

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

In the Matter of	)	File No. EB-10-IH-2797
	)	
	)	Acct. No. 201132080028
	)	
Piedmont Communications Services, Inc.	)	FRN No. 0010104388
	)	
Surry Telephone Membership Corp.	)	FRN No. 0001952605
	)	
	)	
	)	
	)	

**ORDER**

**Adopted: May 17, 2011**

**Released: May 18, 2011**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission (“Bureau”), Piedmont Communications Services, Inc. (“PCS”) and Surry Telephone Membership Corp. (“Surry”). The Consent Decree terminates a Bureau investigation into PCS and Surry for possible violations of section 214(a) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and sections 63.01, 63.03, 63.04, 63.12, 63.18 and 63.24 of the Commission’s rules.<sup>2</sup> The possible violations arise out of four transactions, including two substantial transfers of control of domestic section 214 authority, one substantial transfer of control of international section 214 authority, and one *pro forma* transfer of control of international section 214 authority.

2. The Bureau, PCS and Surry have negotiated the terms of a Consent Decree that resolves 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 PCS and Surry possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

<sup>1</sup> 47 U.S.C. § 214(a).

<sup>2</sup> 47 C.F.R. §§ 63.01, 63.03, 63.04, 63.12, 63.18, 63.24.

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**.

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 David L. Nace, Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>3</sup> 47 U.S.C. § 154(i).

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

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**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission, Piedmont Communications Services, Inc. and Surry Telephone Membership Corp. by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation of compliance by PCS and Surry with section 214(a) of the Communications Act of 1934, as amended,<sup>5</sup> and sections 63.01, 63.03, 63.04, 63.12, 63.18 and 63.24 of the Commission’s rules.<sup>6</sup> The possible violations arise out of four transactions, including two substantial transfers of control of domestic section 214 authority, one substantial transfer of control of international section 214 authority, and one *pro forma* 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.
  - (g) “Investigation” means the Bureau’s investigation regarding whether Piedmont Communications Services, Inc. and Surry Telephone Membership Corp. violated section 214(a)

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<sup>5</sup> 47 U.S.C. § 214(a).

<sup>6</sup> 47 C.F.R. §§ 63.01, 63.03, 63.04, 63.12, 63.18, 63.24.

of the Act and sections 63.01, 63.03, 63.04, 63.12, 63.18 and 63.24 of the Commission's rules by willfully and repeatedly engaging in substantial transfers of control of section 214 authority without the requisite prior approval of the Commission and failing to timely notify the Commission of a *pro forma* transfer of control of section 214 authority.

(h) "Parties" means Piedmont Telephone Membership Corp., Piedmont Communications Services, Inc., Surry Telephone Membership Corp., Surry Telecommunications Inc., 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) "Piedmont" means Piedmont Telephone Membership Corp. ("PTMC"), its subsidiary Piedmont Communications Services, Inc. ("PCS") and their respective subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.

(k) "Surry" means Surry Telephone Membership Corp. ("STMC"), its subsidiary, Surry Telecommunications, Inc. ("STI"), and their 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>7</sup> Sections 63.12, 63.18 and 63.24 of the Rules establish similar prohibitions regarding the provision of international common carrier service, and sections 63.01, 63.03 and 63.04 of the Rules establish similar provisions for the provision of domestic service.<sup>8</sup> Section 63.24(f) provides that while *pro forma* transfers of control and assignments of international section 214 authority do not require Commission approval prior to consummation, the Commission must be notified no later than thirty days after the *pro forma* transaction is completed.<sup>9</sup> This notification must provide information specified in section 63.24(f)(2).<sup>10</sup>

4. On January 1, 2009, Surry consummated an acquisition of Piedmont without making prior application for approval from the Commission, as the Rules require. Prior to the acquisition, Piedmont and Surry provided incumbent local exchange carrier ("LEC") service to different areas of North Carolina. Each entity had a subsidiary that operated as a reseller of long distance communications services. Piedmont's long distance subsidiary was PCS and Surry's long distance subsidiary was STI. On July 1, 2009, Surry merged STI into PCS, and did not provide notice to the Commission within thirty days, as the Rules require.

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<sup>7</sup> 47 U.S.C. § 214(a).

<sup>8</sup> 47 C.F.R. §§ 63.01, 63.03, 63.04, 63.18; 63.24.

<sup>9</sup> 47 C.F.R. § 63.24(f).

<sup>10</sup> 47 C.F.R. § 63.24(f)(2).

5. On January 27, 2010, PCS, which held international section 214 authority since 2001,<sup>11</sup> simultaneously filed applications with the Commission for both domestic and international section 214 authority to transfer control of PCS from Piedmont to Surry, a transaction that had been consummated more than one year earlier. On January 29, 2010, Surry notified the Commission that it had merged STI into PCS in a *pro forma* transfer of control, a transaction that had been consummated more than six months earlier. On October 20, 2010, Surry filed an application for domestic section 214 authority for its acquisition of Piedmont, which had been consummated twenty-two months earlier.

### 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.** PCS and Surry agree that the Bureau has jurisdiction over them 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 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.

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, PCS and Surry 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 PCS and Surry 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 PCS and Surry with respect to PCS's and Surry's basic qualifications, including their character qualifications to be Commission licensees or to hold Commission authorizations.

10. **Compliance Plan.** PCS and Surry agree that they will implement a comprehensive Compliance Plan for purposes of ensuring their compliance with section 214(a) of the Act and sections 63.01, 63.03, 63.04, 63.18 and 63.24 of the Rules. The Compliance Plan shall include, at a minimum, the following components:

(a) **Compliance Officer.** Within 60 calendar days of the Effective Date, PCS and Surry will designate a Compliance Officer who will administer the Compliance Plan, supervise PCS's and Surry's compliance with the Act and the Rules, and serve as the point of contact on behalf of PCS and Surry for all FCC-related compliance matters.

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<sup>11</sup> See IBFS File No. ITC-214-20010323-00152.

(b) **Compliance Manual.** Within 60 calendar days of the Effective Date, the Compliance Officer will develop and distribute a Compliance Manual to all employees and others who perform duties at PCS and Surry that trigger or may trigger compliance-related responsibilities. The Compliance Manual will include an overview of the Commission's requirements, including the need for prior approval for substantial transfers of control of section 214 authorization, timely notification of *pro forma* transfers of control of section 214 authorization and the requirements set forth in the Rules at issue in the Investigation.

(c) **Compliance Training Program.** Within 90 calendar days of the Effective Date, PCS and Surry will begin administering, and within 120 days shall complete, a Compliance Training Program for all employees and others who perform duties at PCS and Surry that trigger or may trigger compliance-related responsibilities. This Compliance Training Program will be presented to new employees who are engaged in such activities, within the first 30 calendar days of employment. This Compliance Training Program will track the Compliance Manual, focusing on proper implementation of the Compliance Manual and tailored to specific user groups.

(d) **Compliance Reports.** PCS and Surry will report to the Commission any instance of non-compliance with this Consent Decree or with section 214(a) of the Act or sections 63.01, 63.03, 63.04, 63.12, 63.18 or 63.24 of the Commission's Rules within 30 days of learning of the non-compliance. PCS and Surry also will submit a Compliance Report to the Commission 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 PCS and Surry, stating that he/she has personal knowledge that: (i) PCS and Surry 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 63.01, 63.03, 63.04, 63.12, 63.18 and 63.24 of the Rules, together with an accompanying statement explaining the basis for the certification; (ii) PCS and Surry 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. 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 PCS and Surry 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.

(e) **Termination.** The requirements relating to the Compliance Plan shall expire twenty-four months after the Effective Date.

11. **Voluntary Contribution.** PCS and Surry agree that they are jointly and severally liable for, and shall make, a voluntary contribution to the United States Treasury in the amount of \$18,000.00. The payment shall be made within 30 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. PCS and Surry will also send

electronic notification within 48 hours of the date payment is made to Hillary.DeNigro@fcc.gov and to Robert.Krinsky@fcc.gov.

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

13. **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.

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 PCS and Surry do not expressly consent) that provision shall be superseded by such Commission rule or Order.

15. **Successors and Assigns.** PCS and Surry agree that the terms and conditions of this Consent Decree shall be binding on their 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 Rules and Orders.

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

By: \_\_\_\_\_  
P. Michele Ellison  
Chief, Enforcement Bureau  
Federal Communications Commission

By: \_\_\_\_\_  
Curtis R. Taylor  
Chief Executive Officer  
Surry Telephone Membership Corp., and  
President  
Piedmont Communications Services, Inc.

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

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