

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

In the Matter of)
Talk America Inc.) File No. EB-05-TC-004
Compliance with the Commission's)
Rules and Regulations Governing Truth-in-Billing) NAL/Acct. No. 200732170004
) FRN: 0004319430
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)
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ORDER

Adopted: December 26, 2006

Released: December 29, 2006

By the Commission:

1. In this Order, we adopt the attached Consent Decree entered into between the Federal Communications Commission (the "FCC" or "Commission") and Talk America Inc. ("Talk America"). The Consent Decree terminates a Truth-in-Billing investigation initiated by the Enforcement Bureau of the FCC regarding Talk America's compliance with section 201(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 201(b), section 64.2401(b) of the Commission's rules, 47 C.F.R. § 64.2401(b), and the Commission's orders.¹

2. The Commission and Talk America have negotiated the terms of a Consent Decree that would resolve these matters and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. We also conclude that, in the absence of material new information not previously disclosed to the Commission, the matters raised in the investigation do not raise any substantial and material questions of fact regarding Talk America's

¹ See Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, ¶ 22 (1993) (stating that "In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on end user's lines"); Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9211, ¶ 855 (1997) (stating that "the universal service contribution is not a federally mandated direct end-user surcharge"); Federal-State Joint Board on Universal Service, Second Recommended Decision, 13 FCC Rcd 24744, 24771, ¶ 70 (1998) (stating that "We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate section 201(b) of the Act").

qualifications to be a Commission licensee.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,² that the attached Consent Decree **IS ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²47 U.S.C. § 154(i).

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CONSENT DECREE

I. INTRODUCTION

1. The Federal Communications Commission (the "FCC" or "Commission") and Talk America Inc. ("Talk America" or "Company"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's Truth-in-Billing investigation regarding Talk America's compliance with section 201(b) of the Communications Act of 1934, as amended (the "Act"), section 64.2401(b) of the Commission's rules, and the Commission's orders.

II. BACKGROUND

2. On February 22, 2005, the Enforcement Bureau of the FCC ("Bureau") sent a Letter of Inquiry ("February 22 LOI") to Talk America concerning allegations that Talk America may have failed clearly and plainly to describe certain charges appearing on customers' bills in violation of section 201(b) of the Act, 47 U.S.C. § 201(b), and the Commission's Truth-in-

147 U.S.C. § 201(b); 47 C.F.R. § 64.2401(b); Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802, 1806, ¶ 22 (1993) (stating that "In order to provide universal telephone service to TRS users as mandated by the ADA, carriers are required to recover interstate TRS costs as part of the cost of interstate telephone services and not as a specifically identified charge on end user's lines"); Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, 9211 ¶ 855 (1997) (stating that "the universal service contribution is not a federally mandated direct end-user surcharge"); Federal-State Joint Board on Universal Service, Second Recommended Decision, 13 FCC Rcd 24744, 24771 ¶ 70 (1998) (stating that "We believe that inaccurately identifying or describing charges on bills that recover universal service contributions may violate section 201(b) of the Act").

2 Section 201(b) declares unlawful any unjust and unreasonable practices in connection with the provision of communication service. See 47 USC 201(b).

Billing rules, 47 CFR § 64.2401(b).³ The Bureau sent a follow-up LOI to Talk America on July 26, 2005 (“July 26 LOI”).

3. Talk America provided its written responses to the February 22 LOI on March 14 and March 28, 2005.⁴ Talk America provided its written responses to the July 26 LOI on August 19 and August 31, 2005.⁵ The parties met to discuss settlement on September 27, 2005, and Talk America subsequently submitted its settlement proposal. Talk America has been forthcoming with its responses, and cooperative with the Bureau’s investigation.

III. DEFINITIONS

4. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended.
 - b. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - c. “Commission” or “FCC” means the Federal Communications Commission.
 - d. “Effective Date” means the date on which the Commission releases the Adopting Order.
 - e. “Investigation” means the investigation commenced by the Bureau’s Letter of Inquiry, dated February 22, 2005, to Talk America regarding its possible noncompliance with section 201(b) of the Act, 47 U.S.C. § 201(b), and section 64.2401(b) of the Commission’s rules, 47 C.F.R. § 64.2401(b).
 - f. “Order” or “Adopting Order” means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
 - g. “Parties” means Talk America and the Commission.

³ Section 64.2401(b) states, “Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.” 47 C.F.R. § 64.2401(b).

⁴ See Letter from Aloysius T. Lawn, IV, EVP-General Counsel, Talk America Inc., dated March 14, 2005, to Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau; Letter from Aloysius T. Lawn, IV, EVP-General Counsel, Talk America, Inc., dated March 28, 2005 to Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau.

⁵ See Letter from Aloysius T. Lawn, IV, EVP-General Counsel, Talk America Inc., dated August 19, 2005, to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau; Letter from Aloysius T. Lawn, IV, EVP-General Counsel, Talk America, Inc., dated August 31, 2005 to Colleen K. Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau.

- h. "Talk America" means Talk America Inc. and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses and their successors and assigns.

IV. AGREEMENT

5. Talk America agrees that the Commission has jurisdiction over it and the subject matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Commission agrees to terminate the investigation. In consideration for the termination of this matter and in accordance with the terms of this Consent Decree, Talk America agrees to the terms, conditions, and procedures contained herein.

7. The Parties 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 by Talk America with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, Talk America does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

8. In consideration for the termination of the investigation in accordance with the terms of this Consent Decree, Talk America agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of four hundred and seventy thousand dollars (\$470,000) within thirty (30) days after the Effective Date. This voluntary payment does not constitute a fine or penalty for, or admission of, the violation of any law. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Please include your NAL/Acct. No. with your wire transfer remittance.

9. To resolve and terminate the investigation, and to ensure compliance with the Commission's Truth-in-Billing rules, Talk America agrees to implement the following Compliance Plan:

- a. "Taxes" Section of Consumers' Bills

In order to comply with the Commission's requirements that the charges described on its bills are not misleading, Talk America agrees that only government-mandated taxes shall appear under any section of consumers' bills labeled "Taxes," and accordingly, will make the following modifications:

- i. Talk America will remove the charge labeled “Fed USF Combined High Cost and School Fund (Fed),” or any similarly labeled charge, from any section containing the label, or partial label, “Taxes,” on consumers’ residential bills.
- ii. Talk America will remove the charge labeled “Interstate Network Charge (Fed),” or any similarly labeled charge, from any section containing the label, or partial label, “Taxes,” on consumers’ residential bills.

b. “Fees and Charges” Section of Consumers’ Bills

In order to comply with the Commission’s requirements that the charges described on its bills are not misleading, Talk America agrees to clearly label non-tax charges that appear under the “Fees and Charges” section of consumers’ bills, and accordingly, will make the following modifications:

- i. Talk America will change the sections of consumers’ residential bills containing the label, or partial label, “Surcharges,” to “Fees and Charges” and include non-tax items in this section, including the “USF Combined High Cost and School Fund (Fed)” and the “Interstate Network Charge.”
- ii. Talk America will change the name of the “TSR Administrative Fee” to the “Wholesale Carrier Charge” to avoid consumer confusion.

c. Glossary of Taxes and Fees Section of Consumers’ Bills

Talk America will provide a brief, clear, non-misleading, plain language description of the charges contained on its bills. To the extent these descriptions are contained in the glossary section on the reverse sides of consumers’ residential bills, Talk America will make the following modifications:

- i. Talk America will add a description of the “Interstate Network Charge.”
- ii. Talk America will update the description of its “Universal Service Fund (USF) Charge,” so that it is apparent to the reasonable consumer that the fee is not government mandated.
- iii. Talk America will update the description of its “Wholesale Carrier Charge” (formerly the “TSR Administrative Fee”) to accurately reflect the costs being recovered.

d. Website Descriptions of Taxes and Fees and Charges

Talk America will provide a brief, clear, non-misleading, plain language description of the charges contained on its bills. To the extent these descriptions are contained on its website, Talk America will make the following modifications:

- i. Talk America will divide its description of charges into separate sections for “Taxes” and “Fees and Charges.”
 - ii. Talk America will add a description of the “Interstate Network Charge.”
 - iii. Talk America will update the description of its “Universal Service Fund (USF) Charge,” so that it is apparent to the reasonable consumer that the fee is not government mandated.
 - iv. Talk America will update the description of its “Wholesale Carrier Charge” (formerly the “TSR Administrative Fee”) to accurately reflect the costs being recovered.
- e. Compliance Monitoring and Review
- i. Talk America will submit sample copies of its residential invoices and website disclosures to the Commission on a quarterly basis for one year from the Effective Date of this Consent Decree.
 - ii. Talk America will heighten its internal reviews to ensure that placement and definitions of new line items on consumers’ bills for telecommunications services are reviewed by regulatory or legal staff for compliance with section 201(b) of the Act, 47 U.S.C. § 201(b), section 64.2401(b) of the Commission’s rules, 47 C.F.R § 64.2401(b), and the Commission’s orders.⁶
 - iii. Talk America will file a report summarizing compliance with this Plan within thirty (30) days after the one-year anniversary of the Effective Date of this Consent Decree. Talk America will file a final report on compliance with this Plan thirty (30) days prior to the termination date of this Consent Decree. The reports shall address in detail Talk America’s compliance with each separate provision of the Compliance Plan as described in paragraph 9 of this Consent Decree. Talk America must mail its reports to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the file number listed above. Talk America will also send an electronic copy of its reports to other Telecommunications Consumers Division staff as directed by the Division Chief.
- f. Term of the Plan
- Talk America will implement this Compliance Plan within sixty (60) days of the Effective Date of this Consent Decree. The terms of this Compliance Plan will expire two (2) years after the Effective Date of this Consent Decree or upon the

⁶ See *supra* note 1.

termination of the Truth-in-Billing requirements set forth in sections 64.2401(b) of the Commission's rules, 47 C.F.R. § 64.2401(b), whichever is earlier.

10. The Commission agrees that, in the absence of new material evidence related to these matters, it will not use the facts developed in these matters through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Talk America, including any other enforcement action, nor will the Commission seek on its own motion any administrative or other penalties from Talk America, concerning the matters that were the subject of the investigation. The Commission also agrees that it will not use the facts developed in these matters through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Talk America with respect to Talk America's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such complaint. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding.

11. Talk America's decision to enter into this Consent Decree is expressly contingent upon the Commission's issuance of an Adopting Order. Provided the Commission issues an Adopting Order, Talk America 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.

12. 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 Talk America nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Talk America and the Commission will waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

13. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. By this Consent Decree, Talk America neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

15. Talk America agrees that any violation of the Order or 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.

16. The Parties agree that if any provision of this Consent Decree is inconsistent with any subsequent rule or order adopted by the Commission, that provision will be superseded by such Commission rule or order.

17. The Parties agree that the requirements of this Consent Decree shall expire two (2) years after the Effective Date or upon the termination of the Truth-in-Billing requirements set

forth in sections 64.2401(b) of the Commission's rules, 47 C.F.R. § 64.2401(b), whichever is earlier.

18. This Consent Decree may be signed in counterparts.

For: Talk America Inc.

For: Federal Communications Commission

Date (Talk America Signature)

Date Marlene H. Dortch
Secretary