

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-TCD-12-00000197 ¹
)	
Fiducia, Inc. d/b/a "America's Toner"; "Toner Dome"; TDI, Inc.; John David)	NAL/Acct. No.: 200832170066
)	
)	FRN: 0017433186

ORDER

Adopted: March 29, 2013

Released: April 1, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Fiducia, Inc. d/b/a America's Toner, and John David. The Consent Decree terminates an investigation regarding America's Toner's compliance with Section 227(b)(1)(C) of the Communications Act of 1934, as amended (Act),² and Section 64.1200(a)(4) of the Commission's rules³ with respect to delivery of unsolicited advertisements to the telephone facsimile machines of consumers.

2. The Bureau and America's Toner have negotiated the 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 will be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) 4(j), and 503(b) of the Act,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ This case was formerly assigned the file number EB-06-TC-131. In January 2011, the Telecommunications Consumers Division assigned a new case number.

² 47 U.S.C. § 227(b)(1)(C)..

³ 47 C.F.R. §64.1200(a)(4).

⁴ 47 U.S.C. §§ 154(i), 154(j),503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

6. **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 Fiducia, Inc. d/b/a America's Toner, Attn: John David, Owner, 162 Dallas Village Shopping Ctr. #182, Dallas, PA 18612-1231.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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

In the Matter of)	File No.: EB-TCD-12-00000197 ¹
)	
Fiducia, Inc. d/b/a “America’s Toner”; “Toner Dome”; TDI, Inc.; John David)	NAL/Acct. No.: 200832170066
)	
)	FRN: 0017433186

CONSENT DECREE

I. INTRODUCTION

The Enforcement Bureau of the Federal Communications Commission, TDI, Inc. and “Toner Dome,” successors in interest to Fiducia, Inc. d/b/a “America’s Toner,” and John David hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether they violated Section 227(b)(1)(C) of the Communications Act of 1934, as amended,² and Section 64.1200(a)(4) of the Commission’s rules³ with respect to the delivery of unsolicited advertisements to telephone facsimile machines.

II. DEFINITIONS

1. 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” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Advertisement” means any material advertising the commercial availability or quality of any property, goods, or services.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which any Company or John David is subject by virtue of its or his business activities, including, but not limited to, the Unsolicited Facsimile Rules.

¹ This case was formerly assigned the file number EB-06-TC-131. In January 2011, the Telecommunications Consumers Division assigned a new case number.

² 47 U.S.C. § 227(b)(1)(C).

³ 47 C.F.R. § 64.1200(a)(4).

- (g) “Companies” means Fiducia, Inc., d/b/a “America’s Toner,” TDI, Inc., “Toner Dome,” and any other business John David controls, each of which is a “Company.”
- (h) “Complaint” means any complaint John David or any Company receives directly from a third party, a federal or state regulatory agency (including the FCC) or otherwise, relating to facsimile marketing activities.
- (i) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
- (j) “Contractor” means any person John David or any Company engages, whether as an independent contractor, vendor, service provider, or otherwise, to use any telephone facsimile machine, computer, or other device, to transmit or send any Advertisement to a telephone facsimile machine, on behalf of John David or any Company.
- (k) “Covered Employees” means all employees, Contractors, and agents of John David, or any Company, who perform duties, supervise, oversee, or manage the performance of duties that relate to responsibilities of John David, or any business he controls, under this Consent Decree and the Unsolicited Facsimile Rules.
- (l) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (m) “Established Business Relationship” and “EBR” shall have the meaning set forth in 47 C.F.R. § 64.1200(f)(6).
- (n) “Investigation” means the investigation commenced by the Bureau regarding whether any Company or John David violated 47 U.S.C. § 227 and 47 C.F.R. § 64.1200(a)(4).
- (o) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by John David, or any Company, to implement the Compliance Plan.
- (p) “Parties” means Companies, John David, and the Bureau, each of which is a “Party.”
- (q) “Person” shall have the meaning set forth in 47 U.S.C. § 153(39).
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “United States” shall have the meaning set forth in 47 U.S.C. § 153(58).
- (t) “Unsolicited Advertisement” shall have the meaning set forth in 47 U.S.C. § 227(a)(5).
- (u) “Unsolicited Facsimile Rules” means 47 U.S.C. § 227, the Commission’s regulations found in 47 C.F.R. § 64.1200(a)(4), and other Communications Laws governing Unsolicited Advertisements.
- (v) “Voluntary Contribution” means the payment made by John David or any Company to the United States Treasury pursuant to this agreement and described at paragraph 16 of this Consent Decree.

III. BACKGROUND

2. Congress enacted the Telephone Consumer Protection Act of 1991 to address problems of abusive telemarketing, including junk faxes.⁴ Unsolicited faxes often impose unwanted burdens on the recipient, including costs of paper and ink, and making fax machines unavailable for legitimate messages. Section 227(b)(1)(C) of the Act thus makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”⁵

3. On July 21, 2006, in response to a Complaint alleging that “America’s Toner” had faxed Unsolicited Advertisements, the Bureau issued a citation to “America’s Toner” for using a telephone facsimile machine, computer, or other device to send Unsolicited Advertisements to telephone facsimile machines.⁶ Subsequently, based on additional Complaints, the Commission released four Notices of Apparent Liability (*NALs*) against “America’s Toner,” finding that the Company apparently willfully and repeatedly violated Section 227 of the Act and Section 64.1200(a)(4) of the Rules, and proposing a total forfeiture of \$1,184,500 against “America’s Toner.”⁷

4. “America’s Toner” filed responses indicating that, among other things, it had ceased sending Advertisements by facsimile. It also submitted the 2004, 2005, and 2006 tax returns of “Fiducia, Inc. dba Americastoner.com” to demonstrate that “America’s Toner” was unable to pay the forfeitures proposed in the *NALs*.⁸

⁴ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227). *See also* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁵ 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if the sender has an EBR with the recipient and the sender obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website through which the recipient voluntarily agreed to make its facsimile number available for public distribution. In addition, the Unsolicited Advertisement must notify the recipient how to opt out of receiving future facsimile Advertisements, subject to certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(4).

⁶ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to America’s Toner (July 21, 2006) (on file in EB-TCD-12-00000197). *See also* 47 U.S.C. § 503(b)(5). The citation identified “American Toner” and Fiducia, Inc. as other names for “America’s Toner,” and was directed to the attention of John David.

⁷ *America’s Toner*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 5415 (2008); *America’s Toner*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9151 (Enf. Bur. 2008); *America’s Toner*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13199 (2008); and *America’s Toner*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18466 (2008). Each of the *NALs* defined “America’s Toner” to include “American Toner” and Fiducia, Inc., as well as John David personally.

⁸ *See* Letter from John David, America’s Toner, to Office of Secretary, dated Apr. 12, 2008; Letter from John David, America’s Toner, to Kris Anne Monteith, Chief, Enforcement Bureau, dated June 20, 2008; and Letter from John David, America’s Toner, to Office of Secretary, dated Sept. 25, 2008. *See also* Letter from John David, America’s Toner, to Enforcement Bureau, Telecommunications Consumer Division, dated July 2, 2008. Letter from John David, America’s Toner, to Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (Aug. 18, 2006) (on file in EB-TCD-12-00000197). Letter from John David, America’s Toner, to FCC Office of Secretary (Apr. 12, 2008) (on file in EB-TCD-12-00000197) (America’s Toner Apr. 12, 2008 Letter). Letter from John David, America’s Toner, to Kris Anne Monteith, Chief, FCC Enforcement Bureau (June 20, 2008) (on file in EB-TCD-12-00000197); Letter from John David, America’s Toner, to Kris Anne Monteith, Chief, FCC Enforcement Bureau (Sept. 25, 2008) (on file in EB-TCD-12-00000197); Letter from John David, (continued....)

5. Subsequently, the Bureau learned that Fiducia, Inc. – which operated as “America’s Toner” – had been involuntarily dissolved. In order to update the business status and financial information of “America’s Toner,” the Bureau sent a Letter of Inquiry to John David, requesting that he provide current information, including more recent financial information, on “America’s Toner” and related enterprises.⁹ John David reported that Fiducia, Inc. was no longer in business, that “Toner Dome” was its successor, that TDI, Inc. owned “Toner Dome,” and that he is the sole owner of TDI, Inc.¹⁰ John David submitted the 2009, 2010, and 2011 federal corporate tax returns of TDI, Inc. and “Fiducia, Inc. dba Americastoner.com” to demonstrate that TDI, Inc., as successor to Fiducia, Inc., was unable to pay the forfeitures proposed in the *NALs*.

IV. 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.

7. **Jurisdiction.** The Companies and John David 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 as defined herein. As of Effective Date, 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 Commission 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 the Investigation. In consideration for terminating the Investigation, the Companies and John David 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 this Investigation through the Effective Date, 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 Companies or John David concerning the matters that were the subject of the Investigation.

10. **Compliance Officer.** John David represents that “America’s Toner” was a name through which Fiducia, Inc. did business; that Fiducia, Inc. has been dissolved; that “Toner Dome” is a name through which TDI, Inc. does business; that TDI, Inc. is a successor to Fiducia, Inc.; that he is the sole owner of TDI, Inc.; and that he exercises control over the daily operations of the Companies and is personally responsible for compliance with the Communications Laws and this Consent Decree, including the discharge of the duties set forth below. John David shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that he, and the Companies, comply with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of

(Continued from previous page) _____

America’s Toner, to Telecommunications Consumers Division, FCC Enforcement Bureau (Jan. 9, 2009) (on file in EB-TCD-12-00000197).

⁹ Letter of Inquiry from Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to America’s Toner (Mar. 20, 2012) (on file in EB-TCD-12-00000197) (LOI).

¹⁰ Letter from John David, America’s Toner, to FCC Office of Secretary at 1 (Mar. 30, 2012) (on file in EB-TCD-12-00000197).

the Communications Laws necessary to discharge his duties under this Consent Decree, John David shall have, or acquire, specific knowledge of the Unsolicited Facsimile Rules.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, John David represents that, prior to the Effective Date, he and each Company have ceased sending, or causing to be sent, all Advertisements by facsimile in the United States (including Unsolicited Advertisements), and have advised all Covered Employees of the provisions of this consent decree.¹¹ Further, John David agrees that, after the Effective Date, neither he nor any Company shall send, or cause to be sent, any Advertisements by facsimile in the United States except under the following conditions:

- (a) **Implementation.** Not less than ninety (90) calendar days before John David, or any Company, sends, or causes to be sent, any Advertisement by facsimile (including Unsolicited Advertisements), John David shall (i) develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree, and (ii) notify the Commission that such Compliance Plan has been implemented. The notification shall be sent to Daniel.Grosh@fcc.gov and to Phillip.Priesman@fcc.gov. The Compliance Plan shall include, without limitation, the components set forth in this Paragraph 11.
- (b) **Operating Procedures on Unsolicited Advertisements.** John David shall establish Operating Procedures that he and all Covered Employees shall follow to ensure compliance with the Unsolicited Facsimile Rules and the Communications Laws. These Operating Procedures shall include, without limitation:
 - i. A “Compliance Checklist” that describes the steps that John David and all Covered Employees must follow to ensure compliance with this Consent Decree and the Unsolicited Facsimile Rules and appropriate reporting of non-compliance pursuant to paragraph 14 below;
 - ii. Procedures for keeping, managing, updating the “EBR List,” “No-Fax List,” and any “Fax Lists,” as those terms are used below;
 - iii. Procedures for promptly investigating and resolving Complaints;
 - iv. A requirement that John David monitor all facsimile marketing activities of any business he controls, for compliance and reporting non-compliance purposes.
- (c) **Company In-house EBR List.** John David shall create an “EBR List” that includes (i) the name of each Person with whom he, or any Company, has an EBR and whose facsimile number he, or any Company, has obtained consistent with the Unsolicited Facsimile Rules; and (ii) the facsimile number for each such Person. John David shall update and maintain the EBR List to ensure that at all times it is accurate, current, and consistent with the Unsolicited Facsimile Rules.
- (d) **Company In-house No-Fax List.** John David shall create a “No-Fax List” containing (i) the name of each Person who has requested that he, or any Company, not send any additional Advertisements; and (ii) the facsimile number for each such Person. John David shall update and maintain the No-Fax List to

¹¹ For purposes of this order, sending or causing to be sent on its behalf, any Advertisement by facsimile in the United States includes any Advertisement by facsimile intended to be received in the United States, regardless of the location from which the facsimile was sent.

ensure that at all times it is accurate, current, and consistent with the Unsolicited Facsimile Rules. Neither John David nor any Company shall send, or cause to be sent, any Advertisement to the facsimile number of any Person on the No-Fax List.

- (e) **Company Fax List.** John David shall create a “Fax List.” The Fax List shall contain the names of (i) Persons who have given John David or any Company, prior express invitation or permission to send them Advertisements; (ii) Persons on the EBR List; and (iii) the facsimile number for each such Person. John David shall ensure that no Person on the No-Fax List appears on the Fax List. Neither John David nor any Company, shall send, or cause to be sent, any Advertisement to the facsimile machine of any Person or to any facsimile number that is not identified on the Fax List.
- (f) **Compliance Manual.** John David shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Unsolicited Facsimile Rules and set forth the Operating Procedures that all Covered Employees must follow to help ensure compliance with this Consent Decree and with the Unsolicited Facsimile Rules. The Compliance Manual shall memorialize, without limitation, the Operating Procedures listed in subparagraph (b) above.
- (g) **Contractor Agreements** John David and each Company shall include in every contract with every Covered Employee entered into after the Effective Date a binding obligation on the part of such Covered Employee to:
 - i. Comply with the Unsolicited Facsimile Rules;
 - ii. Comply with the Operating Procedures and all supplemental instructions from John David and any Company;
 - iii. Transmit to John David, on a daily basis, reports that identify and provide data for each complaint or “Do-Not-Fax” request relating to unsolicited facsimiles; and
 - iv. Permit John David and any Company, to take appropriate action, including immediately terminating the agreement, if the Contractor or agent fails to follow the Operating Procedures or to comply with its legal obligations under this Consent Decree or with the Unsolicited Facsimile Rules.
- (h) **Disciplinary Action.** John David shall take appropriate disciplinary action if he discovers that any Covered Employee has failed to follow the Operating Procedures or to comply with the legal obligations of John David, or any Company, under this Consent Decree or with the Unsolicited Facsimile Rules.
- (i) **Compliance with Bureau Requests.** John David shall maintain and make available to the Bureau, within fourteen (14) days of receipt of any specific request from the Bureau, business records documenting its compliance with the terms and provisions of this Consent Decree.

12. **Compliance Reports.** John David shall submit Compliance Reports to the Bureau for three (3) years after the Effective Date. Such reports shall be due every three (3) months for the first two years

after the Effective Date, and every six (6) months during the third year after the Effective Date. Such reports shall be due on the first day of each reporting period.

- (a) Each Compliance Report shall include a certification by John David stating whether, he, or any Company, has sent or caused to be sent, Advertisements by facsimile during the reporting period. If John David or any Company has sent, or caused to be sent, any Advertisement by facsimile during the reporting period, the certification shall also state that John David, in his personal capacity, and on behalf of each Company, has (i) implemented the Compliance Plan and so notified the Commission as required by Paragraph 11; (ii) has utilized the Operating Procedures since implementing the Compliance Plan; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 hereof.
- (b) Each Compliance Report shall also include the number of telephone line accounts billed to John David and each Company, including the contact numbers, billing contact, and billing addresses for each telephone line identified as belonging to Mr. David or any Company.
- (c) John David's certification shall be accompanied by a statement explaining the basis for such certification and must be in the form set forth in Section 1.16 of the Rules¹² and be subscribed as true under penalty of perjury substantially in the form set forth therein.
- (d) If John David cannot provide the requisite certification, he shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of non-compliance; (ii) the steps that he and each Company have taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that he and each Company have taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.

13. All Compliance Reports shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. John David shall also send an electronic copy of its compliance report and certification to Daniel.Grosh@fcc.gov, and to Phillip.Priesman@fcc.gov

14. **Reporting Non-Compliance.** John David and each Company shall disclose any failure to comply with the Unsolicited Facsimile Rules and the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such failure to comply. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that John David and each Company have taken or will take to remedy such non-compliance; (iii) the schedule on which such proposed remedial actions will be taken; and (iv) the steps that John David and each Company have taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 4-C224, Washington, D.C. 20554, with copies submitted electronically to Daniel.Grosh@fcc.gov and to Phillip.Priesman@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 10 through 14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

¹² 47 C.F.R. § 1.16.

16. **Voluntary Contribution.** John David or the Companies shall make a Voluntary Contribution to the United States Treasury in the amount fifty thousand dollars (\$50,000) within thirty (30) calendar days after the Effective Date. John David and the Companies acknowledge and agree that upon executing this Consent Decree, the Voluntary Contribution shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹³ Upon an Event of Default by Nonpayment of the Voluntary Contribution, all procedures for collection permitted by the Debt Collection Improvement Act of 1996¹⁴ and other provisions of law¹⁵ may, at the Commission’s discretion, be initiated. John David shall also send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. **Event of Default by Nonpayment.** John David and each Company agree that an Event of Default by Nonpayment shall occur upon the failure by them to pay the full amount of the Voluntary Contribution on or before the due date specified in this Consent Decree. John David and each Company further agree to toll and/or revive any applicable statutes of limitations for any and all possible violations that form the basis of the Investigation such that, upon an Event of Default by Nonpayment, the statutes of limitations shall expire six (6) months after the date of default by nonpayment. Further, upon an Event of Default for Nonpayment, the provisions of paragraph 9 shall be null and void.

18. **Interest and Charges for Collection.** Upon an Event of Default by Nonpayment under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed

¹³ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁴ *Id.*

¹⁵ See 31 C.F.R. Part 900-904; 47 C.F.R. § 1.1901, *et seq.*

¹⁶ FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

using the U.S. Prime Rate in effect on the date of the Event of Default by Nonpayment plus 4.75%, from the date of the Event of Default by Nonpayment until payment in full. Upon an Event of Default by Nonpayment, the then unpaid amount of the Voluntary Contribution together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, is accelerated and shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by John David and each Company.

19. **Representations.** John David and each Company represent that they are not engaged in any activity that is subject to oversight by the Commission, including activities involving faxing Advertisements. John David and each Company acknowledge that sending Advertisements by facsimile is unlawful, unless they have an EBR with the recipient and they obtained the facsimile number from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website through which the recipient voluntarily agreed to make its facsimile number available for public distribution; and, the facsimile Advertisement notifies the recipient in accordance with the Unsolicited Facsimile Rules how to opt out of receiving future such Advertisements. John David and each Company hereby waive their right to send Advertisements by facsimile unless they satisfy the requirements of the Unsolicited Facsimile Rules and this Consent Decree, including the adoption of the Compliance Plan.

20. **Waivers.** John David and each Company 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 Bureau issues the Adopting Order. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or Consent Decree, neither that Party nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and John David and each Company shall waive any statutory right to a trial *de novo*. John David and each Company hereby 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.

21. **Severability.** The Parties agree that if a court of competent jurisdiction renders any of the provisions of the Adopting Order or the Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. 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.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of this 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 neither John David nor any Company expressly consents), that provision shall be suspended by such Commission Rule or order.

23. **Successors and Assigns.** John David and each Company agree that the provisions of this Consent Decree shall be binding on them, and their successors, assigns, and transferees.

24. **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 non-compliance with the Communications Laws.

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

26. **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.

27. **Authorized Representative.** John David represents and agrees that he is signing this Consent Decree in his personal capacity and on behalf of each Company, and warrants that he is authorized by such to execute this Consent Decree and to bind each Company to the obligations this Consent Decree imposes on it. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

28. **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.

For: Federal Communications Commission

P. Michele Ellison
Chief, Enforcement Bureau

Date

For: Fiducia, Inc., d/b/a “America’s Toner”; “Toner Dome”; TDI, Inc.

Date

For: John David, individually

Date