

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-TCD-12-00005541
)	
Assist 123, LLC)	Acct. No.: 201432170013
)	
Consent Decree)	FRN: 0020884607
)	
)	

ORDER

Adopted: July 16, 2014

Released: July 16, 2014

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) and Assist 123, LLC, have entered into a Consent Decree for \$1,300,000 to settle allegations that Assist 123—together with its affiliate and sister company, Cell Assist—placed unauthorized charges on consumers’ phone bills for a “Concierge/Directory Assistance” service and otherwise deceptively marketed the service. These companies typically charged consumers a monthly subscription fee of \$9.99 on their mobile phone bills as a Premium Short Messaging Service or on their landline telephone bills by other means. The monthly subscription charge included such services as movie and theater listings, restaurant and lodging locator services, driving directions, news and financial information, and lottery results. Yet, in the Bureau’s review of over 2,600 pages of consumer complaints and inquires, many complainants alleged that the companies’ marketing messages were misleading and deceptive. Others complain that they were charged for the service without first receiving any marketing messages, or that the companies charged them at the same time the consumers received their first text message from Cell Assist. Still others complain that they were unable to cancel the messages even after sending a “stop” reply text: some of these “stop” replies were “undeliverable,” while others apparently went through but were ignored or unsuccessful at stopping the companies’ unauthorized charges.

2. The Bureau has investigated these consumer allegations and the companies’ compliance with the prohibition against the placement of unauthorized charges on consumer bills, a practice commonly known as cramming. The Bureau contends that Assist 123, directly and indirectly through its sister company Cell Assist, unlawfully (i) marketed Concierge/Directory Assistance services in a misleading and deceptive manner to consumers, and (ii) placed, or caused to be placed, charges on consumers’ telephone bills for services the consumers did not authorize. To resolve the Bureau’s investigation, Assist 123 will make a payment of \$1,300,000. It will also refrain from charging any person for any product or service that the person did not expressly authorize; use clear, non-misleading and unambiguous language in marketing communications about telecommunications services, or for products or services billed on a telephone bill; assist consumer complainants within one business day after receipt; designate a senior corporate manager as a compliance officer; and develop and implement a three-year compliance plan.

3. In this Order, we adopt the attached Consent Decree entered into between the Bureau and Assist 123. The Consent Decree resolves and terminates the Bureau's investigation into Assist's compliance with Section 201(b) of the Communications Act of 1934, as amended (Act).¹

4. The Bureau and Assist 123 have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

5. 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 above-referenced investigation.

6. Based solely on the record developed to date in this investigation and in the absence of material new evidence relating to this matter, we conclude that the Bureau's investigation raises no substantial or material questions of fact as to whether Assist 123 possesses the basic qualifications, including those related to character, to hold or obtain any Commission license, certification, or authorization.

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,² and Sections 0.111 and 0.311 of the Commission's rules,³ the attached Consent Decree **IS ADOPTED**.

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

9. **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 Assist 123, LLC, Douglas D. Orvis II, Bingham McCutchen LLP, 2020 K Street, NW, Washington, DC 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Acting Chief, Enforcement Bureau

¹ 47 U.S.C. § 201(b).

² 47 U.S.C. §§ 154(i), 154(j), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Assist 123, LLC by its authorized representative, hereby enters into this Consent Decree for the purpose of terminating the Bureau’s investigation into potential violations of Section 201(b) of the Communications Act of 1934, as amended.¹

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - a) “Act” or “Communications 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) “Affiliate” shall have the same meaning defined in Section 153(2) of the Communications Act. 47 U.S.C. § 153(2).
 - d) “Assist 123” means Assist 123, LLC, and its Affiliate Cell Assist and its predecessors-in-interest, and successors-in-interest.
 - e) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - f) “Cell Assist” means Cell Assist, LLC, and its predecessors-in-interest, and successors-in-interest.
 - g) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - h) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Assist 123 and Cell Assist are subject by virtue of their business

¹ 47 U.S.C. § 201(b).

activities.

i) “Companies” mean Assist 123 and Cell Assist collectively, including their predecessors-in-interest, and successors-in-interest.

j) “Compliance Plan” means the compliance obligations, programs and procedures described in this Consent Decree at paragraph 16.

k) “Consumer Complaint” means any complaint or inquiry Assist 123 or Cell Assist receives from a consumer, a billing aggregator, a local exchange carrier, the Better Business Bureau, or a federal or state regulatory agency alleging that Assist 123 or Cell Assist has charged a consumer without authorization for directory assistance services or other services.

l) “Covered Employees” means all employees and agents of Assist 123, and Affiliates, who perform, supervise, oversee, or manage the performance of, duties that relate to the Companies’ sales, marketing and billing responsibilities with respect to sales to consumers of telecommunications services or services that are billed to consumers on their telephone bills and include Customer Service Representatives and Sales Representatives.

m) “Effective Date” means the date on which the Bureau releases the Adopting Order.

n) “Investigation” means File No. EB-TCD-12-00005541 commenced by the Bureau’s letter of inquiry, dated June 11, 2012,² regarding Assist 123’s possible noncompliance with the Act.

o) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Assist 123 and Cell Assist to implement the Compliance Plan.

p) “Parties” mean Assist 123 and the Bureau, each of which is a “Party.”

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

II. BACKGROUND

2. Assist 123 was a telecommunications carrier that together with an Affiliate and sister company, Cell Assist, provided “Concierge/Directory Assistance” to consumers calling from landline and wireless telephones. Assist 123 and Cell Assist operate within a family of companies owned or controlled by MDF Holdings, LLC. MDF Holdings, LLC is a Nevada company with offices at 3183 E. Warm Springs Road, Las Vegas, NV 89120. Assist 123 and Cell Assist are Delaware corporations with offices at the same address as MDF Holdings, LLC. The Companies have used a variety of fictitious or trade names to provide their Concierge/Directory Assistance service, including “Direct 411,” “900

² Letter from Richard A Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Assist 123 (June 11, 2012) (on file in EB-TCD-12-00005541) (LOI).

Assist,” “Levendo Global,” “Number Info Service,” “SMS 181,” “SMS VW,” “Dial411 Now,” “QueryFast,” “SearchNow 411,” “CellZum,” and “Cell Beetle.”

3. The Companies’ Concierge/Directory Assistance was a subscription service that included a directory assistance look-up service as well as movie/theater listings, restaurant and lodging locator services, driving directions, news and financial information and lottery results. The Companies generally charged consumers \$9.99 per month for their services and invoice consumers on their telephone bills.

4. The Companies’ practices have generated a large number of complaints from consumers who contend that they never signed up for the Companies’ Concierge/Directory Assistance or authorized the monthly recurring charges. Many complainants allege that the Companies’ marketing messages were misleading or deceptive. Others state that they were charged for service without first receiving any marketing messages or that the Companies charged them at the same time they received their first text message from Cell Assist. Others complain that they assumed Cell Assist’s text messages were solicitations but were unable to cancel because either their reply text “stop” to Cell Assist was “undeliverable” or they texted “stop” but were billed nonetheless.

5. Due to the high volume of complaints and other information regarding the Companies’ practices, the Bureau initiated an investigation into the Companies’ compliance with Section 201(b) of the Communications Act. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful” The Commission has held that the inclusion of unauthorized charges and fees on consumers’ telephone bills is an “unjust and unreasonable” practice under Section 201(b).

6. During the course of the investigation, the Bureau reviewed over 2,600 pages of complaints and inquiries regarding allegedly deceptive marketing and unauthorized charges by the Companies. Bureau staff also contacted numerous consumers who sought refunds from the Companies. Based on this and other evidence developed during the course of the investigation, the Bureau alleges that Assist 123, directly and indirectly through its sister company Cell Assist, violated Section 201(b) of the Act by (i) marketing Concierge/Directory Assistance services in a misleading and deceptive manner to consumers, and (ii) placing, or causing to be placed, charges on consumers’ telephone bills for services the consumers did not authorize.

7. At the Companies’ request, the Bureau and the Companies negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

8. **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.

9. **Jurisdiction.** The Companies 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.

10. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. 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 Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

11. **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 the Investigation, the Companies agree to the terms, conditions, and procedures contained herein. The Bureau further 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 new proceeding, formal or informal, or to take any action on its own motion against the Companies 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 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 the Companies with respect to their basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

12. **Billing and Disclosures.** The Companies shall:

- a) refrain from charging any person for any product or service the person did not expressly authorize;
- b) state, in clear, non-misleading, and unambiguous language, during a phone call in which the Companies attempt to sell a telecommunications service or product or bill a product or service to a consumer's telephone bill:
 - i. that the caller has reached Assist 123, Cell Assist, or an Affiliate thereof, as applicable;
 - ii. a full description of the product or service that is being offered or sold;
 - iii. a full description of all one-time and recurring charges that will be assessed if the caller purchases the product or service, and how they will be assessed (e.g., telephone bill, credit card, etc.); and
 - iv. that the caller may hang up without incurring any charges.
- c) state, in clear, non-misleading, and unambiguous language, in any text message or other electronic written communication in which the Companies attempt to sell a telecommunications service or product or bill a product or service to a consumer's telephone bill:
 - i. that the message or communication is from Assist 123, Cell Assist, or an Affiliate thereof;
 - ii. a full description of the product or service that is being offered or sold;

- iii. a full description of all one-time and recurring charges that will be assessed if the message recipient purchases the product or service, and how they will be assessed (e.g., telephone bill, credit card, etc.); and
- iv. that the message recipient will not be charged unless and until the recipient purchases the product or service by pressing a specified key on their keypad or replying to the message.

d) include on each of their own bills for their telecommunications services or products sold to consumers, and request any third party whose bills include charges for their products and services to include on such bills, the following, in clear, non-misleading, and unambiguous language:

- i. identity of the entity responsible for the charge;
- ii. the amount charged;
- iii. the service associated with the charge; and
- iv. a toll-free number where the charged party can contact the entity responsible for the charge to dispute the charge or cancel the service.

13. **Assisting Consumer Complainants.** Within one business day of receiving a Consumer Complaint, a Covered Employee shall attempt to contact the complainant, and assist him or her in obtaining a full credit or refund for all charges (both one-time and recurring) the complainant incurred that were not authorized by the complainant.

14. **Reporting on Related Telecommunications Companies.** The Companies shall notify the Bureau within thirty (30) days of the formation of any new or additional companies that provide telecommunications services or if the Companies resume the provision of telecommunications services, owned, in whole or in part, by any of the present or past owners, shareholders, managers, officers, or directors of the Companies.

15. **Record Retention.** The Companies shall retain for the term of this Consent Decree and one year thereafter, in an accurate and easy-to-review format, all documents evidencing or relating to all Consumer Complaints, including the Companies' responses thereto. Copies of these consumer complaint records must be forwarded electronically to the Bureau within five (5) business days of any written request. Consumer complaint records shall at a minimum contain the following: all non-privileged writings, computer records, electronic or email communications, and all written notes regarding such writings, verbal discussions, and electronic mail communications, as well as any relevant recordings made during telephone conversations relating to the Consumer Complaint.

16. **Compliance Plan.** The Companies shall develop, implement, and maintain a Compliance Plan designed to ensure future compliance with the Communications Laws, including Section 201(b) of the Communications Act, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, at a minimum, the following components:

a) *Compliance Officer*. Within thirty (30) days after the Effective Date, the Companies 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 Compliance Officer shall be responsible for developing, implementing, and administering the Companies' Compliance Plan and ensuring that they comply 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 Rules prior to assuming his/her duties.

b) *Operating Procedures*. No later than sixty (60) days after the Effective Date, the Companies shall establish and maintain Operating Procedures that the Compliance Officer and all Covered Employees shall follow to help ensure each of Assist 123's and Cell Assist's compliance with the Communications Laws and this Consent Decree.

c) *Compliance Manual*. No later than sixty (60) days after the Effective Date, the Companies shall develop and maintain a Compliance Manual, and shall distribute such to each Covered Employee. The Compliance Manual shall set forth and explain the requirements of this Consent Decree and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Companies' compliance with this Consent Decree and the Communications Laws. The Compliance Manual shall also specifically prohibit each Covered Employee from engaging in any activity that violates the Communications Laws, and from making any deceptive, false, or misleading statements, including but not limited to any such statement in connection with the Companies' identity, services, rates, charges, terms, and conditions. The Companies shall periodically review and revise the Compliance Manual to ensure that the information set forth therein remains current and complete. The Companies shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

d) *Compliance Training Program*. No later than sixty (60) days after the Effective Date, the Companies shall have trained each Covered Employee in accordance with the Compliance Manual. Starting on the Effective Date, the Companies shall not allow any Covered Employee to interact with any buyer or potential buyer of the Companies' products or services until the Companies have trained their Covered Employee and provided a copy of the Compliance Manual to each such Covered Employee. As part of the Compliance Training Program, the Companies shall advise each Covered Employee of the Companies' responsibility to report any noncompliance with the Consent Decree and shall instruct each Covered Employee on how to disclose noncompliance to the Compliance Officer. The Companies shall conduct the Compliance Training Program at least annually 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. In the event the Companies have no Covered Employees or do not provide telecommunications services, the Compliance Training Program need not be repeated annually and the

Compliance Officer shall so state in the Compliance Reports.

17. **Reporting Noncompliance.** The Companies shall report any noncompliance with the Act and with the terms and conditions of this Consent Decree within fifteen (15) days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Companies have taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Companies have taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4C-224, Washington, DC 20554, with a copy submitted electronically to mika.savir@fcc.gov.

18. **Compliance Reports.** The Companies shall file Compliance Reports with the Bureau three (3), six (6), twelve (12), twenty-four (24), and thirty-six (36) months after the Effective Date. In the event that the Companies notify the Bureau under paragraph 14 that they have begun providing telecommunications services, the Companies shall also file Compliance reports at eighteen (18) and thirty (30) months after the Effective Date.

- a) Each Compliance Report shall include a detailed description of the Companies' efforts during the relevant period (beginning on the Effective Date, and continuing through to the filing date of each report) to comply with the terms and conditions of the Consent Decree and the Communications Laws.
- b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Companies, stating that the Compliance Officer has personal knowledge that the Companies (i) have established, implemented, and is maintaining 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 17 of this Consent Decree.
- c) The Compliance Officer'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 Rules,³ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Companies, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps the Companies have taken or will take to remedy such noncompliance, including the schedule on which the proposed remedial actions will be taken; and (iii) the steps that the Companies have taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- e) All Compliance Reports shall be submitted to the Chief,

³ 47 C.F.R. § 1.16.

Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4C-224, Washington, DC 20554, with copies submitted electronically to mika.savir@fcc.gov.

19. **Termination Date.** Except where otherwise specified, the obligations set forth in paragraphs 13 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against the Companies or their 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 the Companies with the Act or the Rules.

21. **Payment Amount; Installment Payments.** The Companies jointly and severally agree to pay to the United States Treasury one million three hundred thousand dollars (\$1,300,000) in accordance with the following terms. The Companies shall pay two hundred fifty thousand dollars (\$250,000) within thirty (30) days of the Effective Date (Initial Payment). Thereafter, on the first day of each month beginning with the second month after the Effective Date and continuing for twenty-four (24) months, the Companies shall pay forty-three thousand seven hundred fifty dollars (\$43,750) per month to the United States Treasury (each an Installment Payment and collectively with the Initial Payment, the Installment Payments). The Companies acknowledge and agree that upon execution of this Consent Decree, the Installment Payments shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).⁴ Upon an Event of Default by Nonpayment (as described below in paragraph 22), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. In addition, the Companies agree that they will make the Initial Payment and each subsequent Installment Payment in United States dollars without further demand or notice by the dates specified above. The Companies shall also send electronic notification of payment on the date the Initial Payment and each subsequent Installment Payment is made to Johnny.Drake@fcc.gov. The payments must be made in accordance with the above schedule by check or similar instrument, wire transfer, or credit card, and must include the NAL Account Number and FRN referenced in the caption of the Adopting Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁵ 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 the Companies must follow based on the form of payment selected.

- 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,

⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B.

⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

22. **Event of Default; Interest, Charges for Collection and Acceleration of Maturity Date.** The Companies agree that an Event of Default by nonpayment shall occur upon the failure to pay individually or collectively the full amount of the payment (\$1,300,000) to the U.S. Treasury on or before the due date specified in paragraph 21. Upon an Event of Default, without further notice, demand, or presentment, all procedures for collection permitted by the Debt Collection Improvement Act of 1996⁶ and other provisions of law⁷ may, at the Commission's discretion, be initiated and (1) the then entire unpaid amount of the payment amount (\$1,300,000), which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; and (2) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (3) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees, are 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 the Companies.

23. **Waivers.** The Companies 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 either 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 the Companies nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Companies shall waive any statutory right to a trial de novo. The Companies hereby agree 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.

24. **Invalidity.** 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

⁶ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B.

⁷ See 31 C.F.R. Part 900, *et seq.*

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.

25. **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 the Companies do not expressly consent), such provision will be superseded by such Rule or Commission order.

26. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

27. **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.

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

29. **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.

30. **Authorized Representative.** The individual signing this Consent Decree on behalf of Assist 123 and Cell Assist represents and warrants that he is authorized by Assist 123 and Cell Assist to execute this Consent Decree and to bind Assist 123 and Cell Assist to the obligations, including all payment obligations, set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

31. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile or electronically), 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.

Travis LeBlanc
Acting Chief
Enforcement Bureau

Date

MDF Holdings, LLC

For: Assist 123, LLC
Cell Assist 123, LLC

Date