

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-TCD-12-00000034
)	
Mr. Richard Jackowitz)	NAL/Acct. No.: 201232170007
IT Connect, Inc.)	
)	FRNs: 0021888045
)	0021888037
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 5, 2012

Released: July 6, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Mr. Richard Jackowitz and IT Connect, Inc. (IT Connect)¹ apparently willfully and repeatedly violated Section 52.107 of the Commission’s rules² by brokering 15 toll free numbers for fees ranging from \$10,000 to \$17,500 per number.³ Based on our review of the record before us, we find that Mr. Jackowitz and IT Connect are apparently jointly and severally liable for a proposed forfeiture penalty in the amount of \$240,000.

II. BACKGROUND

2. Section 251(e)(1) of the Communications Act of 1934, as amended (Communications Act or Act), directs that telephone numbers, including toll free telephone numbers, be made “available on an equitable basis.”⁴ Pursuant to Section 251, the Commission has implemented rules “to ensure the efficient, fair, and orderly allocation of toll free numbers.”⁵ In so doing, the Commission determined that the practice of brokering toll free numbers is “contrary to the public interest and thus subject to sanction

¹ According to the record in this investigation and publicly available information, Mr. Jackowitz is an owner, officer, and director of IT Connect. See 1800NumbersFree.com May 18, 2012, Letter of Inquiry (LOI) Response at 9 (response to LOI question 3(a)); see also IT Connect, Inc. About Us, <http://www.itconnect.com/aboutus.html> (last visited May 30, 2012) (identifying Mr. Jackowitz as “Founder and CEO”). For the reasons set forth below, see *infra* paras. 7–8, this NAL is directed to Mr. Jackowitz in his personal capacity and to IT Connect as a corporate entity.

² 47 C.F.R. § 52.107.

³ Although we refer in this NAL to “brokering” violations, we could alternatively characterize them as “hoarding” violations. See 47 C.F.R. § 52.107(a) (noting that “[t]he definition of hoarding . . . includes number brokering”).

⁴ 47 U.S.C. § 251(e).

⁵ *Toll Free Service Access Codes*, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162, 11164, para. 2 (1997) (*Toll Free Second Report and Order*); see, e.g., 47 C.F.R. § 52.107 (prohibiting hoarding, including brokering).

by the Commission.”⁶ Brokering “is the selling of a toll free number by a private entity for a fee.”⁷

3. On November 20, 2007, the Enforcement Bureau (Bureau) issued a citation to Mr. Jackowitz and IT Connect for violations of the Commission’s rules regarding toll free number administration.⁸ Specifically, the Bureau cited Mr. Jackowitz and IT Connect for warehousing, hoarding, and brokering toll free numbers.⁹ The citation put Mr. Jackowitz and IT Connect on notice that if Mr. Jackowitz or the company subsequently “violat[e] the Communications Act or the Commission’s rules in any manner described [in the citation], the Commission [could] impose monetary forfeitures.”¹⁰

4. Despite having warned Mr. Jackowitz and IT Connect in the citation that subsequent violations of the Commission’s toll free numbering rules could result in the imposition of monetary forfeitures, the Bureau has uncovered evidence that Mr. Jackowitz, in his personal capacity and on behalf of IT Connect, has apparently continued to broker toll free numbers. Through the Consumer and Governmental Affairs Bureau, the Bureau received a complaint from Bristol-Myers Squibb Company (BMS) indicating that in 2011, Mr. Jackowitz offered to sell BMS various “vanity” toll free numbers.¹¹ Corroborating its complaint, BMS provided the Bureau with copies of e-mails that Mr. Jackowitz directed to BMS employees concerning the sale of those toll free numbers.¹² BMS also provided sworn declarations from two BMS employees in which the employees detailed their communications with Mr. Jackowitz.¹³ In addition to reviewing the materials provided by BMS, the Bureau conducted independent research relevant to the allegations in the BMS complaint. For example, Bureau staff placed calls to each of the toll free numbers at issue in this investigation,¹⁴ reviewed information from the SMS/800

⁶ *Toll Free Second Report and Order*, 12 FCC Rcd at 11164–65, para. 2.

⁷ 47 C.F.R. § 52.107(a); see *Toll Free Second Report and Order*, 12 FCC Rcd at 11189, para. 38.

⁸ *Mr. Richard Jackowitz*, Citation, 22 FCC Rcd 19998 (Enf. Bur. 2007) (*Jackowitz Citation*). The citation was issued to Mr. Jackowitz both as chief executive officer of IT Connect and in his personal capacity. See *id.* at 19998 (“[F]uture violations of the Act or [the] Commission’s rules [with respect to toll free numbering] may subject you and your company to monetary forfeitures.” (emphasis added)); *id.* at 19999.

⁹ See *id.* (“It has come to [the Commission’s] attention that your company, acting under your direction, reserved toll free numbers, either directly or indirectly through an affiliate, from the Service Management System database without having an actual toll free subscriber for whom those numbers were being reserved. In addition, your company, acting under your direction, engaged in the selling of toll free numbers for a fee.”); see also *id.* at 19998–99 (defining warehousing, hoarding, and brokering).

¹⁰ *Id.* at 19999.

¹¹ See Informal Complaint No. 11-C00318946 (filed July 22, 2011). “A toll free vanity number is a telephone number for which the letters associated with the number’s digits on a telephone handset spell a name or word of value to the number holder.” *Toll Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 9058, 9059, para. 1 (1998).

¹² Declaration of Lisa Osby, Telemarketing Manager, BMS at Exhibits A–F (May 31, 2012) (Osby Decl.); Declaration of Peter Vasquez, Sourcing Manager, BMS at Exhibits A–D (June 4, 2012) (Vasquez Decl.).

¹³ See Osby Decl.; Vasquez Decl.

¹⁴ See Affidavit of Sarah E. Citrin, Assistant Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (May 31, 2012) (Citrin Aff.) (describing calls made on March 9, 2012); Affidavit of Shafanta D. Willis, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau (June 1, 2012) (Willis Aff.) (describing calls made on March 9, 2012, and March 13, 2012).

database,¹⁵ and analyzed information publicly available on the Internet.

5. According to the record, in early 2011, BMS sought to obtain a vanity toll free number for one of its prescription drugs trademarked under the name “Sprycel.”¹⁶ To determine the availability of toll free numbers containing that name, BMS dialed the toll free number 877-Sprycel.¹⁷ That number connected callers to a recording indicating the number’s availability and providing a contact number for interested callers.¹⁸ BMS contacted the number provided by the recording and, by voice message, inquired into the process of obtaining the 877-Sprycel toll free number.¹⁹ Thereafter, BMS received a series of calls and e-mails from Mr. Jackowitz²⁰ indicating that Mr. Jackowitz would sell the 877-Sprycel toll free number, along with several other toll free numbers containing trademarks owned by BMS or its partners, for a fee.²¹

6. Specifically, on June 6, 2011, Mr. Jackowitz sent an e-mail to BMS offering to sell 15 toll free numbers containing trademarks owned by BMS or its partners.²² The e-mail offered to package the referenced toll free numbers for \$10,000 to \$15,000 “or below” per number, depending on the volume of numbers BMS elected to purchase.²³ On June 15, 2011, Mr. Jackowitz sent an additional e-mail to

¹⁵ See 47 C.F.R. § 52.101(d) (defining the Service Management System Database as “[t]he administrative database system for toll free numbers,” and further explaining that “[t]he Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control,” that “[t]he Service Management System shares this information with the Service Control Points,” and that “[t]he entire system is the SMS database”).

¹⁶ See Osby Decl. at para. 3.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *id.* The first returned call was from a woman whom BMS employee Lisa Osby believed to be Mr. Jackowitz’s assistant. See *id.* The record makes clear that all remaining calls and e-mails were from an individual who identified himself as Mr. Jackowitz. See *id.* at paras. 4–15; Vasquez Decl.

²¹ See generally Osby Decl.; Vasquez Decl. According to the declarations that BMS has provided, over the course of approximately two months, in June and July of 2011, Mr. Jackowitz and BMS employees exchanged multiple e-mails regarding Mr. Jackowitz’s desire to sell BMS toll free numbers. See generally *id.* It is not necessary in this NAL to recount all of the e-mails exchanged. Our discussion references particular e-mails to the extent needed to describe the conduct at issue in this NAL. As noted below, see *infra* para. 17 and notes 30, 53, 72, the NAL’s proposed forfeiture is based on e-mails that Mr. Jackowitz sent on July 7, July 10, and July 18 of 2011, but a series of June 2011 e-mails are relevant to place Mr. Jackowitz’s July 2011 e-mails in context.

²² See Osby Decl. at paras. 4–5. The e-mail offered the following 15 toll free numbers for sale: 888-Eliquis (888-354-7847), 888-4-Yervoy (888-493-7869), 855-Kombiglyze (855-566-2445), 888-My-Zerit (888-699-3748), 877-Sprycel (877-777-9235), 855-Sprycel (855-777-9235), 800-Brivani (800-274-8264), 888-Ixempra (888-493-6772), 866-Reyataz (866-739-2829), 888-Sustiva (888-787-8482), 855-Atripla (855-287-4752), 888-4-Atripla (888-428-7475), 877-4-Avapro (877-428-2776), 877-2-Avapro (877-228-2776), and 855-2-Avapro (855-228-2776). See *id.* at para. 5. The words spelled by the numerical digits of those telephone numbers spell the names of pharmaceutical drugs that BMS has trademarked and, in some cases, already marketed.

²³ *Id.* Although the June 6, 2011, e-mail did not expressly state that the \$10,000 to \$15,000 price offered was a “per number” price, it is apparent in context that the price was for individual numbers, and subsequent e-mails from Mr. Jackowitz to BMS substantiate our finding on that point. See, e.g., *id.* at Exhibit B (referencing a price of “\$15,000 per number”).

BMS offering an option to purchase three of the previously identified toll free numbers for a “total price of [\$]36,000,” as an additional option to purchasing the “total list” of 15 numbers referenced in his June 6, 2011, e-mail.²⁴ In a separate e-mail on the same date, Mr. Jackowitz offered to sell one toll free number for \$15,000 or a package of two toll free numbers for \$20,000.²⁵ In yet another separate e-mail on the same date, Mr. Jackowitz offered BMS one toll free number for \$17,500 or a package of two toll free numbers for \$25,000.²⁶ The record further shows that on July 7, 2011, in response to an e-mail from BMS seeking to clarify Mr. Jackowitz’s offer, Mr. Jackowitz explained that there were “many options.”²⁷ The options Mr. Jackowitz specifically highlighted included an option to purchase the number 877-Sprycel on a stand-alone basis for \$17,500, an option to purchase any two or more numbers containing trademarks owned by BMS for \$12,500 each, an offer to sell the number 888-Eliquis (apparently either on a stand-alone basis or as part of a package), and an offer to sell the number “888-4-Yervoy plus about 10 others we own” as a package.²⁸ On July 10, 2011, and July 18, 2011, Mr. Jackowitz sent e-mails to BMS offering to reduce the price for one toll free number from \$17,500 to \$15,000, on the condition that the transaction be completed quickly.²⁹ The trail of correspondence demonstrates that throughout the period between June 6, 2011, and July 18, 2011, Mr. Jackowitz offered BMS various possible packages of vanity toll free numbers containing BMS trademarks, and it appears that at all times he remained willing to sell as many of the toll free numbers offered in his June 6, 2011, e-mail as BMS was willing to buy.³⁰

7. It appears from the evidence provided by BMS that Mr. Jackowitz sent the e-mails described above in his personal capacity and in his capacity as president of IT Connect. Specifically, Mr. Jackowitz made the offers to BMS using various e-mail addresses that he apparently controlled personally. The initial e-mails, dated June 6, 2011, and June 13, 2011, were apparently sent from Mr. Jackowitz’s personal e-mail account, [REDACTED].³¹ The remaining e-mails were sent from another of Mr. Jackowitz’s e-mail accounts, Richard.Jackowitz@brandedmarketing.com, which is an account associated with another of Mr. Jackowitz’s businesses that was apparently defunct during the time that Mr. Jackowitz made the offers.³² In addition to sending the e-mails in his personal capacity,

²⁴ See *id.* at para. 9. The e-mail referenced the following three toll free numbers: 877-Sprycel (877-777-9235), 888-Eliquis (888-354-7847), and 888-4-Yervoy (888-493-7869). See *id.* (“If your [*sic*] not ready to do a total list, let’s do just the one you called on 877-[]sprycel and for best price at same time do 888-eliquis and 888-4-Yervoy.”).

²⁵ See *id.* at para. 11. The e-mail offered 855-Sprycel (855-777-9235) for \$15,000 or both 877-Sprycel (877-777-9235) and 855-Sprycel (855-777-9235) for \$20,000. See *id.*

²⁶ See *id.* at para 13. The e-mail offered 877-Sprycel (877-777-9235) for \$17,500 or both 877-Sprycel (877-777-9235) and “one more like” 888-Eliquis (888-354-7847) for \$25,000. See *id.*

²⁷ Vasquez Decl. at Exhibit B.

²⁸ *Id.*

²⁹ See *id.* at paras. 7–8. The July 10, 2011, and July 18, 2011, e-mails are duplicative. Both e-mails offered to reduce the price for the 877-Sprycel (877-777-9235) toll free number. See *id.*

³⁰ Of course, the proposed forfeiture in this NAL is for apparent violations within the one-year statute of limitations period. See 47 U.S.C. § 503(b)(6)(B). We discuss the June 2011 e-mails to place the July 2011 e-mails in context and illustrate why we have concluded that the July 7, July 10, and July 18, 2011, e-mails constituted independent offers to sell the 15 vanity numbers originally identified for BMS in Mr. Jackowitz’s e-mail of June 6, 2011.

³¹ See Osby Decl. at paras. 4–7.

³² See Osby Decl. at paras. 9–15; see also Vasquez Decl. at paras. 4–10; 1800NumbersFree.com May 18, 2012, LOI Response at 9 (indicating, in response to LOI question 3(a)–(c), that Branded Marketing was not in business at the time the apparent violations occurred). Branded Marketing is apparently another company for which Mr. Jackowitz (continued....)

Mr. Jackowitz also apparently represented to BMS that the offers were made on behalf of IT Connect. For example, his initial e-mails to BMS, dated June 6, 2011, and June 13, 2011, included a signature block identifying Mr. Jackowitz as president of IT Connect and displaying a physical address, phone number, fax number, toll free number, e-mail address, web address, and cell phone number all associated with IT Connect.³³ According to the record, BMS understood that Mr. Jackowitz was attempting to sell the toll free numbers in question on behalf of IT Connect.³⁴

8. The Bureau's independent investigation further establishes that the offers to sell toll free numbers were made by Mr. Jackowitz in both his personal capacity and on behalf of IT Connect. Specifically, calls by Bureau staff on March 9, 2012, and March 13, 2012, to each of the 15 toll free numbers offered to BMS in Mr. Jackowitz's June 6, 2011, e-mail to, and subsequent correspondence with, BMS revealed that the bulk of those numbers connected to recordings that directed callers interested in obtaining the toll free numbers for their businesses to contact "RX Report" at (201) 530-1800.³⁵ [REDACTED]

Further, IT Connect's website lists (201) 530-1800 as the company's contact number,³⁷ as did several of the e-mails in which Mr. Jackowitz offered to sell BMS toll free numbers, as earlier discussed.³⁸ Moreover, the Bureau's investigation has identified several notable connections between IT Connect and RX Report. In particular, both IT Connect and RX Report share Mr. Jackowitz as an officer and contact person, and they share the same physical address.³⁹

III. DISCUSSION

A. Apparent Violations of Section 52.107 of the Commission's Rules

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is (or has served as) the owner and chief executive officer. See BBB.org Business Review Page, <http://www.bbb.org/new-jersey/business-reviews/financial-services/branded-marketing-llc-in-hewitt-nj-90033932> (last visited on May 29, 2012) (listing Mr. Jackowitz as the chief executive officer and contact person for Branded Marketing, LLC). Additionally, LexisNexis's Investigative Portal lists Mr. Jackowitz as the owner of Branded Marketing, LLC.

³³ See Osby Decl. at para. 4. The signature block contained the following information: "Richard Jackowitz, President, IT Connect, Inc., 1069 Ringwood Ave., Haskell, New Jersey 07420, P 201-530-1800; F 201-530-1890; TF 888-IT-Connect; email RJ@ITConnect.com; web www.ITConnect.com; cell [REDACTED]." *Id.*

³⁴ See *id.* (indicating that Lisa Osby "understood from the e-mail's signature block that Mr. Jackowitz was the president of IT Connect, Inc. and [that] he was writing [her] in that capacity").

³⁵ See Citrin Aff. (describing recordings associated with four of the toll free numbers at issue in this investigation); Willis Aff. (describing recordings associated with the remaining 11 toll free numbers at issue in this investigation). Recordings for 10 of the 15 toll free numbers state the following, or some variation thereof: "The toll free number you dialed is available. To inquire about using this toll free number for your business, please call the RX Report at 201-530-1800. Goodbye." Citrin Aff. at paras. 3-6; Willis Aff. at paras. 3-13.

³⁶ See [REDACTED].

³⁷ See IT Connect Contact Page, <http://www.itconnect.com/contactus.html> (last visited May 30, 2012).

³⁸ See *supra* note 32 and accompanying text.

³⁹ See 1800NumbersFree.com May 18, 2012, LOI Response at 9 (response to LOI question 3(a)) (stating that Mr. Jackowitz is an "owner, officer, and director of IT Connect, and a[n] officer [of] RX Report"); see also *id.* at 10 (response to LOI question 3(c)) (stating that 1800NumbersFree.com, IT Connect, and RX report all share the same physical address).

9. As noted above, Section 52.107 of the Commission's rules prohibits brokering,⁴⁰ which is "the selling of a toll free number by a private entity for a fee."⁴¹ The prohibition against "selling" toll free numbers reaches offers to sell toll free numbers, even if no final sale is ever consummated. Notably, several dictionary definitions indicate that the term "sell" may encompass offers to sell.⁴² Moreover, the Commission prohibited brokering because it "provides motivation for hoarding," "results in quicker exhaustion" of toll free numbers, "and interferes with the orderly allocation of numbering resources."⁴³ Offers to sell toll free numbers undermine the Commission's stated intent, as well as the overall effectiveness of the Commission's rules against brokering. Specifically, it would be inconsistent with the policy considerations that animated the Commission to adopt its rule against brokering to construe that rule to permit entities to seek to sell toll free numbers at exorbitant prices—prices that may far exceed the maximum forfeiture available to the Commission to penalize brokering—without risk of sanction unless their sales are actually successful.

10. We recognize that in *Business Edge Group, Inc. v. Champion Mortgage Co.*, a case that involved a form of leasing agreement for a disputed toll free vanity number, the Third Circuit absolved the defendant-appellant of brokering in reliance on certain dictionary "definitions of 'sale' and 'sell'" that the court interpreted to "emphasize the transfer of property or ownership for a price and the finality of the transaction."⁴⁴ Because *Business Edge Group* involved a form of leasing agreement, not an offer to sell the toll free number in question, that case is readily distinguishable from the present matter.⁴⁵ In any event, we decline to follow the Third Circuit's construction of the terms "sale" and "sell" as they relate to Section 52.107 and the Commission's definition of brokering.⁴⁶ The Third Circuit did not address the policy considerations that animated the Commission to adopt its prohibition on brokering, and when the court analyzed what it deemed the "relevant part[s]" of certain dictionary definitions of the terms "sell" and "sale,"⁴⁷ it apparently did not consider aspects of those definitions that we find relevant on the facts of

⁴⁰ See *supra* note 5 and accompanying text.

⁴¹ 47 C.F.R. § 52.107(a); *accord supra* para. 2.

⁴² See, e.g., Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/sell> (last visited May 28, 2012) (indicating that the term "sell" can mean "to cause or promote the sale of," "to make or attempt to make sales to," and "to influence or induce to make a purchase"); *Oxford English Dictionary* 935 (2d ed. 1989) (listing among the connotations of "sell" "[t]o deal in, keep for sale," "[t]o promote the sale of," and "[t]o advertise or publish the merits of" or "persuade (a person) to accept or buy"); *Webster's New International Dictionary* 2272 (2d ed. 1940) (indicating that the term "sell" can mean "[t]o cause or further the sale of," "[t]o deal in as an article of sale," and "[t]o persuade (one) to a course of action, esp. to the making of a contract").

⁴³ *Toll Free Second Report and Order*, 12 FCC Rcd at 11189, para. 38.

⁴⁴ 519 F.3d 150, 155 (3d Cir. 2008).

⁴⁵ Indeed, in *Business Edge Group*, the defendant-appellant had expressly refused the plaintiff-appellee's offer to purchase the number. See *id.* at 152.

⁴⁶ As the Supreme Court recently reaffirmed, the federal courts accord deference "to an agency's interpretation of its regulations . . . unless the interpretation is 'plainly erroneous or inconsistent with the regulation[s]' or there is any other 'reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question.'" *Talk Am., Inc. v. Mich. Bell Tel. Co.*, 131 S. Ct. 2254, 2261 (2011) (second alteration in original) (quoting *Chase Bank USA, N.A. v. McCoy*, 131 S. Ct. 871, 880, 881 (2011)); *accord Auer v. Robbins*, 519 U.S. 452, 461, 462 (1997).

⁴⁷ *Business Edge Group*, 519 F.3d at 155.

this case.⁴⁸

11. In addition to explaining that Section 52.107's prohibition against brokering reaches offers to sell, it may also bear mention that Section 52.107 prohibits any private sale of toll free numbers—whether by individuals or corporate entities.⁴⁹ In view of the objectives that animate the Commission's prohibition on number brokering,⁵⁰ the reference in Section 52.107(a) to "a private entity" necessarily encompasses both corporate entities and natural persons.⁵¹ Moreover, the previous citation issued to Mr. Jackowitz and IT Connect made clear, and provided notice to Mr. Jackowitz, that he himself could be subject to sanctions for violations of the Commission's rule against brokering.⁵²

12. As discussed above, the record in this proceeding appears to indicate that beginning on June 6, 2011, and continuing through July 18, 2011,⁵³ Mr. Jackowitz offered to sell BMS 15 toll free numbers for substantial fees. Mr. Jackowitz's correspondence with BMS employees supports our finding

⁴⁸ Compare Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/sell> (last visited May 28, 2012) (indicating that the term "sell" can mean "to cause or promote the sale of," "to make or attempt to make sales to," and "to influence or induce to make a purchase"), and *Random House Webster's Unabridged Dictionary* 1739 (2d ed. 2001) (listing among the possible connotations of "sell" the following meanings: "to deal in; keep or offer for sale," "to make a sale or offer for sale to," "to persuade or induce (someone) to buy something," and "to offer something for sale"), and *id.* 1693 (indicating that "sale" can mean "opportunity to sell; demand"), with *Business Edge Group*, 519 F.3d at 155 (relying exclusively on other portions of the same dictionary definitions).

⁴⁹ See 47 C.F.R. § 52.107(a); *Toll Free Second Report and Order*, 12 FCC Rcd at 11240, para. 141 (Appendix A – Final Regulatory Flexibility Analysis) ("We further conclude that *the private sale* of numbers involved in number brokering is contrary to the public interest." (emphasis added)); see also *id.* at 11164, para. 2 (characterizing brokering as "subject to sanction by the Commission").

⁵⁰ See *supra* para. 9 (discussing the Commission's objectives in prohibiting number brokering).

⁵¹ 47 C.F.R. § 52.107(a); see also *id.* § 52.107(a)(2) (stating that "[n]o person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee") (emphasis added)); *Enforcement of Section 275(A)(2) of the Communications Act of 1934, as Amended by the Telecommunication Act of 1996, against Ameritech Corporation*, Memorandum Opinion and Order on Remand and Order to Show Cause, 13 FCC Rcd 19046, 19056, para. 18 (1998) (determining, after considering the statutory objectives of the relevant statute, that the term "entity" should be interpreted to have a broad definition, and flatly rejecting the conclusion that the term "entity" requires an organization with separate legal existence); *id.* at 19055, paras. 16, 17 (discussing statutory and dictionary definitions of the term "entity" that include persons and individuals); Merriam-Webster.com, <http://www.merriam-webster.com/dictionary/entity> (last visited May 30, 2012) (defining "entity" to include any "being," as well as "an organization," and listing, as a synonym, the term "individual"); cf. 47 U.S.C. § 153(39) (defining the term "person" to include "an individual, partnership, association, joint-stock company, trust, or corporation").

⁵² See *Jackowitz Citation*, 22 FCC Rcd at 19998 ("As explained below, future violations of the Act or Commission's rules in this regard may subject *you and your company* to monetary forfeitures." (emphasis added)); *id.* at 19999 ("If, after receipt of this citation, *you or your company* violate the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation." (emphasis added)).

⁵³ As indicated above, see *supra* notes 21, 30, the proposed forfeiture in this NAL is based on apparent violations that occurred on July 7, July 10, and July 18 of 2011, *accord infra* para. 17 and note 72. Taken as a whole, however, the broader chain of correspondence we have discussed indicates that Mr. Jackowitz offered to sell BMS the same 15 toll free numbers on repeated occasions from June 6, 2011, through July 18, 2011. See *supra* para. 6.

that he acted both in his personal capacity and on behalf of IT Connect as its president.⁵⁴ Based on our review of that evidence and the record as a whole, we find that Mr. Jackowitz and IT Connect have apparently violated the prohibition against brokering in Section 52.107 of the Commission's rules.⁵⁵

B. Proposed Forfeiture

13. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Communications Act] or of any rule, regulation, or order issued by the Commission."⁵⁶ As to certain violators—for example, individuals who are not themselves holders of or applicants for any form of Commission authorization and whose violations do not involve conduct for which such authorization is necessary—the Commission must issue a citation warning them of the violation charged before imposing monetary penalties.⁵⁷ If such violators subsequently engage "in conduct of the type described in [the] citation," the Commission then may issue an NAL proposing a forfeiture.⁵⁸ Here, there can be no question that we are authorized to issue this NAL because, as noted above, the Commission has previously cited both Mr. Jackowitz and IT Connect for brokering and other toll free numbering violations.⁵⁹

14. "In determining the amount of . . . a forfeiture penalty," Section 503(b)(2)(E) mandates that "the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁶⁰ The Commission may also consider deterrence as a factor in determining the appropriate forfeiture amount.⁶¹

⁵⁴ See *supra* para. 7; see also *supra* para. 8 (describing additional evidence that the Bureau uncovered independently).

⁵⁵ As noted above, see *supra* note 3, for simplicity's sake we characterize these violations as "brokering," but we might equally well describe them as "hoarding." Hoarding by definition includes brokering. See 47 C.F.R. § 52.107(a) ("The definition of hoarding also includes number brokering . . ."). For reasons specific to the facts and circumstances of this case—including considerations that may not be apparent from the face of this NAL—we refrain from determining whether the actions of Mr. Jackowitz and IT Connect additionally constitute hoarding under an alternative theory that they improperly acquired the toll free numbers in question. See *id.* ("[H]oarding is the acquisition by a toll free subscriber from a Responsible Organization of more toll free numbers than the toll free subscriber intends to use for the provision of toll free service."); *id.* § 52.107(a)(2) ("No person or entity shall acquire a toll free number for the purpose of selling the toll free number to another entity or to a person for a fee.").

⁵⁶ 47 U.S.C. § 503(b)(1)(B).

⁵⁷ See *id.* § 503(b)(5).

⁵⁸ *Id.*

⁵⁹ See *supra* para. 3; *Jackowitz Citation*, 22 FCC Rcd at 19998–99. The Bureau's independent investigation in this case appears to indicate that until June 30, 2011, IT Connect was registered with the SMS/800 database administrator as a Responsible Organization. Because a citation was already issued in this case, we need not and do not decide here whether Responsible Organizations operate pursuant to Commission authorizations.

⁶⁰ 47 U.S.C. § 503(b)(2)(E).

⁶¹ See, e.g., *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 20 (1997) (recognizing the relevance of creating the appropriate deterrent effect in choosing the amount of a forfeiture).

15. In addition, Section 503 and the Commission's forfeiture guidelines establish maximum penalties for violations of the Act or the Commission's rules.⁶² Ordinarily,⁶³ when, as here, the violator is not a "common carrier,"⁶⁴ "an applicant for any common carrier . . . instrument of authorization issued by the Commission,"⁶⁵ a "broadcast station licensee or permittee,"⁶⁶ "a cable television operator,"⁶⁷ or "an applicant for any broadcast or cable television operator . . . instrument or authorization issued by the Commission,"⁶⁸ the maximum authorized penalty is "\$16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$112,500 for any single act or failure to act."⁶⁹

16. Based on the record here, it appears that Mr. Jackowitz and IT Connect have willfully and repeatedly offered toll free numbers for sale—a display of intentional conduct that is particularly troubling in view of the 2007 citation putting them on notice that such conduct was wrongful and could subject them to forfeiture. In considering the appropriate penalty, we recognize that attempts to sell toll free numbers "provides motivation for hoarding and therefore results in quicker exhaustion of the current [toll free access codes] and interferes with the orderly allocation of numbering resources" that the Commission has determined must be distributed on a first-come, first-served basis.⁷⁰ We also take into account evidence in the record that the sale of toll free numbers can be lucrative. Mr. Jackowitz's correspondence with BMS in this case reflects that he apparently sought as much as \$17,500 for a single toll free number.⁷¹ In view of the substantial economic gain that brokering toll free numbers can apparently involve, we find that a substantial forfeiture penalty is necessary to deter Mr. Jackowitz, IT Connect, and others from engaging in similar misconduct in the future.

⁶² See 47 U.S.C. § 503(b)(2)(A)–(D), (F); 47 C.F.R. § 1.80(b)(1)–(5).

⁶³ See 47 U.S.C. § 503(b)(2)(C) (setting forth exceptions to the otherwise applicable forfeiture maximums for certain broadcast licensees or applicants that are determined "to have broadcast obscene, indecent, or profane language"); *id.* § 503(b)(2)(F) (establishing the maximum penalties for "manufacturer[s] or service provider[s] subject to the requirements of section[s] 255, 617, or 619 of [the Communications Act]" that are "determined by the Commission to have violated any such requirement").

⁶⁴ *Id.* § 503(b)(2)(B).

⁶⁵ *Id.*

⁶⁶ *Id.* § 503(b)(2)(A).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 47 C.F.R. § 1.80(b)(5). Section 1.80(b)(5) of the Commission's forfeiture guidelines adjusts for inflation the maximum penalties set forth in Section 503(b)(2)(D) of the Act. See 47 U.S.C. § 503(b)(2)(D) (providing that "the amount of any forfeiture penalty determined under this subsection shall not exceed \$10,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$75,000 for any single act or failure to act").

⁷⁰ *Toll Free Second Report and Order*, 12 FCC Rcd at 11189, para. 38; see 47 C.F.R. § 52.111 ("Toll free numbers shall be made available on a first-come, first-served basis unless otherwise directed by the Commission."); see also 47 U.S.C. § 251(e) (prescribing the equitable availability of telephone numbers, including toll free numbers).

⁷¹ See, e.g., Vasquez Decl. at Exhibit A ("If [BMS is] only buying the 877-sprycel number as I expressed to Lisa the price is \$17,500."). Indeed, there is some indication in the record that in a transaction with another pharmaceutical company, Mr. Jackowitz may have sought and received a price of more than three times that amount for a single toll free number. See Osby Decl. at Exhibit B (e-mail in which Mr. Jackowitz states: "We just closed a deal with a large pharma on an 800 number We got \$65K for the one number.").

17. Particularly in light of our concern for creating the necessary deterrent effect on a record that indicates Mr. Jackowitz and IT Connect have offered toll free numbers for sale at prices that exceed the maximum available penalty per violation in this case, and taking into account all of the facts and circumstances apparent from the record as a whole, we propose a total forfeiture of \$240,000, for which Mr. Jackowitz and IT Connect shall be jointly and severally liable. The proposed forfeiture would represent a penalty of \$16,000 for each of the 15 toll free numbers that Mr. Jackowitz and IT Connect offered to sell BMS on July 7, July 10, and July 18, 2011.⁷²

18. In the event that either Mr. Jackowitz or IT Connect continues to engage in conduct that apparently violates the Commission's toll free numbering rules, such apparent violations could result in future NALs proposing additional penalties.

IV. CONCLUSION

19. We have determined that Mr. Richard Jackowitz and IT Connect apparently willfully and repeatedly violated Section 52.107 of the Commission's rules, as discussed above. We have further determined that Mr. Richard Jackowitz and IT Connect are apparently jointly and severally liable for a forfeiture in the amount of \$240,000.

V. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that Mr. Richard Jackowitz and IT Connect, Inc. are hereby **NOTIFIED** of this **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of two hundred forty thousand dollars (\$240,000) for willful and repeated violations of Section 52.107 of the Commission's rules regarding the hoarding and brokering of toll free numbers.

21. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, Mr. Richard Jackowitz and/or IT Connect, Inc. **SHALL PAY** the full amount of the proposed forfeiture, for which they are jointly and severally liable, or each **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. Payment of the forfeiture must be made by check, credit card, or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Regardless of the form of

⁷² As noted above, *see supra* para. 6 and notes 30, 53, Mr. Jackowitz in fact offered to sell BMS the same 15 toll free numbers on repeated occasions between June 6, 2011, and July 18, 2011. For purposes of this NAL, however, we propose a forfeiture based only on the July 2011 offers. *See supra* notes 21, 30, 53. In addition, although it would be within our discretion to propose a separate penalty for each individual occasion in July 2011 on which Mr. Jackowitz offered to sell the toll free numbers in question, we conclude based on the record and the totality of the circumstances before us that in this particular case it is appropriate to propose a penalty of \$16,000 per number.

payment, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). The Payor, Mr. Richard Jackowitz and/or IT Connect, Inc., shall also send electronic notification to Johnny.Drake@fcc.gov on the date said payment is made. Requests for full payment under an installment plan should be sent to Chief Financial Officer – Financial Operations, 445 12th Street, SW, Room 1-A625, Washington, DC 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or e-mail ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

23. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3), 47 C.F.R. § 1.80, and Section 1.16 of the Commission's rules, 47 C.F.R. § 1.16. The written statement must be mailed both to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division; and to Richard A. Hindman, Division Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, and must include the NAL/Acct. No. referenced in the caption. Documents sent by overnight mail (*other than* United States Postal Service Express Mail) must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743. Hand- or messenger-delivered mail should be directed, without envelopes, to Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554 (deliveries accepted Monday through Friday 8:00 a.m. to 7:00 p.m. only). See www.fcc.gov/osec/guidelines.html for further instructions on FCC filing addresses. Mr. Richard Jackowitz and/or IT Connect, Inc. should also send an electronic copy of any written statement to Richard A. Hindman at Richard.Hindman@fcc.gov.

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

25. **IT IS FURTHER ORDERED** that copies of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class Mail to IT Connect, Inc., 314 Route 94, Suite 2, South Warwick, NY 10990, and to Mr. Richard Jackowitz, 10 Knollcroft Terrace, Warwick, NY 10990-2929.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary