

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

In the Matter of)	File No. EB-04-IH-0142
)	
TON Services, Inc.)	Acct. No. 200532080008
)	
)	FRN No. 0005-0237-26

ORDER

Adopted: October 27, 2004

Released: October 28, 2004

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by TON Services, Inc. (“TON”) of section 254 of the Act and sections 52.17, 54.706, 54.711, 54.713, and 64.604 of the Commission’s rules, 47 U.S.C. § 254, 47 C.F.R. §§ 52.17, 54.706, 54.711, 54.713 and 64.604, relating to obligations of carriers to make payments into the Universal Service Fund and Telecommunications Relay Service Fund.¹

2. The Enforcement Bureau (“Bureau”) and TON have negotiated the terms of the Consent Decree. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. We have reviewed the terms of the Consent Decree and evaluated the facts before us. We believe that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial or material questions of fact as to whether TON possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and the authority delegated by section 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree **IS ADOPTED**.

¹ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Brett Sanford Chief Financial Officer, TON Services, Inc. and Allan C. Hubbard, Counsel, dated May 13, 2004 (“LOI”).

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

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and TON Services, Inc. (“TON Services”) hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether TON Services violated the universal service reporting and contribution requirements of section 254 of the Communications Act of 1934, as amended (the “Act”)² and/or certain Commission’s rules relating to universal service, the Telecommunications Relay Service Fund and the North American Numbering Plan Administration.
2. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Commission” and “FCC” mean the Federal Communications Commission.
 - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “TON Services” and “TON” mean TON Services, Inc. and its predecessors-in-interest and successors-in-interest.
 - (d) “Parties” means TON Services and the Bureau.
 - (e) “Order” or “Adopting Order” means an Order of the Commission or the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (f) “Effective Date” means the date on which the Commission or the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s May 13, 2004 Letter of Inquiry³ regarding whether TON Services violated the

² 47 U.S.C. § 254.

³ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC to Brett Sanford, Chief Financial Officer, TON Services, Inc. (May 13, 2004).

universal service reporting and contribution requirements of section 254 of the Act and/or sections 52.17, 54.706, 54.711, 54.713, and 64.604 of the Commission's rules. "Investigation" also includes all matters concerning any non-payment of FCC regulatory fees by TON Services through the Effective Date.

I. BACKGROUND

3. Pursuant to section 254(d) of the Act and sections 52.17, 54.706, 54.711, 54.713, and 64.604 of the Commission's rules, telecommunications carriers that provide interstate telecommunications services and private service providers that provide interstate telecommunications are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) and contribute to the Universal Service Fund, Telecommunications Relay Service Fund and North American Numbering Plan Administration.⁴
4. TON Services operates payphones located at various travel plazas and other facilities and also provides prepaid calling card services. On March 30, 2004, the Bureau's audit staff submitted a data request seeking information about TON's universal service filer identification number. The Bureau received a response on April 16, 2004. On May 13, 2004, the Bureau initiated the Investigation by issuing a Letter of Inquiry ("LOI") directing TON Services to provide information about its compliance with, among other matters, the Commission's universal service reporting and contribution requirements. TON Services submitted a response to the Bureau's LOI on June 17, 2004. TON represented in its response and later offered to submit evidence to prove that its current management team assumed control of the company in late 2003 and first learned of possible universal service compliance problems in January 2004. TON further represented and later offered to submit evidence to prove that it voluntarily began the process of correcting any universal service compliance problems before learning of the Bureau's investigation or receiving any inquiry from the Bureau, including the Bureau audit staff's March 30, 2004 data request. By October 1, 2004, TON had brought itself fully into compliance with governing universal service rules and had no outstanding universal service, telecommunications relay service or numbering plan administration arrearages. TON is presently in discussions with USAC and the FCC's Wireline Competition Bureau regarding TON's claim that it is owed substantial credits for past overpayments to the universal service fund.

⁴ 47 U.S.C. § 254(d); 47 C.F.R. §§ 52.17, 54.706, 54.711, 54.713, 64.604.

II. AGREEMENT

5. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau, through entry of the Order, which shall immediately resolve and terminate the Investigation.
6. 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 with the requirements of the Act or the Commission's rules and orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, TON Services does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.
7. TON Services agrees that it will make a voluntary contribution to the United States Treasury in the amount of four hundred thousand dollars (\$400,000) within 30 calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200532080008" and "FRN No. 0005-0237-26." Payment by check or money order must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.
8. For purposes of settling the matters set forth herein, TON Services agrees to implement a compliance program related to future compliance with the Act, the Commission's rules, and the Commission's orders. The program will include, at a minimum, the following components:
 - (a) **Compliance Manual.** The Company shall develop and update as necessary a Compliance Manual. Company personnel shall have ready access to the Compliance Manual and are to follow the procedures contained in it. The Compliance Manual will, among other things, describe the universal service, Telecommunications Relay Service and North American Numbering Plan Administration rules and requirements as they apply to TON Services. The Compliance Manual will encourage personnel to contact the Company's President, General Manager and/or Chief Financial Officer with any questions or concerns that arise.
 - (b) **Compliance Training Program.** The Company will establish an FCC compliance training program for employees who engage in activities subject to FCC regulation. Training sessions will be conducted at least annually to ensure compliance with the Act and the FCC's regulations and policies and, for new employees, within the first 30 days of employment.

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- (c) **Designated Contact.** The Company will designate one employee as the point of contact for all telecommunications compliance matters.
- (d) **Review and Monitoring.** The Company will review the Program annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.
- (e) **Audits.** The Company will ensure that external and internal audit reviews specifically address compliance with FCC regulatory requirements.
- (f) **Escalation.** The Company will implement an escalation process by which notice is given to progressively higher corporate officers within TON in the event of delay by TON in providing information to its vendor/agent that is necessary for the vendor/agent to make the required filing and payment of universal service, Telecommunications Relay Service and North American Numbering Plan Administration contributions. The first escalation contact is TON's Chief Financial Officer, then its Vice President-General Manager or President.
- (g) **Trade Group.** The Company will maintain membership in a trade group to keep employees and managers with compliance responsibilities informed of FCC regulatory compliance requirements.
- (h) **Termination.** TON's obligation under this Paragraph 8 shall expire twenty four (24) months after the Effective Date.
9. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against TON Services and its affiliate companies concerning the matters that were the subject of the Investigation, including (without limitation) any matters concerning payment of FCC regulatory fees. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree 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 TON Services with respect to TON's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.
10. 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 TON Services 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 material new evidence of noncompliance by TON Services of the Act, the rules, or this Order.

11. TON Services 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 Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. TON Services shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.
12. TON Services' decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.
13. In the event that 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.
14. 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 TON Services nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TON shall waive any statutory right to a trial *de novo*.
15. Any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies authorized by law attendant to the enforcement of a Commission order.
16. The Parties also 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 TON Services does not expressly consent) that provision will be superseded by such Commission rule or order.

17. TON Services hereby agrees 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.

18. This Consent Decree may be signed in counterparts.

David H. Solomon
Chief, Enforcement Bureau
Federal Communications Commission

Date

Jagjit Singh
President
TON Services, Inc.

Date