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Department of Justice

U.S. Attorney's Office

Southern District of Texas

FOR IMMEDIATE RELEASE

Friday, April 3, 2015

California Technology Company Enters Into Non-Prosecution Agreement With U.S.

HOUSTON – The U.S. Attorney's Office for the Southern District of Texas (USAO-SDTX) has entered into a Non-Prosecution Agreement (NPA) with Curvature LLC, a California-based technology company, announced U.S. Attorney Kenneth Magidson. As part of the NPA, Curvature has agreed to pay a fine of \$2.2 million, enter into a statement of facts, appoint a compliance officer to oversee its procurement activities and continue to enhance its compliance and ethics program.

According to the statement of facts, from approximately 2007 through 2010, Curvature resold new and used computer equipment under the name Network Hardware Resale Inc. (NHR). NHR advertised itself as the largest stocking provider of new and used surplus equipment made by Cisco Systems Inc. (Cisco), another technology company that produced and sold computer equipment including switches and routers.

Cisco sold its products directly to its customers and to its authorized resellers, also known as "Channel Partners," and in certain limited circumstances, sold products at large discounts pursuant to an agreement known as a Direct Service Agreement (DSA). Under a DSA, the customer or partner was required to provide Cisco with information about the intended use of the products.

As early as 2007, NHR and certain NHR employees knew that Cisco did not condone, and in fact investigated, the sales of Cisco products at DSA prices to users who planned to resell the product and not use it internally. NHR did not, at any time, make any misrepresentations directly to Cisco. However, NHR employees were aware that at least one NHR vendor was submitting purchase orders to Cisco that did not accurately identify the ultimate purchaser of the products and whether the products would be used internally.

In April through December 2010, NHR purchased Cisco products from another company (identified as Company B), which was misrepresenting to Cisco how the products would be used. As a result of these misrepresentations, NHR and Company B obtained substantial discounts on the Cisco products. Company B obtained the products in excess of 86% off list price and then resold many of the products to NHR at approximately 71% off the list price.

Curvature also agreed that in August 2010, after Cisco began investigating the sale of certain products to Company B, Company B offered to provide a sampling of the products back to Cisco to show that they were not being resold. At Company B's request, NHR shipped some of the products in NHR's inventory back to Company B so that Company B could provide the products to Cisco in an attempt to demonstrate to Cisco that the products had not been resold.

Under the terms of the NPA, Curvature admitted responsibility for its conduct and agreed to institute remedial measures to prevent any future instances of such conduct, continue to cooperate in the investigation and enhance its compliance and internal controls. In exchange, the USAO-SDTX has agreed that, except for federal criminal tax violations, it will not criminally prosecute Curvature for any of the conduct described in the statement of facts.

The case was investigated by the U.S. Secret Service and the FBI. Assistant U.S. Attorneys Jason Varnado and John Pearson handled the case.

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