

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

In the Matter of)	File No. EB-04-IH-0016
)	
Manhattan)	Acct. No. 200432080303
Telecommunications)	
Corporation)	FRN No. 0004-3651-44

ORDER

Adopted: September 23, 2004

Released: September 24, 2004

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (“Bureau”) has been conducting an investigation into possible violations by Manhattan Telecommunications Corporation, a wholly owned subsidiary of Metropolitan Telecommunications Holding Company (“Company”), of section 254 of the Communications Act of 1934, as amended,¹ and sections 54.706 and 64.604² and related provisions of the Commission’s rules concerning reporting and contribution requirements for the universal service and telecommunications relay service funds.³

2. The Bureau and Company have negotiated the terms of a Consent Decree that would terminate the Bureau’s investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. 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.

4. 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 or material questions of fact as to whether Company possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 254.

² 47 C.F.R. §§ 54.706, 64.604.

³ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Frank Lazzara, Chief Financial Officer, Manhattan Telecommunications Corp. (Feb. 11, 2004) (“LOI”).

5. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 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.

6. IT IS FURTHER ORDERED that the above captioned investigation is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Manhattan Telecommunications Corporation, a wholly owned subsidiary of Metropolitan Telecommunications Holding Company (“Company”), hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Company violated the universal service reporting and contribution requirements of section 254 of the Communications Act of 1934, as amended (the “Act”)¹ and sections 54.706 and 64.604 of the Commission’s rules.²

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

- (a) “Commission” means the Federal Communications Commission.
- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “Company” means Manhattan Telecommunications Corporation, a wholly owned subsidiary of Metropolitan Telecommunications Holding Company, and any affiliate, d/b/a, predecessor-in-interest, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or businesses and their successors and assigns.
- (d) “Parties” means Company and the Bureau.
- (e) “Order” or “Adopting Order” means an Order of the Commission or the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

¹ 47 U.S.C. § 254.

² 47 C.F.R. §§ 54.706 and 64.604.

- (f) “Effective Date” means the date on which the Commission or the Bureau releases the Adopting Order.
- (g) “Investigation” means the investigation commenced by the Bureau’s February 11, 2004 Letter of Inquiry³ regarding whether Company violated the universal service reporting and contribution requirements of section 254 of the Act and sections 54.706 and 64.604 of the Commission’s rules.

I. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 54.706 and 64.604 of the Commission’s rules, telecommunications carriers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and contribute to the Universal Service Fund and the Telecommunications Relay Service Fund.⁴ Company is a reseller of interstate and international long-distance services and subject to the requirements of those sections.

II. AGREEMENT

4. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau, through entry of the Order, which shall immediately resolve and terminate the Investigation.

5. 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 or the Commission’s rules and orders. The Parties agree that this Consent Decree is for settlement purposes only.

6. Company agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$60,000, in three equal installments of \$20,000 each paid over a three month period, with the first payment due 30 days after the Effective Date and each of the two successive payment due 30 days after the previous payment. The payments must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include “Acct. No. 200432080303” and “FRN No. 0004-3651-44.” Payment by check or money order must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

³ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Frank Lazzara, Chief Financial Officer, Manhattan Telecommunications Corp. (Feb. 11, 2004) (“LOI”).

⁴ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706 and 64.604.

7. For purposes of settling the matters set forth herein, Company agrees to implement a compliance program related to future compliance with the Act, the Commission's rules, and the Commission's orders. The program will include, at a minimum, the following components:

(a) Compliance Manual. The Company shall develop and update as necessary a Compliance Manual. Company personnel shall have ready access to the Compliance Manual and are to follow the procedures contained in it. The Compliance Manual will describe the universal service rules and requirements and Telecommunications Relay Service Fund contribution requirements as they apply to Company. The Compliance Manual will encourage personnel to contact the Company's Legal Department, the Company's Chief Executive and/or Chief Financial Officer with any questions or concerns that arise.

(b) Compliance Training Program. The Company will establish an FCC compliance training program for employees who engage in activities subject to FCC regulation. Training sessions will be conducted at least annually to ensure compliance with the Act and the FCC's regulations and policies and, for new employees, within the first 30 days of employment.

(c) Designated Contact. The Company will designate one employee as the point of contact for all regulatory compliance matters.

(d) Review and Monitoring. The Company will review the Program annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

8. Company agrees to make timely contributions of its Universal Service Fund contribution amounts and its Telecommunications Relay Service Fund contribution amounts, together with late payment fees, if any, as required by the Commission's rules.

9. The Bureau agrees that 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 take any action on its own motion against Company concerning the matters that were the subject of the Investigation. The Bureau also agrees that 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 Company with respect to Company's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

10. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from acting under section 208 of the Act to adjudicate matters arising under the Act that may involve the Company or any of its affiliates; provided, however, that such adjudication shall be based solely on the record developed in such section 208 proceeding. Except as expressly provided in this Consent Decree, nothing herein shall prevent the Commission from

investigating allegations arising under the Act, the Commission's rules, or this Order that may involve the Company or any of its affiliates.

11. Company 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 Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

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

13. Company 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. Company 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 Company respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer on behalf of Company or, if not a corporate officer, is duly authorized to act on behalf of Company with respect to this Consent Decree and that by his/her signature said representative is binding Company to the terms and conditions of this Consent Decree. Company 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.

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. 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 Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Company shall waive any statutory right to a trial *de novo*. Company shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

16. 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 authorized by law attendant to the enforcement of a Commission order.

17. The Parties also agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Company does not consent) that provision will be superseded by such Commission rule or order.

18. Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

19. This Consent Decree may be signed in counterparts.

David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission

Date

[Name]
[Title]
Manhattan Telecommunications Corporation

Date