

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

In the Matter of	)	
	)	File No. EB-03-IH-0366
	)	Acct. No. 200432080021
WestCom Corporation	)	FRN No. 0009-6760-99
	)	

**ORDER**

**Adopted: March 12, 2004**

**Released: March 16, 2004**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by WestCom Corporation (“WestCom”) of sections 54.706, 54.711, 54.713, and related provisions of the Commission’s rules (“Rules”), 47 C.F.R. §§ 54.706, 54.711 and 54.713, in connection with the universal service support mechanism reporting and contribution requirements.<sup>1</sup>

2. The Enforcement Bureau (“Bureau”) and WestCom have negotiated the terms of the Consent Decree. 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 WestCom possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. We deem the adopted Consent Decree to satisfy the requirements of the Citation provisions under subsections 503(b)(5)(A)-(B) of the Communications Act of 1934, as amended.<sup>2</sup>

6. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i), 4(j), and 503(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 503(b)(5), and the authority delegated by section 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**.

<sup>1</sup> See Letter from William H. Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Michael Hirtenstein, President and Chief Executive Officer, WestCom Corporation, dated September 10, 2003 (“LOF”).

<sup>2</sup> See 47 U.S.C. §§ 503(b)(5)(A) – (B); Consent Decree at ¶ 9.

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

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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WestCom Corporation	)	FRN No. 0009-6760-99
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**CONSENT DECREE**

1. The Enforcement Bureau (the “Bureau”) of the Federal Communications Commission (the “Commission”) and WestCom Corporation (“WestCom” or the “Company”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether WestCom violated the universal service reporting and contribution requirements of Section 254 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 254, and of Sections 52.17, 52.32, 54.706, 54.711, 54.713, and 64.1195 of the Commission’s Rules, 47 C.F.R. §§ 52.17, 52.32, 54.706, 54.711, 54.713, and 64.1195.

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

- (a) The “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
- (b) “Adopting Order” or “Order” means an order of the Commission or the Bureau adopting this Consent Decree.
- (c) The “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (d) The “Commission” or “FCC” means the Federal Communications Commission.
- (e) “Effective Date” means the date on which the Commission or the Bureau releases the Order.
- (f) “Investigation” means the investigation initiated by the Bureau’s September 10, 2003 letter of inquiry concerning possible violations of the Rules.
- (g) “Parties” means WestCom and the Bureau.
- (h) “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.

- (i) “WestCom” or the “Company” means WestCom Corporation and all parents, subsidiaries, divisions and affiliates, and each of their respective officers, directors, employees, agents, representatives, or any other person acting or purporting to act on behalf of WestCom, or its successors or assigns.

## I. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 54.706, 54.711, and 54.713 of the Rules, telecommunications carriers that provide interstate telecommunications services and private service providers that provide interstate telecommunications are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and FCC Form 499-Q) and contribute to the Universal Service Fund. 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711 and 54.713. Sections 52.17 and 52.32 of the Rules require all telecommunications carriers to contribute to the costs of establishing numbering administration and long-term number portability, respectively. Section 64.1195 of the Rules requires all telecommunications carriers to register using Form 499-A.

4. WestCom offers local and long distance private line voice and data services to business customers, predominantly in the financial industry. On September 10, 2003, the Bureau issued a letter of inquiry (“LOI”) initiating an investigation regarding WestCom’s compliance with its universal service and other reporting and contribution obligations associated with Forms 499-A and 499-Q.<sup>3</sup> In its filings and discussions with the Bureau, WestCom stated that prior to its receipt of the LOI, WestCom anonymously had sought guidance from the Wireline Competition Bureau and from the Universal Service Administrative Company (“USAC”) regarding voluntary payment of past universal service contribution obligations and had advised USAC of its intention to pay in full all such amounts. On October 3, 2003, WestCom submitted to USAC Forms 499-A and 499-Q for prior periods (the “Forms”) for which WestCom had not made universal service support contributions. Based on the Forms, USAC calculated WestCom’s obligation and issued three substantial, multi-million dollar invoices. On November 15, 2003, December 15, 2003, and January 15, 2004, WestCom timely paid, in full, each of the invoices.

## II. AGREEMENT

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

6. 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 and that by agreeing to this Consent Decree, WestCom does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with the matters that are the subject of this Consent Decree.

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<sup>3</sup> See Letter from William H. Davenport, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Michael Hirtenstein, President and Chief Executive Officer, WestCom Corporation, dated September 10, 2003.

7. WestCom agrees that it has implemented or will implement, within thirty (30) calendar days after the Bureau releases the Order adopting this Consent Decree, an internal compliance program (the "Program") to ensure WestCom's future compliance with the Act, the Commission's rules, and the Commission's orders. The program will include, at a minimum, the following components:

**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 as they apply to WestCom. 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.

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

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

**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 herein.

**Supplemental Measures.** The Program will be supplemented by membership in a trade organization and other means of keeping responsible Company personnel informed of FCC regulatory compliance requirements.

8. WestCom agrees that in the event it shall fail, after the Effective Date, to timely file a FCC Form 499-A or Form 499-Q, or make on a timely basis a required contribution to the Universal Service Fund, it will make a voluntary contribution to the United States Treasury equal to (a) \$25,000 for the first such failure, (b) \$100,000 for the second such failure, or (c) \$250,000 for the third and any subsequent such failure. Any voluntary contribution under this Paragraph 8 must be made 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 reference "Acct. No. 200432080021" and "FRN No. 0009-6760-99." If WestCom makes any payments 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 WestCom makes any payment by wire transfer, it must wire such payment in accordance with Commission procedures for wire transfers. WestCom must make any voluntary contribution under this Paragraph 8 within thirty (30) days of notice to WestCom from USAC or the Commission that WestCom has failed to timely file a FCC Form 499-A or Form 499-Q, or make a required contribution.

9. The Parties agree that this Consent Decree and WestCom's December 9, 2003 meeting with the Bureau staff are deemed to satisfy the requirements of the Citation provisions under subsections 503(b)(5)(A)–(B) of the Act, 47 U.S.C. §§ 503(b)(5)(A)-(B).

10. The Parties agree that this Consent Decree shall become effective on the Effective Date and, except for paragraph 9, shall expire two (2) years after the Effective Date. On the Effective Date, the Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any material violation of any term of this Consent Decree shall constitute a violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. This Consent Decree and Order may be extended by the Bureau upon a final, non-appealable judicial or administrative ruling that WestCom has materially failed to comply with the terms of this Consent Decree.

12. WestCom acknowledges that the Bureau has jurisdiction over it and this matter, and has the authority to enter into, and adopt, this Consent Decree.

13. WestCom 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, provided the Order adopts this Consent Decree without change, addition, or modification.

14. The Parties agree that if WestCom, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither WestCom nor the Commission shall contest the validity of the Consent Decree or the Order, and WestCom will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree. WestCom, however, may present evidence that it has not violated the Consent Decree.

15. WestCom agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. §§ 1.1501 *et seq.*

16. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate the Investigation without any finding of liability on the part of WestCom. This Consent Decree shall constitute a final settlement between the Parties of the Investigation.

17. The Bureau agrees that, in the absence of material new evidence related to the matters that were the subject of the Investigation, it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against WestCom for possible past violations of the contribution rules of the Commission in connection with the universal service and other reporting and contribution requirements. The Bureau also agrees that, in the absence of material new evidence related to these matters, it will not use the facts developed in the Investigation through the Effective Date, 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 WestCom concerning the matters that were the subject of the Investigation. The Bureau further agrees that, in the absence of material new evidence related to

these matters, it will not use the facts developed in this Investigation through the Effective Date, 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 WestCom 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.

18. Nothing in this Consent Decree shall prevent the Commission from adjudicating formal or informal complaints filed against the Company pursuant to Section 208 of the Act, 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 may file a formal or informal complaint against the Company pursuant to Section 208 of the Act, 47 U.S.C. § 208. If any such complaint is made, the adjudication of that complaint will be based solely on the record developed in that proceeding and the Bureau shall not use any facts developed through the Investigation in any such proceeding. Moreover, the existence of this Consent Decree and the Order shall not be submitted in any proceeding, legal or otherwise, other than to enforce this Consent Decree and Order, as evidence of any act or omission by WestCom, and shall not be deemed an admission or denial by WestCom of any fact introduced therein.

19. Nothing in this Consent Decree shall preclude WestCom from petitioning the Commission for relief as to future obligations under Section 254 of the Act and the Commission's Rules.

20. The Parties agree that the effectiveness of this Consent Decree is expressly contingent upon the Bureau's issuance of the Order adopting the Consent Decree without change, addition, or modification.

21. 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.

22. The Parties 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 WestCom does not consent) that provision will be superseded by such Commission rule or order.

23. This Consent Decree may be signed in counterparts.

**For the Enforcement Bureau  
Federal Communications Commission**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David H. Solomon  
Chief, Enforcement Bureau

**For WestCom Corporation**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Hirtenstein  
President