

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

In the Matter of	)	
	)	
	)	File No. EB-02-TC-152
America's Digital Satellite Telephone, Inc.	)	NAL/Acct. No.200332170011
	)	FRN:0004361168

**ORDER**

**Adopted: January 30, 2004**

**Released: February 2, 2004**

By the Chief, Enforcement Bureau:

1. In this Order, we terminate an investigation into potential violations by America's Digital Satellite Telephone, Inc. ("ADST") of sections 201(b) and 258 of the Communications Act of 1934, as amended ("the Act"),<sup>1</sup> as well as Commission rules and orders, in connection with changing the designated preferred carriers of consumers without their authorization and verification, a practice commonly known as "slamming."<sup>2</sup>

2. The Enforcement Bureau and ADST 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 is 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. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Act, 47 U.S.C. § 154(i), that the attached Consent Decree is hereby ADOPTED.

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<sup>1</sup> 47 U.S.C. §§ 201(b), 258.

<sup>2</sup> "Slamming" is the submission or execution of an unauthorized change in a subscriber's selection of a telecommunications service provider. *See, generally*, 47 C.F.R. §§ 64.1100-64.1195.

5. IT IS FURTHER ORDERED that the above captioned proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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## CONSENT DECREE

### I. INTRODUCTION

1. The Enforcement Bureau (the "Bureau") of the Federal Communications Commission (the "FCC" or the "Commission") and America's Digital Satellite Telephone, Inc. ("ADST") hereby enter into this Consent Decree to resolve an investigation by the Bureau regarding alleged non-compliance with Section 201(b) of the Communications Act of 1934, as amended (the "Act"), concerning unjust and unreasonable practices, and Section 258 of the Act and Sections 64.1100-64.1195 of the Commission's rules concerning the execution of an unauthorized change in the subscriber's selection of a telecommunications service provider.<sup>3</sup>

2. Beginning in July, 2002, the Commission began receiving a high number of consumer complaints against ADST. The complaints alleged generally that ADST had changed the consumers' preferred carrier without their authorization. In response to these complaints, the Commission, along with the Public Utilities Commission of Ohio and the Indiana Regulatory Commission, began investigating ADST's alleged slamming practices. The Commission commenced the investigation pursuant to the provisions of Sections 4(i) and 403 of the Communications Act.<sup>4</sup>

### II. DEFINITIONS

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

- (a) The "FCC" or the "Commission" means the Federal Communications Commission and all Bureaus and Offices of the Commission, including the Enforcement Bureau.

<sup>3</sup> 47 U.S.C. §§ 201(b), 258; 47 C.F.R. §§ 64.1100-64.1195.

<sup>4</sup> 47 U.S.C. §§ 154(i) and 403.

- (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “ADST” or the “Company” means America’s Digital Satellite Telephone, Inc. or any of its subsidiaries, affiliates, and successors.
- (d) “Parties” means ADST and the Bureau.
- (e) “Investigation” means the investigation initiated by the Bureau’s October 29, 2002 letter of inquiry concerning possible violations of Sections 201(b) and 258 of the Act.
- (f) “Slamming” means the submission or execution of an unauthorized change in a subscriber’s selection of a telecommunications service provider.
- (g) “Adopting Order” means an Order of the Commission or the Bureau adopting the terms and conditions of this Consent Decree.
- (h) “Effective Date” means the date on which the Commission or the Bureau adopts the Adopting Order.

### III. AGREEMENT

4. ADST 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. ADST 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 ADST respectively affirm and warrant that said representative is acting in his/her capacity and within his/her authority as a corporate officer of ADST, and on behalf of ADST and that by his/her signature said representative is binding ADST to the terms and conditions of this Consent Decree.

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

6. ADST and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, an admission of wrongdoing on the part of ADST, or any finding on the facts or law regarding any violations committed by ADST in connection with the matters that are the subject of this consent decree. ADST neither admits nor denies the alleged violations.

7. ADST will make a voluntary contribution to the United States Treasury in the amount of \$55,000 of which \$10,000 shall be paid within 10 calendar days after release of the Adopting Order and the remaining \$45,000 shall be paid in nine (9) monthly installments of \$5,000 beginning 30 days thereafter. ADST must make these payments by check, wire transfer, or money

order drawn to the order of Federal Communications Commission, and each check, wire transfer, or money order should refer to "NAL Acct. No. 200332170011" If ADST makes these payments by check or money order, it must mail each check or money order to: Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. If ADST makes these payments by wire transfer, it must wire each such payment in accordance with Commission procedures for wire transfer.

8. ADST further agrees that, to the extent it has not already done so, within 75 days of the effective date of this Consent Decree, it will file an application with the Commission pursuant to Section 214 of the Act and Section 63.71 of the Commission's regulations to discontinue all interstate and international long distance service. Within that period, to the extent it has not already done so, it will also file applications to discontinue intrastate long distance service with all relevant state authorities which have not already adopted an order which would result in discontinuance of ADST's intrastate service. Upon approval of these applications, it shall terminate all interstate, international and intrastate long distance service for a period of five years. After that period, neither ADST nor its principal may provide interstate or international long distance service without specific Commission authorization pursuant to Section 214 of the Act. ADST agrees to notify the Bureau within five (5) days of submitting any application, registration or request to the Commission for authority to provide any such service.

9. ADST 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. ADST 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 ADST's legal status or corporate structure, including but not limited to any merger, incorporation, dissolution, or assignment.

10. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation concerning compliance with Sections 201(b) and 258 of the Act, and Sections 64.1100-64.1195 of the Commission's rules.

11. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between ADST and the Commission of the Investigation. Except as otherwise provided herein, the Bureau agrees that, in the absence of new material evidence (which shall not include complaints submitted prior to the effective date for violations of Sections 201(b) and 258 of the Act) the Commission shall not institute enforcement proceedings against ADST, Damian Cipriani or against any employee, affiliate or agent of ADST, or any successor entity based on the Investigation or concerning violations of Section 201(b) and 258 of the Act, and Sections 64.1100-64.1195 of the Commission's rules occurring prior to the Effective Date. However, nothing in this Consent Decree shall prevent the Commission from adjudicating any formal complaints that may be filed against ADST under Section 208 of the Act, or from instituting new investigations or enforcement proceedings against ADST in the event of alleged future misconduct. Consistent with the forgoing, nothing in this Consent Decree limits the Commission's authority to consider and

adjudicate any other violation of the Act and its rules, including violation of Sections 54.706, 54.709 and 54.713 of the Commission's rules.

12. ADST 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.

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

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 ADST nor the Commission will contest the validity of the Consent Decree or Adopting Order, and ADST and the Commission will waive any statutory right to a trial de novo with respect to any matter upon which the Adoption Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

16. ADST waives any rights it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.150 et seq.

17. ADST 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.

18. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau

For America's Digital Satellite Telephone, Inc.

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

By: \_\_\_\_\_  
Damian Cipriani,  
President  
America's Digital Satellite Telephone Company

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date