

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Lunex Telecom, Inc.

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File No.: EB-IHD-20-00030636
CD Acct. No.: 202132080025
FRN: 0012190294

ORDER

Adopted: April 16, 2021

Released: April 16, 2021

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Lunex Telecom, Inc. (Lunex) violated the Commission’s Filing Rules. These laws ensure that every required contributor to the Universal Service Fund “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”¹ To settle this matter, Lunex admits that it failed to timely file Worksheets and CPNI Certifications, will implement a compliance plan, and will pay a \$216,000 civil penalty.

2. 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 referenced investigation regarding Lunex’s compliance Sections 159(a), 222, 251(e)(2) and 254(d) of the Communications Act of 1934, as amended (Act),² and Sections 1.1154, 1.1157, 1.7001, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, and 64.2009(e) of the Commission’s rules.³

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Lunex’s basic qualifications to hold or obtain any Commission license or authorization.⁴

4. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Act⁵ and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules,⁶ the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

5. IT IS FURTHER ORDERED that the above-captioned matter IS TERMINATED in accordance with the terms of the attached Consent Decree.

¹ 47 U.S.C. § 254(d).

² 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d).

³ 47 CFR §§ 1.1154, 1.7001, 1.1157, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, 64.2009(e).

⁴ See 47 CFR § 1.93(b).

⁵ 47 U.S.C. § 154(i).

⁶ 47 CFR §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by e-mail to Edward Maldonado, Esq., counsel for Lunex Telecom, Inc., at eam@maldonado-group.com, and to Darren Dat Lu, Chief Executive Officer, Lunex Telecom, Inc., at DarrenLu@Lunextelecom.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Lunex Telecom, Inc. File No.: EB-IHD-20-00030636 CD Acct. No.: 202132080025 FRN: 0012190294

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Lunex Telecom, Inc. (Lunex), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Lunex violated Sections 159(a), 222, 251(e)(2) and 254(d) of the Communications Act of 1934, as amended (Act),1 and Sections 1.1154, 1.1157, 1.7001, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, and 64.2009(e) of the Commission’s rules.2 To resolve this matter, Lunex admits that it violated the provisions of the Act and the Rules described herein, agrees to implement a compliance plan, and will pay a \$216,000 civil penalty.

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.3 (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) “CD Acct No.” means account number 202132080025, associated with payment obligations described in paragraph 20 of this Consent Decree. (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 Lunex is subject by virtue of its business activities, including but not limited to the Filing Rules. (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 15. (h) “Covered Employees” means all employees and agents of Lunex who perform, supervise, oversee, or manage the performance of, duties that relate to Lunex’s responsibilities under the Communications Laws, including the Filing Rules.

1 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d). 2 47 CFR §§ 1.1154, 1.7001, 1.1157, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, 64.2009(e). 3 47 U.S.C. § 151 et seq.

- (i) “Effective Date” means the date by which both the Bureau and Lunex have signed the Consent Decree and the Bureau has released an Adopting Order.
- (j) “Filing Rules” means Sections 222, 251(e)(2) and 254(d) of the Act;⁴ Sections 1.7001-02, 52.17, 52.32, 54.711, 64.604, and 64.2009(e) of the Rules;⁵ and other provisions of the Act, the Rules, and Commission orders related to the filing of Worksheets, CPNI Certifications, Advanced Telecommunications Capability Data, and responses to Letters of Inquiry issued by the Bureau.
- (k) “Investigation” means the investigation commenced by the Bureau in EB-IHD-20-00030636 regarding whether Lunex violated the Filing Rules.
- (l) “LOI” means the Letter of Inquiry issued on February 19, 2020, by the Bureau to Lunex in EB-IHD-20-00030636 in connection with the Company’s compliance with Sections 159(a), 222, 251(e)(2) and 254(d) of the Act,⁶ and Sections 1.1154, 1.1157, 1.7001, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, and 64.2009(e) of the Rules.⁷
- (m) “Lunex” or “Company” means Lunex Telecom, Inc. and its parent, affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (n) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Lunex to implement the Compliance Plan.
- (o) “Parties” means Lunex and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Service Providers” means telecommunications service providers and telecommunications providers subject to the Filing Rules.
- (r) “Worksheets” means Telecommunications Reporting Worksheets, including FCC Form 499-A, which Service Providers must file by April 1 of each year (“Annual Worksheet”), and FCC Form 499-Q, which Service Providers must file by February 1, May 1, August 1, and November 1 of each year (“Quarterly Worksheet”).

II. BACKGROUND

A. Worksheet Filing Requirements

3. Section 254(d) of the Act requires, among other things, that “[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁸ In implementing this Congressional mandate, the Commission directed interstate telecommunications services providers, and certain providers of interstate telecommunications (collectively, “Service Providers”), including Voice over Internet Protocol (VoIP) providers such as Lunex,⁹ to contribute to the Universal Service Fund (USF) based upon their

⁴ 47 U.S.C. §§ 222, 251(e)(2), 254(d).

⁵ 47 CFR §§ 52.17, 52.32, 54.711, 64.604, 64.2009(e).

⁶ 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d).

⁷ 47 CFR §§ 1.1154, 1.1157, 1.7001, 52.17, 52.32, 54.706, 54.707, 54.711, 54.712, 64.604, 64.1195, 64.2009(e).

⁸ 47 U.S.C. § 254(d).

⁹ See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”); *Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require interconnected VoIP providers to contribute to the USF),

(continued....)

interstate and international end-user telecommunications revenues.¹⁰ When Service Providers fail to pay their share of obligations to the USF, they undermine the Congressional mandates embodied in Section 254(d) of the Act.¹¹ Delinquent contributors also obtain an unfair competitive advantage over companies that comply with the universal service provisions of the Act and the Rules.¹²

4. Each Service Provider required to contribute to the USF is required to file Annual Worksheets,¹³ and with certain exceptions, Quarterly Worksheets.¹⁴ The Universal Service Administrative Company (USAC) uses the revenue projections submitted in Quarterly Worksheets to determine each Service Provider's monthly universal service contribution obligation.¹⁵ A Service Provider must timely file Quarterly Worksheets by February 1, May 1, August 1 and November 1 of each year, and Annual Worksheets by April 1 of each year.¹⁶ The Rules explicitly warn Service Providers that failure to timely file Worksheets or submit timely USF payments potentially subjects them to enforcement action.¹⁷ USAC; the administrators of Telecommunications Relay Service, Local Number Portability, and the North American Numbering Plan; and the Commission rely on the Worksheets that Service Providers file to determine liability for, and subsequent billing and collection of, payments for important federal regulatory mechanisms implemented under the Act.¹⁸ A Service Provider that neglects to timely submit accurate and the most current revenue information in its Worksheets can consequently evade its federal obligations to fully contribute toward the vital programs linked to the reporting obligations.¹⁹ As a consequence of this failure, other Service Providers might shoulder an unfair burden of the USF and other federal regulatory programs implemented under the Act.²⁰

petition for review denied, and vacated in part on other grounds, Vonage Holding Corp. v. FCC, 489 F.3d 1232 (D.C. Cir. 2007).

¹⁰ 47 CFR § 54.706(b).

¹¹ *See Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1629 (2016).

¹² *See id.*

¹³ *See* 47 CFR § 54.711; *Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 1350, 1373 (WCB 2020) (*2020 Form 499 Public Notice*); *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹⁴ *See* 47 CFR § 54.711; *2020 Form 499 Public Notice*, 35 FCC Rcd at 1373; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹⁵ Individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up based on the Annual Worksheets. *See* 47 CFR § 54.711; *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

¹⁶ *E.g.*, *2020 Form 499 Public Notice*, 35 FCC Rcd at 1373.

¹⁷ 47 CFR § 54.713.

¹⁸ The effective administration of Telecommunications Relay Service, *see* 47 CFR § 64.604; Local Number Portability, *see* 47 CFR § 52.32; the North American Numbering Plan, *see* 47 CFR § 52.17; and federal regulatory fees, *see* 47 CFR §§ 1.1154, 1.1157, requires the timely filing of accurate Worksheets by Service Providers.

¹⁹ *See, e.g., Unipoint Tech., Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12753, para. 5 (2012), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 1633 (2014) (*Unipoint Forfeiture Order*); *ADMA Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 838, 846-47, para. 17 (2009), *forfeiture issued*, Forfeiture Order, 26 FCC Rcd 4152 (2011) (*ADMA Forfeiture Order*); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008) (proposed forfeiture reduced from \$529,000 to \$436,765 to account for updated revenue information provided to USAC by the Service Provider).

²⁰ *See id.*

B. CPNI Certification Filing Requirements

5. The protection of CPNI is of paramount importance, and the Rules direct Service Providers to ensure that CPNI is adequately protected from unauthorized access, use, or disclosure.²¹ Service Providers must file an annual CPNI Certification, documenting compliance with the Commission's CPNI rules, by March 1 of each year.²² The failure of a Service Provider to file a timely and complete CPNI Certification calls into question whether the Service Provider has complied with Rules implemented to protect the privacy and security of CPNI.²³ The Bureau has provided notice that failure to timely submit CPNI Certifications may lead to enforcement action.²⁴

C. Lunex Filing Violations and Remedial Actions

6. The Company, a Service Provider subject to the Filing Rules, did not timely file a total of 41 required Worksheets by the Commission's filing deadlines between April 2011 and November 2020. Prior to the Investigation, Lunex, had not timely filed an Annual Worksheet since 2010 and had not timely filed a Quarterly Worksheet since February 2011.²⁵

7. In addition, Lunex failed to timely file CPNI Certifications that were due by March 1 of each year from 2012 to 2020. The Company filed CPNI Certifications for 2012-2013 and 2015-2019 on November 6, 2020, and CPNI Certifications for 2011 and 2014 on January 8, 2021.²⁶

8. After USAC referred Lunex to the Bureau for investigation into the Company's repeated failures to comply with the Worksheet filing requirements of Section 54.711 of the Rules, on February 19, 2020, the Bureau issued the LOI to Lunex. Lunex filed its response to the LOI between June 4 and July 17, 2020, and supplemented its responses through January 2021. On August 6, 2020, the Company informed the Bureau that it engaged counsel to represent Lunex in this matter,²⁷ and requested settlement negotiations with the Bureau.²⁸ This settlement is a result of those negotiations, and Lunex and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

9. **Adopting Order**. The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

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

²¹ See, e.g., 47 CFR §§ 64.2001-11; *FCC Enforcement Advisory: Telecommunications Carriers and Interconnected VoIP Providers Must File Annual Reports Certifying Compliance with Commission Rules Protecting Customer Proprietary Network Information*, Public Notice, 35 FCC Rcd 1201, 1201 (EB 2020) (*2020 CPNI Enforcement Advisory*).

²² See 47 CFR § 64.2009(e).

²³ *2020 CPNI Enforcement Advisory*, 35 FCC Rcd at 1201.

²⁴ See, e.g., *id.* at 1201-02.

²⁵ Specifically, between April 1, 2011 and November, 2020, Lunex failed to timely file (a) three Quarterly Worksheets due on May 1, August 1 and November 1, 2011; and (b) four Quarterly Worksheets due on February 1, May 1, August 1 and November 1, each year from 2012 through 2020; and (c) ten Annual Worksheet due on April 1, each year from 2011 through 2020.

²⁶ On November 19, 2010, the Bureau released an Order and Consent Decree regarding Lunex's apparent failure to timely file a compliance CPNI certification pursuant to section 64.2009(e) of the Rules for failure to files its CPNI compliance certificate for 2007. See *Lunex Telecom, Inc.*, Order and Consent Decree, 25 FCC Rcd 11570 (EB 2010)

²⁷ See Notice of Counsel Representing Licensee in This Matter (filed Aug. 6, 2020) (on file in EB-IHD-20-00030636).

²⁸ See Request for Consent Decree Negotiations (filed Aug. 6, 2020) (on file in EB-IHD-20-00030636).

11. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

12. **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, Lunex agrees 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 the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Lunex concerning the matters that were the subject of the Investigation, or to set for hearing the question of Lunex's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.²⁹

13. **Admission of Liability.** Lunex admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 12 herein, that its actions violated Sections 222, 251(e)(2) and 254(d) of the Act,³⁰ and Sections 52.17, 52.32, 54.711, 64.604, and 64.2009(e) of the Rules,³¹ by failing to timely file Worksheets and CPNI Certifications, as described in paragraphs 6-8.

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Lunex 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 Lunex 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 or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Filing Rules prior to assuming his/her duties.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, Lunex 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 Filing Rules, Lunex will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Lunex shall establish Operating Procedures that all Covered Employees must follow to help ensure Lunex's compliance with the Filing Rules. Lunex's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Filing Rules. Lunex shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Filing 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 Filing Rules and set forth the Operating Procedures that Covered Employees shall follow to help Lunex's compliance with the Filing Rules. Lunex shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Lunex shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

²⁹ See 47 CFR § 1.93(b).

³⁰ 47 U.S.C. §§ 222, 251(e)(2), 254(d).

³¹ 47 CFR §§ 52.17, 52.32, 54.711, 64.604, 64.2009(e).

- (c) **Compliance Training Program.** Lunex shall establish and implement a Compliance Training Program on compliance with Filing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Lunex's obligation to report any noncompliance with the Filing Rules under paragraph 16 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 sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Lunex shall repeat 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.

16. **Reporting Noncompliance.** Lunex shall report any noncompliance with the Filing Rules and with 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 Lunex 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 Lunex has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with a copy submitted electronically to Pam.Slipakoff@fcc.gov.

17. **Compliance Reports.** Lunex 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, thirty-six (36), forty-eight (48) months, and sixty (60) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Lunex's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Filing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Lunex, stating that the Compliance Officer has personal knowledge that Lunex: (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 16 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 Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³²
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Lunex, 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 Lunex 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 Lunex has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

³² 47 CFR § 1.16.

- (d) All Compliance Reports shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with a copy submitted electronically to Pam.Slipakoff@fcc.gov.

18. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 14 through 17 of this Consent Decree shall expire sixty (60) months after the Effective Date.

19. **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 Act³³ against Lunex or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Lunex with the Communications Laws.

20. **Civil Penalty.** Lunex will pay a civil penalty to the United States Treasury in the amount of two hundred sixteen thousand dollars (\$216,000). Such payment shall be made in 60 installments (each an Installment Payment). The first Installment Payment in the amount of three thousand six hundred dollars (\$3,600) is due within thirty (30) calendar days of the Effective Date. Thereafter, subsequent Installment Payments of three thousand six hundred dollars (\$3,600) will be due monthly on or before the 15th of each month starting on June 15, 2021. Lunex acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).³⁴ Upon an Event of Default, as defined in paragraph 21, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Lunex shall send electronic notification of payment to Jeffrey.Gee@fcc.gov and Pam.Slipakoff@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),³⁵ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN.

³³ 47 U.S.C. § 208.

³⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁵ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

³⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

22. **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 Civil Penalty or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, 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 Lunex.

23. **Waivers.** As of the Effective Date, Lunex 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. Lunex 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 Consent Decree or the Adopting Order, neither Lunex nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Lunex shall waive any statutory right to a trial *de novo*. Lunex hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁸ relating to the matters addressed in this Consent Decree.

24. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

25. **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.

26. **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 Lunex does not expressly consent) that provision will be superseded by such Rule or order.

27. **Successors and Assigns.** Lunex agrees that the provisions of this Consent Decree shall

³⁸ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

be binding on its successors, assigns, and transferees.

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

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

30. **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.

31. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

32. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or 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.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Darren Dat Lu
Chief Executive Officer
Lunex Telecom, Inc.

Date