

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No. EB-05-IH-0034
)	
Intelecom Solutions, Inc.)	Acct. No. 911-6229
)	
)	FRN No. 0011-3836-92

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “Commission” or “FCC”) and Intelecom Solutions, Inc. (“Intelecom” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Intelecom 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) The “Company” or “Intelecom” shall mean Intelecom Solutions, Inc., any affiliate, d/b/a, predecessor-in-interest, parent companies, any wholly or partially owned subsidiary, or other affiliated companies or businesses, and all directors, officers, employees or agents, including consultants and any other persons working for or on behalf of the foregoing at any time during the period covered by this letter, unless otherwise noted.
 - (e) “Parties” means Intelecom and the Commission.
 - (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.

¹ 47 U.S.C. § 254(d).

(h) “Investigation” means the investigation commenced by the Bureau’s March 30, 2004 letter regarding Intelcom’s compliance with the registration requirement of section 64.1195 of the Commission’s rules and the Bureau’s January 26, 2005 letter of inquiry regarding whether Intelcom violated the requirements of section 254 of the Act² 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.³

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.⁴ 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.⁵

4. Section 225(b)(1) of the Act codifies Title IV of the Americans with Disabilities Act of 1990.⁶ 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.⁷

5. Section 251(e)(1) 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.⁸ 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.⁹

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.¹⁰ In particular, sections 1.1154

² 47 U.S.C. § 254(d).

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

⁴ 47 C.F.R. § 64.1195(a).

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

⁶ 47 U.S.C. § 225(b)(1).

⁷ 47 C.F.R. § 64.604(c)(5)(iii)(A).

⁸ 47 U.S.C. § 251(e)(1).

⁹ 47 C.F.R. § 52.17(a).

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

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.¹¹

7. Intelcom offers Unbundled Network Element Platform (UNE-P) local and interstate telecommunications services for customers in New York, California, and Connecticut. In 2004, the Bureau audit staff undertook a compliance review program to identify resellers and wholesalers of telecommunications service that may have failed to register in accordance with section 64.1195 of the Commission's rules. On March 30 and June 18, 2004, the Bureau's audit staff sent letters to Intelcom requesting information regarding Intelcom's compliance with the Commission's registration requirement.¹² On January 26, 2005, the Bureau issued a letter of inquiry ("LOI") directing Intelcom to submit a sworn written response to a series of questions about the company's compliance with various reporting and contribution requirements relating to universal service and other federal programs.¹³ Intelcom filed a response to the Bureau's LOI on February 28, 2005.¹⁴ Subsequently, on March 25 and May 11, 2005, Intelcom filed supplemental information.¹⁵ On July 6, 2005, the Bureau issued another LOI to Intelcom,¹⁶ and on July 13, 2005, Intelcom responded.¹⁷ On September 23, 2005, Intelcom filed supplemental information, including financial statements and cash flow projections.¹⁸ On October 5, 2005, the Bureau directed Intelcom to provide additional information concerning that financial information.¹⁹

¹¹ See 47 C.F.R. §§ 1.1154, 1.1157(b)(1).

¹² Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Intelcom Solutions, dated Mar. 30, 2004; Letter from Hugh L. Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, FCC, to Intelcom Solutions, dated June 18, 2004.

¹³ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Henry Fiorillo, Chief Financial Officer, Intelcom Solutions, Inc., dated Jan. 26, 2005.

¹⁴ Letter from Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, to David M. Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Feb. 28, 2005.

¹⁵ Letter from Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, to David M. Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Mar. 25, 2005; Letter from Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, to David M. Janas, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, FCC, dated May 11, 2005.

¹⁶ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, dated July 6, 2005.

¹⁷ Letter from Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, to Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC, dated July 13, 2005.

¹⁸ Letter from Edward A. Yorkgitis, Jr., Darius B. Withers, and Karly E. Baraga, Kelley Drye & Warren, LLP, to Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC, dated Sept. 23, 2005.

¹⁹ Email from Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC, to Darius B. Withers, Kelley Drye & Warren, LLP, dated Oct. 5, 2005.

8. On May 25, 2006, Intelcom executed a payment plan with the Universal Service Administrative Company ("USAC") and the Commission's Office of Managing Director ("OMD") to eliminate its total outstanding obligations to the Universal Service Fund.²⁰ The payment plan, which became effective upon execution on May 25, 2006, provides for the payment of the principal sum together with accrued interest, administrative charges, and penalties. As of the Effective Date, Intelcom is also current on its TRS Fund and numbering contributions and has paid all of the Commission's regulatory fees.

II. AGREEMENT

9. 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.

10. 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, Intelcom 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.

11. Intelcom agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$150,000, to be paid in monthly installments over a three-year period. Under the installment plan, Intelcom agrees to make an initial payment of \$10,000 by January 1, 2007. From February 2007 through July 2007, Intelcom agrees to make a monthly payment of \$2,000, for a total of \$12,000 during that period. From August 2007 through July 2008, Intelcom agrees to make monthly payments of \$3,000, for a total of \$36,000 during that period. Beginning in August 2008 through December 2009, Intelcom agrees to pay \$5,411.77 per month, for a total of \$92,000 during that period. 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. 911-6229" and "FRN No. 011-3836-92." 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 911-6229.

12. For purposes of settling the matters set forth herein, Intelcom 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, North American Numbering Plan Administration rules and requirements as they apply to Intelcom, including the Company's reporting and payment obligations triggered by revenues from

²⁰ On May 11, 2006, the Commission received notice of substitution of counsel for Intelcom Solutions. Letter from Andrew M. Klein, Klein Law Group, PLLC, to Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC, dated May 11, 2006.

resellers that do not contribute to the Universal Service Fund. The Compliance Manual shall set forth a schedule of filing and payment dates associated with these regulatory programs, and Intelcom 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, Chief Executive and/or 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. The Company will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of Intelcom. 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. The Company will designate one employee as the point of contact for all telecommunications regulatory compliance matters.
- (d) Review and Monitoring. The Company will review the FCC Compliance Manual and FCC Compliance Training Program annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.
- (e) Audits. The Company will ensure that any audit reviews specifically consider compliance with FCC regulatory requirements.
- (f) Billing Software Review and Updates. The Company will replace or update, as necessary, existing billing software and systems to ensure compliance with all federal requirements relating to Universal Service, TRS, NANPA and regulatory fee programs.
- (g) Termination. Intelcom's obligations under this paragraph shall expire 36 months after the Effective Date.

13. 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.

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

15. 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 Intelcom 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 Intelcom of the Act, the rules, or this Consent Decree.

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

17. Intelcom'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.

18. 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.

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

20. 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.

21. 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 Intelcom does not consent) that provision will be superseded by such Commission rule or order.

22. Intelcom 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.

23. This Consent Decree may be signed in counterparts.

Kris Monteith
Chief, Enforcement Bureau
Federal Communications Commission

Joseph P. Fiorillo
President
Intelcom Solutions, Inc.

Date

Date