

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Talk America, Inc.	)	File No. EB-00-TC-007
	)	NAL/Acct. No. 20033217004
Consent Decree	)	FRN No. 0004319430
	)	
	)	

**ORDER**

**Adopted: March 31, 2003**

**Released: April 1, 2003**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an informal investigation by the Enforcement Bureau (“Bureau”) into possible violations by Talk America, Inc. (“Talk America”) of Section 258 of the Communications Act of 1934, as amended (the “Act”), the Commission’s rules related to unauthorized preferred carrier changes (“slamming”), Section 64.1120 of the Commission’s rules, and Section 201(b) of the Communications Act, regarding business practices of Talk America, including billing errors.<sup>1</sup>

2. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

3. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether Talk America possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

4. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), and 503(b) and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the Consent Decree attached hereto IS ADOPTED.

<sup>1</sup> 47 U.S.C. § 258; 47 C.F.R. § 64.1120; 47 U.S.C. § 201(b).

5. IT IS FURTHER ORDERED that the above-captioned investigation IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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**CONSENT DECREE**

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission ("Commission") and Talk America Inc. ("Talk America" or the "Company"), previously known as Talk.com Holding Corp., by their counsel or authorized representatives, hereby enter into this Consent Decree terminating an Investigation by the Bureau staff. The Investigation involved possible violations of Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, the Commission's rules related to unauthorized preferred carrier changes, 47 C.F.R. § 64.1120, and Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), regarding business practices of Talk America, including billing errors.

2. Talk America is a common carrier that offers local, long distance, intraLATA toll, and international voice services to residential and small business customers nationwide.

3. On November 3, 2000, the Bureau issued a letter of inquiry ("LOI") initiating an Investigation of Talk America's compliance with Sections 201(b) and 258 of the Communications Act and Section 64.1120 of the Commission's rules. In its filings and discussions with the Bureau in response to the Investigation, Talk America identified several problems that it had experienced. The Company switched consumers from their preferred carriers to Talk America without proper authorization. The Company incorrectly sent promotional checks with billing telephone numbers ("BTNs") belonging to one consumer to other consumers, causing additional unauthorized preferred carrier changes. Talk America dial-around customers received bills that contained charges for presubscribed customers. Consumers were double-billed by Talk America for monthly charges. Consumers complained that they tried to cancel their Talk America service, but were unable to do so. Consumers also complained that they tried to disconnect their Talk America service and reconnect to a new preferred carrier, but that they had considerable difficulty doing so.

4. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) "Adopting Order" shall mean an Order of the Bureau adopting the terms and conditions of this Consent Decree.
- (b) "Bureau" shall mean the Enforcement Bureau of the Federal Communications Commission.

- (c) "Commission" shall mean the Federal Communications Commission.
- (d) "Effective Date" shall mean the date on which the Enforcement Bureau adopts the Adopting Order.
- (e) "Informal complaint" shall mean a complaint filed under 47 C.F.R. §§ 1.711-1.717.
- (f) "LEC" shall mean a Local Exchange Carrier.
- (g) "Parties" shall mean the Bureau or the Commission and Talk America.
- (h) "preferred carrier change" shall mean an order or request submitted by a carrier to a LEC to effect a change in the customer's preferred carrier.
- (i) "Talk America" or the "Company" shall mean Talk America and all parents, subsidiaries, divisions, successors or assigns, officers, directors, employees, agents, representatives, marketing personnel, or any other persons acting or purporting to act on behalf of Talk America, or its successors or assigns.
- (j) "Investigation" means the investigation initiated by the Bureau regarding the matters discussed in paragraph 3 above, concerning Talk America's conduct during the time period of January 1, 2000 to the Effective Date of the Consent Decree.

5. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau through incorporation of such provisions by reference in an Adopting Order, which shall immediately terminate the Investigation.

6. The Parties agree that this Consent Decree shall become effective on the date on which the Adopting Order is adopted by the Bureau and shall expire two (2) years after its Effective Date. Unless otherwise specified, all commitments made by Talk America herein shall continue until the expiration of this Consent Decree. The Consent Decree and Adopting Order may be extended by the Bureau upon a finding that Talk America has materially failed to comply with the terms of the Consent Decree. Upon the effective date of the Consent Decree, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission Order.

7. The Parties agree that any provisions of this Consent Decree that would cause Talk America to act in violation of any subsequent rule or order adopted by the Commission will be superseded by any such subsequent rule or order.

8. Talk America admits the jurisdiction of the Bureau over it and the subject matter of this action for purposes of this Consent Decree and the Adopting Order.

9. Talk America waives any further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of this Consent Decree or the Adopting Order.

10. If the Commission brings an action in the United States District Court to enforce the terms of the Consent Decree, Talk America agrees that it will not contest the validity of the Consent Decree or Adopting Order, will consent to a judgement incorporating the terms of this Consent Decree, and will waive its statutory right to a trial *de novo*.

11. Talk America waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

12. In express reliance on the covenants and representations contained in this Consent Decree, the Bureau agrees to terminate the Investigation, without any finding of liability on the part of Talk America. This Consent Decree shall constitute a final settlement between Talk America and the Bureau of the above-captioned Investigation and, except as otherwise set forth in this paragraph, any additional proceeding based on allegations of unauthorized preferred carrier changes and/or billing errors occurring on or before the Effective Date of this Consent Decree. This Consent Decree is not dispositive of any matter(s) within the jurisdiction of any other federal or state agency, regulatory body, or state attorney general. Nothing in this Consent shall prevent the Commission from adjudicating formal or informal complaints filed against the Company pursuant to Section 208 of the Communications Act, as amended, 47 U.S.C. § 208. Similarly, nothing in this Consent Decree is dispositive with respect to the rights of any third party or complainant who has filed or should file a formal or informal complaint against the Company pursuant to Section 208 of the Communications Act, as amended, 47 U.S.C. § 208. Nothing in this Consent Decree shall prevent the Commission from instituting new investigations or enforcement proceedings against Talk America in the event of any alleged future misconduct.

13. The Bureau agrees that, based on the facts developed in this Investigation and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or to take any action on its own motion against Talk America concerning the matters discussed in paragraph 3 above. The Bureau also agrees that, based on the facts developed in the Investigation, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Talk America with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

14. The Bureau and Talk America agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Commission's rules. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Talk America does not admit or deny liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.

15. Talk America shall make a voluntary contribution to the United States Treasury in the total amount of four hundred and seventy-five thousand dollars (\$ 475,000.00) The payment shall be made within thirty (30) days of the Effective Date of this Consent Decree. The payment shall be made, without further protest or recourse, by check, wire transfer, or money order drawn to the order of the Federal Communications Commission, and the check, wire transfer or money order shall refer to: "FCC File No. EB-00-TC-007"; "NAL/ Acct. No. 20033217004"; "FRN No. 0004319430." If Talk America makes this payment by check or money order, it must mail the check or money order to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. If Talk America makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

16. Talk America shall not knowingly submit to any LEC any preferred carrier change request unless Talk America has complied with all Commission rules and orders concerning preferred local exchange, interexchange, and/or intraLATA carrier changes in effect, or as they may be hereafter modified or amended.

17. With respect to outbound telemarketing, the Company represents that it has terminated its relationship with its former telemarketing agent, Traffix (formerly known as Quintel Corporation) because of the Company's belief that its agent engaged in unauthorized marketing promotions and practices and agrees not to rehire Traffix. The Company will not permit the use of marketing materials, promotions and practices by its telemarketing agents without the Company's prior approval and the Company will require prior approval of all marketing materials used by third parties hired to conduct marketing on the Company's behalf. The Company represents that it will intensify its scrutiny of its internal and external telemarketing forces. The Company represents that will create a permanent centralized regulatory department in New Hope, Pennsylvania to ensure uniform and expeditious Company responses to customer complaints and a heightened awareness of potential problems. Talk America will enforce a zero tolerance policy with respect to unauthorized preferred carrier changes by telemarketers or third party verification entities such that any employee or independent contractor who violates the foregoing policy will be terminated immediately. The Company will conduct remote and random monitoring of telemarketing calls and to review its telemarketing and verification scripts to ensure full compliance with federal and state rules regarding the solicitation of customers and the unauthorized preferred carrier changes. Talk America will review and approve its direct mail and on-line promotional campaigns in accordance with its zero-tolerance policy. Talk America will distribute, within 60 days of the Effective Date of this Consent Decree, a comprehensive sales training manual, which it will distribute to all of its telemarketing agents and employees to provide them with centralized information, including the Company's zero tolerance policy against unauthorized preferred

carrier changes and the Company policies with which all telemarketing agencies and employees must comply, including compliance with Section 258 of the Communications Act and implementing rules.

18. To address the issue of whether Talk America has sent promotional checks to prospective customers with incorrect BTNs, Talk America will implement procedures to improve the accuracy in its issuance of promotional checks. For local customers, Talk America will manually compare the customer service record (“CSR”) that it receives from the LEC to the name and address of the customer who approves the sale. For long distance customers, the Company will put in place an automated system that matches up the billing name and address (“BNA”) provided by the LEC with the telephone numbers the company has on file for the customer. Talk America will fully implement this system within 60 days of the Effective Date of this Consent Decree. In instances where the customer name/BTN matches are incorrect, the Company will not proceed further with the processing of the order, but instead will assign its provisioning staff to manually check the BNA with the telephone number(s). Talk America represents that it has no plans, at this time, to resume issuing promotional checks. To the extent that it determines to do so in the future, however, Talk America will use all commercially reasonable efforts to ensure that a consumer’s preferred carrier is not switched based on the use of promotional checks until and unless the customer’s information first has been verified.

19. As of the Effective Date of this Consent Decree, Talk America has corrected an internal billing programming error that causes some consumers to receive incorrect bills for dial-around service that contain the monthly fees commonly applied to presubscribed customers. The Company has made significant changes in its billing programs and will endeavor to make any future changes necessary to ensure against any future recurrence of this type of error. Additionally, Talk America will segregate the casual or dial-around customers at issue from the rest of its customer pool so that these customers cannot again be billed en masse for monthly fees applicable to presubscribed customers. To the extent that any billing errors occur in the future, Talk America, as it has in the past, expeditiously will inform all affected customers, state regulators and the Bureau, and take the necessary steps to issue appropriate refunds or credits to affected customers.

20. With respect to issues involving customer difficulty in regard to cancellation, disconnection, or reconnection, Talk America commits to resolving all operational problems within its control that have occurred as a result of its entry into the provision of local exchange service. Talk America has hired and will maintain a sufficient number of customer service and provisioning staff to handle the volume of cancellation orders received, and has and will continue to ensure that these employees are thoroughly trained to accurately and expeditiously process the cancellation orders that the Company receives. To this end, the Company has trained and will maintain sufficient customer service representatives to process cancellation orders in order to prevent, as much as possible, such orders from being sent to the LEC in error. Second, in instances in which customers have placed disconnection or cancellation orders directly with the LECs resulting in inaccurate or missing cancellation orders for Talk America, the Company will work with the LECs to achieve fair and expeditious problem resolution. In addition, Talk America will expeditiously process cancellation orders. If a customer is billed for a time period

for which the customer should not have been served by Talk America, the Company will immediately issue a customer credit to cover charges collected during such time period.

21. Talk America will provide prompt redress to any consumer affected by actions of the Company that do not conform to the Commission's rules and orders, as they may be hereafter modified or amended, or that do not conform to the agreements reached in this Consent Decree.

22. Within six (6) months of the Effective Date of this Consent Decree and every one-hundred and eighty (180) calendar days thereafter for the duration of this Consent Decree, Talk America agrees to submit a report to the Bureau detailing Talk America's compliance with all terms and conditions of this Consent Decree, and Talk America's record with respect to unauthorized preferred carrier changes. The report shall describe the methods and materials used in verifying customer preferred carrier change authorizations. The report shall include the percentage of preferred carrier changes submitted to LECs or other entities that were disputed by consumers, the nature of each dispute, and a description of action or actions taken by Talk America to resolve such disputes. The report shall also include a list, sorted by state, of every complainant alleging the unauthorized conversion of his/her telephone service through any marketing program.

23. Beginning with the Effective Date of this Consent Decree, and for two (2) years following the filing of any consumer complaint, as described below, against the Company during the duration of the Consent Decree, Talk America will maintain business records reflecting its record of compliance with the terms and provisions of this Consent Decree. Such business records shall include, but are not limited to, advertisements, sales scripts, presentations or manuals, third party verification tapes, written advisories to sales distributors or agents and required responses to those advisories, Letters of Agency, preferred carrier change records, billing records, and all written consumer complaints filed directly with Talk America and those complaints filed against, or otherwise submitted to, the Company in any local, state or federal jurisdiction served. The record of consumer complaints shall include the name, address and telephone number of each complainant, Talk America's response, and the final disposition, if any, of each such complaint. For the purposes of this provision, consumer complaint records shall include all writings, computer records, electronic or e-mail communications, and all written notes regarding such writings, verbal discussions, and electronic mail communications. Talk America will maintain such records in an accurate and easy-to-review format. Within fifteen (15) business days of the receipt of a written request from the Commission, Talk America shall make all such business records available to the requesting entity. In addition, Talk America agrees that, upon request, the Commission shall have reasonable access to Talk America's operational, marketing, and verification facilities, including the facilities of independent third party verifiers.

24. Talk America agrees that it shall notify the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington, D.C. 20554, at least thirty (30) days prior to the date of any material change in Talk America's legal status or corporate structure that may materially affect its obligations hereunder, including but not limited to, merger, incorporation, dissolution, assignment, or any other change that may materially affect Talk America's obligations under this Consent Decree.



25. This consent decree may be signed in counterparts.

**For the Enforcement Bureau,  
Federal Communications Commission**

**For Talk America, Inc.**

By: \_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau  
Federal Communications Commission

By: \_\_\_\_\_  
Aloysius T. Lawn  
Executive Vice President, General  
Counsel and Secretary

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Date

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Date