

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

In the Matter of	)	File No. EB-10-IH-3833
	)	
Union Telephone Company	)	NAL/Acct. No. 201132080031
	)	
	)	FRN No. 0001630201

**ORDER**

**Adopted: July 21, 2011**

**Released: July 22, 2011**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Union Telephone Company (“UTC”). The Consent Decree terminates an investigation by the Bureau into whether UTC violated section 214 of the Communications Act of 1934, as amended (the “Act”)<sup>1</sup> and section 63.18 of the Commission’s rules<sup>2</sup> by willfully or repeatedly failing to obtain an international section 214 authorization before providing international telecommunications service.

2. The Bureau and UTC 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 concerning UTC’s 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**.

<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> 47 C.F.R. § 63.18.

<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 counsel for Union Telephone Company, David L. Nace, Esq., Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, McLean, VA, 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

Before the  
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Washington, D.C. 20554

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Union Telephone Company	)	NAL/Acct. No. 201132080031
	)	
	)	FRN No. 0001630201

**CONSENT DECREE**

1. The Enforcement Bureau (“Bureau”) and Union Telephone Company (“UTC” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether the Company violated section 214 of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214, and section 63.18 of the Commission’s rules, 47 C.F.R. § 63.18, by willfully or repeatedly failing to obtain an international section 214 authorization before providing international telecommunications service.

**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 Officer” means the individual designated in Paragraph 10 of this Consent Decree as the person responsible for administration of the Compliance Plan.
  - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
  - (f) “Effective Date” means the date on which the Commission releases the Adopting Order.
  - (g) “Investigation” means the Bureau’s investigation commenced by its August 25, 2010 Letter of Inquiry (“LOI”)<sup>1</sup> regarding whether the Company violated section 214 and section 63.18 by willfully or repeatedly failing to obtain an international section 214 authorization before providing international telecommunications service.
  - (h) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.

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<sup>1</sup>See Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, to John G. Woody, President, Union Telephone Company, dated August 25, 2010.

- (i) “Parties” means Union Telephone Company and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.
- (k) “UTC” means Union Telephone Company and its predecessors-in-interest and successors-in-interest.

## II. BACKGROUND

3. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity” require, or will require, the construction, extension, or operation of the line.<sup>2</sup> While the Commission has granted “blanket” authority to carriers providing domestic service,<sup>3</sup> meaning that such carriers are granted authority to provide domestic service without having to apply individually for such authority, the Commission has not done the same for providers of international telecommunications services.<sup>4</sup> Rather, section 63.18 of the Commission’s rules requires that any carrier that seeks section 214 authority “for provision of common carrier communication services between the United States, its territories or possessions, and a foreign point shall request such authority by application.”<sup>5</sup> The application requirement applies to carriers, including, but not limited to, those that resell the service of another authorized carrier,<sup>6</sup> and to domestic providers of wireless telecommunications service that also provide international telecommunications service.<sup>7</sup>

4. UTC is a Wyoming-based company that began offering landline telecommunications services in 1914.<sup>8</sup> UTC states that it began providing international telecommunications services in 1994.<sup>9</sup>

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<sup>2</sup> 47 U.S.C. § 214(a).

<sup>3</sup> 47 C.F.R. § 63.01(a) (“Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.”).

<sup>4</sup> *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion & Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11366 n.8 (1999) (grant of blanket authority is only for domestic services and does not extend to the provision of international services).

<sup>5</sup> 47 C.F.R. § 63.18.

<sup>6</sup> *See id.* § 63.18(e)(2).

<sup>7</sup> *1998 International Biennial Regulatory Review -- Review of International Common Carrier Regulations*, Report and Order, 14 FCC Rcd 4909, 4926-27, ¶¶ 38-39 (1999). *See also Personal Communications Indus. Ass’n’s Broadband Personal Communications Servs. Alliance’s Pet. for Forbearance for Broadband Personal Communications Servs.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16881-84, ¶¶ 45-54 (1998) (declining PCIA’s request to forbear from requiring section 214 authority for a broadband PCS carrier to provide international services); *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Servs.*, Second Report and Order, 9 FCC Rcd 1411, 1481, ¶ 182 n.369 (1994) (declining to forbear from application of section 214 to CMRS carriers’ provision of international services).

<sup>8</sup> *See* Letter from David, L. Nace, Esquire, Lukas, Nace, Gutierrez & Sachs, LLP, counsel for Union Telephone Company to Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, FCC, dated Sep. 15, 2010, at 3 (“*LOI Response*”).

<sup>9</sup> *See LOI Response* at 3. UTC first offered international calling to landline customers in 1994. UTC believes that its wireless customers were also permitted to make international calls beginning in 1994. *LOI Response* at 3.

UTC offers international services on a resale basis to its wireless and landline customers.<sup>10</sup> On March 19, 2010, UTC submitted an application for international section 214 authority in which it disclosed that it had provided international services since 1994, but could not locate any record that the company sought or obtained authority to provide such service under section 214 of the Act.<sup>11</sup> The Commission also has no record of any such application. On the same date, UTC filed a request for Special Temporary Authority (“STA”) for its provision of international services.<sup>12</sup> The International Bureau granted the STA on March 26, 2010<sup>13</sup> and granted the section 214 application on April 16, 2010.<sup>14</sup>

5. Based on UTC’s disclosure in its international section 214 application, on August 25, 2010, the Bureau issued the *LOI* to UTC. The *LOI* directed UTC to, among other things, submit a sworn written response to a series of questions relating to its failure to obtain international section 214 authorization before providing international telecommunications services.<sup>15</sup> UTC responded to the *LOI* on September 15, 2010.<sup>16</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.** The Company 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, the Company 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 the Company 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

<sup>10</sup> See File No. ITC-STA-20100319-00118, Attachment 1.

<sup>11</sup> See File No. ITC-214-20100319-00117. In its *LOI Response*, UTC also states that in February of 1994, UTC received a proposed application for international Section 214 authority from its attorney but it could find no record that the application was filed with the Commission.

<sup>12</sup> See File No. ITC-STA-20100319-00118.

<sup>13</sup> *Id.*

<sup>14</sup> See *International Authorizations Granted*, Public Notice, Rep. No. TEL-01422, DA No. 10-678 (rel. April 22, 2010).

<sup>15</sup> See *LOI*.

<sup>16</sup> See *LOI Response*.

Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or to hold Commission authorizations.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, UTC agrees to create within 60 days after the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan shall include, at a minimum, the following components:

- a) **Compliance Officer.** Within 30 calendar days after the Effective Date, UTC shall designate a Compliance Officer who shall administer the Compliance Plan, supervise UTC's compliance with the Act and the Rules and the Commission's orders, and serve as the point of contact on behalf of UTC for all FCC-related compliance matters.
- b) **Compliance Manual.** Within 60 calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to employees and others who perform duties at UTC that trigger or may trigger compliance-related responsibilities. The Compliance Manual shall include (i) an overview of the Commission's requirements, including the need for prior approval for license assignments and transfers of control; (ii) a description of the regulatory requirements applicable to the accurate and timely reporting of information in FCC applications and in response to inquiries by FCC staff; and (iii) instructions regarding due diligence for FCC applications and information presented to the FCC, including in response to FCC staff inquiries.
- c) **Compliance Training Program.** UTC shall develop a Compliance Training Program that includes, at minimum, a complete discussion of the Compliance Manual and its implementation. Within 90 calendar days after the Effective Date, and annually thereafter, all UTC employees and others who perform duties on behalf of UTC that trigger or may trigger FCC compliance-related responsibilities shall complete the Compliance Training Program. UTC shall also require new and reassigned employees that are responsible for these activities to complete the Compliance Training Program within 30 calendar days after their assuming these duties.
- d) **Review and Monitoring.** UTC shall review the Compliance Manual and Compliance Training Program at least annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein, and shall update the Compliance Manual and Compliance Training Program in accordance with any changes to the relevant sections of the Act, Rules, and related Commission orders.
- e) **Reporting Non-Compliance.** UTC shall report any non-compliance with this Consent Decree or any relevant sections of the Act, Rules, or related Commission orders to the Bureau within 15 days after the discovery of non-compliance.
- f) **Compliance Reports.** UTC shall file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and upon expiration of this Consent Decree, three (3) years after the Effective Date. Each compliance report

shall include a compliance certificate from the Compliance Officer, as defined in paragraph 2 of this Consent Decree, as an agent of the Company, stating that the Compliance Officer has personal knowledge that the Company: (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and section 214 of the Act and section 63.18 of the Commission's rules,<sup>17</sup> together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Commission's Rules<sup>18</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and section 214 of the Act and section 63.18 of the Commission's rules;<sup>19</sup> and (ii) the steps that the Company has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All compliance reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh, and to Pam Slipakoff at [Pam.Slipakoff@fcc.gov](mailto:Pam.Slipakoff@fcc.gov).

- g) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire three (3) years after the Effective Date.

11. **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 the Company 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 the Company of the Act, the rules, or the Order.

12. **Voluntary Contribution.** UTC agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$100,000. The payment shall be made within 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. UTC shall also send electronic notification within forty-eight (48) hours of the date said payment is made to Pam.Slipakoff@fcc.gov.

<sup>17</sup> See 47 U.S.C. § 214; 47 C.F.R. § 63.18.

<sup>18</sup> See 47 C.F.R. § 1.16.

<sup>19</sup> See 47 U.S.C. § 214; 47 C.F.R. § 63.18.

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

15. **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 the Company does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

17. **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.

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

19. **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.

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



21. **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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P. Michele Ellison  
Chief  
Enforcement Bureau

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Date

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John G. Woody  
Vice President  
Union Telephone Company

\_\_\_\_\_  
Date