

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

In the Matter of	)	File No. EB-08-IH-5316
	)	
Inmate Telephone, Inc.	)	NAL/Acct. No. 200932080037
	)	
	)	FRN No. 0018179531

**ORDER**

**Adopted: March 31, 2009**

**Released: March 31, 2009**

By the Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Inmate Telephone, Inc. (“Inmate”). The Consent Decree terminates an investigation by the Bureau against Inmate for possible violations of section 254 of the Communications Act of 1934, as amended (the “Act”)<sup>1</sup> and sections 54.706 and 54.711 of the Commission’s rules<sup>2</sup> relating to reporting and contribution requirements for the universal service fund (“USF”).

2. The Bureau and Inmate 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 Inmate 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 Act<sup>3</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

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

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<sup>1</sup> 47 U.S.C. § 254.

<sup>2</sup> 47 C.F.R. §§ 54.706, 54.711.

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

7. **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 Thomas J. Navin, Esq., Wiley Rein LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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Federal Communications Commission  
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In the Matter of	)	
	)	NAL/Acct. No. 200932080037
Inmate Telephone, Inc.	)	
	)	FRN No. 0018179531

**CONSENT DECREE**

1. The Enforcement Bureau (“Bureau”) and Inmate Telephone, Inc. (“Inmate” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Inmate violated section 254 of the Communications Act of 1934, as amended (the “Act”)<sup>1</sup> and sections 54.706 and 54.711 of the Commission’s rules<sup>2</sup> relating to reporting and contribution requirements for the universal service fund (“USF”).

**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 10.
- (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (f) “Investigation” means the investigation commenced by the Bureau’s December 8, 2008 Letter of Inquiry<sup>3</sup> regarding whether Inmate violated section 254 of the Act<sup>4</sup>

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<sup>1</sup> 47 U.S.C. § 254.

<sup>2</sup> 47 C.F.R. §§ 54.706, 54.711.

<sup>3</sup> See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Thomas J. Navin, Wiley Rein LLP, dated December 8, 2008 (“LOI”).

<sup>4</sup> 47 U.S.C. § 254.

and sections 54.706 and 54.711 of the Commission's rules<sup>5</sup> relating to reporting and contribution requirements for the universal service fund.

- (g) "Inmate" means Inmate Telephone, 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 Inmate and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Federal Regulations.

## II. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 54.706 and 54.711 of the rules,<sup>6</sup> telecommunications carriers that provide interstate telecommunications services and private service providers that provide interstate telecommunications are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and FCC Form 499-Q) and contribute to the USF.

4. Inmate, a Pennsylvania-based company, is a niche provider of telecommunications, offering telecommunications and information services exclusively to correctional facilities that are based on individualized contracts and pricing arrangements with each correctional institution.<sup>7</sup> Inmate thus is subject to the requirements discussed in paragraph 3 above.

5. On December 4, 2008, through counsel, Inmate self-disclosed to the Bureau that it had discovered that it may have failed to comply with certain regulations pertaining to universal service and other associated reporting and contribution obligations. Inmate also submitted FCC Forms 499-A and FCC Forms 499-Q to the Universal Service Administrative Company on November 26, 2008. On December 8, 2008, the Bureau issued a letter of inquiry to Inmate directing it to provide certain documents and information.<sup>8</sup> Inmate submitted its response on December 22, 2008.<sup>9</sup> On January 23,

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<sup>5</sup> 47 C.F.R. §§ 54.706, 54.711.

<sup>6</sup> 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711. The Commission also requires certain providers of interstate telecommunications, including interconnected Voice over Internet Protocol ("VoIP") providers, to contribute to the USF. See 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF) *petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

<sup>7</sup> See Letter from Thomas J. Navin, Wiley Rein LLP, to Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, dated December 22, 2008 ("LOI Response").

<sup>8</sup> See LOI.

<sup>9</sup> See LOI Response.

2009, the Bureau sent a follow-up letter of inquiry to Inmate,<sup>10</sup> to which Inmate responded on February 5, 2009.<sup>11</sup>

### III. TERMS OF AGREEMENT

6. **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.

7. **Jurisdiction.** Inmate 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.

8. **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.

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

10. **Compliance Plan.** Inmate agrees that it has implemented or will implement, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to ensure Inmate's future compliance with the Act, the Commission's rules, and the Commission's orders governing reporting and USF contribution requirements. The Compliance Plan includes the following components:

- (a) **Compliance Manual.** Inmate shall create, maintain and update a USF Compliance Manual. Inmate personnel who engage in activities related to USF compliance and reporting obligations of Inmate 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 Inmate regarding USF compliance and reporting obligations. The Compliance Manual will set forth a schedule of filing and payment dates associated with the USF, and Inmate will create compliance notifications that alert Inmate to upcoming filing and payment dates. The Compliance Manual will encourage personnel to contact Inmate's Designated

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<sup>10</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Thomas J. Navin, Wiley Rein LLP, dated January 23, 2009 ("Supplemental LOI").

<sup>11</sup> Letter from Thomas J. Navin, Wiley Rein LLP, to Michele Levy Berlove, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, FCC, dated February 5, 2009 ("Supplemental LOI Response").

Contact and Regulatory Legal Counsel with any questions or concerns that arise with respect to Inmate's USF compliance and reporting obligations.

- (b) Compliance Training Program. Inmate will establish a USF compliance training program for any employee who engages in activities related to Inmate's USF compliance and reporting obligations. Training sessions will be conducted for such employees to ensure such employees are informed regarding all applicable USF obligations, and, for new employees who are engaged in such activities, within the first sixty (60) days of employment.
- (c) Designated Contact. Inmate will designate one employee as the point of contact for all USF compliance obligations.
- (d) Review and Monitoring. Inmate will review the USF Compliance Manual and USF Compliance Training Program to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (e) Compliance Reports. Inmate will file compliance reports with the Commission ninety days after the Effective Date and twelve (12) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer or responsible official, as an agent of Inmate, stating that the individual has personal knowledge that Inmate has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's or responsible official'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. The Company shall also transmit a copy of the reports via email to [hillary.denigro@fcc.gov](mailto:hillary.denigro@fcc.gov).
- (f) Termination Date: Unless stated otherwise, the compliance requirements under this Consent Decree will expire twelve (12) months after the Effective Date.

11. The Parties agree that this Consent Decree and Inmate's March 4, 2009 meeting with the Bureau staff are deemed to satisfy the requirements of the Citation provisions under subsections 503(b)(5)(A)-(B) of the Act, 47 U.S.C. §§ 503(b)(5)(A)-(B).

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

13. 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 Inmate does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

15. **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.

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

17. **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.

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

19. **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.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Date

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Anthony R. Bambocci  
Chief Executive Officer  
Inmate Telephone, Inc.

\_\_\_\_\_  
Date