

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	File No. ENF-98-07
Operator Communications, Inc.	)	
	)	NAL/Acct. No. 816EF0005
Apparent Liability for Forfeiture	)	

**ORDER**

**Adopted:** June 1, 2000

**Released:** June 6, 2000

By the Commission:

1. In this Order, we adopt a Consent Decree terminating this forfeiture proceeding. Operator Communications, Inc., (OCI) commits to pay all outstanding amounts it owes to the Universal Service Administrative Company (USAC), and to make a voluntary contribution to the United States Treasury of forty-one thousand seven hundred two dollars and fifty cents (\$41,702.50).

2. In a Notice of Apparent Liability for forfeiture issued to OCI, the Commission found OCI apparently liable for a forfeiture in the amount of eighty-three thousand four hundred and five dollars (\$83,405). *See in re Operator Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 16082 (1998) (“NAL”). The NAL found that OCI apparently had violated Section 254 of the Communications Act of 1934, as amended, and the Commission’s rules and orders by failing to pay its universal service contribution for January 1998.

3. The Commission and OCI have negotiated the terms of a proposed Consent Decree that would resolve this enforcement proceeding. A copy of the proposed Consent Decree is attached hereto.

4. We have reviewed the Consent Decree and evaluated the circumstances of this enforcement proceeding. We believe that the public interest would be served by approving the attached Consent Decree and terminating this proceeding.

5. OCI may make its voluntary contribution to the United States Treasury by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by check, or similar instrument, payable to the order of the Federal Communications Commission and mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the above

NAL/Account Number.

6. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), that the Consent Decree, incorporated by reference herein and attached to this Order, IS HEREBY ADOPTED.

7. IT IS FURTHER ORDERED, that the Secretary SHALL SIGN the Consent Decree on behalf of the Commission.

8. IT IS FURTHER ORDERED, that this Order is effective upon execution of the Consent Decree by all parties to the Agreement.

9. IT IS FURTHER ORDERED, that the above-captioned enforcement proceeding IS TERMINATED.

**FEDERAL COMMUNICATIONS COMMISSION**

Magalie Roman Salas  
Secretary

## CONSENT DECREE

### I. Introduction

1. This Consent Decree is entered into by the Federal Communications Commission (“Commission”) and Operator Communications, Inc. (“OCI”).

### II. Background

2. On August 14, 1998, the Commission issued a Notice of Apparent Liability finding OCI apparently liable for forfeiture in the amount of \$83,405.00. *See in re Operator Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 16082 (1998) (“NAL”). Specifically, the NAL concluded that OCI apparently had violated Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254, and Commission rules and orders issued pursuant thereto, by failing to pay its universal service obligation for the month of January 1998.

3. On September 14, 1998, OCI submitted its response to the NAL, in which it denied that it willfully or repeatedly had violated Section 254 of the Communications Act or the Commission’s rules or orders relating to that section. OCI’s response stated that its failure to remit its universal service payment in a timely manner was the result of a misunderstanding between OCI, the Universal Service Administrative Company (“USAC”), which administers the Universal Service Fund, and the Commission regarding the appropriate calculation of its universal service payment. OCI’s response further requested that the proposed forfeiture either not be imposed or that the forfeiture amount be reduced.

4. From the inception date of the universal service program, January 1, 1998, through the date of the NAL, OCI submitted no universal service payments to USAC. After the Commission issued the NAL, but before filing its response, OCI submitted to USAC a payment of \$441,920, in partial fulfillment of its obligations to the Universal Service Fund that had accrued since January 1998. After filing its response to the NAL, OCI continued to make monthly payments to the Universal Service Fund, although always in amounts less than those required by USAC in the monthly invoices that it transmitted to the carrier. During this time, OCI recalculated its monthly obligations based on its current-year revenues, rather than its higher, prior-year revenues. OCI has indicated that these payments were consistent with OCI’s view that assessment of universal service contributions based on prior year revenues unduly penalized carriers serving declining market segments whose revenues were decreasing from year to year. On July 14, 1998, one month prior to issuance of the NAL, OCI petitioned the Commission for waiver of the universal service funding rules to allow it to have its contributions based on current year revenues. On October 13, 1999, the Commission issued an order in which it denied OCI’s waiver request. *In re Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Seventeenth Order on Reconsideration, FCC 99-280, 1999 WL 816258 (rel. Oct. 13, 1999), *recon. pending*. By December 1999, because of its routine underpayments and the resultant late fees that USAC assessed, OCI had accumulated a delinquency to the Universal Service Fund of nearly \$1,000,000. During the months of January through April 2000, OCI paid

in full the monthly universal service contribution assessed by USAC plus approximately \$40,000 per month, in order to start reducing its delinquency.

5. As set forth below, OCI and the Commission have negotiated a settlement of the issues raised by the NAL, which requires the payment in full, by December 31, 2001, of OCI's accumulated delinquency to the Universal Service Fund, as well as the periodic late payment fees that USAC may continue to assess until the carrier brings itself current in its obligations.

### **III. Definitions**

6. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Commission" means the Federal Communications Commission.
  - (b) "OCI" means Operator Communications, Inc. d/b/a Oncor Communications, Inc.
  - (c) "USAC" means the Universal Service Administrative Company, the administrator of the *Universal Service Fund*.
  - (d) "*Universal Service Fund*" means the universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers.
  - (e) "Order" means a Commission order adopting this Consent Decree.
  - (f) "Final Order" means an Order that is no longer subject to administrative or judicial review, appeal or stay.
  - (g) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (h) "Notice of Apparent Liability" or "NAL" means the Commission order styled, *In re Operator Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 16082 (1998).
  - (i) "Bankruptcy" means a voluntary or involuntary liquidation or reorganization case by or against OCI under bankruptcy, receivership or other insolvency law.

### **IV. Agreement**

7. Without admitting any violation of the Act or the Commission's rules or orders, OCI agrees to the following undertakings and to make the payments set forth below in order to secure the termination of this proceeding. In return, the Commission agrees to terminate this proceeding, on the terms set forth below, making no determination that OCI has violated the Act or the Commission's rules or orders.

8. OCI and the Commission agree that neither the Order nor this Consent Decree constitutes an adjudication of the merits, or any finding on the facts or law regarding any violations committed by OCI within the scope of the NAL.

9. OCI shall make a voluntary contribution to the U.S. Treasury in the amount of forty-one thousand seven hundred two dollars and fifty cents (\$41,702.50) within 10 days after the Order becomes a Final Order.

10. Additionally, OCI covenants to pay in full, by no later than December 31, 2001, its entire delinquency to the Universal Service Fund, as calculated by USAC (including any standard late-payment penalties calculated at seven percent (7%) per annum that USAC periodically may assess before the delinquency is paid), so that OCI shall have no delinquency whatsoever to the Universal Service Fund as of that date. In order to pay in full its delinquency by December 31, 2001, OCI agrees to remit to USAC payments in the amount of forty-two thousand one hundred seventy-six dollars and fifty cents (\$42,176.50) by no later than the 15<sup>th</sup> of each month between the date of this Consent Decree and the point at which the current delinquency is paid in full. OCI agrees that all such payments shall be paid by the 15<sup>th</sup> of each month. However, there shall be a five business day grace period before any collection or other enforcement action shall be taken. These monthly payments shall be in addition to full payment of the ongoing, monthly, universal service contributions, as invoiced by USAC, which OCI agrees to continue to make in a timely manner.

11. OCI agrees that either of the following events shall constitute a separate violation of a Commission order and shall subject OCI to additional enforcement action by the Commission or the United States as provided in the Act, the Commission's rules, and other applicable statutes: (1) any failure by OCI, for whatever reason, to submit to USAC, by the 15<sup>th</sup> of any month (subject to the 5-day grace period), a payment in the amount required by paragraph 10 above; or (2) the failure by OCI to bring itself current in its obligations to the Universal Service Fund by December 31, 2001.

12. OCI further agrees that, in the event of its Bankruptcy, OCI will not contest or oppose any motion filed by the Commission, USAC or the United States seeking relief from, or modification of, the automatic stay imposed by 11 U.S.C. § 362(a). OCI further agrees that, in the event of its Bankruptcy, it will not seek relief under 11 U.S.C. § 105 to enjoin or restrain the Commission, USAC or the United States from recovering, through offset, amounts owed by OCI arising out of this Consent Decree or OCI's underlying obligations to USAC and/or the Universal Service Fund. OCI recognizes that this express waiver is in consideration for the final settlement of the NAL.

13. In express reliance upon the covenants and representations contained herein, the Commission agrees to terminate the instant enforcement proceeding at such time as the Order becomes a Final Order.

14. In consideration for the termination by the Commission of these proceedings in accordance with the terms of this Consent Decree, OCI agrees to the terms, conditions, and procedures contained herein.

15. Nothing in this Consent Decree shall preclude OCI from petitioning the Commission for relief as to future obligations under Section 254 of the Act and the Commission's rules.

16. OCI admits the jurisdiction of the Commission to adopt this Consent Decree.

17. OCI waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.

18. OCI and the Commission agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order adopting the Consent Decree without change, addition, or modification.

19. OCI and the Commission agree that, in the event this Consent Decree 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.

20. OCI and the Commission agree that if OCI, the Commission or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither OCI nor the Commission shall contest the validity of the Consent Decree or Order.

21. OCI agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*

22. This Consent Decree may be signed in counterparts.

**FEDERAL COMMUNICATIONS COMMISSION**

By: \_\_\_\_\_  
Magalie R. Salas  
Secretary

Date \_\_\_\_\_

**OPERATOR COMMUNICATIONS, INC.**

By: \_\_\_\_\_

Date \_\_\_\_\_