

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

In the Matter of)
)
Access Integrated Networks, Inc.)
)
)
)
Verification of Orders for)
Telecommunications Service Requirement)
and Unsolicited Facsimile Restrictions)

File No. EB-03-TC-041
NAL/Acct. No. 200432170002
FRN: 0005044375

ORDER

Adopted: June 1, 2004

Released: June 3, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by Access Integrated Networks, Inc. ("AIN") of Sections 201(b), 227(b)(1)(C), and 258 of the Communications Act of 1934, as amended (the "Act")¹ and Sections 64.1120 and 64.1200(a)(3) of the Commission's rules.²

2. The Bureau and AIN have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act, 47 U.S.C. §§ 154(i), 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 attached Consent Decree IS ADOPTED.

5. AIN shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200432170002 and FRN 0005044375.

¹ 47 U.S.C. §§ 201(b), 227(b)(1)(C), and 258.

² See 47 C.F.R. §§ 64.1200(a)(3), 64.1120(a)(1)(ii), (c)(3)(iv).

6. IT IS FURTHER ORDERED that the investigation into the matter described herein is terminated.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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Access Integrated Networks, Inc.
Verification of Orders for
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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or the "Commission") and Access Integrated Networks, Inc. ("AIN"), by their authorized representatives, hereby enter into this Consent Decree to resolve an investigation (the "Investigation") by the Bureau regarding possible non-compliance with the requirements contained in Sections 201(b), 227(b)(1)(C) and 258 of the Communications Act of 1934, as amended (the "Act"), and Sections 64.1120 and 64.1200(a)(3) of the Commission's rules. The Investigation was undertaken pursuant to Sections 4(i) and 403 of the Act.

2. The Enforcement Bureau has been investigating whether AIN's sales, marketing, and record retention practices violated the Act and the Commission's rules. Specifically, the Bureau reviewed allegations that AIN may have sent unsolicited advertisements to facsimile machines; submitted unauthorized changes in subscriber carrier selections; failed to maintain and preserve records of verification of subscriber authorizations to change telecommunications service for a minimum of two years after obtaining such verification; and engaged in other unjust and unreasonable practices raised in letters of inquiry ("LOIs") issued to AIN. AIN responded to the Bureau's inquiries.

1 47 U.S.C. §§ 201(b), 227(b)(1)(C), 258; 47 C.F.R. §§ 64.1120, 64.1200(a)(3).

2 47 U.S.C. §§ 154(i), 403.

3 Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Mr. William Wright, Chief Executive Officer (May 28, 2003); Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Counsel to Access Integrated Networks, Inc. (Aug. 15, 2003); Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Counsel to Access Integrated Networks, Inc. (Sep. 12, 2003); and Letter from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Counsel to Access Integrated Networks, Inc. (Nov. 20, 2003).

II. DEFINITIONS

3. For the Purposes of this Consent Decree, the following definitions shall apply:
- (a) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree.
 - (b) "AIN" includes directors, officers, employees, agents or any other person acting under, by, through, or on behalf of Access Integrated Networks, Inc., directly or indirectly, or through any corporate or other device, including its subsidiaries, affiliates, and successors.
 - (c) "Authorized Sales Agent" means any person or entity authorized by AIN or an AIN agent to market telecommunications services on its behalf.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (f) The "FCC" or the "Commission" means the Federal Communications Commission and all Bureaus and Offices of the Commission, including the Enforcement Bureau.
 - (g) "Parties" means AIN and the Bureau.
 - (h) "Telemarketing Sales" means the initiation of a telephone call for the purpose of obtaining an oral authorization to submit a preferred carrier change on behalf of a subscriber. Telemarketing Sales result in oral authorizations that must be confirmed via independent third party verification ("TPV") pursuant to the procedures set forth in 47 C.F.R. § 64.1120(c)(3).

III. AGREEMENT

4. AIN represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. AIN further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative's signature. Said representative and AIN respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of AIN, and on behalf of AIN and that by his/her signature said representative is binding AIN to the terms and conditions of this Consent Decree. AIN also represents that it has been represented by counsel of its choice in connection with this Consent Decree and is fully satisfied with the representation of counsel.

5. AIN agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. AIN will make a voluntary contribution to the United States Treasury in the amount of one hundred fifty-five thousand dollars (\$155,000). The payment shall be made as follows: one payment of \$95,000 within thirty (30) calendar days after the Effective Date, and six (6) consecutive monthly installments of \$10,000 commencing within sixty (60) calendar days after the Effective Date. The payments 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 should refer to "NAL Acct. No. 200432170002." If AIN makes this payment by check or money order, it must mail the check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If AIN makes this payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers.

7. AIN agrees that it will voluntarily implement a Compliance Program as set forth below, beginning no later than 30 days after the Effective Date. Under this program:

- (a) AIN will implement a written policy that (1) prohibits Authorized Sales Agents, contractors and employees that market AIN's services from sending unsolicited facsimiles except as permitted in Section 227(b)(1)(C) of the Act and Section 64.1200(a)(3) of the Commission's rules and (2) requires Authorized Sales Agents to maintain documentation of prior express invitation or permission by any recipient of a facsimile advertisement. In addition, AIN will require any Authorized Sales Agent that intends to market AIN services through the use of facsimile advertisements to obtain AIN's prior consent before sending any such facsimiles. Authorized Sales Agents who do not receive AIN's prior consent will be prohibited from using facsimiles to advertise AIN services. If an Authorized Sales Agent has been given approval by AIN to market AIN services through the use of facsimile advertisements, AIN shall require each approved Authorized Sales Agent to maintain for one year, a quarterly, written report that (i) identifies the number of facsimile advertisements sent during the quarter, (ii) identifies the telephone number to which each facsimile advertisement was sent during the quarter; and (iii) confirms that prior to sending the fax the Authorized Sales Agent had documentation demonstrating express invitation or permission from the person receiving the facsimile advertisement. Failure by an approved Authorized Sales Agent to submit this report shall be grounds for AIN to revoke the Authorized Sales Agents' permission to send facsimile advertisements on behalf of AIN and/or to terminate the sales agency relationship. If any requirement of this provision conflicts with a Commission rule or order that becomes effective during the period of this Consent Decree and imposes a higher burden of care on AIN, that requirement will be superseded by such Commission rule or order.

- (b) AIN will implement written policies and procedures that: (1) require that all records of verification of subscriber authorizations to change telecommunications service meet the requirements set forth in the Commission's rules and orders; and (2) require that all such records are maintained and preserved for a minimum of two years after obtaining such verification in compliance with the Commission's rules and orders. AIN will require compliance with these policies in all contracts with Authorized Sales Agents, and will incorporate the written policies in its corporate compliance, agent compliance, employee training and agent training programs.
- (c) AIN will not state or imply that it is affiliated with, is a subsidiary, division, faction or billing agent of, or is sponsored by an incumbent local exchange carrier, interexchange carrier, or any other unaffiliated entity.
- (d) In sales calls, AIN will make clear to each prospective customer that the customer is changing his or her local telephone, intraLATA toll, or long distance service provider, as applicable. AIN will not state or imply that its services are provided by the incumbent local exchange carrier or any other carrier currently providing telecommunications service to the customer or that the customer's telephone services will remain with the consumer's current service provider. Nothing herein shall prohibit AIN from truthfully answering any questions from customers or potential customers regarding the services to be provided by AIN, including, without limitations, statements that truthfully describe any interconnection agreement with an incumbent local telephone company or the obligations of the Act.
- (e) AIN will require each Authorized Sales Agent to obtain AIN's prior consent before commencing any Telemarketing Sales activity on AIN's behalf. AIN shall monitor the Telemarketing Sales activities of its Authorized Sales Agents to ensure that the activities are being conducted in compliance with AIN policies and the FCC's rules and orders. AIN represents that it will take proactive measures to monitor compliance, through measures determined by AIN, such as on-site visits to Authorized Sales Agent's telemarketing facilities or random telephonic monitoring of outbound sales calls. At a minimum AIN will conduct either on site visits or telephonic monitoring. In the event AIN conducts on-site visits to an Authorized Sales Agent, AIN shall conduct such visits at least twice per year. In the event AIN conducts telephonic monitoring, AIN shall monitor, on a random unannounced basis, a minimum of two calls per sales representative per week and eight calls per sales representative per month to ensure compliance with all AIN policies. AIN's Authorized Sales Agent may perform this initial random monitoring provided all monitored calls are taped and monitoring results are reviewed by AIN on at least a monthly basis. In addition, AIN shall have the capability to remotely monitor outbound sales calls on an unannounced basis. Should AIN receive information indicating that a particular Authorized Sales

Agent has engaged in practices that may violate the Commission's rules and orders, AIN shall engage in telephonic monitoring of the calls of that Agent for a period of time sufficient to determine whether he or she is operating in compliance with the Commission's rules and orders. If AIN discovers noncompliance, such Agent shall be terminated in accordance with AIN's written procedures described below.

- (f) In the event AIN or its Authorized Sales Agents engage in Telemarketing Sales, AIN shall contract directly with the entity that will provide independent TPV services pursuant to Section 64.1120(c)(3) of the Commission's rules. AIN's contract with the independent third party verifier shall provide for the maintenance and preservation of the TPV records in compliance with Commission rules and orders; require that AIN have access to and the ability to produce copies of TPV records within 30 days of a request from a consumer or regulatory authority; and require that AIN approve all verification scripts used by the independent third party verifier.
- (g) AIN will implement, for all Authorized Sales Agents, contractors and employees who market AIN's services, a training program addressing the requirements and procedures for obtaining and maintaining subscriber authorizations to change telecommunications service. AIN will make clear that failure to follow these rules and procedures will result in disciplinary action and could result in termination. All Authorized Sales Agents, contractors and employees will be required to complete such training at least once a year.
- (h) AIN will incorporate its sales and marketing policies into all contracts with Authorized Sales Agents. Violations of the sales and marketing policies by an agent or agency shall be grounds for termination of the contract.
- (i) AIN agrees to maintain and make available to the Bureau, within 14 days of receipt of any specific written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree.

Nothing in this Compliance Program shall alter AIN's obligation to otherwise comply with the Act and with the Commission's rules and orders, subject to paragraph 16, below.

8. Within sixty (60) calendar days from the Effective Date, AIN will provide a written report to the Bureau of its compliance with this Consent Decree, including progress in implementing its Compliance Program. AIN also agrees to submit to the Bureau additional written reports of its compliance with this Consent Decree six (6) months after the Effective Date, one (1) year after the Effective Date and thereafter, upon written request from the Bureau.

9. In express reliance on the covenants and representations contained herein, the Commission agrees to terminate the Investigation concerning compliance with Sections 201(b), 258 and 227(b)(1)(C) of the Act and Sections 64.1120 and 64.1200(a)(3) of the Commission's rules.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. The Bureau agrees that, in the absence of new material evidence, it will not initiate on its own motion any other enforcement action against AIN based on this Investigation concerning violations of Sections 201(b), 258 and 227(b)(1)(C) of the Act and Sections 64.1120 and 64.1200(a)(3) of the Commission's rules occurring prior to the Effective Date, or seek on its own motion any administrative or other penalties from AIN based on this Investigation. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, and to take any action otherwise authorized by the Act in response to such complaint.

11. AIN waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification. The Bureau also agrees that, in the absence of material new evidence related to such matters, it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against AIN with respect to its basic qualifications, including the character qualifications, to be a Commission licensee.

12. AIN's agreement to enter into this Consent Decree is expressly contingent upon the issuance of an Order by the Commission or the Bureau that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, or modification.

13. AIN represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation that engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree. AIN agrees to notify the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Washington D.C. 20554, at least thirty (30) days prior to the effective date of any material change in AIN's legal status or corporate structure, including but not limited to any merger, incorporation, dissolution, or assignment. Nothing in this Consent Decree shall be deemed to be an obligation by AIN to disclose to the Bureau "material inside information," as that term is defined in applicable securities laws and regulations.

14. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. AIN represents and warrants that neither AIN nor any of its representatives, employees, agents or any other person acting under, by, through, or on behalf of AIN, directly or indirectly, or through any corporate or other device, shall state, represent, or imply that the

Commission, or any other governmental unit or subdivision thereof, approved or authorized any practice, act, or conduct of AIN as a result of this Consent Decree, other than the standards and actions set forth in this Consent Decree.

16. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation of the subsequent rule or order, that provision will be superseded by such Commission rule or order.

17. By this Consent Decree, AIN does not waive or alter its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of AIN's compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, is not altered by the execution or implementation of the terms of this Consent Decree and no waiver of such privileges is made by this Consent Decree.

18. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AIN nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and AIN and the Bureau will waive any statutory right to a trial de novo with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

19. The Parties 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 Act and the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, AIN does not admit or deny any liability for violating the Communications Act or Commission rules in connection with the matters that are the subject of this Consent Decree.

20. AIN agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

21. The Parties agree that this Consent Decree shall expire two (2) years after the Effective Date. Unless otherwise specified, all commitments made by AIN herein shall continue until the expiration of this Consent Decree.

22. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

For Access Integrated Networks, Inc.

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

By: _____
Vincent Oddo
President
Access Integrated Networks, Inc.

Date

Date