

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

In the Matter of	)	File No.: EB-07-IH-4090
	)	
InterMetro Communications, Inc.	)	Acct. No.: 201232080022
	)	
	)	FRN: 0015294150

**ORDER**

**Adopted: May 4, 2012**

**Released: May 4, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) and InterMetro Communications, Inc. (InterMetro). The Consent Decree terminates an investigation by the Bureau against InterMetro for possible violation of Section 214 of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Sections 63.03 and 63.04 of the Commission's rules (Rules),<sup>2</sup> relating to the transfer of control of domestic Section 214 authority.

2. The Bureau and InterMetro 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 InterMetro 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 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. § 214.

<sup>2</sup> 47 C.F.R. §§ 63.03–04.

<sup>3</sup> See 47 U.S.C. § 154(i).

<sup>4</sup> See 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 David Olert, InterMetro Communications, Inc., 2685 Park Center Dr., Building A, Simi Valley, CA 93065.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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InterMetro Communications, Inc.	)	Acct. No.:
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	)	FRN: 0015294150

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and InterMetro Communications, Inc. (InterMetro), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether InterMetro violated Section 214 of the Communications Act of 1934, as amended,<sup>1</sup> and Sections 63.03 and 63.04 of the Commission's rules,<sup>2</sup> relating to the transfer of control of domestic 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) "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 14 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 14.
  - (f) "Effective Date" means the date on which the Commission releases the Adopting Order.
  - (g) "InterMetro" means InterMetro Communications, Inc. and its predecessors-in-interest and successors-in-interest.
  - (h) "Investigation" means the investigation commenced by the Bureau's June 15, 2007, Letter of Inquiry<sup>3</sup> regarding whether InterMetro violated the requirements of Section 214

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<sup>1</sup> 47 U.S.C. § 214.

<sup>2</sup> 47 C.F.R. §§ 63.03–04.

<sup>3</sup> See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Mr. Vince Arena, Chief Financial Officer, InterMetro Communications, Inc. (June 15, 2007) (on file in EB-07-IH-4090) (June 15, 2007 LOI).

of the Act<sup>4</sup> and Sections 63.03 and 63.04 of the Rules<sup>5</sup> relating to the transfer of control of domestic Section 214 authority.

- (i) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (j) “Parties” means InterMetro and the Bureau, and each a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

## II. BACKGROUND

3. Section 214 of the Act requires telecommunications carriers to 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.<sup>6</sup> The Commission granted all carriers blanket authority under Section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line.<sup>7</sup> In accordance with Section 63.03 of the Rules, however, 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.<sup>8</sup> Section 63.04 sets forth the required contents of domestic transfer of control applications.<sup>9</sup> The Commission employs a public interest standard under Section 214(a) of the Act that involves the examination of the public interest impact of a proposed transaction.<sup>10</sup>

4. Advanced Tel, Inc. (Advanced Tel) is a non-dominant switchless reseller holding Section 214 authority to provide intrastate and interstate long distance telecommunications services. Advanced Tel was wholly-owned by Mr. David Singer prior to the transfer of control.

5. InterMetro, a publicly-traded company, is a facilities-based provider of interstate voice and data transport over a Voice over Internet Protocol network to other carriers. InterMetro also provides wholesale voice services to retailers and resellers of voice and data products.

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<sup>4</sup> 47 U.S.C. § 214.

<sup>5</sup> 47 C.F.R. §§ 63.03–04.

<sup>6</sup> See 47 U.S.C. § 214(a).

<sup>7</sup> See *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996; Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order and Second Memorandum Opinion and Order, 14 FCC Rcd 11364 (1999) (*1999 Streamlining Order*); 47 C.F.R. § 63.01.

<sup>8</sup> See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5521, para. 5 (2002) (*2002 Streamlining Order*); 47 C.F.R. § 63.03. See also 47 C.F.R. § 63.03(d)(1) (excluding all pro forma transactions, which do not result in a change in the carrier’s ultimate ownership or control, from the domestic Section 214 application and approval requirements), § 63.04(d)(2) (requiring that a post-transaction notice be filed with the Commission within 30 days of a pro forma transfer of a domestic Section 214 authorization to a trustee, a debtor-in-possession, or any other party pursuant to any applicable chapter of the Bankruptcy Code).

<sup>9</sup> See 47 C.F.R. § 63.04.

<sup>10</sup> See 47 U.S.C. § 214(a).

6. On March 31, 2006, Mr. Singer transferred one hundred percent ownership interest in Advanced Tel to InterMetro. Pursuant to the ownership transfer, Advanced Tel became a wholly-owned subsidiary of InterMetro.

7. On March 6, 2007, Advanced Tel and InterMetro filed an application for consent to transfer control of Advanced Tel's domestic Section 214 authority to InterMetro.<sup>11</sup> The applicants also requested special temporary authority from the Commission that would allow Advanced Tel to provide service under the ownership of InterMetro pending approval of their application for transfer of control.

8. On March 26, 2007, the Wireline Competition Bureau granted Advanced Tel and InterMetro's request for special temporary authority to allow Advanced Tel to provide service under the ownership of InterMetro pending approval of their application for transfer of control. On the same day, the Wireline Competition Bureau released a Public Notice accepting the application for streamlined processing under the Commission's rules.<sup>12</sup> The Wireline Competition Bureau released a Public Notice granting the application on April 26, 2007.<sup>13</sup>

9. On June 15, 2007, the Bureau issued a letter of inquiry directing InterMetro, among other things, to submit a sworn written response to a series of questions relating to the apparent unauthorized transfer of control of Advanced Tel to InterMetro.<sup>14</sup> InterMetro responded to the LOI on June 25, 2007.<sup>15</sup>

### III. TERMS OF AGREEMENT

10. **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.

11. **Jurisdiction.** InterMetro 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.

12. **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 Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

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<sup>11</sup> The application stated that InterMetro entered into a merger on December 29, 2006, with Lucy's Café, Inc., a publicly-traded shell company that had no business operations. Pursuant to the merger, Lucy's Café acquired 100 percent ownership and control of InterMetro. In turn, Mr. Charles Rice, who controlled InterMetro, also assumed majority voting control of Lucy's Café, Inc. See *Advanced Tel, Inc., Licensee, and InterMetro Communications, Inc., Transferee, Application* (filed Mar. 6, 2007) at <http://fjallfoss.fcc.gov/ecfs/document/view?id=6518912336>.

<sup>12</sup> See *Domestic Section 214 Application Filed for the Transfer of Control of Advanced Tel, Inc. to InterMetro Communications, Inc.*, Public Notice, DA 07-1425 (WCB, rel. Mar. 26, 2007).

<sup>13</sup> See *Notice of Domestic Section 214 Authorizations Granted*, Public Notice, DA 07-1907 (WCB, rel. Apr. 26, 2007).

<sup>14</sup> See June 15, 2007 LOI.

<sup>15</sup> See Letter from Vince Arena, Chief Financial Officer, InterMetro Communications, Inc., to Diana Lee, Esq., Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission (June 25, 2007) (on file in EB-07-IH-4090).

13. **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, InterMetro 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 InterMetro 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 InterMetro with respect to InterMetro's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

14. **Compliance Plan.** InterMetro agrees to implement a comprehensive Compliance Plan for purposes of ensuring its compliance with the Act, the Rules, and the Commission's orders. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** InterMetro shall designate a Compliance Officer, as defined in paragraph 2 of this Consent Decree, within thirty (30) calendar days after the Effective Date. The Compliance Officer shall administer the Compliance Plan, supervise InterMetro's compliance with the Act, the Rules and the Commission's Orders, and serve as the point of contact on behalf of InterMetro for all FCC-related compliance matters.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to InterMetro's employees and others who perform InterMetro's federal regulatory reporting and compliance-related tasks, all of whom shall follow the procedures detailed in the Compliance Manual. The Compliance Manual will include at a minimum (i) an overview of the Commission's requirements, including the need for prior approval for license assignments and substantial transfers of control; (ii) a description of the regulatory requirements applicable to the accurate and timely reporting of information in FCC applications; and (iii) instructions regarding due diligence for FCC applications.
- (c) **Compliance Training Program.** Within ninety (90) calendar days after the Effective Date, and annually thereafter, InterMetro shall implement and conduct a training program for all employees who perform duties at InterMetro that trigger or may trigger compliance-related responsibilities. InterMetro shall ensure that training and compliance materials are provided to new and reassigned employees who are responsible for fulfilling those obligations within the first thirty (30) calendar days of employment or reassignment.
- (d) **Review and Monitoring.** InterMetro shall review the Compliance Manual and Compliance Training Program at least annually to ensure they are maintained in a proper manner and continue to address InterMetro's compliance with federal regulatory reporting obligations. InterMetro shall update the Compliance Manual and Compliance Training Program in the event of changes and/or additions to the relevant Rules and related Commission orders.
- (e) **Compliance Reports.** InterMetro will file compliance reports with the Commission ninety (90) calendar 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 Compliance Plan, *i.e.*, three (3) years after the Effective Date. Each compliance report

shall include a compliance certificate from the Compliance Officer, as an agent of and on behalf 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<sup>16</sup> and Sections 63.03 and 63.04 of the 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 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<sup>19</sup> and Sections 63.03 and 63.04 of the Rules<sup>20</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 David Janas at david.janas@fcc.gov.

- (f) Reporting Non-Compliance. InterMetro shall report any non-compliance with this Consent Decree, or Section 214 of the Act<sup>21</sup> and Sections 63.03 and 63.04 of the Rules,<sup>22</sup> or related Commission orders to the Bureau within fifteen (15) calendar days after the discovery of non-compliance.
- (g) Termination Date of Compliance Plan. The requirements relating to the Compliance Plan shall expire three (3) years after the Effective Date, unless stated otherwise.

15. **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<sup>23</sup> against InterMetro 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 InterMetro of the Act, the rules, or the Order.

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<sup>16</sup> 47 U.S.C. § 214.

<sup>17</sup> 47 C.F.R. §§ 63.03–04.

<sup>18</sup> *See id.* § 1.16.

<sup>19</sup> 47 U.S.C. § 214.

<sup>20</sup> 47 C.F.R. §§ 63.03–04.

<sup>21</sup> 47 U.S.C. § 214.

<sup>22</sup> 47 C.F.R. §§ 63.03–04.

<sup>23</sup> *See* 47 U.S.C. § 208.

16. **Voluntary Contribution.** InterMetro agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand dollars (\$6,000). 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 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. InterMetro will also send electronic notification within forty-eight (48) hours of the date said payment is made to Terry Cavanaugh at Terry.Cavanaugh@fcc.gov, and to David Janas at david.janas@fcc.gov.

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

18. **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.

19. **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 InterMetro does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

21. **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.

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

23. **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.

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



25. **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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David Olert  
Chief Financial Officer  
InterMetro Communications, Inc.

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Date