

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-TCD-12-00000412 ¹
)	
NobelTel, LLC)	NAL/Acct. No.: 201232170011
)	
Apparent Liability for Forfeiture)	FRN: 0008760928

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 28, 2012

Released: September 28, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that NobelTel, LLC (NobelTel or Company)² has apparently willfully and repeatedly violated Section 201(b) of the Communications Act of 1934, as amended (Communications Act or Act),³ by deceptively marketing prepaid calling cards. Based upon our review of the facts and surrounding circumstances, NobelTel appears to target its marketing to immigrants with claims that, for a card costing just a few dollars, buyers can make hundreds of minutes of calls to their native countries—when in fact, for that price, they will be able to use only a fraction of those minutes due to NobelTel’s assessment of multiple fees and surcharges that are not clearly and conspicuously disclosed to consumers. Accordingly, we find that NobelTel, LLC has apparently violated Section 201(b) of the Act and is apparently liable for a proposed forfeiture in the amount of five million dollars (\$5,000,000).

II. BACKGROUND

2. A prepaid calling card is a retail product for which the consumer pays a specific dollar amount and which enables that customer to make domestic and/or international telephone calls. Such cards are frequently marketed to immigrant communities for calling a variety of international destinations and are especially popular with these communities, where many depend on prepaid calling cards to stay in touch with family and friends in their home countries. The cards are typically sold in denominations of \$2, \$3, and \$5 at newsstands and in grocery and convenience stores. Companies often market prepaid cards under a variety of brand names and advertise them to consumers primarily using posters displayed in retail locations and in some cases through radio and television advertising.

3. The Enforcement Bureau (Bureau) began its investigation of NobelTel by directing a letter of inquiry (LOI) to the Company requesting information and documents relating to its prepaid

¹ This case was formerly assigned the file number EB-11-TC-131. In January 2012, the Telecommunications Consumers Division assigned the case a new number.

² NobelTel is a Delaware limited liability company whose principal address is 5973 Avenida Encinas, Suite 202, Carlsbad, CA 92008.

³ 47 U.S.C. § 201(b).

calling card services.⁴ In its LOI Response, NobelTel stated that it was responding on behalf of “NobelTel, LLC, Nobel Holding, Inc., Nobel, Inc. [and] NobelCom, LLC”⁵

4. According to its LOI Response,¹¹ NobelTel

In its LOI Response, NobelTel provided samples of the posters and calling cards sold in 2010 and 2011.¹⁶ A poster includes the name of the calling card (e.g., “ICE,” “Bullet” and “iCARD”) and representations about the number of minutes a consumer will receive when calling various countries and/or cities.¹⁷ The number of calling minutes listed on NobelTel’s posters usually appears in large font size.¹⁸ Additionally, some posters contain large boxes listing various calling destinations, along with the number of calling minutes or “units” a consumer will receive to those destinations using the advertised calling card of a specified dollar value (e.g., Lima 1000 Units \$2; Mexico 1039 Minutes \$5).¹⁹ Appearing on the bottom of the NobelTel posters is a disclosure in very small font size relating to certain fees and

⁴ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to NobelTel, Inc. (Dec. 12, 2011) (on file in EB-TCD-12-00000412).

⁵ See Letter from Robert J. Aamoth and Barbara A. Miller, Counsel for NobelTel, to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Feb. 2, 2012) (on file in EB-TCD-12-00000412) (LOI Response).

⁶ See LOI Response at 5.

⁷ See *Notice of Domestic Section 214 Authorizations Granted*, 24 FCC Rcd 14453 (2009).

⁸ See *id.*; LOI Response at 5.

⁹ See LOI Response at 5.

¹¹ See LOI Response at 6.

¹² See *id.* We note that NobelTel was granted an international Section 214 certificate on December 6, 2001. See *Public Notice, International Authorizations Granted*, 16 FCC Rcd 21369, 21370 (2001). The original Section 214 authorization was granted in the name of Nobel Limited Company d/b/a NobelTel. See *id.*

¹³ See LOI Response at 3.

¹⁴ See *id.*

¹⁵ See E-mail from Barbara S. Miller, Counsel for NobelTel, to David L. Marks, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, Exhibit 1 at 1 (May 10, 2012) (on file in EB-TCD-12-00000412) (May Supplemental Response).

¹⁶ See LOI Response attachment.

¹⁷ See, e.g., ICE poster, Bullet poster, and iCARD poster submitted with LOI Response. All three posters expired less than a year prior to the release of this Notice of Apparent Liability for Forfeiture. See *id.*

¹⁸ See *id.*

¹⁹ According to the disclosure on the ICE poster, for example, a unit equals 0.7 minutes, and thus 1000 units equal 700 minutes. See ICE poster submitted with LOI Response.

surcharges that may apply when using the cards, including daily, hang up, and toll-free access number fees.²⁰

5. NobelTel's calling cards themselves generally come in two parts: a top portion (or "hang tag") and a bottom portion, the size of a credit card, that can be separated from the top and is intended to be retained by the purchaser. The front of the card identifies the name of and value of the card (e.g., \$2, \$5). The reverse of the top portion of the cards includes a disclosure about fees—the same disclosure that typically appears on its posters. For example, the disclosure on NobelTel's \$2 iCARD calling card reads, in relevant part, as follows:

A HIGHER RATE MAY APPLY TO CALLS TO WIRELESS RECEIVERS OR SPECIAL SERVICE NUMBERS. . . . A \$0.69 DAILY FEE MAY APPLY AFTER INITIAL USE. A \$0.04 PER MINUTE CHARGE . . . WILL APPLY FOR TOLL FREE ACCESS. CALLS ARE BILLED IN 2-MINUTE INCREMENTS. A HANG UP FEE OF \$0.69 MAY APPLY PER CALL. RATES FOR SUBSEQUENT CALLS MAY BE 100% HIGHER THAN THE RATE OF THE INITIAL CALL. . . . NOBEL MAY CHANGE TERMS AND CONDITIONS AND/OR THE PRICES CHARGED AT ANY TIME WITHOUT NOTICE²¹

The reverse of the card—which is intended to be retained by the purchaser—includes a series of local access numbers, a toll-free access number, and a customer service number, but does not include information about the rates, terms, charges and conditions of service.²²

III. DISCUSSION

A. Apparent Violation of Section 201(b) of the Act

6. Section 201(b) of the Act states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful"²³ The Commission has found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices under Section 201(b).²⁴ A practice that "convey[s] insufficient information as to the company's identity, rates,

²⁰ See, e.g., ICE poster, Bullet poster, and iCARD poster submitted with LOI Response.

²¹ See iCARD \$2 card submitted with LOI Response.

²² See *id.*

²³ 47 U.S.C. § 201(b).

²⁴ See, e.g., *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 8133 (2001) (*NOS*) (finding that the companies engaged in deceptive marketing of their interstate communication services by failing to disclose clearly and conspicuously material facts regarding their promotional plan offerings and pricing methodology, in violation of Section 201(b)); *Business Discount Plan, Inc.*, Order of Forfeiture, 15 FCC Rcd 14461 (2000) (*BDP*), *recon. granted in part and denied in part*, 15 FCC Rcd 24396 (2000) (finding that the company violated Section 201(b) by using unjust and unreasonable telemarketing practices such as misrepresenting the nature of its service offerings); *Telecommunications Research & Action Center & Consumer Action*, Memorandum Opinion and Order, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (*TRAC*) (recognizing that Section 201(b) provides a cause of action against carriers for failing to convey sufficient information about their rates, practices and range of services); Joint FCC/FTC Policy Statement For the Advertising of Dial-Around And Other Long Distance Services To Consumers, 15 FCC Rcd 8654 (2000) (*Joint Advertising Statement*) (adopting a policy statement to provide guidance to carriers regarding how to comply with Section 201(b) in the advertising context); see also *infra* note 27 (citing recent NALs finding apparent violations of the Communications Act for deceptive marketing based on facts virtually identical to those in this case).

practices, and range of services” constitutes a violation of Section 201(b).²⁵ Specifically, the Commission has stated that a carrier must provide “clear and conspicuous disclosure on how to calculate the total cost of a call.”²⁶ Thus, the Commission has found—in five cases with facts substantially similar, in relevant part, to those at issue here—a carrier that fails sufficiently to convey material information, such as rates, about its prepaid calling card services violates Section 201(b) of the Act.²⁷

7. We find that NobelTel has apparently violated Section 201(b) of the Act because it deceptively represents that buyers of its cards can make hundreds of minutes of calls to foreign countries for just a few dollars. In fact, buyers can make calls for only a fraction of those minutes because NobelTel applies a variety of fees and surcharges that quickly deplete the card. NobelTel purports to disclose these fees and surcharges, but the fine print “disclosures” contradict the express and much more prominent claims in the main portion of the marketing materials.²⁸ Moreover, even if the disclosures of the various fees and surcharges were not contradictory, they are in small print and not clear or conspicuous in relation to the claim of total available minutes that the disclosure is intended to modify, and the disclosure otherwise “convey[s] insufficient information as to the company’s identity, rates, practices, and range of services.”²⁹ Finally, because NobelTel states that certain charges *may* apply and that it *may* change terms and conditions and/or the prices charged “at any time, without notice,”³⁰ it is impossible for the consumer to determine the cost of a call at the point of sale.

8. NobelTel uses posters displayed in retail locations as its primary vehicle for marketing its prepaid calling card services to consumers at those locations.³¹ As indicated above, NobelTel represents

²⁵ See *TRAC*, 4 FCC Rcd at 2159. The full Commission has approvingly cited this passage from *TRAC* as indicating that such conduct violates Section 201(b) of the Act. *BDP*, 15 FCC Rcd at 14469.

²⁶ *NOS*, 16 FCC Rcd at 8138, para. 9.

²⁷ See *STi Telecom Inc. (formerly Epana Networks, Inc.)*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12808 (2011) (finding that the marketing materials used to sell prepaid calling cards were misleading and deceptive regarding the rates and charges applicable to the service and therefore violated Section 201(b)); *Locus Telecommunications, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12818 (2011); *Lyca Tel, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12827 (2011); *Touch Tel USA, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 12836 (2011); *Simple Network, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16669 (2011).

²⁸ See, e.g., iCARD poster submitted with LOI Response.

²⁹ *TRAC*, 4 FCC Rcd at 2158, para. 16; see also *NOS*, 16 FCC Rcd at 8138, para. 9 (finding that there must be a clear and conspicuous disclosure of “how to calculate the total cost of a call”).

³⁰ See, e.g., iCARD poster submitted with LOI Response.

³¹

See 47 U.S.C. § 217 (“[T]he act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”). Based on FCC staff’s investigation of the calling card industry generally, the business relationship between telecommunications service provider and retail customer may involve several layers of companies. For example, companies such as NobelTel provide telecommunications services in the form of prepaid long-distance cards,

. See generally *supra* para. 4 ().

(continued . . .)

on its posters that consumers who purchase its cards will receive a specified number of calling minutes to specific countries for a set price (e.g., to Mexico 1039 minutes for \$5, 415 minutes for \$2).³² Although NobelTel's prepaid cards are often marketed as providing hundreds of minutes, the total number of minutes actually received by the consumer is likely to be significantly less for any consumer who attempts to use the card to make multiple calls once the various fees are applied.³³

9. NobelTel's marketing materials and cards make certain disclosures about these fees, but the disclosures conflict with the express statements of how many calling minutes are available. Further, the disclosures regarding the various fees that *may* apply are not adequate to counter the express and otherwise unqualified claim that consumers will be able to make hundreds of minutes of calls for the marketed rate. As a preliminary matter, the font size of the advertised minutes and rate information completely dwarfs the disclosure.³⁴ As described above, NobelTel's posters typically advertise the number of calling minutes offered to certain countries in large, simple text, which is prominently displayed at the top or center of the poster. The main part of the poster stands in stark contrast to the disclosures regarding additional fees and surcharges, which is at the bottom of the posters in significantly smaller type and easily overlooked.³⁵ While this same language is usually printed on the top portion (or "hang tag") of NobelTel's cards, it is similarly printed in extremely small font and difficult to read. Further, because the calling card is apparently meant to be torn away from the hang tag for ease of carrying the card in a wallet and customer use, the disclosures on the hang tag afford the consumer little information at the actual point of use.³⁶ Disclosures in fine print and in materials that reasonable consumers may not read or use are ineffective to ensure that consumers have an accurate and informed

(continued from previous page)

Increasingly, the retail outlets are Internet "platforms" or portals selling virtual cards that involve downloading minutes directly to a consumer's account. Clearly, those in the distribution chain that provide telecommunications service are carriers subject to FCC jurisdiction; others in the chain may also qualify as carriers, depending on the particular factual circumstances presented. *See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, RM-1997, RM-2218, Report and Order, 60 FCC 2d 261, 265, para. 8 (1976) ("an entity engaged in the resale of communications service is a common carrier, and is fully subject to the provisions of Title II"), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978); *see also Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290, 7307, para. 45 (2006) (stating that all prepaid calling card carriers are telecommunications carriers subject to Title II of the Act and Universal Service Fund contribution obligations).

³² *See* iCARD poster submitted with LOI Response.

³³ A card is exhausted when either its face value has been used up (e.g., \$2), or when all of the available minutes have been used. For a discussion of how the fees may impact the value of the card as it is used, *see infra*, para. 11.

³⁴ Both academic research and the Commission's experience with consumer issues have demonstrated that the manner in which providers display material information, including the charges, classifications, and terms of use, can have as much impact on a consumer's decision to make a purchase as the information itself. *See generally* Colin Camerer, Samuel Issacacoff, George Loewenstein, Ted O'Donoghue & Matthew Rabin, *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism"*, 151 U. PENN. L. REV. 1211 (2003) (surveying regulatory strategies to address problems arising from systematic errors in consumer decision-making); RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE*, Yale University Press 2008 (concluding that information buried deep in the "fine print" is far less useful to consumers than information displayed clearly and prominently); *see also Joint Advertising Statement*, 15 FCC Rcd at 8654-55, para. 2 (finding that if consumers are deceived by advertising claims, they cannot make informed purchasing decisions); *Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492 (1999) (noting that the proper functioning of competitive markets is predicated on consumers having access to accurate, meaningful information in a format that they can understand).

³⁵ *See* iCARD poster submitted with LOI Response.

³⁶ *See, e.g.*, iCARD card submitted with LOI Response.

understanding of an advertising claim.³⁷ We therefore conclude that NobelTel's disclosures are not clear and conspicuous to the average consumer.

10. Perhaps more important, NobelTel's disclosures do not provide the information necessary for a consumer to determine what fees apply, the amounts of those fees, and when and how they will affect the number of calling minutes offered. To illustrate this point, we use the disclosure in paragraph 5 above on the poster for NobelTel's \$2 iCARD prepaid calling card, which is typical of the disclosures found in NobelTel's marketing materials. As noted above, despite advertising on its posters a specific number of minutes for a set price, NobelTel includes a disclosure that states:

A HIGHER RATE *MAY* APPLY TO CALLS TO WIRELESS RECEIVERS OR SPECIAL SERVICE NUMBERS. . . . A \$0.69 DAILY FEE *MAY* APPLY AFTER INITIAL USE. A \$0.04 PER MINUTE CHARGE . . . WILL APPLY FOR TOLL FREE ACCESS. CALLS ARE BILLED IN 2-MINUTE INCREMENTS. A HANG UP FEE OF \$0.69 *MAY* APPLY PER CALL. RATES FOR SUBSEQUENT CALLS *MAY* BE 100% HIGHER THAN THE RATE OF THE INITIAL CALL. . . . NOBEL *MAY* CHANGE TERMS AND CONDITIONS AND/OR THE PRICES CHARGED AT ANY TIME WITHOUT NOTICE³⁸

The explanation of the application of fees and variety of other terms, conditions, and charges is so vague that it is impossible for a consumer to know when purchasing NobelTel's prepaid card what fees will actually apply or how the fees will impact the number of calling minutes received. In other words, the consumer is unable to calculate the cost of any call.³⁹ In this case, a consumer cannot calculate the cost of calls to "wireless receivers and Special Service numbers" because an indefinite "higher rate *may* apply;"⁴⁰ the cost of calls after the initial call because rates "*may* be 100% higher;"⁴¹ and the cost of *any* call because daily and hang-up fees may or may not apply.⁴² In addition, NobelTel states that it can change the prices charged at *any* time without notice so that even if it were possible to calculate the cost of a call based on NobelTel's posters, the consumer would not know if those rates had changed. Thus, the disclosures are not in the "clear and unambiguous language" that the Commission has said is needed to ensure that consumers can calculate the cost of a call.⁴³

11. One of NobelTel's cards, which NobelTel's posters advertises as offering 400 minutes to Mexico for \$2, demonstrates how the disclosures are inadequate and the extent of the gulf between a consumer's reasonable expectation (based on NobelTel's marketing materials) and the consumer's actual experience (based on application of NobelTel's surcharges).⁴⁴ If a consumer makes a 10-minute call to

³⁷ *Joint Advertising Statement*, 15 FCC Rcd at 8663, para. 22 (noting that prominence, proximity, and placement of disclosure in comparison to advertising representation affect effectiveness of disclosure); *id.* at 8659, para.14 (noting that disclosure about limitations on advertised long-distance rate likely ineffective when advertised rate appeared on peel-off stickers, without disclosure, that consumers were supposed to put on telephones).

³⁸ See iCARD Poster submitted with LOI Response (emphasis added).

³⁹ See *NOS*, 16 FCC Rcd at 8138, para. 9 (finding that there must be a clear and conspicuous disclosure of "how to calculate the total cost of a call"). Other NobelTel cards make it even more difficult to calculate the cost of a call because they do not advertise the number of minutes per card, but the number of "units." On NobelTel's ICE poster, for example, one unit equals 0.7 minutes. The ICE poster includes units for over 150 destinations. In order to determine the number of minutes to those destinations a consumer would have to multiply each number of units by 0.7. See ICE poster submitted with Response.

⁴⁰ See, e.g., iCARD \$2 card submitted with LOI Response (emphasis added).

⁴¹ *Id.* (emphasis added).

⁴² See *id.*

⁴³ See *NOS*, 16 FCC Rcd at 8138, para. 9.

⁴⁴ See iCARD poster submitted with LOI Response.

Mexico, one would reasonably expect that there would be 390 minutes remaining on the card. However, the card disclosure suggests that once the initial call is completed, a daily fee of \$0.69 may apply and a hang up fee of \$0.69 may apply per call.⁴⁵ Thus, a day after an initial 10-minute call, potential post-call charges of \$2.07⁴⁶ would exhaust a card that was advertised to provide 400 minutes. In other words, the only possible way a consumer could use all of the 400 advertised minutes would be to make a single six-hour 40-minute call—a duration that makes such calls improbable for the typical consumer.

12. Information regarding the existence, amount, and application of fees that affect the value of a calling card is material to consumers when deciding to purchase cards. The failure to provide such information clearly and conspicuously, because it deprives customers of material information needed to make a purchasing decision, is a deceptive marketing practice. As the Commission stated in *NOS*,⁴⁷ if a consumer must take a series of complicated and confusing steps to try to calculate the charges and calling time based on the disclosure provided, such disclosure almost certainly would be misleading to consumers.⁴⁸ Specifically, the Commission stated that there must be a clear and conspicuous disclosure of “how to calculate the total cost of a call.”⁴⁹ Because NobelTel’s disclosure only states that certain fees “may apply” and that NobelTel may change prices at any time without notice, it would be impossible for a consumer to determine at the point of sale how to calculate the cost of a call. Such a practice is unjust and unreasonable under Section 201(b).

13. We find that the marketing materials used by NobelTel to sell its prepaid calling cards are misleading and deceptive regarding the rates and charges applicable to its service offerings. In addition, we find that NobelTel failed to disclose, in any meaningful way, material information about its rates, charges and practices at the point of sale, resulting in substantial harm to consumers who purchased its prepaid calling cards. Accordingly, we find that NobelTel has apparently engaged in unjust or unreasonable marketing practices in violation of Section 201(b) of the Act.

B. Proposed Forfeiture Pursuant to Section 503(b) of the Act

14. Section 503(b)(1) of the Act states that any person who willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.⁵⁰ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$150,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act by common carriers.⁵¹ In determining the appropriate forfeiture amount, we consider the factors enumerated in Section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and

⁴⁵ *See id.*

⁴⁶ The total fee of \$2.07 includes one hang-up fee and two daily fees.

⁴⁷ *See NOS*, 16 FCC Rcd at 8136, para 7.

⁴⁸ We note that having to convert “units” to minutes in certain cards makes it even more difficult for a consumer to calculate the cost of a call. *See supra* para. 4.

⁴⁹ *Id.*

⁵⁰ 47 U.S.C. § 503(b)(1)(B); *accord* 47 C.F.R. § 1.80(a)(2).

⁵¹ 47 U.S.C. § 503(b)(2)(B); 47 C.F.R. § 1.80(b)(2). In 2008, the Commission amended section 1.80(b)(2) of the rules, 47 C.F.R. § 1.80(b)(2), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, para. 3, 9847, Appendix (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,300,000 to \$150,000/\$1,500,000).

such other matters as justice may require.”⁵² Although the forfeiture guidelines do not establish a forfeiture amount for unjust or unreasonable practices, such as deceptive marketing practices, the guidelines do state that, “[a]ny omission of a specific rule violation from the . . . [forfeiture guidelines] . . . should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”⁵³ The Commission retains the discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.⁵⁴

15. In *NOS*, the Commission found that unfair and deceptive marketing practices by interstate common carriers constitute unjust and unreasonable practices within the meaning of Section 201(b) of the Act,⁵⁵ and concluded that each instance of such practices constituted a separate violation of Section 201(b).⁵⁶ The Commission noted that it had previously assessed a forfeiture amount of \$40,000 for each instance in which a carrier engaged in an unjust and unreasonable telemarketing practice in violation of Section 201(b).⁵⁷ It explained, however, that “a straightforward application of a \$40,000 base forfeiture amount would likely produce a proposed forfeiture in the millions of dollars.”⁵⁸ Rather, taking into account the number of violations attributed to the two companies involved in the case, the Commission determined that a \$500,000 forfeiture amount per company was sufficient to protect the interests of consumers and to deter future violations of the Act.⁵⁹

16. In the Commission’s recent NALs against carriers providing prepaid calling cards, the Commission found apparent violations of Section 201(b) on facts substantially similar to those in the instant case. In those cases, the Commission found that the prepaid calling card companies violated Section 201(b) because they deceptively represented to card buyers that they could make hundreds of minutes of calls to foreign countries for just a few dollars when, in fact, buyers could use only a fraction of those minutes.⁶⁰ Further, the Commission found each card the companies sold using deceptive marketing was a violation of Section 201(b) of the Act and, taking into account the statutory factors of Section 503(b)(2)(E) applicable in those cases, assessed a total proposed forfeiture of \$5,000,000.⁶¹

17. Consistent with our previous NALs involving prepaid cards,⁶² we find each card that NobelTel marketed using deceptive advertising constitutes an independent unjust and unreasonable

⁵² 47 U.S.C. § 503(b)(2)(E).

⁵³ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate Guidelines*, Report and Order, 12 FCC Rcd 17087, 17099, para. 22 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999).

⁵⁴ *Id.*

⁵⁵ See *NOS*, 16 FCC Rcd at 8140, para. 15.

⁵⁶ See *id.* at 8141, para. 19.

⁵⁷ See *id.* at 8141–42, para. 19 (citing *BDP*, 15 FCC Rcd at 14471–72, paras. 21–24 (2000)).

⁵⁸ *Id.* at 8142, para. 19.

⁵⁹ *Id.*

⁶⁰ See *STi Telecom Inc.*, 26 FCC Rcd at 12815, para.18; *Locus Telecommunications, Inc.*, 26 FCC Rcd at 12824, para. 18; *Lyca Tel, LLC*, 26 FCC Rcd at 12833, para. 18; *Touch Tel USA, LLC*, 26 FCC Rcd at 12842, para. 17; *Simple Network, Inc.*, 26 FCC Rcd at 16675, para. 17.

⁶¹ See *id.* In determining the amount of a forfeiture penalty, the Commission considers “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.” 47 U.S.C. § 503(b)(2)(E).

⁶² See *id.*

practice and thus a separate and distinct apparent violation of Section 201(b) of the Act.⁶³ Given that NobelTel states that it sold [REDACTED] there appears to be an extensive number of apparent violations in this case for which the Commission is empowered to propose a penalty. Applying the base penalty of \$40,000 for Section 201(b) violations involving deceptive marketing to the large number of apparent violations in this case would lead to an astronomical forfeiture. Thus, as in our other prepaid card cases,⁶⁵ we propose a forfeiture of \$5,000,000 here. Weighing the facts before us, and taking into account the factors enumerated in Section 503(b)(2)(E), including the extent and gravity of NobelTel's egregious conduct, as well as its culpability and the information in the current record about its revenues, we find that a total proposed forfeiture of this amount is appropriate under the specific circumstances of this case.⁶⁶ The proposed forfeiture clearly must protect the interests of consumers and serve as an adequate deterrent. A lesser penalty would be inappropriate in light of NobelTel's failure to adequately provide material information about its rates to the thousands of consumers who purchased NobelTel's prepaid cards. Moreover, in determining the amount of a proposed penalty, we seek to "guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business."⁶⁷ Finally, the proposed forfeiture is consistent with recent precedent in similar cases, where companies deceptively marketed prepaid calling cards.⁶⁸ In the event NobelTel continues to engage in conduct that apparently violates Section 201(b)'s prohibition against unjust and unreasonable practices, such apparent violations could result in future NALs proposing substantially greater forfeitures and revocation of NobelTel's operating authority.

IV. CONCLUSION

18. We have determined that NobelTel, LLC apparently violated Section 201(b) of the Act. We have further determined that NobelTel, LLC is apparently liable for a forfeiture in the amount of five million dollars (\$5,000,000).

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b)(2)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(B), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, NobelTel, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of five million dollars (\$5,000,000), for willful and repeated violations of Section 201(b) of the Act, 47 U.S.C. § 201(b).

⁶³ In *NOS*, the Commission found that "each rate sheet sent to consumers constitutes a separate violation of Section 201(b)." *NOS*, 16 FCC Rcd at 8141, para 19. Consistent with *NOS*, we find that the marketing of each card to consumers constitutes a separate apparent violation of Section 201(b); *see also BDP*, 15 FCC Rcd at 14471-72, paras. 21-24 (assessing a forfeiture amount of \$40,000 for each instance in which the carrier engaged in an unjust and unreasonable telemarketing practice in violation of Section 201(b)).

⁶⁴ *See* LOI Response at 13 (stating that [REDACTED]).

⁶⁵ *See STi Telecom Inc.*, 26 FCC Rcd at 12815, para.18; *Locus Telecommunications, Inc.*, 26 FCC Rcd at 12825, para. 18; *Lyca Tel, LLC*, 26 FCC Rcd at 12833, para. 18; *Touch Tel USA, LLC*, 26 FCC Rcd at 12842, para. 17; *Simple Network, Inc.*, 26 FCC Rcd at 16675, para. 17.

⁶⁶ The \$5 million penalty we propose would be equivalent to applying a \$40,000 penalty to only 125 apparent violations that occurred within one year of this NAL.

⁶⁷ *See Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 24; *see also NobelTel, LLC* 2011 FCC Form 499-A (Telecommunications Reporting Worksheet (Reporting Calendar 2011 Revenues)).

⁶⁸ *See STi Telecom Inc.*, 26 FCC Rcd at 12815, para.18; *Locus Telecommunications, Inc.*, 26 FCC Rcd at 12825, para. 18; *Lyca Tel, LLC*, 26 FCC Rcd at 12833, para. 18; *Touch Tel USA, LLC*, 26 FCC Rcd at 12842, para. 17; *Simple Network, Inc.*, 26 FCC Rcd at 16675, para. 17.

20. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁶⁹ within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, NobelTel, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.⁷⁰

21. 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 in the caption. 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 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). NobelTel, LLC 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, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

22. The response, if any, 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 Hindman, 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.

23. The Commission will not consider reducing or canceling a proposed 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.

⁶⁹ 47 C.F.R. § 1.80.

⁷⁰ All further communications with respect to this case should use the new file number.

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail Return Receipt Requested and First Class mail to NobelTel, LLC, Attention: Richard Mahfouz, 5973 Avenida Encinas, Suite 202, Carlsbad, CA 92008, and to Robert J. Aamoth and Barbara A. Miller, Kelley Drye and Warren, LLP, Counsel for NobelTel, LLC, 3050 K Street, NW, Suite 400, Washington DC, 20007.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary