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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 05-4284
	:	
YAW OSEI AMOAKO,	:	FIRST AMENDED
	:	<u>COMPLAINT</u>
Defendant.	:	

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows against the above-named defendant:

ADDRESSES OF THE PARTIES

1. The address of plaintiff Securities and Exchange Commission is 100 F Street, N.E., Washington, D.C. 20549. The address of defendant Yaw Osei Amoako is 226 Brookside Lane, Hillsboro, New Jersey 08844. At all relevant times, defendant worked for ITXC Corp. in Princeton, New Jersey.

SUMMARY OF ALLEGATIONS

2. Yaw Osei Amoako, the Regional Director for Africa at ITXC Corp. (“ITXC”), violated the Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), which is codified as Section 30A of the Securities Exchange Act of 1934 [15 U.S.C. § 78dd-1] (the “Exchange Act”), by bribing foreign government officials in Nigeria (between November 2002 and May 2004), Rwanda (during September 2002), and Senegal (between August 2001 and October 2003). Amoako arranged for ITXC to make a series of wire transfers to senior officials at Nigerian Telecommunications Limited (“Nitel”), Rwandatel S.A. (“Rwandatel”) and La Société Nationale des Télécommunications du Sénégal (“Sonatel”), which are telephone companies owned by the governments of Nigeria, Rwanda and Senegal, respectively. At Amoako’s direction, ITXC paid the Nitel employee \$166,541.31, the Rwandatel employee \$26,155.11, and the Sonatel employee \$74,772.06.

3. During the period in which these payments were made, ITXC obtained and retained contracts with these government-owned telephone companies that generated profits in the following amounts: (a) \$1,136,618 from Nitel; (b) \$217,418 from Rwandatel; and (c) \$10,155,696 from Sonatel.

4. By disguising the bribe payments on ITXC’s books as legitimate expenses through the creation of false business records, defendant violated the books and records and internal control provisions of Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1], and aided and abetted ITXC’s violations of the books and records provisions of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

5. Amoako personally derived ill-gotten gains from these bribery schemes. He received a kickback in 2004 of \$50,000 in connection with the bribery scheme in Nigeria. Between 2001 and 2003, Amoako embezzled \$100,411 from ITXC in connection with the bribery scheme in Senegal.

6. Defendant Amoako may, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and courses of conduct of similar object and purport.

JURISDICTION

7. The Court has jurisdiction over this action pursuant to the FCPA [15 U.S.C. § 78dd-1], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1331.

8. The Commission brings this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)].

9. Defendant Amoako, directly or indirectly, has made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein.

DEFENDANT

10. Defendant Amoako is a resident of Hillsboro, New Jersey. He began his employment with ITXC in 1999 and was terminated for cause on August 19, 2004. During the relevant time period, Amoako was the Regional Director for Africa at ITXC. His responsibilities included negotiating contracts between ITXC and telephone companies in Africa. Amoako maintained an office in Princeton, New Jersey.

OTHER RELEVANT PARTIES

11. ITXC was an international telecommunications carrier based in Princeton, New Jersey. ITXC's business consisted of selling the ability to place telephone calls to individuals in as many as 232 foreign countries. ITXC ceased to exist as a separate entity on June 1, 2004, when it merged with Teleglobe International Holdings Ltd. ("Teleglobe"). Prior to the merger with Teleglobe, ITXC's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and was traded on NASDAQ.

12. Nitel is the incumbent telephone company in Nigeria. Nitel is, and always has been, wholly-owned by the government of Nigeria.

13. Rwandatel is the incumbent telephone company in Rwanda. Rwandatel is, and always has been, wholly-owned by the government of Rwanda.

14. Sonatel is the dominant telephone company in Senegal. During the relevant time period, Sonatel was partially owned by, and an instrumentality of, the government of Senegal.

FACTS

15. ITXC sought from Nitel, Rwandatel, and Sonatel the right to place telephone calls to individuals in Nigeria, Rwanda and Senegal, respectively. These countries do not grant such rights liberally. Rather, they carefully restrict access to their networks in order to increase the fees that they can charge foreign telecommunications carriers for placing calls to their customers.

Bribes in Nigeria

16. In 2000, ITXC and Amoako competed against other international telecommunications carriers to obtain a contract with Nitel that would have allowed ITXC's customers to call Nitel's customers (generically such agreements are known in the industry as "carrier contracts"). To facilitate his efforts, Amoako hired as an agent a former senior official of Nitel. However, the strategy backfired: the former Nitel official irritated the current Nitel decision-makers. In the end, Amoako was unsuccessful and Nitel awarded the carrier contract to one of ITXC's competitors.

17. In mid-2002, Nitel opened the bidding for four new carrier contracts and specifically invited ITXC to participate. Amoako returned to Nigeria in the summer of 2002 to present ITXC's bid to Nitel. This time, however, Amoako offered a Nitel Deputy General Manager the opportunity to be ITXC's agent (hereinafter "the Nitel Agent"). As Amoako knew, the Nitel Agent was one of the key decision-makers at Nitel who would select the four bidders to receive a new carrier contract. Amoako promised the Nitel

Agent a hefty “retainer” and a cut of ITXC’s profits if the agent steered a carrier contract to ITXC. ITXC and Amoako hired the Nitel Agent for the sole purpose of obtaining, and then retaining, business with Nitel.

18. Amoako’s decision to hire an inside agent paid off. Nitel granted a carrier contract to ITXC, which the parties signed on October 25, 2002. Less than three weeks later, on November 12, 2002, the Nitel Agent signed a formal agreement to be ITXC’s agent. The agreement, which the Nitel Agent signed as the CEO of an otherwise non-existent corporation, granted the agent the right to a percentage of ITXC’s profits from the carrier contract with Nitel.

19. The agreement with the Nitel Agent called for ITXC to pay him a “retainer” of \$10,000. Amoako arranged for ITXC to make two \$5,000 payments to the agent’s company on November 21, 2002 and January 10, 2003. ITXC made these payments through wire transfers from its account at PNC Bank in New Jersey to the account of the Nitel Agent’s company at Intercontinental Bank PLC in Nigeria.

20. ITXC failed to pay the Nitel Agent his cut of ITXC’s profits throughout most of 2003. To repair the relationship with the agent, and to pay him for his assistance in settling a rate dispute with Nitel on exceptionally favorable terms, Amoako arranged for ITXC to make a payment of \$150,000 (which was almost six times what the agent had actually earned under the agreement) to the agent’s company on December 23, 2003. ITXC made this payment through a wire transfer from its account at PNC Bank in New Jersey to the account of the Nitel Agent’s company at Intercontinental Bank PLC in Nigeria.

21. On May 27, 2004, Amoako arranged for ITXC to pay the Nitel Agent’s company \$6,541.31, which represented the agent’s share of ITXC’s profits from the carrier contract with Nitel for the year to date. ITXC made this payment through a wire transfer from its account at PNC Bank in New Jersey to the account of the Nitel Agent’s company at Intercontinental Bank PLC in Nigeria.

22. The total amount of the payments that Amoako arranged to be made to the Nitel Agent was \$166,541.31. Amoako caused ITXC improperly to record the payments to the Nitel Agent as legitimate expenses on ITXC's books and records.

23. The sole purpose of the payments was to influence the agent, a foreign official, to steer the carrier contract to ITXC and thereby enable it to obtain and retain business with Nitel. There was no legitimate purpose for the payments. In fact, as a result of the agreement with the Nitel Agent, ITXC earned profits of \$1,136,618 from selling telephone service to customers calling Nigeria. ITXC could not have made such sales without having the carrier contract with Nitel that resulted from Amoako's bribes to the agent.

24. Amoako received a kickback of \$50,000 from the Nitel Agent in mid-2004. Amoako concealed the kickback from ITXC and his superiors by having the money deposited at financial institutions in Africa.

Bribes in Rwanda

25. Amoako negotiated with an employee of Rwandatel in February 2002 to obtain a carrier agreement between ITXC and Rwandatel. Amoako promised to compensate the Rwandatel employee as an agent of ITXC if he would influence Rwandatel to agree to favorable traffic exchange terms with ITXC. The Rwandatel employee agreed and became ITXC's agent (hereinafter "Rwandatel Agent").

26. On February 28, 2002, Rwandatel and ITXC entered a carrier contract, which the Rwandatel Agent signed as an employee of Rwandatel.

27. On July 2, 2002, ITXC entered into a formal agent agreement with the Rwandatel Agent. Although the agent agreement was ostensibly between ITXC and Rwandatel, it is clear that the Rwandatel Agent was the true counter-party. He signed the agent agreement and personally received the payment thereunder at his bank account outside Rwanda.

28. The agreement entitled the Rwandatel Agent to \$0.01 for each minute of telephone traffic that ITXC was able to complete to telephone subscribers in Rwanda (as well as in Burundi and Uganda where Rwandatel had the right to complete telephone calls) under the Rwandatel carrier contract. Pursuant to the agent agreement, Amoako arranged for ITXC to pay the Rwandatel Agent \$26,155.11 on September 11, 2002. ITXC made this payment through a wire transfer from its account at PNC Bank in New Jersey to the account of the Rwandatel Agent at Standard Chartered Bank in Dubai.

29. Amoako caused ITXC improperly to record the foregoing payment to the Rwandatel Agent as a legitimate expense on ITXC's books and records.

30. At all relevant times, Amoako knew that the Rwandatel Agent was an employee of the foreign government-owned Rwandatel.

31. The sole purpose of the payment was to influence the Rwandatel Agent, a foreign official, to steer the Rwandatel carrier contract to ITXC and thereby enable it to obtain and retain business with Rwandatel. There was no legitimate purpose for the payment. In fact, as a result of the agreement with the Rwandatel Agent, ITXC earned profits of \$217,418 from selling telephone service to customers calling Rwanda, Burundi and Uganda. ITXC could not have made such sales without having the Rwandatel carrier contract that resulted from the bribe paid to the Rwandatel Agent.

Bribes in Senegal

32. In November 2001, Amoako traveled to Senegal to negotiate a carrier contract between ITXC and Sonatel. Amoako negotiated with a certain employee of Sonatel who later became an agent for ITXC (hereinafter "the Sonatel Agent"). Amoako promised the Sonatel Agent that ITXC would pay him a percentage of ITXC's revenues if he persuaded Sonatel to enter a carrier contract with ITXC.

33. Negotiations between ITXC and Sonatel continued through February 2001, when the parties executed an agreement on February 22, 2001.

34. On March 15, 2001, Amoako caused ITXC to enter a formal agency agreement with the Sonatel Agent. The agreement entitled the Sonatel Agent to a percentage of ITXC's revenues associated with the Sonatel carrier contract. Toward that end, Amoako caused ITXC to make a series of payments to the Sonatel Agent between August 2001 and October 2003 totaling approximately \$74,772, which are summarized in the table below:

Payment	Date
\$531.22	8/27/2001
\$2716.82	9/25/2001
\$11605	10/17/2001
\$12839.18	1/25/2002
\$7994.68	4/17/2002
\$5684.4	6/12/2002
\$4689.65	8/19/2002
\$5096.94	1/8/2003
\$3358.06	2/28/2003
\$1848.24	3/18/2003
\$3009.18	4/30/2003
\$3444.31	5/22/2003
\$4779.19	7/25/2003
\$7175.19	10/29/2003

ITXC made these payments through wire transfers from its account at PNC Bank in New Jersey to the account of the Sonatel Agent at Societé Générale du Banque in Paris, France.

35. Amoako directed ITXC to send a separate series of wire transfers totaling \$100,411 to an account at Societé Générale du Banque in Cote D'Ivoire between August 2001 and October 2003. Amoako misled his superiors and the accounting group at ITXC into believing that this money went to the Sonatel Agent. In reality, Amoako himself controlled the account in Cote D'Ivoire, and he used it to embezzle the \$100,411 from ITXC.

36. Amoako caused ITXC improperly to record the payments to the Sonatel Agent, as well as the amounts he embezzled, as legitimate expenses on ITXC's books and records.

37. At all relevant times, Amoako knew that the Sonatel Agent was an employee of the foreign government-owned Sonatel.

38. The sole purpose of these payments was to influence the Sonatel Agent, a foreign official, to steer the Sonatel carrier contract to ITXC and thereby enable it to obtain and retain business with Sonatel. There was no legitimate purpose for the payments. In fact, as a result of the agreement with the Sonatel Agent, ITXC earned profits of \$10,155,696 from selling telephone service to customers calling Senegal. ITXC could not have made such sales without having the Sonatel carrier contract that resulted from the bribes paid to the Sonatel Agent.

FIRST CLAIM

Violations of the Foreign Corrupt Practices Act Section 30(A of the Exchange Act

39. Paragraphs 1 – 38 are hereby incorporated by reference.

40. Defendant Amoako knowingly and corruptly offered and made illicit payments, effected through wire transfers of money from ITXC, to foreign officials for the purposes of influencing their acts or decisions and inducing such foreign officials, in their official capacity, to use their influence to assist ITXC in obtaining and retaining business with foreign government entities. Throughout the relevant period, the recipients of these illicit payments were foreign officials within the meaning of the FCPA.

41. Defendant Amoako's conduct was knowing and willful.

42. By reason of the foregoing, defendant Amoako violated, and unless restrained will continue to violate, the anti-bribery provisions of the FCPA, as codified in Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Violations of the Books and Records and Internal Controls Provisions in Exchange Act Section 13(b)(5) and Rule 13b2-1

43. Paragraphs 1 – 42 are hereby incorporated by reference.

44. As described above, defendant Amoako knowingly circumvented ITXC's internal accounting controls and, directly or indirectly, falsified, or caused to be falsified, books, records, or accounts of ITXC subject to Exchange Act Section 13(b)(2) [15 U.S.C. § 78m(b)(2)].

45. By reason of the foregoing, defendant Amoako violated, and unless restrained will continue to violate, Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1].

THIRD CLAIM

Aiding and Abetting ITXC's Violations of Books and Records Provisions of Exchange Act Section 13(b)(2)(A)

46. Paragraphs 1 – 45 are hereby incorporated by reference.

47. ITXC inaccurately recorded the bribery payments described above as agent fees or consulting fees in its books and records in violation of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)]. Defendant Amoako knowingly provided substantial assistance to ITXC in inaccurately recording these payments in ITXC's books and records.

48. By reason of the foregoing, defendant Amoako aided and abetted ITXC's violations of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] and will continue to do so unless restrained.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

- a) permanently enjoin defendant Amoako from violating Exchange Act Sections 30A and 13(b)(5) [15 U.S.C. §§ 78dd-1 and 78m(b)(5)], and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1], and from aiding and abetting violations of Exchange

Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)];

- b) order defendant Amoako to pay civil penalties under Exchange Act Sections 21(d)(3) and 32(c) [15 U.S.C. §§ 78u(d)(3) & 78ff(c)];
- c) order defendant Amoako to disgorge, with prejudgment interest, ill-gotten gains that he received from the bribery schemes; and
- d) grant such other relief as this Court may deem just and proper.

Respectfully submitted,

Local Counsel:

s/ Paul W. Kisslinger

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