

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

In the Matter of
STi Telecom Inc.,
f/k/a Epana Networks, Inc.
and
Progress International, LLC
File No.: EB-10-IH-4278
Acct. No.: 201132080035
FRN No.: 0007413867
FRN No.: 0005885090

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, STi Telecom Inc. and Progress International, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation of STi Telecom Inc. and Progress International, LLC for possible violations of section 214(a) of the Communications Act of 1934, as amended, and sections 63.18 and 63.24 of the Commission’s Rules, requiring prior Commission approval of the transfer of control of international section 214 authority.

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” or “Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(d) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
(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.

1 On June 29, 2011, Epana Networks, Inc. filed with the Secretary of State of the State of Delaware a certificate of amendment of its certificate of incorporation changing its name to STi Telecom, Inc. During the entirety of the events outlined below, it operated under the name “Epana Networks, Inc.”

2 47 U.S.C. § 214(a).

3 47 C.F.R. §§ 63.18, and 63.24.

(g) “Investigation” means the Bureau’s investigation regarding whether STi Telecom Inc. and Progress International, LLC violated section 214(a) of the Act and sections 63.18 and 63.24 of the Commission’s rules by willfully engaging in a substantial transfer of control of section 214 authority without the requisite prior approval of the Commission.

(h) “Parties” means STi Telecom Inc. and Progress International, LLC, the respective subsidiaries, affiliates, predecessors-in-interest and successors-in-interest of the aforementioned entities, and the Enforcement Bureau of the Federal Communications Commission, and each a “Party.”

(i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

(j) “STi” means STi Telecom Inc., and its respective subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.

(k) “Progress” means Progress International, LLC and its respective subsidiaries, affiliates, predecessor-in-interest and successors-in-interest.

## II. BACKGROUND

3. Section 214(a) of the Act prohibits the construction, operation, or acquisition of lines for interstate or international common carrier communication without Commission authorization.<sup>4</sup> Sections 63.18 and 63.24 of the Rules establish similar prohibitions regarding the provision of international common carrier service.<sup>5</sup> Section 63.24(c) provides that “a transfer of control is a transaction in which the authorization remains held by the same entity but there is a change in the entity or entities that control the authorization holder.”<sup>6</sup> Furthermore, section 63.24(e) provides that, in the case of transfers of control that are not “pro-forma,”<sup>7</sup> the proposed transferee must apply to the Commission for authority prior to consummation of the proposed transfer of control. This notification must provide the information specified in section 63.24(e)(2).<sup>8</sup>

4. STi is a provider of global or limited global facilities-based service, and global or limited resale service, to international points, and holds an international section 214 authorization.<sup>9</sup> STi is a wholly-owned subsidiary of Vivaro Corporation (“Vivaro”).<sup>10</sup> On June 18, 2010, Progress acquired Vivaro and, therefore, STi and STi’s section 214 authorization, when Progress Ventures Acquisition Sub,

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<sup>4</sup> 47 U.S.C. § 214(a).

<sup>5</sup> 47 C.F.R. §§ 63.18; and 63.24.

<sup>6</sup> 47 C.F.R. § 63.24(c).

<sup>7</sup> Section 63.24(b) of the Rules provides that transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial or *pro forma*. Section 63.24(b) further provides that the determination of whether there has been a change in the actual controlling party must be determined on a case-by-case basis. 47 C.F.R. § 63.24(b).

<sup>8</sup> 47 C.F.R. § 63.24(f)(2).

<sup>9</sup> See Attachment 1 to Epana Networks, Inc. Application for Approval *Nunc Pro Tunc* of Transfer of Control of Entity Holding Section 214 Authorization, filed July 23, 2010. IBFS File No. ITC-T/C-20100723-00305.

<sup>10</sup> *Id.*

Inc. (“Progress Sub”), a subsidiary of Progress, merged with and into Vivaro.<sup>11</sup> As a result of this transaction, the separate corporate existence of Progress Sub ceased and Vivaro continued as the surviving corporation of the merger and as a subsidiary of Progress.<sup>12</sup> Progress consummated this transfer without making prior application for approval from the Commission, as the Rules require.

5. On July 23, 2010, just over one month after control of STi was transferred to Progress, STi simultaneously filed: (1) an application for Special Temporary Authority (“STA”) with the Commission’s International Bureau (“IB”) to continue providing international service after the merger,<sup>13</sup> and (2) an application to transfer control of STi’s international section 214 authorization from Vivaro to Progress.<sup>14</sup> IB granted the STA application on August 26, 2010<sup>15</sup> and granted STi’s subsequent October 18, 2010<sup>16</sup> and December 14, 2010<sup>17</sup> applications for STA on October 25, 2010<sup>18</sup> and December 22, 2010,<sup>19</sup> respectively. IB granted STi’s application to transfer control of its international section 214 authorization on January 19, 2011.<sup>20</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.** STi and Progress agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree, and that the Bureau 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 Effective Date. 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 Bureau order.

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<sup>11</sup> See Delaware Certificate of Merger of Progress Ventures Acquisition Sub, Inc. with and into Vivaro Corporation, filed June 18, 2010.

<sup>12</sup> *Id.*

<sup>13</sup> See IBFS File No. ITC-STA-20100723-00302.

<sup>14</sup> See IBFS File No. ITC-T/C-20100723-00305.

<sup>15</sup> See IBFS File No. ITC-STA-20100723-00302.

<sup>16</sup> See IBFS File No. ITC-STA-20101018-00404.

<sup>17</sup> See IBFS File No. ITC-STA-20101214-00481.

<sup>18</sup> See IBFS File No. ITC-STA-20101018-00404.

<sup>19</sup> See IBFS File No. ITC-STA-20101214-00481.

<sup>20</sup> See IBFS File No. ITC-T/C-20100723-00305.

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 on the Effective Date. In consideration for the termination of the Investigation, STi and Progress agree 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 the 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 STi and Progress concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the 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 STi and Progress with respect to STi's and Progress' basic qualifications, including their character qualifications to be Commission licensees or to hold Commission authorizations.

10. **Compliance Plan.** STi and Progress agree that they will implement, within thirty (30) calendar days from the Effective Date, a Compliance Plan related to compliance with the Act, the Rules, and the Commission's Orders, with particular emphasis on compliance with the Rules concerning transfers of control and the provision of international telecommunications service. The Compliance Plan shall include, at a minimum, the following components:

(a) **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, STi and Progress will designate a Compliance Officer who will administer the Compliance Plan, supervise STi's and Progress' compliance with the Act, Rules, and Commission Orders, and serve as the point of contact on behalf of STi and Progress for all FCC-related compliance matters.

(b) **Compliance Manual.** Within sixty (60) calendar days of the Effective Date, STi and Progress will develop and distribute a Compliance Manual to all employees and others who perform duties at STi and Progress that trigger or may trigger responsibilities related to regulatory compliance with the Act, the Rules and the Commission's Orders. The Compliance Manual will include at a minimum (i) an overview of the Commission's requirements, including the need for prior approval for substantial transfers of control of section 214 authorizations and the requirements set forth in the Rules at issue in the Investigation; (ii) a description of the regulatory requirements applicable to the accurate reporting of information in FCC applications; and (iii) instructions regarding due diligence for FCC applications. The Compliance Manual will be reviewed annually and updated as appropriate, and any revisions will be distributed within thirty (30) calendar days.

(c) **Compliance Training Program.** Within ninety (90) calendar days of the Effective Date, all STi and Progress employees and others who perform duties at STi and Progress that trigger or may trigger compliance-related responsibilities must complete a Compliance Training Program focused on those portions of the Act, Rules, and Commission Orders that relate to transfers of control and the provision of international telecommunications service. This Compliance Training Program will also be presented to new employees who are engaged in such activities, within the first thirty (30) calendar days of employment, and to employees who are reassigned to such duties within thirty (30) calendar days of reassignment. This Compliance Training Program will track the Compliance Manual, focusing on proper implementation of the Compliance Manual and tailored to specific user groups.

(d) **Review and Updating.** STi and Progress will 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 will 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.** STi and Progress will 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.** STi and Progress will file a Compliance Report with the Commission ninety (90) days after the Effective Date, and annually thereafter on the anniversary of the Effective Date until the Termination Date. Each Compliance Report will include a certification by the Compliance Officer, as an agent of and on behalf of STi and Progress, stating that he/she has personal knowledge that: (i) STi and Progress have established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 214(a) of the Act, and sections 63.18 and 63.24 of the Rules, together with an accompanying statement explaining the basis for the certification; (ii) STi and Progress have been utilizing those procedures since the previous Compliance Report was submitted; and (iii) the Compliance Officer is not aware of any instances of non-compliance with the Consent Decree, the Act or the Rules. The certification must comply with section 1.16 of the Rules 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, he/she shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that STi and Progress have 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 directed to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

(g) **Termination.** The requirements relating to the Compliance Plan shall expire thirty-six (36) months after the Effective Date provided, however, that, if STi and Progress have not substantially satisfied each of the terms of the Compliance Plan, the obligations set forth therein shall continue until STi and Progress have complied fully for two (2) consecutive years.

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 STi, Progress 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 STi or Progress with the Act, the Rules, or Commission Orders.

12. **Voluntary Contribution.** STi and Progress agree that they are jointly and severally liable for, and shall make, a voluntary contribution to the United States Treasury in the amount of \$8,000.00. The payment shall be made within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment shall 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 Numbers referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to the 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. STi and Progress will also send electronic notification within forty-eight (48) hours of the date payment is made to [Terry.Cavanaugh@fcc.gov](mailto:Terry.Cavanaugh@fcc.gov) and to [Edward.Smith@fcc.gov](mailto:Edward.Smith@fcc.gov).

13. **Waivers.** STi and Progress agree to waive any and all rights they 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 Consent Decree is adopted without change, addition, modification, or deletion. STi and Progress 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 STi and Progress, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and STi and Progress shall waive any statutory right to a trial *de novo*. STi and Progress hereby agree to waive any claims they 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 STi and Progress do not expressly consent) that provision shall be superseded by such Commission rule or Order.

16. **Successors and Assigns.** STi and Progress agree that the terms and conditions of this Consent Decree shall be binding on their 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, the Rules and the Commission's Orders.

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

By: \_\_\_\_\_  
Theresa Z. Cavanaugh  
Acting Chief  
Investigations and Hearings Division  
Enforcement Bureau  
Federal Communications Commission

By: \_\_\_\_\_  
Robert K. Lacy  
Chief Executive Officer  
STi Telecom Inc.  
and  
Progress International, LLC

Date: \_\_\_\_\_

Date: \_\_\_\_\_