

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No. EB-TCD-12-00000418
)	
Net One International, Inc.)	NAL/Acct. No. 201432170010
)	
Apparent Liability for Forfeiture)	FRN: 0004337556

FORFEITURE ORDER

Adopted: March 8, 2016

Released: March 9, 2016

By the Commission: Commissioner O’Rielly concurring in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. We impose a penalty of \$1,600,000 against Net One International, Inc. (Net One or Company), for improperly billing consumers for unauthorized charges and fees purportedly in connection with long distance telephone service—a practice commonly known as “cramming.” Consumers complained that Net One continued to charge them for services and “late fees” after they had affirmatively cancelled their service and paid all final bills. Cramming is a deceptive business practice that results in consumers paying for services they never requested and expending time and personal effort to remedy the unauthorized charges. The Federal Communications Commission (Commission) is committed to protecting consumers against cramming and we will take aggressive action against carriers such as Net One that commit such unjust and unreasonable acts against consumers. After reviewing Net One’s response to the July 11, 2014, Notice of Apparent Liability for Forfeiture (*2014 NAL*), we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$1,600,000 forfeiture the Commission previously proposed.

II. BACKGROUND

2. Net One is a toll reseller based in Florida¹ that offers interexchange and international telecommunications service.² The Enforcement Bureau (Bureau) reviewed over 100 consumer complaints filed against Net One with the Commission, Federal Trade Commission, and the Better Business Bureau. As discussed in more detail in the *2014 NAL*,³ many consumers complained that Net One continued to bill them after they had paid their final bill and notified Net One that they were

¹ Net One has used several different Florida addresses during the course of this investigation: 6931 University Blvd., Winter Park, FL 32792 (annual CPNI filing); 4037 Metric Drive, Suite 200, Winter Park, FL 32792-6808 (annual CPNI filing); P.O. Box 4970, Winter Park, FL 32793 (FCC Form 499-A); 457 South Avalon Park Blvd., Suite 500, Orlando, FL 32828-6997 (FCC Form 499-A); and P.O. Box 863511, Orlando, FL 32886-3511 (consumer invoices).

² Net One was granted international Section 214 authority on July 3, 1997. See ITC-214-19970516-00273.

³ *Net One International, Inc.*, Notice of Apparent Liability, 29 FCC Rcd 9046 (2014) (*2014 NAL*). The carrier’s name is at times spelled “NetOne” in consumer complaints, and elsewhere, due to the way it appears on the Company’s letterhead.

cancelling their accounts.⁴ Based on these complaints, on July 15, 2011, the Bureau sent a letter of inquiry (LOI) to Net One, ordering the Company to provide certain information and documents.⁵ The Bureau directed Net One to respond to the LOI on or before August 4, 2011. Net One received and signed for the LOI on July 19, 2011,⁶ but neither contacted the Bureau nor responded to the LOI by the deadline. Consequently, on December 9, 2011, the Bureau released a Notice of Apparent Liability (*2011 NAL*), followed by a Forfeiture Order and Memorandum Opinion and Order, against Net One for its failure to provide a complete response to the LOI.⁷ Notwithstanding Net One's failure to provide the information requested in the LOI, the Bureau continued its investigation of Net One for cramming based on the numerous allegations from consumers that Net One had charged them for service and fees without their authorization.

3. Subsequently, on July 15, 2014, the Commission issued the *2014 NAL* proposing a \$1,600,000 forfeiture against Net One for its apparent willful and repeated violation of Section 201(b) of the Communications Act of 1934, as amended (Act),⁸ by imposing unauthorized charges on 20 consumers' telephone bills. The Commission has found that the inclusion of such unauthorized charges and fees on telephone bills, or cramming, is an "unjust and unreasonable" practice under Section 201(b) of the Act.⁹

4. On September 12, 2014, Net One filed a response to the *2014 NAL*.¹⁰ Net One makes a number of arguments as to why the *2014 NAL* should be canceled, claiming: the *2014 NAL* fails to provide substantial evidence to support a finding of cramming;¹¹ the Commission's actions were arbitrary

⁴ See *2014 NAL*, 29 FCC Rcd at 9048-9050, para. 6.

⁵ See Letter from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Net One International (July 15, 2011) (on file in EB-TCD-12-00000418).

⁶ The Winter Park, Florida, post office stamped the return receipt card on July 19, 2011. The card was apparently signed by El Bachir Alaoui Hichami, the Treasurer of Net One.

⁷ *Net One International, et al.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16493 (EB 2011) (*2011 NAL*), Order of Forfeiture, 29 FCC Rcd 264 (EB 2014), *petition for reconsideration denied*, Memorandum Opinion and Order, 30 FCC Rcd 1021 (EB 2015).

⁸ 47 U.S.C. § 201(b).

⁹ See, e.g., *Long Distance Direct, Inc., Apparent Liability for Forfeiture*, Memorandum Opinion and Order, 15 FCC Rcd 3297, 3302, para. 14 (2000) (*LDDI MO&O*) (finding that the company's practice of cramming membership and other unauthorized fees on consumer telephone bills was an unjust and unreasonable practice in connection with communication services); *Optic Internet Protocol, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 9056, 9058, para. 7 (*Optic NAL*), Forfeiture Order, 30 FCC Rcd 2539 (2015); *Central Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5517, 5523, para. 14 (2014) (*Central NAL*); *U.S. Telecom Long Distance, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 823, 829-830, para. 14 (2014) (*USTLD NAL*); *Consumer Telcom, Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17196, 17202, para. 14 (2013) (*CTI NAL*); *Advantage Telecommunications Corp.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 6843, 6849-6850, para. 17 (2013) (*Advantage NAL*).

¹⁰ See "Response to Notice of Apparent Liability for Forfeiture," dated September 11, 2014, and received September 12, 2014 (NAL Response).

¹¹ *Id.* at 4-13.

and capricious;¹² and the proposed forfeiture violates public policy and would be a financial hardship for the Company.¹³

III. DISCUSSION

5. The Commission proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹⁴ Section 1.80 of the Commission's rules,¹⁵ and the Commission's *Forfeiture Policy Statement*.¹⁶ When we assess forfeitures, Section 503(b)(2)(E) requires that we 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."¹⁷ As discussed below, we have fully considered Net One's response to the *2014 NAL*, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore affirm the \$1,600,000 forfeiture proposed in the *2014 NAL*.

6. As stated in the *2014 NAL*, during the course of its investigation, the Bureau reviewed over 100 consumer complaints in which consumers alleged, among other things, that Net One had billed them after they had cancelled their service and paid their final bills.¹⁸ The complaints upon which we based the *2014 NAL* had been filed with the Commission and/or the Better Business Bureau and had been served on Net One.¹⁹

7. As discussed in more detail below, Net One's NAL Response makes a number of arguments. Four of those arguments address four separate groups of complaints:

- For the first group,²⁰ Net One contends that the *2014 NAL* failed to consider that the charges were in error and that Net One corrected the errors after it became aware of them, and accordingly we should not assess a forfeiture based on those charges. We reject Net One's argument because the facts show that the Company did not correct the errors after it was initially contacted by the consumers; instead, this group of complainants had to repeatedly notify Net One over an extended period of time before the Company finally refunded the illegal fees these complainants were charged.
- For the second group of complainants,²¹ Net One claims that its charges were not unjust and unreasonable, and argues that the Commission did not recognize that the complainants had an outstanding balance when they cancelled their service or made their final payment late. We reject this argument as well because the uncontradicted facts

¹² *Id.* at 13-15.

¹³ *Id.* at 13-17.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

¹⁶ *The 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 (1997) (*Forfeiture Policy Statement*), reconsideration denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ *NAL*, 29 FCC Rcd at 9048-9050, para. 6.

¹⁹ In some cases, Net One had responded to consumer complaints; however, in most cases the Company did not.

²⁰ Complainants Gopalan, Tantawy, Foster, El-Nakhal, and Karam.

²¹ Complainants Mattam, Haughton, Hadeed, Chakkala, Towfeles, and Sibay.

show that Net One did not merely charge the complainants the alleged delinquent amount, or a late fee, but also refused to cancel the consumers' accounts and continued to bill them monthly for unauthorized services as well as for additional late fees.

- For a third group of complaints,²² Net One claims that it is unaware of any specifics about such complaints and for that reason we should not assess a forfeiture. We reject this argument, as Net One was served with these complaints, the complainants were Net One customers, and Net One possessed records of all invoices it sent them and of the numerous times these complainants contacted Net One's customer service representatives.
- For the final group of complainants,²³ Net One claims that it cannot identify any customer account because the NAL only provided complainant's names and not their billing telephone number. We reject this claim; all the consumer complaints, which contained the consumers' addresses and telephone numbers, were served on Net One. Additionally, Net One should have records of all interactions between the complainants and the customer service representatives. Accordingly, Net One was on actual notice of each consumer complaint listed in the *2014 NAL*.

The Company's fifth argument is that its actions were not shown to be willful. As we discuss below, the repeated attempts by consumers to resolve Net One's unauthorized charges by contacting Net One's customer service representatives and filing complaints show that Net One had been on notice for several years of the cramming allegations and nonetheless continued to include unauthorized charges on consumers' bills. Finally, Net One states that imposition of the forfeiture proposed in the *2014 NAL* is against public policy and will impose a financial hardship on the Company. We reject all of these arguments for the reasons explained below.

A. Net One Violated Section 201(b) by Continuing to Charge Complainants in Group One After Becoming Aware of its Error

8. Net One argues that the *2014 NAL* was in violation of the Administrative Procedure Act (APA) because it relies on an incomplete factual record.²⁴ Specifically, Net One contends the *2014 NAL* should have acknowledged that five of the complainants²⁵ received credits or refunds after Net One became "aware of the error in the billing system."²⁶ Net One explains that despite its efforts to "retain a third-party provider [to handle its billing] with the highest credentials in the industry for accuracy, there were several occurrences where . . . several of its thousands of customers were billed erroneously."²⁷ Regardless of whether, as Net One contends, it eventually issued refunds to these five complainants or credited them before the release date of the *2014 NAL*, the fact that Net One billed the consumers for unauthorized charges or fees is uncontradicted. Further, to the extent that the Company did refund or provide credits to these consumers, these consumers were only given those credits or refunds after they

²² Complainants Sakkal, Wilwerding, Geevarghese, Batarseh, and Panapitiya.

²³ Complainants Elgowainy, Birouty, Bhatti, and Ahmed.

²⁴ NAL Response at 4–5.

²⁵ These complainants are: Gopalan, Tantawy, Foster, El-Nakhal, and Karam.

²⁶ NAL Response at 8.

²⁷ *Id.* at 9.

spent much effort and time trying, to no avail, to resolve these illegal charges with Net One. Ultimately, no corrective action was taken by Net One until these consumers filed complaints.²⁸

9. For example, Net One contends in the NAL Response that it “refunded \$87.39 via check to Complainant [Gopalan] on January 5, 2012.”²⁹ This refund, discussed in the NAL Response, occurred a year *before* the unauthorized account in question was opened by Net One and does not refute the allegations in Mr. Gopalan’s complaint. Mr. Gopalan did not authorize the creation of this Net One account, and he received bills for this unauthorized account on January 10, 2013, and February 7, 2013.³⁰ As we discussed in the *2014 NAL*, we find that these unauthorized charges constitute instances of cramming.

10. Next, Net One claims that the Commission should not have included Complainant Tantawy in calculating the forfeiture amount because the Company erroneously billed him due to “an error in the third-party billing system,” and when it “became aware of the error, it issued a credit (in full)” on April 24, 2014, in the amount of \$254.20.³¹ Net One omits the fact that the refund it claims it made when it “became aware of the error” was actually made a year after Mr. Tantawy filed his first complaint with the Commission, and over a year after he repeatedly contacted Net One about its erroneous billing.³² Further, as Mr. Tantawy explained, “[t]hey have been claiming they [cannot] stop the computer from sending bills unless I pay ½ of the amount [] they have been billing me. I refused to pay any money for unauthorized billing.”³³ Net One’s bald assertion that the refund was made when it “became aware of the error” is refuted by the facts in the record.

11. Net One claims that we should also exclude the Foster complaint because it provided Ms. Foster with a credit on January 8, 2014, when it “became aware of the error”;³⁴ yet the record shows that Ms. Foster had complained to Net One repeatedly since February 12, 2013.³⁵ Ms. Foster called Net One and sent two certified letters as well as e-mails to the company notifying them that she had cancelled the service on February 12, 2013, and that she had paid her account in full and did not owe anything further.³⁶ Again, Net One’s contention that it provided the refund when it “became aware of the error” is inconsistent with the facts.

²⁸ Net One contends that complainants Gopalan, Tantawy, Foster, El-Nakhal, and Karam (erroneously listed as “Sadie” in the NAL Response) were in this category of consumers who were billed erroneously by the third-party and later credited or refunded.

²⁹ NAL Response at 9.

³⁰ Complaint from B. Gopalan.

³¹ NAL Response at 9-10.

³² Mr. Tantawy states that he “talked with [Net One] over 10 times” when trying to stop the unauthorized billing. *See* E-mail from S. Tantawy to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 3, 2014, 3:15 PM). Mr. Tantawy provided bills dated April 30, 2013, and February 1, 2014, with his complaint and e-mail correspondence. The February 1, 2014, bill was for \$224.22.

³³ *See* E-mail from S. Tantawy to Mika Savir, Telecommunications Consumers Division, FCC Enforcement Bureau (Mar. 3, 2014, 3:15 PM).

³⁴ NAL Response at 10.

³⁵ Complaint from D. Foster.

³⁶ *Id.*

12. Net One next argues that it sent invoices to Complainant El-Nakhal only until the company “confirmed its mistake” and provided a credit on May 7, 2014.³⁷ The record, however, shows that Complainant El-Nakhal cancelled his service, paid the final Net One bill on April 18, 2013, and then called Net One every month to complain about Net One’s continuing to bill him for unauthorized charges.³⁸ Complainant El-Nakhal filed a complaint with the Commission on May 9, 2013, and a complaint with the Better Business Bureau on December 12, 2013.³⁹ Despite the numerous telephone calls and the two filed complaints, Net One did not provide a credit until over a year after Mr. El-Nakhal cancelled its service.

13. Finally, Net One contends that we should not include Complainant Karam (referred to by Net One as Complainant Sadie) because it erroneously charged him and, when it “became aware of the error,” it issued him a credit on April 29, 2014.⁴⁰ The record shows, however, that Mr. Karam called Net One repeatedly but nevertheless continued to receive bills with late fees.⁴¹ He then filed a complaint with the Commission on February 10, 2014, eight months after he had cancelled his Net One account;⁴² yet Net One failed to issue a credit until almost a year after the cancellation, when the company claims it “became aware of the error.”⁴³

14. We accordingly reject Net One’s argument that the Commission failed to consider all of the evidence in the record in the *2014 NAL*. Net One’s allegation that we erred by including the five complainants discussed above, instead of determining that Net One provided credits “upon becoming aware of the error in the billing system,” is not supported by the record. Instead, the evidence shows that these complainants repeatedly contacted Net One about the unauthorized charges and after Net One continued to bill these complainants and refused to correct its unauthorized charges, the complainants were forced to file complaints to obtain refunds. Based on the record, we affirm the finding in the *2014 NAL* that the charges Net One imposed on these consumers were unauthorized and in violation of Section 201(b) of the Act.

B. Net One Violated Section 201(b) by Continuing to Assess Unauthorized Charges on Complainants in Group Two

15. Net One contends that the *2014 NAL* failed to consider the “substantial evidence” that six of the complainants⁴⁴ had delinquent balances and thus the Net One charges were not unauthorized.⁴⁵ Specifically, Net One argues that the charges it assessed against Complainant Mattam were not unauthorized because, when Mr. Mattam cancelled the service, he had a “delinquent balance of \$25.49, against which Complainant paid \$15.49 after the due date.”⁴⁶ Net One claims that it “issued a good faith credit in the amount of \$10.00 before the statement cut-off date. As a result of Complainant’s failure to

³⁷ NAL Response at 10.

³⁸ Complaint from H. El-Nakhal

³⁹ *Id.* Net One did not submit a response to either complaint.

⁴⁰ NAL Response at 10-11.

⁴¹ Complaint from M. Karam.

⁴² *Id.*

⁴³ NAL Response at 11.

⁴⁴ These complainants are: Mattam, Haughton, Hadeed, Chakkala, Towfeles, and Sibay.

⁴⁵ *Id.*

⁴⁶ NAL Response at 6.

remit the balance due on the account on or before the due date, additional late charges were assessed.”⁴⁷ The evidence shows otherwise. The invoices attached as Net One’s Exhibit 1 and the invoices provided by Mr. Mattam do not corroborate Net One’s contention that the only fee in question was a fee the Company assessed for a late payment.⁴⁸ According to Complainant Mattam, despite his repeated telephone calls to Net One after he had cancelled his account, the Company continued to bill him each month for monthly service charges, regulatory fees, late fees, taxes, and surcharges.⁴⁹ Although Net One now contends that the August 2013 payment was one day late, and therefore a \$10.00 late fee was justified,⁵⁰ the invoices Net One sent to Mr. Mattam were not only for the alleged “late fee” but also included new monthly service charges, regulatory fees, taxes, and surcharges, i.e., Net One was continuing to bill Mr. Mattam as if he had not closed his account.⁵¹ These recurring monthly charges were unauthorized. Mr. Mattam stated in his complaint:

I have called on various occasions to cancel our services with NetOne for close to one year. After speaking to their representatives, it would seem as if my service has been ended, however, I am still being billed by this company every single month. Not only are we still being charged for a service that we have cancelled, we are still being charged administrative fees, including late fees and printing fees.⁵²

We therefore find that Net One has failed to show that the charges for which it continued to bill Mr. Mattam after he closed his account in August 2013 were authorized.

16. Similarly, Net One’s arguments with respect to Complainants Haughton, Hadeed,⁵³ Chakkala, Towfeles, and Sibay⁵⁴ do not refute the evidence in the complaints that the bills were unauthorized. In all of these cases, the consumers tried to close their Net One accounts, yet Net One continued to bill them monthly for taxes, a “Regulatory Cost Recovery Fee,” and “Additional Charges.”⁵⁵ As Net One refused to close the accounts, the late charges, as well as these other recurring fees for services and charges it illegally assessed, continued to accumulate. In some cases, this snowballing of charges was initiated by a final payment that Net One claimed was late.⁵⁶ For example, Complainant Towfeles paid her final bill of \$4.13 to close her account on January 22, 2013, which Net One contended

⁴⁷ *Id.* According to Net One, Complainant Mattam paid the invoice one day late. *Id.* at Exhibit 1.

⁴⁸ *Id.* at Exhibit 1.

⁴⁹ Complaint from T. Mattam.

⁵⁰ NAL Response at Exhibit 1.

⁵¹ See invoices attached to Mr. Mattam’s complaint (the March 1, 2014 invoice has charges for “Monthly,” “Regulatory Fees,” as well as a past due balance and “Late Fees”).

⁵² Complaint from T. Mattam.

⁵³ Net One claims that it is “unaware of the specifics pertaining to any alleged wrongdoing either by Complainant or the Commission” regarding the Hadeed complaint, yet the company submitted a response to Hadeed complaint to the Better Business Bureau on March 4, 2014. See Complaint from B. Hadeed (on file in EB-TCD-12-00000418).

⁵⁴ Net One claims that it is “unaware of the specifics pertaining to any alleged wrongdoing either by Complainant or the Commission” regarding the Sibay complaint, yet the company was served with Ms. Sibay’s informal complaint on June 4, 2014. As we mentioned above, Net One was served with the Commission and Better Business Bureau complaints.

⁵⁵ See, e.g., Complaint from M. Sibay (attached invoice dated May 1, 2014, contains charges for a “Previous Balance,” “Monthly,” “Regulatory Fees,” “Late Fees,” and “Taxes and Surcharges”).

⁵⁶ See, e.g., Complaint from M. Towfeles.

was one week late.⁵⁷ Despite the fact that she had closed the account and paid the final bill, Net One did not close the account and instead continued to charge Complainant Towfeles monthly service charges, regulatory fees, taxes, and late fees every month until the balance reached \$120.07.⁵⁸ Ms. Towfeles explained, “we are still liable for the charges and [they] kept threatening [to] send[] account to collection despite the fact that their account show[s] that we paid the full balance [of \$4.13] in January 2013.”⁵⁹ For example, Ms. Towfeles’ October 1, 2013 bill from Net One includes charges for “Monthly” service fees, “Regulatory Fees,” “Late Fees,” and “Taxes and Surcharges,” as well as a “Balance Forward.”⁶⁰ Despite Ms. Towfeles’ numerous telephone calls to Net One, the Company did not close out the account until after the 2014 NAL was released.⁶¹

17. Complainant Sibay’s bills from Net One further demonstrate the egregious nature of Net One’s conduct. Ms. Sibay was a prepaid customer of Net One’s until Net One, without her authorization or consent, began billing her as a monthly postpaid customer instead.⁶² Despite numerous telephone calls to Net One, she continued to receive monthly bills for a postpaid service she had never authorized or requested. As she explained, “They continue adding more amounts to a bill for services that I did not ask for and I have asked . . . to stop or cancel whatever services they think they are offering me.”⁶³ Ms. Sibay’s May 1, 2014, bill from Net One was for a “Previous Balance” of \$294.98, along with a “Monthly” fee, “Regulatory Fee,” “Late Fees,” and “Taxes and Surcharges.”⁶⁴ Net One offers no explanation for why it changed a prepaid account to a postpaid account, why its customer service representatives refused to assist Ms. Sibay when she called and wrote to the company seeking help, or how its May 1, 2014, charges of \$312.47 were authorized. Instead, Net One contends that Ms. Sibay had a balance due of \$0.36 after her last payment on October 11, 2012, and for that reason she “received a/an additional invoice(s).”⁶⁵

18. We conclude that the evidence in the record, including the Exhibits attached to Net One’s NAL Response, shows conclusively that Net One refused to cancel these consumers’ accounts after their repeated requests, and instead continued to bill them for unauthorized monthly service charges and fees.⁶⁶ We therefore affirm the findings in the 2014 NAL that the charges Net One imposed on these consumers were unauthorized and in violation of Section 201(b) of the Act.

⁵⁷ NAL Response at Exhibit 5. Net One gave her a credit for \$10.54, the total invoice amount was \$14.67.

⁵⁸ Complaint from M. Towfeles.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ NAL Response at Exhibit 5.

⁶² Complaint from M. Sibay.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ NAL Response at 8.

⁶⁶ The Houghton complaint is similar to the Mattam complaint in that the final payment, to close the account, was “late.” According to Net One, Complainants Hadeed and Chakkala had not paid their final bills in full. In all of these complaints, however, Net One did not merely bill the consumers for what it claimed it was owed (a late charge or the balance due after the final payment) but instead refused to close the accounts and continued to bill for monthly recurring charges for the Net One service, including ever-increasing late fees.

C. Net One Violated Section 201(b) by Continuing to Assess Unauthorized Charges on Complainants in Group Three

19. Net One contends that it is unaware of any specifics regarding Complainants Sakkal, Wilwerding, Geevarghese, Batarseh, and Panapitiya, and therefore the Commission must cancel the forfeiture amounts pertaining to these complaints.⁶⁷ Net One provided no more information or arguments concerning these complainants, and, as described below, we are not persuaded by this argument because the record and evidence provided by each complainant shows that each complainant had contacted Net One numerous times about the unauthorized charges and filed complaints against the Company.

20. Complainant Sakkal filed a complaint with the Better Business Bureau on July 3, 2013, and attached Net One's invoices to his complaint.⁶⁸ Mr. Sakkal contended that Net One failed to provide service so he called customer relations to cancel, but instead of cancelling his service, as he had requested, Net One sent him another bill and continued to bill him monthly.⁶⁹

21. Complainant Wilwerding also filed a complaint with the Better Business Bureau, contending that she cancelled her service with Net One, but the Company refused to close her account and instead continued sending her bills.⁷⁰ She explains, "They will not cancel. When I call they say that the office is closed that day, or someone will call back in 4 hours, etc. None of these things ever happen, just bills are sent."⁷¹

22. Complainant Geevarghese filed a complaint with the Commission on November 8, 2013. At one time Mr. Geevarghese was a Net One customer; however, the Company continued to bill him after he cancelled his service.⁷² As he explained,

Net One International disconnected the service and keeps billing me and refuses to stop billing me. The company employees have called me [a] few times and threatened me by saying if I don't pay the bill they are going to [have the account] sent to [a] collection agency and I demanded an explanation for the bill and requested to talk to someone in Management. No one from management has contacted me so far but every month I keep getting new bill[s] with added charges I have paid my bills on time for the time frame I used their service but I do [not] want to pay for service that was not provided to me.⁷³

23. Complainant Batarseh filed a complaint with the Commission on May 8, 2014, attaching Net One's invoices.⁷⁴ Mr. Batarseh had overpaid Net One, resulting in a credit on his account.⁷⁵ However, when he cancelled his service on December 17, 2013, Net One refused to refund the

⁶⁷ NAL Response at 11.

⁶⁸ Complaint from E. Sakkal. The Better Business Bureau complaint listed Net One's address under "Business Info" and tried to notify Net One about the complaint on July 5, 2013 and July 22, 2013, but did not receive a response from Net One.

⁶⁹ Complaint from E. Sakkal.

⁷⁰ Complaint from L. Wilwerding.

⁷¹ *Id.*

⁷² Complaint from J. Geevarghese.

⁷³ *Id.*

⁷⁴ Complaint from S. Batarseh.

⁷⁵ *Id.*

overpayment.⁷⁶ He explained, “NetOne International was still charging me [for monthly] service for the past 5 months using the credit balance on my account When I speak to NetOne, . . . they are refusing to pay me what was a credit balance on my account. I am only asking to get my own money back. . . . This has been going on for months now and . . . they are still charging me monthly service fees and claiming I am late in paying them.”⁷⁷

24. Complainant Panapitiya filed a complaint with the Better Business Bureau, to which Net One customer service manager W. Quttaineh responded on May 26, 2014.⁷⁸ Mr. Panapitiya contended that he had repeatedly asked Net One to cancel his account but instead Net One sent him monthly bills for service and late fees.⁷⁹

25. Despite Net One’s claim that it was “unaware of the specifics pertaining to any alleged wrongdoing,”⁸⁰ these five complaints were served⁸¹ on Net One and Net One had sent bills to these complainants. We find that the evidence in the consumer complaints is credible and uncontradicted, and accordingly we affirm the findings in the *2014 NAL* that the charges imposed by Net One were unauthorized in violation of Section 201(b) of the Act.

D. Net One Violated Section 201(b) by Continuing to Assess Unauthorized Charges on Complainants in Group Four

26. Net One contends that for Complainants Elgowainy, Birouty, Bhatti, and Ahmed, it “cannot identify any account based on information provided by the Commission.”⁸² For this reason, Net One states that it “reserves the right to supplement” the NAL Response after it can identify the consumer accounts.⁸³ Net One has not, however, provided any supplementary information regarding these complainants. Not only did Net One fail to rebut these consumers’ allegations, the evidence in the record supports the finding in the *2014 NAL* that Net One had assessed charges on these consumers that were not authorized.

27. Complainant Elgowainy filed a complaint with the Better Business Bureau on November 4, 2013.⁸⁴ Mr. Elgowainy was offered a pre-paid international calling plan by Net One, with a 14-day money back guarantee if the customer was not satisfied for any reason.⁸⁵ Because the plan turned out to be more expensive than he anticipated, Mr. Elgowainy tried to cancel the Net One plan the following day

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Complaint from D. Panapitiya.

⁷⁹ *Id.*

⁸⁰ NAL Response at 11.

⁸¹ Complaints filed with the Commission are served on the carrier by the Consumer & Governmental Affairs Bureau. BBB complaints are also sent to the company and Net One’s response is noted in the BBB complaint. *See, e.g.,* Complaint from D. Panapitiya.

⁸² *Id.*

⁸³ NAL Response at 12.

⁸⁴ *See 2014 NAL*, 29 FCC Rcd at 9049, para. 6.

⁸⁵ Complaint from A. Elgowainy.

and have his money refunded, but his request to cancel was refused by Net One because, according to Net One, it was “not a good reason to cancel.”⁸⁶

28. Complainant Birouty filed a complaint with the Commission on November 14, 2013.⁸⁷ He explains that initially, on September 16, 2013, “I told them to cancel my parents['] account. [I] talked to a gentleman who told me there is an outstanding balance of \$15.02 that must be paid before closing the account I told him I will pay it, but to close the account. He said . . . as soon as they receive my payment they will close the account. I sent in the payment the same day.”⁸⁸ One month later Mr. Birouty “received a bill from NetOne that showed my payment was received in full and they did not close my account, but rather they levied another \$10 late fee.”⁸⁹ He called Net One customer service to ask why the account was not closed, and the customer service representative “said that my account cannot be closed because it has an outstanding balance that I have to pay.”⁹⁰ The Net One representative told Mr. Birouty that she could not close his account because only [Mr.] Ghani is authorized to close accounts. On October 24, 2013, Mr. Birouty spoke with Mr. Ghani, who “would not close that account [but] . . . said he would remove all charges and I would receive a \$0 [invoice] now and for every month and would only ever get billed if we used the [service].” Despite the fact that Mr. Ghani assured Mr. Birouty that the balance was “\$0” and he would be charged only if they resumed using the service, Net One billed him an additional \$30.15.⁹¹

29. Complainant Bhatti filed a complaint with the Commission on January 17, 2014.⁹² Mr. Bhatti contended that he tried to cancel his Net One service in September 2013 because he subscribed to AT&T and no longer needed Net One.⁹³ He tried repeatedly to cancel his service with Net One but explained that “Net One states they cannot cancel [my] service.”⁹⁴ The bill from Net One, dated March 1, 2014, shows that notwithstanding Mr. Bhatti’s attempts to cancel Net One’s service for several months, the Company was charging Mr. Bhatti for a “Previous Balance,” “Monthly” service charge, “Regulatory Fees,” “Late Fees,” and “Taxes and Surcharges.”⁹⁵

30. Complainant Ahmed filed his complaint with the Commission on September 16, 2013.⁹⁶ Mr. Ahmed tried to cancel his Net One account in January 2013.⁹⁷ Mr. Ahmed repeatedly called Net

⁸⁶ *Id.* Net One charged Mr. Elgowainy \$54.20 and refused to refund this amount despite his requests to cancel and the fact that he did not use Net One’s services. *Id.*

⁸⁷ Complaint from I. Birouty.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Complaint from I. Birouty. The Net One bill sent after Mr. Ghani assured Mr. Birouty that the balance was “\$0” included charges for “Monthly” service, “Regulatory Fees,” “Late Fees,” and “Taxes and Surcharges.” *Id.* The same recurring charges were in subsequent bills as well.

⁹² See 2014 NAL, 29 FCC Rcd at 9048, para. 6.

⁹³ Complaint from M. Bhatti.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See 2014 NAL, 29 FCC Rcd at 9048, para. 6.

⁹⁷ Complaint from M. Ahmed.

One's customer service to cancel his account.⁹⁸ Nevertheless, Net One continued to bill Mr. Ahmed monthly, claiming that they could not cancel his account because they could not access his "account information."⁹⁹ Finally, Net One agreed to stop billing him if he would pay an additional \$10.99.¹⁰⁰ Mr. Ahmed explains that "the customer agent asked me to pay \$10.99 and that would stop billing statements. I paid the amount at the time but the monthly billing never stopped . . . [N]ow they want me to [pay] \$25.00 including \$10.00 of late fee charges[;] otherwise they would send the bill to [a] collection agency."¹⁰¹

31. Despite Net One's contention that it cannot identify the complainants' accounts, we have reviewed the Net One invoices attached to the complaints and the evidence shows that Net One charged these consumers for "Monthly" service charges, "Regulatory Fees," "Late Fees," and "Taxes and Surcharges" even though they had attempted repeatedly to cancel their accounts.¹⁰² Fourteen months after Mr. Ahmed had cancelled his Net One account, for instance, Net One was still charging him a monthly fee for its service, as well as monthly regulatory fees and taxes.¹⁰³ Although Net One claims that he and other complainants "do not appear in Respondent's customer service database,"¹⁰⁴ in fact Net One was charging these complainants for service and copies of the Net One invoices are attached to the consumer complaints. In addition, all the complainants discussed in the 2014 NAL contacted Net One's customer service department numerous times to try to stop the unauthorized billing. We therefore conclude, based on the record, that Net One assessed unauthorized charges on these consumers in violation of Section 201(b) of the Act.

E. Net One's Unauthorized Billing of Consumers was Willful

32. Finally, Net One contends that its conduct was not willful because it had no "conscious and deliberate knowledge."¹⁰⁵ We disagree. The controlling definition of "willful" in this case is found in the Communications Act, which defines it as "the conscious and deliberate commission or omission of [an] act, irrespective of any intent to violate" the law.¹⁰⁶ The repeated attempts by consumers to resolve Net One's unauthorized charges by contacting Net One's customer service representatives and filing complaints¹⁰⁷ show that Net One had been on notice for several years of the cramming allegations. Nonetheless Net One continued to include unauthorized charges on consumers' bills and failed to resolve consumers' complaints. Net One asserts that the Commission failed to "proffer substantial evidence in support of its findings" of willful violations, but this is not the case. Indeed, the consumer complaints and attached invoices from Net One and the invoices that Net One provided together with the NAL Response are substantial evidence that Net One assessed unauthorized charges on consumers.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See id.*; Complaint from M. Bhatti.

¹⁰³ *See* Complaint from M. Ahmed.

¹⁰⁴ NAL Response at 11.

¹⁰⁵ *Id.* at 12.

¹⁰⁶ 47 U.S.C. § 312(f)(1).

¹⁰⁷ The Bureau reviewed over 100 consumer complaints; the 2014 NAL was based on the most recent 20 complaints.

33. Net One's arguments set forth in the NAL Response are not mitigating evidence weighing against finding of a willful violation, as Net One claims.¹⁰⁸ Instead, Net One's explanations for these charges contained in the NAL Response underscore the egregious nature of the Company's actions. For example, Net One claims in the NAL Response that "upon becoming aware of the error in the billing system" it refunded overcharges to five consumers; however, according to Net One's own records, the refunds took place many months after the consumers had unsuccessfully contacted Net One to resolve the unauthorized charges and then resorted to filing complaints after Net One refused to provide refunds to them. In addition, Net One contends that the 2014 NAL is not based on "substantial evidence" because certain complainants had made late or incomplete final payments, yet Net One's own records show that the crammed charges were not limited to a delinquent amount or a late fee but that Net One was billing them for recurring service charges and fees months after the consumers had tried to cancel their accounts with the Company. We find that the evidence is overwhelming that Net One crammed the 20 consumers listed in the 2014 NAL and that this cramming was willful.

F. The Forfeiture Amount is Appropriate

34. Net One argues that the forfeiture amount violates public policy because it "did not knowingly, willfully or repeatedly engage in cramming;" it filed a response to the 2011 NAL; it is not in "red light" status;¹⁰⁹ prior to the 2011 NAL and the 2014 NAL at issue here it had never before been the subject of an NAL; it refunded the money at issue prior to release of the 2014 NAL; and it has implemented remedial measures.¹¹⁰ We reject these arguments. As discussed above and in the 2014 NAL, the Bureau reviewed over 100 consumer complaints filed against Net One alleging unauthorized charges.¹¹¹ The 20 complaints that resulted in the 2014 NAL all arose from substantiated unauthorized charges imposed after the Bureau had issued the first NAL against Net One in 2011. Net One's conduct was unjust and unreasonable and we find that imposing an upward adjustment in addition to the base forfeiture amount is consistent with public policy.

35. The Commission has established a \$40,000 base forfeiture for cramming violations.¹¹² In the 2014 NAL, the Commission explained that applying the \$40,000 base forfeiture to each of the 20 cramming violations¹¹³ would result in a forfeiture of \$800,000 and that an upward adjustment was warranted. As the Commission reiterated in the *Central NAL*, "we may propose more significant forfeitures in the future as high as necessary, within the range of our statutory authority, to ensure that

¹⁰⁸ NAL Response at 15. Net One contends that our failure to consider these "mitigating factors" is arbitrary and capricious. On the contrary, we find that Net One's evidence is not mitigating but supports the Commission's conclusion that Net One engaged in cramming.

¹⁰⁹ Entities or individuals seeking licenses or other benefits from the FCC that are delinquent in debt owed to the Commission are placed in "red light" status until the delinquency is paid.

¹¹⁰ NAL Response at 16-17.

¹¹¹ See *NAL*, 29 FCC Rcd at 9046-47, para. 3

¹¹² See *LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 (affirming the \$40,000 penalty for cramming imposed by the Commission in the forfeiture order); *Central NAL*, 29 FCC Rcd at 5529, para. 25; *USTLD NAL*, 29 FCC Rcd at 835, para. 24; *CTI NAL*, 28 FCC Rcd at 17207, para. 26.

¹¹³ The Commission has made clear that each unauthorized charge a carrier places on a consumer's bill—or "crams"—constitutes a separate and distinct violation of Section 201(b). See *CTI NAL*, 28 FCC Rcd at 17208, n.79 (citing *NOS Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1833 (2001)); *Central NAL*, 29 FCC Rcd at 5529, para 25 n.84 (same); *USTLD NAL*, 29 FCC Rcd at 835, para. 24 n.94 (same). Based on the record in the instant case, we decline to exercise our discretion in that way at this time. Rather, we apply an upward adjustment to the proposed forfeiture amount to take into account these additional violations.

such companies do not charge consumers for unauthorized services.”¹¹⁴ We find that, based on the record, Net One engaged in cramming repeatedly, including placing unauthorized charges on consumers’ telephone bills multiple times. As we discussed in the *2014 NAL*, the Bureau began this cramming investigation in 2011, yet Net One has continued to engage in the same conduct—imposing unauthorized charges on consumers’ bills and preventing consumers from closing their accounts.

36. Under Section 503, we may take into account the egregious and repeated nature of Net One’s actions and, consistent with our recent enforcement actions,¹¹⁵ upwardly adjust the proposed forfeiture for its apparent cramming violations.¹¹⁶ Given the egregious circumstances here and the extent of Net One’s improper conduct and the longstanding nature of Net One’s cramming practices, all in the face of the repeated warnings of the Commission that cramming would not be tolerated, we affirm the conclusion in the *2014 NAL* that an upward adjustment is appropriate here.

37. Net One contends, however, that the payment of a \$1,600,000 forfeiture would be a financial hardship.¹¹⁷ Net One argues that it is a small company with a single office and fewer than ten employees.¹¹⁸ Upon review of Net One’s financial information, and the totality of the circumstances presented here, we decline to reduce the forfeiture amount. Section 503(b)(2)(B) of the Act empowers the Commission to assess a forfeiture of up to \$150,000 for each willful or repeated violation in this case of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹¹⁹ In exercising our forfeiture authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²⁰

¹¹⁴ *Central NAL*, 29 FCC Rcd at 5531, para. 28 (citing *Main Street Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8861, para. 24 (2011)); see also *USTLD NAL*, 29 FCC Rcd at 837, para. 27 (same); *CTI NAL*, 28 FCC Rcd at 17207, para. 29 (same).

¹¹⁵ See, e.g., *Central NAL*, 29 FCC Rcd at 5531, para. 28; *USTLD NAL*, 29 FCC Rcd at 837, para. 27; *CTI NAL*, 28 FCC Rcd at 17207, para. 29; *Main Street Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8853, 8861, para. 24 (2011); *VoiceNet Telephone, LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8874, 8882, para. 24 (2011); *Cheap2Dial Telephone Co.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8863, 8872, para. 25 (2011); *Norristown Telephone Co., LLC*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8844, 8851, para. 23 (2011).

¹¹⁶ In the future we may also seek to revoke a carrier’s authorization. See *CCN Revocation Order*, 13 FCC Rcd 13599 (1998) (revoking a company’s operating authority under Section 214 for repeatedly slamming consumers).

¹¹⁷ *NAL Response* at 15-16. Net One submitted three years of tax returns to support this claim.

¹¹⁸ *Id.* at 15.

¹¹⁹ 47 U.S.C. § 503(b)(2)(B); see also 47 CFR § 1.80(b)(2). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. See 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, 28 FCC Rcd 10785 (EB 2013); see also *Inflation Adjustment of Monetary Penalties*, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting September 13, 2013, as the effective date for the increases). Because the DCIA specifies that any inflationary adjustment “shall apply only to violations that occur after the date the increase takes effect,” however, we apply the forfeiture penalties in effect at the time the apparent violation took place. 28 U.S.C. § 2461 note (6).

¹²⁰ See 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

38. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.¹²¹ However, a party's inability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive in setting a forfeiture.¹²² The other four factors are: (i) the nature, circumstances, extent, and gravity of the violation; (ii) the degree of culpability; (iii) any history of prior offenses; and (iv) such other matters as justice may require. With respect to the nature, circumstances, extent, and gravity of the violation and the degree of culpability, in particular, we have described the numerous consumer complaints against the Company for cramming. As discussed herein, Net One refused to allow consumers to cancel their accounts and continued to bill them for monthly service fees, regulatory fees, taxes, and other fees for many months after the consumers had paid their final bill and tried to close their accounts. Despite repeated telephone calls from consumers, Net One continued to send them additional bills for monthly service and accumulating late fees.

39. We have previously rejected inability to pay claims in cases of repeated or otherwise egregious violations.¹²³ Given the record evidence here, we find that the egregious nature of Net One's conduct outweighs any inability to pay claim raised by Net One and that therefore, the record does not warrant any mitigation of the proposed forfeiture amount. Accordingly, after consideration of the entire record and the factors listed above, we find that forfeiture in the amount of \$1,600,000 is warranted.

IV. CONCLUSION

40. After considering the relevant statutory factors and the Commission's *Forfeiture Policy Statement*, we find that Net One is liable for the total forfeiture amount of \$1,600,000. As explained in the *2014 NAL*, this total results from a \$40,000 forfeiture for each of the 20 instances of cramming¹²⁴ which results in a forfeiture of \$800,000, plus an upward adjustment of \$800,000. We find that the undisputed evidence presented in the 20 complaints supports the forfeiture imposed.

V. ORDERING CLAUSES

41. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹²⁵ and Section 1.80 of the Commission's rules,¹²⁶ that Net One International, Inc. **SHALL FORFEIT** to the United States government the sum of one million six hundred thousand dollars (\$1,600,000) for willfully or repeatedly violating Section 201(b) of the Communications Act.

¹²¹ See *Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues).

¹²² See 47 U.S.C. § 503(b)(2)(E).

¹²³ See, e.g., *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014) (noting that the Commission "has previously rejected inability to pay claims in cases of repeated or otherwise egregious violations"); *Whisler Fleurinor*, Forfeiture Order, 28 FCC Rcd 1087, 1090, para. 9 (EB 2013) (violator's demonstrated inability to pay outweighed by gravity of multiple intentional violations); *Kevin W. Bondy*, Forfeiture Order, 26 FCC Rcd 7840 (EB 2011) (holding that violator's repeated acts of malicious and intentional interference outweighed evidence concerning his ability to pay), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 1170 (EB 2013), *aff'd*, Memorandum Opinion and Order, 28 FCC Rcd 16815 (EB 2013).

¹²⁴ Although the forfeiture guidelines do not provide a base forfeiture amount for cramming, we have established a base forfeiture of \$40,000 for cramming violations. See *LDDI MO&O*, 15 FCC Rcd at 3304, para. 19 ("The imposition of charges on a telephone bill for 'services' the consumer has not authorized is sufficiently egregious to warrant a forfeiture in an amount equal to that for slamming.").

¹²⁵ 47 U.S.C. § 503(b).

¹²⁶ 47 CFR § 1.80.

42. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹²⁷ If the forfeiture is not paid within the period specified, the case may be referred to the United States Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹²⁸

43. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Net One International, Inc. shall send electronic notification of payment to Johnny Drake at johnny.drake@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹²⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

44. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹³⁰ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

¹²⁷ 47 CFR § 1.80.

¹²⁸ 47 U.S.C. § 504(a).

¹²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹³⁰ See 47 CFR § 1.1914.

45. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Net One International, Inc.'s attorney, Lance J.M. Steinhart, P.C., 1725 Windward Concourse, Suite 150, Alpharetta, GA 30005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY
CONCURRING IN PART AND DISSENTING IN PART**

Re: Net One International, Inc., File No. EB-TCD-12-0000418

The evidence shows that Net One engaged in cramming and it is subject to an enforcement action in order to punish such conduct and deter future wrongdoing. At the same time, I disagree that the Commission should issue enforcement actions in the absence of rules. In this instance, the Commission relies solely on section 201 as the basis for this forfeiture order. In my view, the Commission should initiate a rulemaking proceeding to adopt comprehensive cramming rules. Therefore, it was comforting to learn at the recent hearing on Oversight of the FCC before the Senate Committee on Commerce, Science, and Transportation that all five Commissioners support conducting a rulemaking on cramming, and that accomplishing the task is simply a matter of resource prioritization. Taking the time to seek public comment and adopt comprehensive rules on a real problem that is actually impacting consumers is worth the effort to ensure that our actions are on solid substantive and legal footing.

Separately, I remain concerned about how enforcement penalties are calculated, particularly when a company has put forward evidence of an inability to pay. Imposing a \$1.6 million fine for 20 complaints of cramming seems disproportionate to the offense, especially since some of the consumers ultimately were made whole. But the larger problem is how the inability to pay is merely a factor in deciding whether to reduce a proposed fine. If a company has demonstrated that it cannot pay a certain level of fine, then it makes little sense to stick with the original amount. That's about as useful as trying to get blood from a stone, especially from a company that is already subject to an enforcement penalty for a previous offense of the same nature. Revoking the carrier's authorization would be far a more effective solution, particularly to protect additional consumers from unauthorized charges should the company continue to engage in cramming in the meantime.