palatkevich to implement the technology system for the operation of Stanacard's calling platform. Palatkevich is the only individual who could have implemented the technology system for Centmobile.com, as Zaytsev and Alexander Dzerneyko (Rubard's alleged managing member) would not have the knowledge or ability to do so. I can only conclude that Palatkevich would not have implemented the technology system for Centmobile.com without also having obtained a controlling or at least substantial interest in its operations, whether through Omnitel or Rubard.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on this 12 day of July, 2012.



Michael Choupak

EXHIBIT A

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EXHIBIT B
(REDACTED FOR PUBLIC INSPECTION)

CERTIFICATE OF SERVICE

I, Stefan Roha, a legal assistant at the Law Offices of Thomas K. Crowe, P.C., do hereby certify that on this 12th day of July, 2012, a copy of the foregoing was served, by the method described below, upon the following:

By first class U.S. Mail, postage prepaid:

Ms. Patricia Paoletta
Counsel to Rubard, LLC d/b/a Centmobile
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Suite 1200
Washington, DC 20036

Mr. Alexander Dzerneyko
Rubard, LLC d/b/a Centmobile
Box 180671878
Sioux Falls, SD 57186

Mr. Alexander Dzerneyko
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PMB 7244
2711 Centerville Road
Suite 120
Wilmington, DE 19808



Stefan Roha

CERTIFICATE OF SERVICE

I, Stefan Roha, a legal assistant at the Law Offices of Thomas K. Crowe, P.C., do hereby certify that on this 16th day of July, 2012, a copy of the foregoing was served, by the method described below, upon the following:

By first class U.S. Mail, postage prepaid:

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