

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

In the Matter of)	File No. EB-05-IH-2502
)	
FPL FiberNet, LLC)	NAL/Acct. No. 200632080165
)	
)	FRN No. 0008338683

ORDER

Adopted: July 28, 2006

Released: July 31, 2006

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission and FPL FiberNet, LLC (“FPL”). The Consent Decree terminates the enforcement proceeding initiated by the Bureau against FPL for possible violations of section 254 of the Communications Act of 1934, as amended (“the Act”),¹ relating to universal service, and, among others, sections 1.1157, 52.17, 54.706, 54.711, 64.604, and 64.1195 of the Commission rules relating to carrier registration, revenue reporting, and contribution to certain regulatory programs.²

2. The Bureau and FPL have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

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

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree.

¹ 47 U.S.C. § 254.

² 47 C.F.R. §§ 1.1157, 52.17, 54.706, 54.711, 64.604, 64.1195.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ the Consent Decree attached to this Order **IS ADOPTED**.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

³ 47 U.S.C. § 154(i).

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “Commission” or “FCC”) and FPL FiberNet, LLC (“FPL” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether FPL violated section 254 of the Communications Act of 1934, as amended (the “Act”),¹ relating to universal service, and certain of the Commission’s rules relating to carrier registration, universal service, the Telecommunications Relay Services, the North American Numbering Plan Administration, and regulatory fees.

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

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) “Commission” and “FCC” mean the Federal Communications Commission, and all of its bureaus and offices.
- (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (d) “FPL” means FPL FiberNet, LLC and its predecessors-in-interest and successors-in-interest.
- (e) “Parties” means FPL and the Bureau.
- (f) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (h) “Investigation” means the investigation commenced by the Bureau’s December 19, 2005 Letter of Inquiry² regarding whether FPL violated the requirements of section 254 of the

¹ 47 U.S.C. § 254(d).

² See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to David Eckmann, Director of Business Development, FPL FiberNet, LLC, dated December 19, 2005 (“December 19, 2005 LOI”).

Act³ and/or sections 1.1157, 52.17, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules relating to carrier registration, universal service, the Telecommunications Relay Service, the North American Numbering Plan Administration, and regulatory fees.⁴

I. BACKGROUND

3. Pursuant to section 64.1195(a) of the Commission's rules, all carriers that provide interstate telecommunications service must register with the Commission through submission of FCC Form 499-A.⁵ In addition, pursuant to section 254(d) of the Act and sections 54.706(a) and 54.711(a) of the Commission's rules, telecommunications carriers that provide interstate telecommunications services and private service providers 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.⁶

4. Section 225(b)(1) of the Act codifies Title IV of the Americans with Disabilities Act of 1990.⁷ In support of that Act, section 64.604 of the Commission's rules requires every carrier that provides interstate telecommunications services to file Telecommunications Reporting Worksheets and contribute to the Telecommunications Relay Services Fund based upon its interstate and international end-user revenues.⁸

5. Section 251(e) of the Act directs the Commission to ensure the availability of telephone numbers on an equitable basis, and that the costs of establishing numbering administration are borne by all carriers on a competitively neutral basis.⁹ To this end, section 52.17 of the Commission's rules requires that all telecommunications carriers file Telecommunications Reporting Worksheets and contribute toward the costs of numbering administration on the basis of their end-user telecommunications revenues for the prior calendar year.¹⁰

6. Pursuant to section 9(a)(1) of the Act and section 1.1151 of the Commission's rules, interstate telecommunications and other providers must pay regulatory fees to the Commission to recover the costs of certain regulatory activities.¹¹ In particular, sections 1.1154 and 1.1157(b)(1) of the Commission's rules require that interstate telecommunications carriers pay regulatory fees on the basis of their interstate and international end-user revenues.¹²

³ 47 U.S.C. § 254(d).

⁴ 47 C.F.R. §§ 1.1157, 52.17, 54.706, 54.711, 64.604, 64.1195.

⁵ 47 C.F.R. § 64.1195(a).

⁶ 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706(a), 54.711(a).

⁷ 47 U.S.C. § 225(b)(1).

⁸ 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁹ 47 U.S.C. § 251(e).

¹⁰ 47 C.F.R. § 52.17(a).

¹¹ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

¹² See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

7. FPL is a seller of private line and related dedicated services and began to provide interstate telecommunications service in January, 2000. On December 19, 2005, the Bureau issued a letter of inquiry to FPL.¹³ The December 19, 2005 LOI directed FPL, among other things, to submit a sworn written response to a series of questions relating to the apparent failure of FPL to register, file Telecommunications Reporting Worksheets, and make mandated federal telecommunications regulatory program payments. After an extension of time in which to respond that was granted on January 31, 2006,¹⁴ FPL timely responded to the December 19, 2005 LOI on February 14, 2006.¹⁵

II. AGREEMENT

8. 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.

9. 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, FPL does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.

10. FPL agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$150,000 within thirty (30) calendar days of the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200632080165" and "FRN No. 0008338683." Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

11. For purposes of settling the matters set forth herein, FPL agrees to maintain 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 create, maintain and update an FCC 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, among other things, describe the regulatory fee, universal service, Telecommunications Relay Service and North American Numbering Plan Administration rules and requirements as they apply to FPL, including the Company's reporting and payment obligations triggered by revenues from resellers that do not contribute to the Universal Service Fund. The Compliance Manual shall set forth a schedule of filing and payment

¹³ See December 19, 2005 LOI.

¹⁴ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to David Eckmann, Director of Business Development, FPL FiberNet, LLC, dated January 31, 2006.

¹⁵ See FPL FiberNet, L.L.C.'s Response to the Enforcement Bureau's December 19, 2005, Inquiry, filed February 14, 2006 ("February 14, 2006 LOI Response").

dates associated with these regulatory programs, and FPL will create compliance notifications that alert the Company to upcoming filing and payment dates. The Compliance Manual will encourage personnel to contact the Company's Designated Contact, attorneys, the Company's Chief Executive and/or the Company's Chief Financial Officer with any questions or concerns that arise with respect to the Company's FCC compliance. The Company shall submit to the Bureau a final version of its Compliance Manual thirty (30) days after the Effective Date.

- (b) Compliance Training Program. FPL will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of FPL. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies. For new employees who are engaged in such activities, the training sessions will be conducted within the first thirty (30) days of employment.
- (c) Designated Contact. FPL will designate one employee as the point of contact for all telecommunications compliance matters.
- (d) Verification of Registration by Carrier-Customers. The Company, through its Designated Contact, will ensure that carrier-customers of the Company who are also resellers are registered as required by 47 C.F.R. § 64.1195.
- (e) Review and Monitoring. FPL will review the FCC Compliance Manual and FCC Compliance Training Program annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (f) Audits. FPL will ensure that any audit reviews specifically consider compliance with FCC regulatory requirements.
- (g) Termination. FPL's obligations under this Paragraph 11 shall expire twenty-four (24) months after the Effective Date.

12. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation.

13. 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 FPL 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 FPL with respect to FPL's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

14. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against FPL or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by FPL of the Act, the rules, or the Order.

15. FPL 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. FPL shall retain the right to challenge Bureau's interpretation of the Consent Decree or any terms contained herein.

16. FPL'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.

17. 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.

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 FPL nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and FPL shall waive any statutory right to a trial *de novo*.

19. 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.

20. 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 FPL does not expressly consent) that provision will be superseded by such Commission rule or order.

21. FPL 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.

22. This Consent Decree may be signed in counterparts.

Kris Anne Monteith
Chief, Enforcement Bureau
Federal Communications Commission

Date

David Eckmann
Director - Contracts & Regulatory Affairs
FPL FiberNet, LLC

Date