

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

In the Matter of)	File No. EB-07-IH-5304
)	
WTI Communications, Inc.)	NAL/Acct. No. 200832080086
)	
)	FRN No. 0009-7608-69

ORDER

Adopted: May 30, 2008

Released: June 4, 2008

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and WTI Communications, Inc. (“WTI”). The Consent Decree terminates an investigation by the Bureau against WTI for possible violation of sections 9, 254(d), 225, and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ and sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules relating to regulatory fees, the universal service fund, telecommunications relay service fund, and cost recovery mechanisms for the North American Numbering Plan administration and local number portability.²

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

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether WTI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ 47 U.S.C. §§ 159, 254(d), 225, and 251(e)(2).

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that WTI shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the Order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). WTI shall also send electronic notification of payment of the voluntary contribution on the date said payment is made to michele.berlove@fcc.gov.

8. **IT IS FURTHER ORDERED** that WTI will file reports with the Commission ninety days after the effective date of the Consent Decree, as defined therein (“Effective Date”), twelve months after the Effective Date, and twenty-four months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of WTI, stating that the officer has personal knowledge that WTI has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer’s compliance certification. All reports shall be submitted to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

9. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Frank G. Lamancusa, Bingham McCutchen LLP, 2020 K Street, N.W., Washington, D.C. 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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)	NAL/Acct. No. 200832080086
WTI Communications, Inc.)	
)	FRN No. 0009-7608-69

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and WTI Communications, Inc. (“WTI”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether WTI violated sections 9, 254(d), 225, and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”)¹ and sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules² relating to regulatory fees, the universal service fund (“USF”), the telecommunications relay service (“TRS”) fund, and cost recovery mechanisms for the North American Numbering Plan (“NANP”) administration and local number portability (“LNP”).

I. DEFINITIONS

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) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (d) “Compliance Plan” means the program described in this Consent Decree at paragraph 13.
- (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (f) “Investigation” means the investigation commenced by the Bureau’s August 9, 2007 Letter of Inquiry³ regarding whether WTI violated sections 9, 254(d), 225, and 251(e)(2) of the Communications Act of 1934, as amended (the “Act”) and sections

¹ 47 U.S.C. §§ 9, 254(d), 225, and 251(e)(2).

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195

³ See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated August 9, 2007 (“August 9, 2007 LOI”).

1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules relating to regulatory fees, regulatory filings, USF, the TRS fund, and cost recovery mechanisms for NANP administration and LNP.⁴

- (g) "WTI" means WTI Communications, Inc. and its predecessors-in-interest and successors-in-interest.
- (h) "Order" or "Adopting Order" means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (i) "Parties" means WTI and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Federal Regulations.

II. BACKGROUND

3. Pursuant to section 64.1195(a) of the Commission's rules and pursuant to Commission orders, all carriers that provide interstate telecommunications service and certain other providers of interstate telecommunications must register with the Commission through submission of FCC Form 499-A.⁵ In addition, section 254(d) of the Act and sections 54.706 and 54.711 of the rules require telecommunications carriers that provide interstate telecommunications services to file annual and quarterly Telecommunications Reporting Worksheets (FCC Form 499-A and FCC Form 499-Q) and contribute to the USF on the basis of their interstate and international end-user telecommunications revenues.

4. Pursuant to section 251(e) of the Act and sections 52.17 and 52.32 of the rules, all telecommunications carriers are required to contribute to the costs of establishing numbering administration based on information contained in FCC Form 499-A and FCC Form 499-Q and to contribute to the shared costs of long-term number portability.

5. Pursuant to section 225(b)(1) of the Act and section 64.604 of the rules, telecommunications carriers that provide interstate telecommunications services are required to contribute to the TRS fund, based on information contained in FCC Form 499-A and FCC Form 499-Q.

6. Pursuant to section 9(a)(1) of the Act and section 1.1157(b)(1) of the Commission's rules, interstate telecommunications carriers are required to pay regulatory fees.

⁴ 47 U.S.C. §§ 9, 254(d), 225, and 251(e)(2); 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195.

⁵ 47 U.S.C. § 254(d), 47 C.F.R. § 64.1195(a); *Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 06-122 and 04-36, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170, 21 FCC Rcd 7518, 7548-49, para. 61 (2006).

7. WTI is a California-based telecommunications carrier that provides telecommunications to end users and carrier-customers in the United States. WTI offers interstate telecommunications services and is subject to the requirements discussed in paragraphs 3 through 6 above.

8. On August 9, 2007, the Bureau issued a letter of inquiry (LOI) to WTI.⁶ The August 9, 2007 LOI directed WTI, among other things, to submit a sworn written response to a series of questions relating to WTI's apparent failure to make required regulatory filings and contribute to the USF, TRS fund, and cost recovery mechanisms for NANP administration and LNP. WTI responded to the August 9, 2007 LOI on September 17, 2007.⁷

III. TERMS OF AGREEMENT

9. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

10. **Jurisdiction.** WTI agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

11. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

12. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, WTI agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau 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 WTI 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 WTI with respect to WTI's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

13. **Compliance Plan.** WTI agrees that it will develop, within sixty (60) calendar days from the Effective Date, an internal Compliance Plan to ensure WTI's future compliance with the Act, the Commission's rules, and the Commission's orders governing telecommunications carriers' reporting and contribution requirements for universal service and other Commission programs. The Compliance Plan shall include the following components:

⁶ See August 9, 2007 LOI.

⁷ See Letter from Frank G. Lamancusa, Bingham McCutchen LLP, to Michele Levy Berlove, Attorney Advisor, Investigations & Hearings Division, Enforcement Bureau, FCC, dated September 17, 2007 ("LOI Response").

- (a) Compliance Manual. WTI shall create, maintain and update an FCC Compliance Manual. WTI personnel who engage in activities related to FCC regulation of WTI will have ready access to the Compliance Manual and are to follow the procedures contained therein. The Compliance Manual will, among other things, describe the rules and requirements as they apply to WTI regarding the annual regulatory fee, the USF, TRS Fund, NANP, and LNP. The Compliance Manual will set forth a schedule of filing and payment dates associated with these regulatory programs, and WTI will create compliance notifications that alert WTI to upcoming filing and payment dates. The Compliance Manual will encourage personnel to contact WTI's Designated Contact, Regulatory Legal Counsel, Regulatory Services Advisors, and/or Vice President, Telecom Policy and Regulatory Affairs with any questions or concerns that arise with respect to the WTI's FCC compliance. WTI shall submit to the Bureau a final version of its Compliance Manual sixty (60) days after the Effective Date.
- (b) Compliance Training Program. WTI will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of WTI. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies and, for new employees who are engaged in such activities, within the first sixty (60) days of employment.
- (c) Designated Contact. WTI will designate one employee as the point of contact for all FCC compliance matters.
- (d) Review and Monitoring. WTI 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.
- (e) Audits. WTI will ensure that any internal audit reviews of this Compliance Plan, if conducted, specifically consider compliance with FCC regulatory requirements.
- (f) Compliance Report. WTI will file compliance reports with the Commission ninety days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of WTI, stating that the officer has personal knowledge that WTI has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (g) Termination Date. Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months after the Effective Date.

14. **Section 208 Complaints: Subsequent Investigations**. 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 WTI 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 WTI of the Act, the rules, or the Order.

15. **Voluntary Contribution.** WTI agrees that it will make a voluntary contribution to the United States Treasury in the amount of one-hundred thousand dollars (\$100,000) in installments as follows: The first payment of \$15,000 shall be paid within thirty (30) days after the Effective Date of the Adopting Order. The balance shall be paid in twenty-four equal monthly installments, with each successive payment of \$3,541.67 due on the first of the following month. Each payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money Order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. WTI will also send electronic notification on the date said payment is made to michele.berlove@fcc.gov.

16. **Waivers.** WTI 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 Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. WTI shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. 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 WTI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and WTI shall waive any statutory right to a trial *de novo*. WTI 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.

17. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety 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. **Subsequent Rule or Order.** 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 WTI does not expressly consent) that provision will be superseded by such Commission rule or Order.

19. **Successors and Assigns.** WTI agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further 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.

21. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

22. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Tony Rodriguez
Chief Executive Officer
WTI Communications, Inc.

Date