

August 9, 2013

CONTAINS CONFIDENTIAL INFORMATION— SUBJECT TO REQUEST FOR CONFIDENTIAL TREATMENT

VIA HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

ATTN:

Mr. James Ball
Chief, Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Response to Rubard LLC d/b/a Centmobile's April 26 and April 30, 2013 Filings; File No. ITC-214-20120518-00134 (ITC-STA-20120703-00168; ITC-STA- 20130128-00025)

Dear Madam Secretary:

Stanacard, LLC ("Stanacard"), by undersigned counsel, hereby submits an original and four (4) copies of its Response to Rubard LLC d/b/a Centmobile's April 26, and April 30, 2013 Filings" and a Request for Confidential Treatment of certain commercially sensitive information not generally made available to the public. A redacted version of this filing will be submitted via IBFS.

Please date stamp the enclosed extra copy of this filing and return it for our records. Should you have any questions concerning this matter, please do not hesitate to contact the undersigned at (703) 714-1319 or via email at mpd@commlawgroup.com.

Respectfully submitted,



Michael P. Donahue
Counsel to Stanacard, LLC

MARASHLIAN & DONAHUE, LLC

REQUEST FOR CONFIDENTIAL TREATMENT

August 9, 2013

VIA HAND DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20054

ATTN:

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

**Re: Response of Stanacard, LLC and Request for Confidential Treatment; File
No. ITC-214-20120518-00134
(ITC-STA-20120703-00168; ITC-STA-20130128-00025)**

Dear Madam Secretary:

On behalf of Stanacard, LLC ("Stanacard"), undersigned counsel submits a letter response to Rubard LLC's d/b/a Centmobile ("Rubard") April 26 and April 30, 2013 response to the International Bureau's request for additional information. Pursuant to Sections 0.457(d) and 0.459 of the Commission's rules, Stanacard respectfully requests that the Commission accord confidential treatment to and withhold from public disclosure the declaration and exhibits attached to Stanacard's response.

As explained more fully below, information contained in these documents is commercially sensitive, confidential and proprietary information that is not otherwise made publicly available and is, therefore, exempt from disclosure under the Freedom of Information Act and the Commission's rules. In accordance with Section 0.459(b) of the Commission's rules, and in support of this request, Stanacard provides the following statement of the reasons for withholding this information from inspection and the relevant facts upon which this request is based, including: (1) identification of the specific information for which confidential treatment is sought; (2) a description of the circumstances giving rise to the submission; (3) explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged; (4) explanation of the degree to which the information concerns a service that is subject to competition; (5) explanation of how disclosure of the information could result in substantial competitive harm; (6) identification of any measures taken by the submitting party to prevent unauthorized disclosure; (7) identification of

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whether the information is available to the public and the extent of any previous disclosure of the information to third parties; (8) justification of the period during which the submitting party asserts that materials should not be available for public disclosure; and (9) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

1. Identification of the specific information for which confidential treatment is sought.

Stanacard seeks confidential treatment of information contained in the declaration and exhibits attached to its letter response to Rubard's April 26 and 30, 2013 response to the International Bureau's request for information.

2. Description of the Circumstances giving rise to the submission.

Stanacard is providing certain confidential information to respond to information and claims made in Rubard's response to ensure the Bureau has a complete record upon which to review Rubard's application.

3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The documents for which confidential treatment is requested contain commercial, financial information regarding a wholesale international telecommunications service provider's services, contracts and pricing, and references to third-party information that those entities may view as confidential. The documents include the type of information that competitive carriers would not generally disclose to the public.

4. Explanation of the degree to which the information concerns a service that is subject to competition.

The international telecommunications services market is highly competitive. Disclosure of the commercially sensitive information contained in these attachments could put the international telecommunications carriers involved at a competitive disadvantage by revealing proprietary, business and commercial information to their competitors.

5. Explanation of how disclosure of the information could result in substantial competitive harm.

As noted, disclosure of the information for which confidential treatment is requested could provide a competitive advantage to competitors of the entities involved.

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

Stanacard has not disclosed to the public the information for which confidential treatment is requested. In order to prevent unauthorized disclosure, the documents have been redacted for public inspection and the unredacted copy stamped CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

Stanacard has not previously disclosed information contained in these attachments to the public.

8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

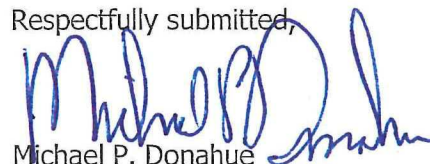
Stanacard requests that the information for which confidential treatment is requested remain confidential indefinitely.

9. Other information that Stanacard believes may be useful in assessing whether the request for confidentiality should be granted.

Stanacard is providing the information in the attachments to assist the Bureau in its analysis of Rubard's application for the reasons set forth in Stanacard's concurrently filed response. While the information is relevant to the Bureau's analysis, inspection of the information by anyone outside the Commission would not serve the public interest and, therefore, should be limited.

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

Respectfully submitted,



Michael P. Donahue
Counsel to Stanacard, LLC

cc: Pamela Kane
William Kehoe
Mindy Littell
Investigations and Hearings Division
Enforcement Bureau

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August 9, 2013

REDACTED FOR PUBLIC INSPECTION

VIA HAND DELIVERY

Ms. Marlene Dortch
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Re: Response to Rubard LLC d/b/a Centmobile's April 26 and April 30, 2013 Filings; File No. ITC-214-20120518-00134 (ITC-STA-20120703-00168; ITC-STA- 20130128-00025)

Dear Mr. Ball:

On March 28, 2013, the International Bureau (the "Bureau") requested Rubard LLC d/b/a Centmobile ("Rubard") to supplement the information previously provided by Rubard to the Bureau in support of Rubard's pending Section 214 application. On April 26, 2013, and then on April 30, 2013, Rubard responded to the Bureau's request (the "IB Response").¹ On May 3, 2013, Stanacard, LLC ("Stanacard") sought an extension of time and an opportunity to comment upon the IB Response. On May 10, 2013, Rubard objected to Stanacard's request.² Stanacard's comments upon the IB Response are set forth below.

The IB Response is a disingenuous apology for Rubard's admitted *fourteen month long* supposed "error" in providing service "without authorization" after April 2011, coupled with a long-winded explanation as to why Rubard, in its opinion, did not violate any Commission rules related to the unauthorized provision of international calling services and unauthorized transfers of control until

¹ Rubard's letter dated April 30, 2013, is an errata to Rubard's letter dated April 26, 2013 to correct a redaction, but it appears to include a revised response as well.

² See Response of Rubard LLC d/b/a Centmobile to May 3, 2013 Stanacard Letter; File No. ITC-214-20120518-00134 (ITC-STA-20120703; ITC-STA-20130128-00025) (filed May 10, 2013), at p. 2.

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April 2011. According to the IB Response, prior to April 11, 2011 Rubard had not offered any "service to the public," but rather only to "personally-acquainted users."

On this record, however, Rubard – and its predecessor, "Centmobile.com enterprise" – did offer international calling services to the public at large long before April 2011:

- Rubard's web page - the very definition of an offer to the public - was admittedly up and running on the web, *accessible to the public*, at least as early as November 2010;
- Rubard did not deny that it offered service to anyone who contacted it, and did not deny that it sought payment from and/or was paid by such customers; and
- The invoices of Omnitel Communications Corp. ("Omnitel"), the entity through which Centmobile.com served the public, demonstrate a volume of traffic and call destinations inconsistent with the "trial" use of the service by "personally-acquainted users."³

Moreover, the record already before the Commission shows that Rubard's principals – Artur Zaytsev and Aleksandr Palatkevich - were doubtless aware of the rules of the Commission long before they began providing international calling services to the public for their own account and long before April 2011. Nonetheless, they surreptitiously continued to offer international calling services – through "Centmobile.com enterprise" and then through Rubard - without the required authorization and without providing Form 499s or any other filings required under the Commission's rules until April 2011, and then for over fourteen months thereafter, and only applied for temporary authority when Stanacard brought these transgressions to the attention of the Commission. They also played a "shell" game to conceal at least two unauthorized transfers of control of their "enterprise," in December 2010, when Rubard "assumed control of the Centmobile.com enterprise" developed by Palatkevich (IB Response at 5); and on February 17, 2011, when Zaytsev allegedly transferred 90.1 percent of his ownership interest in Rubard to Alexander Dzerneyko (IB Response at 10).

The IB Response focuses on the April 2011 timeframe and characterizes the provision of international calling services prior to that date as limited only to "personally-acquainted users" in a thinly-disguised attempt to deflect the attention of the Bureau from Rubard's *admitted* continuous violation of the Commission's rules for fourteen months thereafter. Rubard neglects to explain, because it cannot, how its alleged provision of services to "personally-acquainted users" prior to April 2011 – if true - whitewashes its fourteen month long provision of services to the public at large without authorization after April 2011. Rubard seeks to cut off further investigation into these matters by pleading ignorance, admitting its "error" and throwing itself at the mercy of the Commission to complete a compliance plan "as soon as possible".

³ See e.g., Invoices for services for the period from 11/24/2009 to 11/30/2009, reflecting 16,567 minutes, for calls going to, *inter alia*, Angola, Finland, Ghana, Ivory Coast, Liberia, Mali, Nigeria, Qatar, Saudi Arabia, Senegal, St. Kitts & Nevis, St. Lucia, Sweden, and Trinidad & Tobago (Attached hereto as Exhibit A to the Confidential Supplemental Declaration of Underlying Provider).

Rubard had a strong and illicit motive for its failure to file a timely Section 214 application. Simply put, if Rubard applied to the Commission for the authority to offer international calling services after Palatkevich's resignation as the Chief Technology Officer of Stanacard in July 2009 or Zaytsev's termination as the Chief Financial Officer of Stanacard in December 2009, Stanacard would have learned of the improper use of the Stanacard technology and immediately sued Rubard and its principals for patent infringement and related offenses then and there, rather than in 2012.⁴

The IB Response is incomplete and inaccurate, and lacks candor. Rubard's convoluted responses and carefully crafted phrases are designed to mislead and obfuscate rather than to inform the Commission. Rubard's blatant, deliberate, and protracted violation of the Commission's rules – designed to conceal its illicit activities from the Commission and Stanacard – warrant the denial of its application. A grant of Rubard's application would not serve the public interest, convenience and necessity. *See* 47 U.S.C. § 214(a); 47 C.F.R. § 63.18.

For the foregoing reasons, Stanacard urges the Commission to deny Rubard's application for international Section 214 authority. *At a minimum*, the woeful inadequacy of the IB Response warrants further investigation and additional scrutiny by the Bureau. Rubard's request for immediate approval is a nothing more than a disingenuous attempt to prematurely close the proceeding to avoid further inquiry into its improper operations.

ARGUMENT

I. A Section 214 Applicant Must Provide Complete, Accurate, and Truthful Information to the Commission.

Applicants seeking authority to offer international calling services under Section 214 have an ongoing obligation to submit complete, accurate, and truthful information to the Commission.⁵ Notably:

[T]he Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate. This duty of candor is basic and well known.⁶

⁴ *See Stanacard v. Rubard, LLC, Aleksandr Palatkevich, Artur Zaytsev & Alexander Dzerneyko*, No. 12 Civ. 5176 (S.D.N.Y. 2012).

⁵ Applicants are under an obligation to maintain the continuing accuracy and completeness of information furnished in a pending application pursuant to Section 1.65 of the Commission's rules. 47 C.F.R. § 1.65. *See also* Advanced Business Communications, Inc.; In the Domestic Public Cellular Telecommunications Radio Service for the Waco, Texas MSA, *Order on Recon.*, 2 FCC Rcd 580 at ¶ 7 (1987) ("The Commission must depend on the accuracy and truthfulness of its licensees' representations. A breach of that trust is grounds for character disqualification. Parties and applicants are strongly cautioned to be completely honest in their dealings with this Commission.") (citation omitted).

⁶ *See, e.g., RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981).

The Commission firmly believes that “[t]he integrity of the Commission’s processes cannot be maintained without honest dealing with the Commission by licensees.”⁷ The Commission has revoked authorizations or denied the grant of authorizations for lack of candor and misrepresentation.⁸ The Commission has based this policy on its conclusion that there is a “predictive element to the application process,”⁹ and therefore, intentional misrepresentations in the course of the application process are grounds for a denial of the application.

For the reasons discussed below and as demonstrated in the record, the IB Response fails to meet these basic requirements. The IB Response is wrought with half-truths and vague statements which appear responsive but which, in reality, are designed to mislead. The IB Response epitomizes Rubard’s lack of candor which the Commission should find sufficient to deny Rubard’s Section 214 application.

II. Rubard’s Response to the Bureau Confirms Rubard’s Deliberate Violations and Lack of Candor and Require the Denial of its Application.

A. Rubard Does Not and Cannot Deny That its Principals Knew of the Relevant Regulations and Provides no Explanation of the “Error.”

Rubard concedes that it violated the Commission’s rules by providing international calling services without the authorization for over fourteen months after April 2011. IB Response at 2 (“unauthorized provision of service was in error”). Thus, the question before the Bureau is whether Rubard’s principals knew or should have known that Rubard was violating the regulations so as to require the denial of its application. To be sure, the Bureau can infer such intent from the surrounding facts and circumstances, including a clear motive to conceal,¹⁰ but no such inference is necessary in this case.

⁷ Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, *Report, Order and Policy Statement*, 102 FCC 2d 1179, at ¶ 61 (1986) (“*Broadcaster Character Qualifications Order*”).

⁸ See, e.g., Publix Network Corporation, *Order to Show Cause and Notice of Opportunity for Hearing*, 20 FCC Rcd. 5857 (2005); Marc Sobel Applicant for Certain Part 90 Authorizations in the Los Angeles Area and Requestor of Certain Finder’s Preferences; Marc Sobel and Marc Sobel d/b/a Air Wave Communications Licensee of Certain Part 90 Stations in the Los Angeles Area, 17 FCC Rcd. 1872 (2002); Algreg Cellular Engineering, *Memorandum Opinion and Order*, 12 FCC Rcd. 8148, 8189 (1997).

⁹ *In re Colonial Communications, Inc. Bedford Concepts*, Initial Decision of Administrative Law Judge, 4 FCC Rcd 5959, 5978 (1989). See also *Broadcaster Character Qualifications Order*, 102 FCC 2d 1179, at ¶ 56.

¹⁰ *In re Gerard A. Turro for Renewal of License for FM Translator Stations W276AQ(FM), Fort Lee, NJ, and W232AL(FM), Pomona, NY*, Hearing Designation Order, order to Show Cause and Notice of Opportunity for Hearing, 12 FCC Rcd 6264, 6272 (1997).

Indeed, Rubard's founders, Artur Zaytsev and Aleksandr Palatkevich, the developer of the Centmobile.com "enterprise," unquestionably knew of the requirements for offering international calling services under Section 214. Zaytsev was Stanacard's Chief Financial Officer (IB Response at 2), while Palatkevich was Stanacard's Chief Technology Officer (IB Response at 3). *See generally* IB Response at 5. Zaytsev is listed as the contact on Stanacard's application dated June 2009 for the authority to offer international calling services under Section 214,¹¹ as well as the contact on Stanacard's application for Special Temporary Authority ("STA") in 2009,¹² well before the date of Rubard's conceded violations. Moreover, both Zaytsev and Palatkevich filed an opposition to Stanacard's application for approval of a transfer of control under Section 214 on February 9, 2012, over four months *before* Rubard finally deigned to file a Section 214 application in June 2012.¹³ It is inconceivable that Zaytsev and Palatkevich were not aware of the Section 214 requirements such that their failure to have Rubard file an application for such authority was a mere "error".

Moreover, while Rubard does not and cannot deny that its principals were well aware of the Section 214 requirements, Rubard provides *no explanation* of the supposed "error" in failing to file an application for international Section 214 authority. There is no allegation that Rubard filed an application, but that its application was misplaced; no allegation that Rubard had instructed its counsel to file, but counsel did not do so; and no allegation that Rubard believed it came within some exception to the filing requirement for the period after Rubard alleges to have commenced service to the public in April 2011.

Rubard's failure to offer an explanation for its supposed "error" speaks louder than words. After all, Rubard and its predecessor, Centmobile.com, had an illicit and very strong motive for its decision to eschew the filing of an application under Section 214 – they were hiding not only from the Commission, but also Stanacard – whose patented technology Centmobile.com/Rubard used – unbeknownst to Stanacard – to offer international calling services to the public.

Palatkevich, Stanacard's Chief Technology Officer from 2006-2009, improved and further developed the technology utilized by Stanacard in offering its international calling services to the public.¹⁴ Stanacard owned all right, title and interest in and to such technology, including the patent.¹⁵ Palatkevich retained a complete working copy of the Stanacard system when he left Stanacard in 2009, and utilized that same system in offering service through Centmobile.com.¹⁶ Palatkevich knew all there was to know about the technology utilized by Stanacard and did not need

¹¹ See File No. ITC-214-20090624-00301 (filed June 24, 2009); *International Authorizations Granted*, Public Notice, 25 FCC Rcd 1860 (FCC/IB 2010).

¹² See, e.g., File No. ITCSTA-20090625-00304 (filed June 25, 2009).

¹³ See *Domestic Section 214 Application Filed for the Transfer of Control of Stanacard, LLC*, WC Docket No. 12-18, Public Notice, DA 12-372 (rel. Mar. 9, 2012).

¹⁴ See Affidavit of Michael Choupak, ¶¶3-4 (attached to *Stanacard, LLC*, Reply to Opposition to Petition to Deny International Section 214 Application of Rubard LLC d/b/a Centmobile, File No. ITC-214-20120518-00134 (filed July 12, 2012)).

¹⁵ Choupak Aff. ¶ 6.

¹⁶ Choupak Aff. ¶ 5.

any "trial period."¹⁷ As soon as Stanacard learned what Palatkevich and Zaytsev were up to, Stanacard immediately filed suit seeking, *inter alia*, an injunction, damages, and other relief.¹⁸

That is one reason why Centmobile.com/Rubard decided, knowingly and intentionally, not to file an application under Section 214 while offering service to the public. Rubard thereby not only avoided an immediate lawsuit from Stanacard, but also the Commission's oversight, ongoing regulatory compliance filings, required universal service and other fund contributions, and the Commission's regulatory fees.

B. Rubard Did Not Voluntarily Disclose its Non-Compliance with the Commission's Rules and Regulations.

On June 20, 2012, Stanacard asked the Commission to deny Rubard's application for authority to offer international calling services to the public.¹⁹ In response, Rubard conceded the "error" of having operated unlawfully for over fourteen months and asked the Commission for "forgiveness" on the grounds that Rubard "disclosed" its violations "voluntarily." IB Response at 2, n.5. In reality, after Stanacard filed its petition and disclosed Rubard's unauthorized operations, Rubard had little choice but to respond as it did, *i.e.*, to apologize and seek leniency. To claim that Rubard's belated admissions were "voluntary" is thus *prima facie* disingenuous.

Rubard's claim of voluntary disclosure is further belied by its failure to seek an STA. After all, Zaytsev knew that an applicant that had been offering international calling services to the public without the requisite authority under Section 214 was required to obtain an STA; simply put, his name appears on Stanacard's STA request filed in June 2009.²⁰ Despite this specific knowledge of the Commission's rules, Rubard chose to continue its unauthorized operations, failed to apply for an STA, and instead sought to utilize a streamlined application under Section 214 in hopes that its unauthorized operations would go undetected. Only after Stanacard exposed Rubard's unauthorized operations in its petition to deny dated June 20, 2012, did Rubard apply for an STA.²¹

Summing up, Rubard's knowing, intentional, deliberate, and protracted serious violations of the Commission's rules and plain lack of candor warrant the denial of Rubard's application.

III. The Rules Admit No Exception for a "Trial Period"

Throughout its latest filing with the Commission, Rubard repeatedly tries to convince the Bureau that - prior to April 2011 - Rubard was not offering services to the public and hence was not subject to the Section 214 requirements. See IB Response at 1-2, 3, 4, 8, 9, 10. To this end,

¹⁷ Choupak Aff. ¶ 7.

¹⁸ See *Complaint, Stanacard v. Rubard, LLC, Aleksandr Palatkevich, Artur Zaytsev & Alexander Dzerneyko*, No. 12 Civ. 5176, at ¶¶ 8, 26-80 (S.D.N.Y. 2012) (submitted herewith as Exhibit A).

¹⁹ Stanacard's Petition to Deny Rubard's Application under Section 214, filed June 20, 2012, File No. ITC-214-20120518-001 34.

²⁰ File No. ITCSTA-20090625-00304 (filed June 25, 2009).

²¹ See File No. ITC-STA-20120703-00168 (filed July 3, 2012). Stanacard filed an opposition to Rubard's application for STA on July 9, 2012.

Rubard claims to have used services of Centmobile.com and TELNA only to “provide a marketing trial to a limited number of users, all of whom were known personally to Centmobile.com’s developer, Mr. Palatkevich.” IB Response at 1-2. To be sure, Rubard’s contentions are demonstrably false as a matter of fact. More importantly, however, Rubard’s legal contention that Section 214 authority is not required to conduct a “trial” is without merit and could pose a serious threat to the Commission’s regulatory authority.

Rubard is correct in stating that a “telecommunications service” means the “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used,” IB Response at 9, quoting 47 U.S.C. § 153(53); however, nothing in the statute exempts the service provider from the requirements set forth in Section 214 during the “trial period.” The one and only case offered by Rubard in support of its proposition – *i.e.*, that a “trial” is not subject to Section 214 – stands for the opposite proposition.²² There, US West had sought the Commission’s permission under Section 214 to construct facilities for a trial of video dial tone. The Commission concluded that the proposed “trial” was subject to its rules and granted the application on condition that US West offers, *inter alia*, “nondiscriminatory access to the platform.” Thus, even assuming that Rubard’s provision of service to the public prior to April 2011 could be considered a “trial,” Rubard has not identified any basis for which that trial was exempt from the requirements of Section 214.

In short, acceptance of Rubard’s contention would severely undermine the Commission’s authority to regulate international calling services under Section 214 since any provider could offer service for months or longer under the Commission’s radar screen as Rubard did here, and, when caught, claim that it was merely conducting a “trial.”

IV. Rubard Offered Services Directly to the Public for Value Prior to April 2011.

The record shows that Rubard has been offering international calling services to the public since well before April 2011. Rubard did not need a “trial period” to do so since Palatkevich had been utilizing Stanacard’s proven technology to offer international calling services to the public for several years before leaving Stanacard and undertaking to offer the service on his own. Thus, the IB Response’s argument that Rubard’s pre-April 2011 activities were a “trial period” is merely a smokescreen to attempt to conceal Rubard’s deliberate and intentional longstanding pre-April 2011 unauthorized offer of international calling services to the public and to shield its pre-April 2011 unauthorized transfers of control under the pretext that the pre-April 2011 activities were not subject to Section 214.²³

²² *Application of US West Communications Inc. for Authority under Section 214 of the Communications Act of 1934, as Amended, to Construct, Operate, Own and Maintain Facilities and Equipment to Provide Video Dialtone Service in Portions of the Omaha, Nebraska Service Area, Order and Authorization*, 9 FCC Rcd. 184, 188 n.56 (1993).

²³ The first unauthorized transfer of control was in December 2010, when Rubard “assumed control of the Centmobile.com enterprise” developed by Aleksandr Palatkevich (IB Response at 5); and the second time was on February 17, 2011, when Zaytsev allegedly transferred 90.1 percent of his ownership interest in Rubard to Alexander Dzerneyko (IB Response at 10).

A. Rubard Offered its Service to the Public Pre April 2011.

1. Archived Webpages.

It is beyond dispute that Centmobile.com/Rubard's website offered service "directly to the public." Rubard cannot and does not dispute that the public could access the website. The Centmobile.com website may "not have [had] active links" in September 2009 (IB Response at 4), but the Omnitel invoices demonstrate that the website was active and generating traffic at the latest by November 2009. In September 2010, *i.e.*, "a year later," Palatkevich admittedly "began conducting trials of voice calling over Centmobile.com." IB Response at 4. The links were thus concededly active at least seven months prior to April 2011, the date when Rubard claims to have commenced to offer service to the public.

The archived webpages confirm that Rubard was offering service directly to the public well before April 2011:

- Centmobile's Home Page from as early as November 6, 2010 provided links to "How To Use," "Call Rates," "Access Numbers," "Go To My Account," "Create A Free Account" and "Referral Program"; and how to contact Centmobile.²⁴
- "How to Use – Frequently Asked Questions (FAQ)" from as early as November 7, 2010, explained *inter alia* that (a) PayPal payments sent to paypal@centmobile.com were accepted; (b) calls could be made from any country because CentMobile had access numbers all over the world; (c) customers could sign up and begin using the service instantly; and (d) TelPay was available as another payment option (the page footer indicates "CentMobile is a service of TelPay Inc.").²⁵
- "Call Rates" page from as early as November 7, 2010, displayed rates for calls to many international destinations.²⁶

To be sure, the IB Response attempts to refute this evidence, but demonstrably fails. For example:

- **Alleged Absence of Commercial Grade Service.** *See, e.g.*, IB Response at 3 ("From the beginning of the trial in September 2010 through April 2011, the website calling platform was not sufficiently stable to provide a commercial-grade service to

²⁴ See Letter from James L. Ball, Chief, Policy Division of the International Bureau, to Patricia Paoletta, Counsel for Rubard, ITC-214-2012051 8-00134 (ITC-STA-20120703-00168; ITC-STA-20130128-00025), dated March 28, 2013; <http://web.archive.org/web/20101107190451/http://www.centmobile.com> (last accessed July 24, 2013).

²⁵ http://web.archive.org/web/20101107190451/http://www.centmobile.com/how_to_use.aspx?id=1 (last accessed July 24, 2013).

²⁶ <http://web.archive.org/web/20101107220255/http://www.centmobile.com/Callrates.aspx> (last accessed July 24, 2013).

the public.") This assertion, of course, proves nothing, except that the alleged service to the public may not have been top notch at that time.

- **Alleged Absence of "Active Solicitation."** *See, e.g.,* IB Response at 4 ("The web archives do not demonstrate active solicitation for customers.") The absence of "active solicitation" does not mean that the service is not offered to the public. In addition, the Omnitel invoices for this period clearly show that customers were generating call volumes. *See* Confidential Supplemental Declaration of Underlying Provider, Ex. 1 & Ex. 2.
- **Alleged Absence of a Merchant Account.** *See, e.g.,* IB Response, at 5 ("Zaytsev still faced obstacles to offering services to the public. Rubard lacked a low-risk method for customers to create accounts and make online payments directly through Centmobile.com's interface. . . . Rubard needed a merchant account.") The IB Response expects the reader to conclude, by implication, that Rubard could not offer service to the public until "after it opened its merchant bank account," (IB Response at 8), when, in reality, at most Rubard merely did not have a "low-risk" means of receiving payments at the time in question. Of course, nothing in the Commission's principles or jurisprudence suggests that one need not file a Section 214 application until the service has a "low-risk" method of receiving payments from its customers, such as a merchant bank account.

2. Allegedly "Limited Trial."

The IB Response is meant to convince the Bureau that Rubard was not required to file a Section 214 application because Rubard had been merely conducting "a marketing trial to a limited number of users, all of whom were known personally to Centmobile.com's developer, Mr. Palatkevich." IB Response at 1-2. As previously noted, this proposition is legally unsound and threatens to set a dangerous precedent. Even if this proposition were correct, which it is not, it has no application to Rubard.

Indeed, Rubard concedes that Palatkevich "develop[ed] Centmobile.com during the same period of time in which he was consulting for Omnitel, and used Omnitel's name to purchase numbers and voice termination services to use in testing Centmobile.com's service." IB Response at 11. The Omnitel invoices for services provided to Centmobile.com provide substantial evidence that this so-called "limited trial" was not limited in any sense of the word. For example, Invoice No. 8 for the week of 11/24/2009 to 11/30/2009 reflects 16,567 minutes of calls to Angola, Finland, Ghana, Ivory Coast, Liberia, Mali, Nigeria, Qatar, Saudi Arabia, Senegal, St. Kitts & Nevis, St. Lucia, Sweden and Trinidad & Tobago.²⁷ It seems unlikely that an immigrant from the former Soviet Union residing in Brooklyn, would have "friends and acquaintances" generating this much traffic to locations all over the world simply to "try" the service. Invoice No. 11 for the period from 12/22/2009 to 01/05/2010 reflects 3,675.7 minutes of calls to the same countries, plus Bangladesh, China, Egypt, Gambia, India, Kenya and Tunisia.²⁸

²⁷ *See* Confidential Supplemental Declaration of Underlying Provider Ex. A.

²⁸ Confidential Supplemental Declaration of Underlying Provider, Ex. B

Moreover, Rubard claims to have offered its "trial users" who referred new customers a credit toward making calls - supposedly because the Centmobile.com site was unable to accept payments directly (*see* IB Response at 8), but did not limit such customer referrals to individuals "known personally" to Palatkevich. The probability of each such referred customer to have been personally known to Palatkevich is extremely low. Put differently, on this record, Rubard has been serving the public rather than "friends and acquaintances" ever since its formation and through Centmobile.com, its predecessor-in-interest, even earlier.²⁹

B. Rubard Offered Services for a Fee During the "Trial Period."

The IB Response contends that Rubard was not offering a telecommunications service for a fee during the "trial period" supposedly because the Centmobile.com website did not allow users to make "payments through PayPal" until after April 2011, and that Palatkevich "requested family and personal acquaintances to use the service for free." IB Response at 4 and 8 ("The [web] pages cited from November 2010 through January 2011 did not allow users to make direct" payments."). The IB Response neglects to mention whether anyone actually paid, whether any non-family/non personal acquaintances used the services, or whether a user could provide other means of payment.

The Commission has held that the words "for a fee," in the context of telecommunication services, "means services rendered in exchange for something of value or a monetary payment."³⁰ It is clear Rubard was surely receiving "something of value" for its services, *i.e.*, a "new customer," feedback, goodwill, etc. Moreover, Rubard neither claimed to have offered services without a fee, nor asserted that it did not receive payment through other means, yet conceded that Palatkevich used TelPay for precisely this purpose, only in other circumstances. IB Response at 5 ("TelPay Inc. was a small, online payment company incorporated in the State of Georgia which Palatkevich had used for his other business ventures, and he included a reference to TelPay as a payment method while the website was in beta."). In other words, Rubard asks the Commission to accept that Palatkevich referred customers to TelPay, Inc., as a means of payment, but he did not expect his customers to make use of TelPay, Inc. Finally, on this record, Centmobile's customers could prepay for services to be rendered. IB Response at 9 ("Centmobile.com permits prepaid international calling to retail consumers. This global voice calling was offered through prepaid payment plans, the accounts for which, after the initial trial, could be established by customers directly through the www.centmobile.com/site").³¹

In sum, Rubard did receive "something of value" for its services, yet continues to insist, despite the evidence, that it did not. IB Response at 8-9.

²⁹ *See* Confidential Declaration of Underlying Provider (attached to Stanacard's Reply to Opposition to Petition to Deny International Section 214 Application of Rubard LLC d/b/a Centmobile, File No. ITC-214-20120518-0013, filed July 12, 2012)).

³⁰ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 9167, ¶ 784 (1997).

³¹ Rubard implies that the words "after the initial trial" mean "after April 2011," but deliberately does not tell the reader when in fact the prepaid payment plans became available.

V. Rubard is Liable as a Successor-in-Interest to Centmobile.com/Omnitel.

The IB Response struggles to distance Rubard from Centmobile.com/Omnitel by asserting that Rubard “assumed control of the Centmobile.com enterprise” developed by Palatkevich only after Rubard’s incorporation in December 2010 and assumption of Omnitel’s contract with TELNA – whereby TELNA provided DIDs and termination services to Centmobile.com through Omnitel – in January 2012. According to Rubard, the connections among Palatkevich (who founded Centmobile.com), his colleague Zaytsev (who founded Rubard), Omnitel (to whom Palatkevich rendered consulting services and through whom he obtained DIDs and termination services for Centmobile.com) and Rubard are immaterial and, hence, Rubard is not responsible for violations of the Commission’s rules by Centmobile.com or Omnitel since, according to Rubard, neither is its predecessor-in-interest. IB Response at 5. These contentions fail for multiple reasons.

First, these arguments do not absolve Rubard for its failure to seek the permission of the Commission to assume control of Centmobile.com “enterprise.” IB Response at 5. That obligation rests with Rubard, as well as with the Centmobile.com “enterprise.” While the IB Response attempts to convince the Bureau that Zaytsev and Palatkevich acted independently, and that Centmobile.com was not a front for Omnitel, the record is devoid of any evidence that Omnitel had any business existence other than as a conduit for providing TELNA’s services to Centmobile.com. Moreover, the record is devoid of any explanation as to why Palatkevich – who surely created Centmobile.com (IB Response at 7) – has no interest in Rubard.

Second, Rubard surely looks like the successor-in-interest to Centmobile.com/Omnitel. At common law, a purchaser of assets is deemed the successor-in-interest to the seller where (i) the purchaser assumes seller’s obligations; (ii) the transaction amounts to a consolidation or merger of the purchaser or the seller; (iii) the purchaser continues the seller’s business; or (iv) the transaction is entered into for the (fraudulent) purpose of letting the seller escape liability for its obligation.³²

While any one of these elements is sufficient to establish successor liability, in this case at least three are met. First, since Rubard unabashedly claims to have “assumed control of the Centmobile.com enterprise” developed by Palatkevich (IB Response at 5), at a minimum Rubard assumed Centmobile.com’s obligations. Second, for the same reason, Rubard is *ipso facto* a continuation of Centmobile.com’s – and perhaps Omnitel’s – business.³³ Finally, the relationship among Zaytsev, Palatkevich, Omnitel and Rubard surely smacks of a common enterprise to defraud Stanacard. Zaytsev and Palatkevich “worked together on several business ventures” (IB Response at 3), and, in particular, provided an authorized telecommunications service to the public using Stanacard’s technology.³⁴

³² See generally *Moriarty v. Svec*, 164 F.3d 323,327 (7th Cir. 1998) (quoting *Vernon v. Schuster*, 179 Ill.2d 338, 688 N.E.2d 1172, 1175 (1997)).

³³ See Confidential Declaration of Underlying Provider. The shell-game was surely designed to keep the Centmobile.com “enterprise” from Stanacard’s scrutiny, yet had the added benefit of keeping it beneath the Commission’s radar.

³⁴ See Confidential Declaration of Underlying Provider (filed July 12, 2012).

Finally, to further congressional objectives, federal common law may hold even a genuinely distinct successor-in-interest liable for regulatory violations of its predecessor where "(i) there is sufficient continuity between the two and (ii) the successor had notice of the predecessor's liability."³⁵ Under this authority, Rubard is surely liable because Rubard "assumed control of the Centmobile.com enterprise" developed by Palatkevich (IB Response at 5), and has continued its business without proper authorization from the Commission while well aware - through Zaytsev, its founder - of the Section 214 requirements.

The patent inconsistency between the record and Rubard's "explanations" in the IB Response serves to highlight Rubard's overall lack of candor and calls for further investigation to explore the extent of Rubard's relationship with Omnitel, Dzerneyko and Palatkevich and the identity of any other third-party investors in Rubard.

VI. Rubard May Have Failed to Disclose Foreign Investors and/or Affiliates.

Applications for the authority to offer international calling services from companies with foreign ownership are far more likely to undergo substantial scrutiny by the Executive Branch through national security reviews.³⁶ While most providers prefer to avoid these national security reviews, they are an integral part of maintaining this nation's security. Furnishing misleading and less than truthful information about the ownership structure implicates the applicant's character and candor. Upon information and belief, Palatkevich is not a citizen of the United States. Perhaps for this and other reasons he is not identified in Rubard's application as an owner of Rubard, when it would appear he has more right and more reason to hold an interest in Rubard than Zaytsev, Dzerneyko, or others. Given Palatkevich's integral role in Rubard and the Centmobile.com enterprise, Rubard has offered no explanation for the fact that Palatkevich is not identified as an owner of Rubard. Palatkevich may not be the only individual who has an ownership interest in Rubard and whose identity Rubard has failed to disclose. For these reasons, the Commission should further investigate whether Palatkevich, or any other individual(s), has or ever had an undisclosed interest in Rubard.

³⁵ *Moriarty*, 164 F.3d at 327. See, e.g., *Upholsterers' Int'l Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323, 1327-1329 (7th Cir.1990) (holding that a successor purchaser of assets may be liable for the seller's delinquent ERISA fund contributions to vindicate important federal statutory policy where the buyer had notice of the liability prior to the sale and there was sufficient evidence of "continuity of operations" between the entities); *U.S. ex rel. Generations Healthcare, LLC*, No. 10 C 2413, 2012 WL 3581060 (N.D. Ill. 2012), at *12 (the "successor liability" theory "allows lawsuits against *even a genuinely distinct purchaser* of a business if (1) the successor had notice of the claim before the acquisition; and (2) there was substantial continuity in the operation of the business before and after the sale.") (emphasis added).

³⁶ 47 C.F.R. § 63.18(h).

VII. If the Bureau Determines Not To Deny Rubard's Section 214 Application at this Time, Additional Thorough Investigation Is Required.

The record clearly demonstrates Rubard's intentional, blatant and protracted violations of the Commission's rules, the gaps and inconsistencies in the IB Response, and Rubard's failure to adequately address the issues raised by Stanacard. Should the Bureau nonetheless decline to deny Rubard's application for authority to offer international calling services under Section 214, additional investigation of the relationship among Rubard, Omnitel, Zaytsev, Palatkevich and Dzerneyko would appear to be in order to, *inter alia*:

- (i) Elicit an explanation, under oath, from Zaytsev, Palatkevich, and Dzerneyko as to why they failed to cause Rubard to file a Section 214 application for fourteen months following April 2011;
- (ii) Conduct:
 - Inquiry of Zaytsev, Palatkevich, and Dzerneyko under oath as to the identity of all personally known "friends and acquaintances" who utilized Centmobile.com to make the calls reflected on Omnitel invoices, including for the period 11/24/2009 to 11/30/2009 for 16,567 minutes, for calls going to, among other locations, Angola, Finland, Ghana, Ivory Coast, Liberia, Mali, Nigeria, Qatar, Saudi Arabia, Senegal, St. Kitts & Nevis, St. Lucia, Sweden, and Trinidad & Tobago; and
 - Inquiry of Zaytsev and Palatkevich under oath regarding the funds received from customers during the operation of Centmobile.com/Omnitel "enterprise";
 - Inquiry of Zaytsev and Palatkevich regarding Palatkevich's ownership interest, past or present, in Centmobile.com and Rubard; and
- (iii) Obtain the following records:
 - Records for all accounts maintained by Centmobile and Omnitel with financial institutions, merchants, vendors, providers, etc.; and
 - All documents relating to two transfers of control (i) in December 2010, when Rubard "assumed control of the Centmobile.com enterprise" developed by Palatkevich (IB Response at 5), and (ii) Zaytsev's alleged transfer of 90.1% of supposedly his 100% ownership interest in Rubard to Dzerneyko on February 17, 2011. *See* IB Response at 10.

CONCLUSION

The Bureau has ample evidence of Rubard's deliberate, intentional and protracted misconduct – and its utter lack of candor in its filings with the Commission - warranting the denial of Rubard's application for international Section 214 authority. Suffice it to say, Rubard has attempted to evade not only Stanacard's exercise of its intellectual property rights, but also the Commission's scrutiny, and has succeeded in operating free of the administrative and monetary costs imposed upon the law-abiding providers of such services while denying its customers the opportunity to bring

complaints to the attention of the Commission. For the foregoing reasons, the Bureau should deny Rubard's application under Section 214 or - in the event the Bureau is not inclined to do so - the Bureau should reserve the decision until after it conducts a thorough investigation of the matters addressed herein.

Respectfully submitted,



Michael P. Donahue

Counsel to Stanacard, LLC

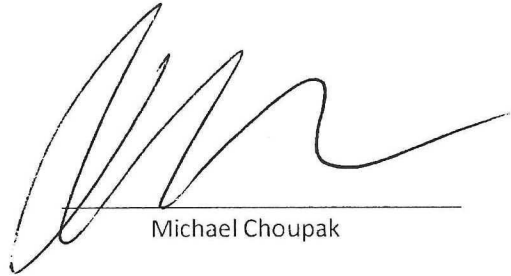
cc: Pamela Kane
William Kehoe
Mindy Littell
Investigations and Hearings Division
Enforcement Bureau

Patricia Paoletta
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Verification

I certify under penalty of perjury under the laws of the United States of America that the foregoing Response to Rubard LLC d/b/a Centmobile's May 10, 2013 Filing File No. ITC-214-20120518-00134 (ITC-STA-20120703; ITC-STA- 20130128-00025) is true and correct to the best of my knowledge and belief.

Executed on August 6th, 2013



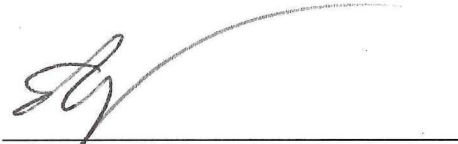
Michael Choupak

CERTIFICATE OF SERVICE

I, Edward Lee, a legal assistant with Marashlian & Donahue, LLC, The CommLaw Group, do hereby certify that on this 9th day of August, 2013, a copy of the foregoing "Response to Rubard LLC d/b/a Centmobile's April 26 and April 30, 2013 Filings" was served, by the method described below, upon the following:

By First Class Mail, postage prepaid:

Patricia Paoletta
Counsel to Rubard LLC d/b/a Centmobile
Wiltshire & Grannis LLP
1200 18th Street, NW, Suite 1200
Washington, DC 20036



Edward Lee

EXHIBIT A

**SUPPLEMENTAL DECLARATION
OF UNDERLYING PROVIDER**

REDACTED FOR PUBLIC INSPECTION