

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-10-IH-4243
)	
FTTH Communications, LLC)	Acct. No.: 201332080009
)	
)	FRN: 0007719230

ORDER

Adopted: May 14, 2013

Released: May 14, 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 FTTH Communications, LLC (FTTH). The Consent Decree resolves and terminates the Bureau's investigation into FTTH's compliance with Section 214 of the Communications Act of 1934, as amended (Act),¹ and Section 63.18 of the Commission's rules (Rules)² pertaining to authorization to provide facilities-based and resold international common carrier communications services.

2. A copy of the Consent Decree that the Bureau and FTTH negotiated is attached hereto and incorporated herein 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 FTTH 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 Sections 4(i) and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ 47 U.S.C. § 214

² 47 C.F.R. § 63.18.

³ 47 U.S.C. §§ 154(i), 503(b).

⁴ 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 Jeffrey Feldman, Chief Executive Officer, FTTH Communications, LLC, 2930 146th Street W, Rosemount, MN 55068.

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-10-IH-4243
)	
FTTH Communications, LLC)	Acct. No.: 201332080009
)	
)	FRN: 0007719230

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and FTTH Communications, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 214 of the Communications Act of 1934, as amended,⁵ and Section 63.18 of the Commission's rules⁶ concerning authorization to provide facilities-based and resold international common carrier communications services.

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" means an Order of the Bureau 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" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which FTTH is subject by virtue of its business activities.
 - (f) "Compliance Plan" means the compliance obligations and program described in this Consent Decree at paragraph 12.
 - (g) "Covered Employees" means all employees and agents of FTTH who perform, or supervise, oversee, or manage the performance of, duties that relate to FTTH's responsibilities under the Communications Laws, including Section 214 of the Act and the Rules that implement this provision.

⁵ 47 U.S.C. § 214.

⁶ 47 C.F.R. § 63.18.

- (h) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (i) “FTTH” or the “Company” means FTTH Communications, LLC and its predecessors-in-interest and successors-in-interest.
- (j) “Investigation” means the investigation commenced by the Bureau regarding the Company’s compliance with Section 214 of the Act and Part 63 of the Rules concerning FTTH’s obligation to obtain Commission authorization before providing facilities-based or resold international common carrier services.⁷
- (k) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by FTTH to implement the Compliance Plan.
- (l) “Parties” means FTTH and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Section 214 Rules” means Section 214 of the Act and other Communications Laws governing the construction, acquisition, operation, or transmission of lines of communication, including any Rules implementing Section 214 and any related Commission orders.

II. BACKGROUND

3. Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate of authorization from the Commission.⁸ While the Commission has granted “blanket” Section 214 authority to carriers providing domestic service,⁹ meaning that such carriers need not apply to the Commission before providing domestic service, the Commission has not done the same for providers of international telecommunications services.¹⁰ Section 63.18 of the Rules requires any carrier that seeks Section 214 authority “for provision of common carrier communication services between the United States, its territories or possessions, and a foreign point” to request such authority by application.¹¹ This

⁷ 47 U.S.C. § 214; 47 C.F.R. Part 63.

⁸ 47 U.S.C. § 214(a).

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

¹⁰ See *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion & Order in AAD File No. 98-43, 14 FCC Rcd 11364, para. 2 & n.8 (1999) (grant of blanket authority is only for domestic service and does not extend to international service).

¹¹ 47 C.F.R. § 63.18.

application requirement applies to carriers that resell the international services of another authorized carrier, as well as to facilities-based international service providers.¹²

4. FTTH is a Minnesota limited liability company that provides telecommunications services.¹³ FTTH is owned by Everest FTTH Acquisition, LLC (Everest), a Delaware limited liability company based in New Jersey.¹⁴ In 2010, Everest acquired FTTH from Rudder Capital Corporation (Rudder), a Minnesota corporation.¹⁵ During the course of the acquisition process, but prior to consummation of the transfer of control of FTTH from Rudder to Everest, Everest and FTTH discovered that FTTH had provided international telecommunications services to its customers in Minnesota without having obtained Commission authority to do so, as required by Section 214(a) of the Act and Section 63.18 of the Rules.¹⁶ On January 29, 2010, FTTH filed an application with the Commission's International Bureau (IB) for authority to provide facilities-based and resale international telecommunications services.¹⁷ On the same day, FTTH and Everest jointly filed applications with the Wireline Competition Bureau and IB for Special Temporary Authority (STA) that would permit FTTH to provide international Section 214 services and for the transfer of control of international Section 214 authority from FTTH to Everest.¹⁸

5. On February 2, 2010, IB granted an STA providing FTTH with international Section 214 authority. On that same day, IB granted an STA allowing the transfer of FTTH's international Section 214 authority from Rudder to Everest.¹⁹ On March 5, 2010, IB granted FTTH's application for permanent authority to provide international Section 214 facilities-based and resale services, and the application for Rudder to transfer control of Section 214 authority held by FTTH to Everest.²⁰ IB granted FTTH international Section 214 authority "without prejudice to any enforcement action by the Commission for non-compliance" with the Act or the Rules.²¹ Thereafter, the matter was referred to the Bureau, which

¹² *Id.* § 63.18(e)(1)-(2); see Start Wireless Group, Inc. d/b/a/ Page Plus Cellular, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 350 (Enf. Bur. 2012).

¹³ See Application for Global Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, to Operate as an International Facilities-Based and Resale Carrier Between the United States and Various International Points, Int'l. Bur. Filing System (IBFS) Application No. ITC-214-20100129-00025, at 2 (filed Jan. 29, 2010) (*FTTH Section 214 Authorization Application*).

¹⁴ See Application of FTTH Communications, LLC and Everest FTTH Acquisition LLC for Transfer of Control of International Section 214 Authorization, IBFS Application No. ITC-T/C-20100201-00073, at 2 (filed Feb. 1, 2010).

¹⁵ *Id.* at 3, 6.

¹⁶ See *FTTH Section 214 Authorization Application* at 1 n.1; Letter from Jean L. Kidoo and Danielle Burt, Bingham McCutchen LLP, Counsel for Everest Acquisition, LLC and FTTH, LLC, to Marlene H. Dortch, Secretary, FCC (Jan. 29, 2010).

¹⁷ See *FTTH Section 214 Authorization Application*.

¹⁸ See *FTTH International Section 214 STA Application*, Request for Special Temporary Authority, IBFS Application No. ITC-STA-20100129-00024 (filed Jan. 29, 2010).

¹⁹ See record of action by Int'l Bur. in *FTTH STA Application* available through IBFS at <http://licensing.fcc.gov/myibfs/>.

²⁰ See *International Authorizations Granted, Section 214 Applications*, DA No. 10-412, Public Notice, 25 FCC Rcd 2337 (Int'l Bur. 2010).

²¹ *Id.*

commenced its investigation. On November 1, 2010, the Bureau issued a Letter of Inquiry to Everest regarding the matters recited above.²²

6. On September 14, 2011, the Bureau issued a Notice of Apparent Liability for Forfeiture to FTTH (*FTTH NAL*) for failing to obtain an international Section 214 authorization before providing international telecommunications service.²³ The *FTTH NAL* proposed a \$100,000 forfeiture.²⁴ FTTH submitted financial data documenting its inability to pay the proposed forfeiture.²⁵

III. TERMS OF AGREEMENT

7. **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.

8. **Jurisdiction.** FTTH agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the 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 Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

10. **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 the termination of said Investigation, FTTH 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, 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 FTTH concerning the matter that was 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 this Investigation through the Effective Date, 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 FTTH with respect to FTTH's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

²² See Letter from Hillary S. DeNigro, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Jean L. Kidoo and Danielle Burt, Bingham McCutchen LLP, Counsel for Everest Acquisition, LLC and FTTH Communications, LLC (Nov. 1, 2010).

²³ See FTTH Communications, LLC, *Notice of Apparent Liability for Forfeiture*, 26 FCC Rcd 12890 (Enf. Bur. 2011).

²⁴ *Id.* at 12894, para. 10.

²⁵ See E-mail from Jeffrey Feldman, Chief Executive Officer, FTTH Communications, LLC, to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Div., FCC Enforcement Bureau; Pamela S. Kane, Deputy Chief, Investigations and Hearings Div., FCC Enforcement Bureau; and Robert B. Krinsky, Attorney Advisor, Investigations and Hearings Div., FCC Enforcement Bureau (Feb. 22, 2012, 11:41 EDT).

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, FTTH shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that FTTH complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Section 214 Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, FTTH agrees that it shall, within sixty (60) calendar days after the Effective Date, 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. With respect to the Section 214 Rules, FTTH shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, FTTH shall establish Operating Procedures that all Covered Employees must follow to help ensure FTTH's compliance with the Section 214 Rules. FTTH shall include internal procedures and policies specifically designed to ensure that FTTH complies with the Section 214 Rules. FTTH shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Section 214 Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Section 214 Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure FTTH's compliance with the Section 214 Rules. FTTH shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. FTTH shall distribute any revisions to the Compliance Manual promptly to Covered Employees.
- (c) **Compliance Training Program.** FTTH shall establish and implement a Compliance Training Program on compliance with the Section 214 Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of FTTH's obligation to report any noncompliance with the Section 214 Rules under paragraph 13 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time after the Initial Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. FTTH shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

13. **Reporting Noncompliance.** FTTH shall report any noncompliance with the Section 214 Rules and the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that FTTH has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that FTTH has taken or will take

to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov. The reporting obligations set forth in this paragraph shall expire thirty-six (36) months after the Effective Date.

14. **Compliance Reports.** FTTH shall 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 thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of FTTH's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Section 214 Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of FTTH, stating that the Compliance Officer has personal knowledge that FTTH (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 13 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules²⁶ and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of FTTH, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that FTTH has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that FTTH has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11 through 14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date

16. **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 Act²⁷ against FTTH 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

²⁶ 47 C.F.R. § 1.16.

²⁷ 47 U.S.C. § 208.

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 FTTH with the Communications Laws.

17. **Voluntary Contribution.** FTTH agrees that it will make a voluntary contribution to the United States Treasury in the amount of fifteen thousand dollars (\$15,000.00) (Voluntary Contribution). Due to FTTH's inability to make a lump sum payment, such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of two thousand dollars (\$2,000.00) is due on June 1, 2013. The second Installment Payment in the amount of one thousand dollars (\$1,000.00) is due on July 1, 2013. Thereafter, an Installment Payment of one thousand dollars (\$1,000) is due on the first day of each consecutive succeeding month for twelve months. The final Installment Payment in the amount of one thousand dollars (\$1,000.00) is due on July 1, 2014 (Maturity Date). FTTH acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁸ Upon an Event of Default, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, FTTH agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. FTTH shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov on the date said Installment Payments are made.

18. Installment Payments 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.²⁹ 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 regarding the form of payment:

- 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help

²⁸ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. **Event of Default.** FTTH agrees that an Event of Default shall occur upon the failure by FTTH to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

20. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, 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, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by FTTH.

21. **Waivers.** FTTH 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 Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. FTTH 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 FTTH nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and FTTH shall waive any statutory right to a trial *de novo*. FTTH hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,³⁰ relating to the matters addressed in this Consent Decree.

22. **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.

23. **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 FTTH does not expressly consent) that provision will be superseded by such Commission rule or order.

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

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. 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 Communications Laws.

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

³⁰ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

27. **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.

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

29. **Counterparts.** This Consent Decree may be signed in counterpart (including by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Jeffrey Feldman
Chief Executive Officer
FTTH Communications, LLC

Date