

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

v.

No.

Mj. 05-1122

YAW OSEI AMOAKO

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about the dates specified in Attachment A, in the District of New Jersey, and elsewhere, the defendant did:

SEE ATTACHMENT A

in violation of Title 15, United States Code, Sections 78dd-1(a) & (g) and Title 18, United States Code, Section 2.

I further state that I am a Special Agent for the Federal Bureau of Investigation and that this complaint is based on the following facts:

SEE ATTACHMENT B

Continued on the attached sheet and made a part hereof: Yes No



Patrick Moran, Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,

June 28, 2005
Date

at

Trenton, New Jersey
City and State

Honorable John J. Hughes
United States Magistrate Judge
Name & Title of Judicial Officer


Signature of Judicial Officer

ATTACHMENT A

On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

YAW OSEI AMOAKO

being an employee and an agent of ITXC Corporation, an issuer within the meaning of the Foreign Corrupt Practices Act, made use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to foreign officials for purposes of: (a) influencing acts and decisions of such foreign officials in their official capacity; (b) inducing such foreign officials to do and omit to do acts in violation of the lawful duty of such officials; (c) securing an improper advantage; and (d) inducing such foreign officials to use their influence with foreign governments and instrumentalities thereof to affect and influence acts and decisions of such governments and instrumentalities in order to assist ITXC Corporation in obtaining and retaining business for and with, and directing business to, ITXC Corporation as described below:

COUNT	THING OF VALUE (USD)	MEANS & INSTRUMENTALITIES OF INTERSTATE COMMERCE USED	FOREIGN OFFICIAL	APPROX. DATE
1	\$5000	wire transfer from New Jersey to Nigeria	Nigerian officials, including employee of NITEL as described below	11/21/2002
2	\$5000	wire transfer from New Jersey to Nigeria	Nigerian officials, including employee of NITEL as described below	01/10/2003

3	\$150,000	wire transfer from New Jersey to Nigeria	Nigerian officials, including employee of NITEL as described below	12/23/2003
4	\$6541.31	wire transfer from New Jersey to Nigeria	Nigeria officials, including employee of NITEL as described below	05/27/2004

In violation of the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78dd-1(a) & (g) and Title 18, United States Code, Section 2.

ATTACHMENT B

I, Patrick Moran, am a Special Agent with the Federal Bureau of Investigation. Based upon my investigation, which includes my review of relevant documents and discussions with other law enforcement officials, I have knowledge of the following:

1. The Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. §§ 78dd-1 et seq., makes it unlawful, among other things, for United States persons, businesses and residents to act corruptly in furtherance of an offer, promise, authorization or payment of money or anything of value to a foreign government official for the purpose of obtaining business for, or directing business to, any person.

2. At all times material to this complaint:

- a. ITXC Corporation ("ITXC") was a provider of global telecommunications services, including Voice over Internet Protocol (VOIP) network services. ITXC maintained its principal offices in Princeton, New Jersey.
- b. ITXC had a class of securities registered pursuant to Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. § 78o) and was required to file reports with the U.S. Securities & Exchange Commission under Section 12 of the Securities Exchange Act (15 U.S.C. § 78l). Thus, ITXC was an issuer within the meaning of the FCPA, 15 U.S.C. § 78dd-1.
- c. The defendant **YAW OSEI AMOAKO** was an employee of ITXC and thus the employee and agent of an issuer within the meaning of the FCPA, 15 U.S.C. § 78dd-1.

3. Based on my review of defendant **YAW OSEI AMOAKO's** ITXC personnel file, travel reimbursement records, and other ITXC corporate documents I have determined the following:

- a. **AMOAKO** began his employment with ITXC on or about September 13, 1999 as ITXC's Regional Manager for Africa.
- b. The New Employee Form submitted by **AMOAKO** to ITXC

in connection with his employment indicates that **AMOAKO** is a native of Ghana and a naturalized citizen of the United States.

- c. While employed at ITXC, defendant **AMOAKO** was based at ITXC's principal offices in Princeton, New Jersey and traveled frequently to Africa.
- d. Defendant **AMOAKO** retained his position as ITXC's Regional Manager for Africa until on or about August 19, 2004, when ITXC's corporate successor terminated **AMOAKO**'s employment after an internal investigation concluded that **AMOAKO** had violated the FCPA by causing the payment of bribes to an official of the Nigerian Telecommunications Limited ("NITEL") as generally described in this Complaint, and by causing illegal payments to government officials in Senegal (in the approximate amount of \$175,000, less some portion which **AMOAKO** appears to have diverted to his own use) and Rwanda (in the approximate amount of \$26,000).

4. According to information provided by outside counsel for ITXC's successor following the successor's May 2004 acquisition of ITXC (the "company's attorneys"), in early 2000 defendant **YAW OSEI AMOAKO** and other ITXC officials determined that ITXC's success in Africa depended on its ability to tap into the relatively large telecommunications market in Nigeria by doing business with NITEL.

5. According to publicly available information, NITEL was the largest telecommunications carrier in Nigeria and was wholly owned and operated by the Nigerian government.

6. In August 2004, defendant **YAW OSEI AMOAKO** was interviewed by the company's attorneys in connection with their internal investigation. In the course of that interview, **AMOAKO** stated in substance and in part the following:

a. In 2000, **AMOAKO** enlisted the aid of an individual to serve as ITXC's agent in Nigeria in order to obtain from NITEL a carrier termination contract that would permit ITXC to route its customers' calls to and from Nigeria.

b. ITXC used third party agents in most African

countries because ITXC did not have employees based in Africa. According to AMOAKO, it was very difficult to get a contract signed with a carrier in Africa and, if there are problems, it was useful to have someone who can speak directly to the carrier.

c. According to AMOAKO, ITXC used agents in Nigeria, Ghana, Rwanda, Kenya, and Senegal. AMOAKO stated that ITXC hired employees of the relevant state-owned telecommunications companies as ITXC's agents in Senegal, Rwanda and Nigeria.

d. AMOAKO attempted to secure a carrier termination contract from NITEL in 2000 using the services of various friends and contacts in Nigeria. This effort proved unsuccessful. NITEL awarded that contract to another telecommunications carrier.

e. In 2002, after the telecommunications carrier that was awarded the carrier termination contract by NITEL failed to fulfill the terms of the contract, AMOAKO began to negotiate with NITEL to have the carrier termination contract awarded to ITXC instead. AMOAKO spent eight weeks in Nigeria negotiating the new contract, during which time he ran up a hotel bill of more than \$50,000. ITXC travel and expense reimbursement records confirm that AMOAKO spent much of August, September and October 2002 in Nigeria. AMOAKO stated that he believed he would be fired if he came back without a contract.

f. Having lost the contract in 2001 using the services of his friends and contacts in Nigeria, AMOAKO decided he needed an insider at NITEL to act as ITXC's agent in the negotiations. AMOAKO believed that ITXC's competitors were using NITEL insiders as their agents in seeking this contract, and that he would be unsuccessful unless he also used an insider as an agent.

g. AMOAKO caused ITXC to retain an individual who was NITEL's Deputy General Manager for International Business (the "NITEL Official"), as ITXC's agent in the negotiations for the carrier termination contract. Among his duties, the NITEL Official was a member of an internal committee at NITEL that was responsible for assessing the competing companies vying for the NITEL contract. AMOAKO had known the NITEL Official for a number of years, dating back to when AMOAKO worked for another telecommunications company.

7. I have reviewed ITXC records, including emails, which indicate that after the telecommunications carrier that was initially awarded the contract failed to perform, a new Managing Director was appointed at NITEL. Records reflect that in June 2002, defendant **YAW OSEI AMOAKO**, the NITEL Official, and the new Managing Director of NITEL had a meeting in Washington, D.C. Records further reflect that from July 8-11, 2002, **AMOAKO** presented a proposal on behalf of ITXC to various representatives of NITEL, including the NITEL Official. On or about July 15, 2002, **AMOAKO** sent his supervisor at ITXC a written report on the meeting and, without identifying the agent's name, the proposed terms for "agent fees." **AMOAKO's** eight-week negotiating trip followed these meetings.

8. I have reviewed an October 10, 2002 email from defendant **YAW OSEI AMOAKO** to certain ITXC personnel in which **AMOAKO** wrote: "Nigeria is a very difficult place to get deals through because of nepotism, strong bribery and corruption and political connections. . . I was able to get [**AMOAKO's** supervisor at ITXC]'s counterpart at Nitel to chat with [the supervisor] in my hotel room and he poured out what we have to do to get the deal through with[out] getting him in trouble for favoring ITXC."

9. NITEL awarded the carrier termination contract to ITXC and entered into an agreement with ITXC dated October 25, 2002, which I have reviewed.

10. On or about November 13, 2002, ITXC entered into a written "Sales Representative Agreement" with an entity called Standard Digital International Ltd. ("Standard Digital"). I have reviewed this document. It identifies Standard Digital's representative as "[NITEL Official], CEO", reflects the NITEL Official's full name, telephone number, and email address, and was signed on behalf of Standard Digital by the NITEL Official. The agreement called for Standard Digital to "identify potential service providers who may be interested in consummating an agreement with ITXC in order to purchase or provide VOIP and/or telecommunications services internationally." The agreement identified the marketing area as Nigeria and provided that in return for securing service agreements with service providers, ITXC would pay Standard Digital a retainer fee of \$10,000 and 12 per cent of ITXC's profit from the contract. The agreement contained a clause whereby Standard Digital acknowledged awareness of the FCPA and agreed to comply therewith. Defendant **YAW OSEI AMOAKO's** superiors at ITXC approved this agreement and one of **AMOAKO's** superiors signed the agreement on behalf of ITXC.

11. I have reviewed internal ITXC emails which reflect that the fee structure set forth in the Sales Representative Agreement with Standard Digital had been adjusted upwards from a \$5000 retainer fee and five per cent of ITXC's profit from the contract at the urging of defendant YAW OSEI AMOAKO.

12. During the August 2004 interview of defendant YAW OSEI AMOAKO by the company's attorneys, AMOAKO stated in substance and in part the following with respect to the Sales Representative Agreement:

- a. AMOAKO knew at the time that the NITEL Official was Standard Digital's representative;
- b. the NITEL Official was an employee of NITEL;
- c. NITEL was owned by the Nigerian government;
- d. AMOAKO believed that the NITEL Official was a conduit for someone "higher up" who would ultimately be receiving the money ITXC sent to Standard Digital;
- e. AMOAKO believed that the ultimate beneficiary of the payments was either someone in Nigeria's Ministry of Communications or someone else inside or outside of the Nigerian government who was able to exert influence within the government;
- f. AMOAKO did not believe that the NITEL Official had sufficient influence on his own to ensure that ITXC won the NITEL contract;
- g. AMOAKO understood that, under the FCPA, he was not allowed to make a payment to a government official to influence a decision to award a contract, and that it was therefore improper to pay the NITEL Official;
- h. AMOAKO did not believe it was improper to pay Standard Digital, a corporate entity, as opposed to paying the NITEL Official directly;
- i. AMOAKO believed that Standard Digital may have been formed for purposes of entering the Sales Representative Agreement, and he was not aware of any other business engaged in by Standard Digital; and

j. AMOAKO assumed that the NITEL Official was being compensated for his services in connection with the Standard Digital Sales Representative Agreement.

13. Based on interviews of other ITXC personnel by the company's attorneys and my own review of internal ITXC email, it appears that in November 2003, ITXC and NITEL had a dispute over ITXC's failure to make certain payments for NITEL's transportation of telecommunications traffic that were called for under the carrier termination agreement. It appears that NITEL demanded from ITXC payments of approximately \$770,000. ITXC advised the NITEL Official that ITXC was prepared to pay a total of \$500,000, proposed that the NITEL Official negotiate a settlement with NITEL, and offered the NITEL Official the difference between the \$500,000 and the amount of the settlement with NITEL.

14. I have reviewed ITXC's internal accounting and wire transfer records which reflect the following payments from ITXC's bank account at PNC Bank in New Jersey:

a. a \$5000 payment on or about November 21, 2002 to Standard Digital's bank account in Nigeria, which was a portion of the retainer fee;

b. a \$5000 payment on or about January 10, 2003 to Standard Digital's Bank account in Nigeria, which was the remainder of the retainer fee;

c. a payment of \$352,000 on or about December 19, 2003 to NITEL, which was part of the settlement payment referenced above;

d. a \$150,000 payment on or about December 23, 2003 to Standard Digital's bank account in Nigeria, which represented the NITEL Official's portion of the settlement payment;

e. a \$6541.31 payment on or about May 27, 2004 to Standard Digital's bank account in Nigeria.

15. The payments to Standard Digital identified in the preceding paragraph, which total more than \$165,000, were more than the amount that the company's attorneys have calculated Standard Digital should have received under its Sales Representative Agreement with ITXC.

16. In addition to defendant **YAW OSEI AMOAKO's** admissions to the company's attorneys regarding his knowledge of the FCPA, I have reviewed the following ITXC records which relate to his knowledge of the FCPA:

a. a written certification by defendant **AMOAKO** indicating that he had received a copy of ITXC's Employee Handbook, which described the requirements of the FCPA; and

b. a document entitled "Compliance with Foreign Corrupt Practices Act Questionnaire," completed by defendant **AMOAKO** in January 2001, in which **AMOAKO** stated that he had not sought "to affect the decisions of others by offering to pay monies, goods or services in return for some special consideration" "in connection with matters pertaining to the Company."

17. I have reviewed an email dated October 27, 2003 from defendant **YAW OSEI AMOAKO** to some ITXC employees expressly identifying, in response to a request for details on agency agreements, the NITEL Official as an employee of NITEL and noting that "the name on the agreement is Standard Digital."

18. I have reviewed records of ITXC's corporate successor which reflect that the successor terminated the Sales Representative Agreement with Standard Digital on or about July 20, 2004.

19. I have reviewed a copy of a standard form of ITXC's successor entitled "Request for Approval of Agency Agreement," which, upon information and belief, was obtained by the company's attorneys from a file at ITXC maintained by the defendant **YAW OSEI AMOAKO** during the course of his employment. This form was to be completed for a prospective agent in order to obtain the company's approval for an agency contract. The form found in defendant **AMOAKO's** file had a fax header dated July 21, 2004 and the words "Attn: Yaw" in handwriting at the top of the form. The form requested approval to retain "Standard Communications International" as an agent. The mailing address for Standard Communications International on the completed form was the same as that for Standard Digital. The form was signed by "Ebenezer O. [A]." The last name, identified herein only as "A," was the same as that of the NITEL Official. The form proposed that the compensation for Standard Communications International would be "12% of margin," which was the same compensation paid to Standard Digital. The records of ITXC's successor do not indicate that

Standard Communications International was ever retained as an agent.

20. On or about August 19, 2004, ITXC's corporate successor terminated defendant **YAW OSEI AMOAKO's** employment with the company. Upon information and belief, **AMOAKO** has since found new employment with a firm in Nigeria and presently resides in Nigeria.