

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

In the Matter of)	File No. EB-08-IH-0976
)	
)	Acct. No. 200932080048
Hiawatha Broadband Communications, Inc.)	
)	FRN No. 0003785318

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission” or “FCC”) and Hiawatha Broadband Communications, Inc. (“Hiawatha” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Hiawatha may have violated section 214(a) of the Communications Act of 1934, as amended (the “Act”),¹ relating to the construction, acquisition, and operation of transmission lines; sections 63.03 and 63.04 of the Commission’s rules,² relating to procedures for the assignment or transfer of control of domestic transmission lines or section 214 authorizations; and sections 63.18 and 63.24 of the Commission’s rules, relating to procedures for the assignment or transfer of control of international section 214 authorizations.³

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) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Applicants” means Hiawatha Broadband Communications, Inc., and TDS Metrocom, LLC, as successor-in-interest to HBC Telecom, Inc.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 9.
 - (g) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (h) “Investigation” means any investigation commenced by the Bureau regarding whether Hiawatha may have violated section 214(a) of the Communications Act of 1934, as

¹ 47 U.S.C. § 214(a).

² 47 C.F.R. §§ 63.03, 63.04.

³ 47 C.F.R. § 63.24.

amended (the “Act”), relating to the construction, acquisition, and operation of transmission lines; sections 63.03 and 63.04 of the Commission’s rules, relating to procedures for the assignment or transfer of control of domestic transmission lines or section 214 authorizations; and sections 63.18 and 63.24 of the Commission’s rules, relating to procedures for the assignment or transfer of control of international section 214 authorizations.

- (i) “Parties” means Hiawatha Broadband Communications, Inc. and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (k) “Telecommunications” or “Telecommunications service” means telecommunications or telecommunications service as defined in sections 3(43) and 3(46) of the Act, respectively, 47 U.S.C. §§ 153(43), 153(46).
- (l) “Hiawatha Broadband Communications, Inc.” means Hiawatha and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Pursuant to Section 214 of the Act, telecommunications carriers must obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating, or engaging in transmission over lines of communications, or before discontinuing, reducing, or impairing service to a community.⁴ In accordance with section 63.03 of the Commission’s rules, any domestic carrier seeking to transfer control of lines or authorization to operate pursuant to section 214 of the Act must obtain prior approval from the Commission.⁵ Similarly, pursuant to section 63.24, an assignment or transfer of control of an international section 214 authorization requires application to and prior approval from the Commission.⁶ Sections 63.04 and 63.24 set forth the required contents of domestic and international transfer of control applications, respectively.⁷

4. Hiawatha Broadband Communications, Inc. is a provider of high speed internet, competitive local exchange, nondominant interexchange, cable television, and video production services to residential and business customers in Minnesota. On November 9, 2007, Hiawatha and TDS Metrocom, LLC, the successor-in-interest to HBC Telecom, Inc. (“Telecom”) (together, “Applicants”), filed an application, pursuant to sections 63.03, 63.04, and 63.24(e) of the Commission’s rules, requesting approval to assign assets and customer accounts relating to Telecom’s telecommunications business and Telecom’s domestic and international section 214 authorizations from Telecom to Hiawatha.⁸ The Applicants stated that they

⁴ See 47 U.S.C. § 214(a).

⁵ See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5521, ¶ 5 (2002); 47 C.F.R. § 63.03.

⁶ 47 C.F.R. § 63.24(a).

⁷ 47 C.F.R. §§ 63.04, 63.24.

⁸ TDS Metrocom, LLC (as successor-in-interest to HBC Telecom, Inc.), Assignor and Hiawatha Broadband Communications, Inc., Assignee, Application for *Nunc Pro Tunc* Assignment of Domestic and International Authority Under Section 214 of the Communications Act, as Amended, WC Docket No. 07-262, File No. ITC-ASG-20071113-00462 (filed Nov. 9, 2007) (“Application”). Hiawatha also requested and was granted special temporary

consummated the transaction in October 2003, but inadvertently did not seek Commission consent prior to the assignment of assets and Hiawatha's provision of telecommunications services to former Telecom customers.⁹ The Commission's Wireline Competition Bureau granted the Applicants' request for approval to transfer control of the domestic section 214 authorization from Telecom to Hiawatha on January 28, 2008¹⁰ and referred for possible enforcement the issue of whether Hiawatha violated section 214 of the Act and the Commission's rules with respect to the assignment of Telecom's assets and customers and the transfer of control of Telecom's 214 authorization to Hiawatha. The Commission's International Bureau granted the Applicants' request for approval to assign the international section 214 authorization from Telecom to Hiawatha on January 18, 2008.¹¹ On November 6, 2008, the Bureau and Hiawatha entered into a tolling agreement.

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** Hiawatha 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.

7. **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.

8. **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, Hiawatha 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 Hiawatha 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 Hiawatha with respect to Hiawatha's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

authority to provide domestic and international telecommunications services during the pendency of the application. See Hiawatha Broadband Communications, Inc., Request for Special Temporary Authority, WC Docket No. 07-262 (domestic), File No. ITC-STA-20071127-00474 (international) (filed Nov. 26, 2007, granted Dec. 7, 2007).

⁹ Application at 3-4.

¹⁰ *Domestic 214 Application Granted*, Public Notice, WC Docket No. 07-262, DA No. 08-177 (rel. Jan. 28, 2008).

¹¹ *International Authorizations Granted*, Public Notice, File No. ITC-ASG-20071113-00462, DA No. 08-152 (rel. Jan. 24, 2008).

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Hiawatha agrees to create within thirty (30) calendar days from the Effective Date a Compliance Plan related to future compliance with the provisions of the Act, the Commission's rules, and the Commission's orders governing the assignment or transfer of control of FCC section 214 authorizations. As part of this Compliance Plan, Hiawatha will conduct an education program for company attorneys, managers, and other parties responsible for and involved in the purchase, sale, or acquisition of telecommunications assets or carriers, regarding the Commission's rules and requirements applicable to assignments and transfers of control under section 214 of the Act and related Commission's rules. Hiawatha also commits to seek federal regulatory counsel to ascertain any Commission approvals required for transactions involving transfers of control or assignments of Commission licenses or authorizations.

10. **Compliance Reports.** Hiawatha will file compliance reports with the Commission 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 Hiawatha, stating that the officer has personal knowledge that Hiawatha 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 Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

11. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months after the Effective Date.

12. **Voluntary Contribution.** Hiawatha agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirteen thousand dollars (\$13,000) within thirty (30) days after 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 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. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Hiawatha will also send an electronic notification on the date payment is made to Chin Yoo at Chin.Yoo@fcc.gov.

13. **Waivers.** Hiawatha 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 Adopting Order, provided the Commission issues the Adopting Order without change, addition, modification, or deletion. Hiawatha 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 Hiawatha nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Hiawatha shall waive any statutory right to a trial *de novo*. Hiawatha 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.

14. **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 Hiawatha does not expressly consent) that provision will be superseded by such Commission rule or order.

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

16. **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. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Hiawatha does not admit or deny any fact, noncompliance, violation, or liability for violating the Act in connection with the matters that are the subject of this Consent Decree.

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

18. **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.

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

20. **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.

Hillary S. DeNigro
Chief, Investigations & Hearings Division
Enforcement Bureau

Date



Robert Bartz
Vice President of Finance
Hiawatha Broadband Communications, Inc.

June 5, 2009

Date