

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

|                                   |   |                         |
|-----------------------------------|---|-------------------------|
| In the Matter of                  | ) | File No.: EB-09-IH-1219 |
|                                   | ) |                         |
| NTS Communications, Inc.          | ) | Acct. No.: 201032080024 |
|                                   | ) |                         |
| Apparent Liability for Forfeiture | ) | FRN: 0004266938         |

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and NTS Communications, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible violations of Section 254(d) of the Communications Act of 1934, as amended,<sup>1</sup> and Section 54.706(a) of the Commission's rules,<sup>2</sup> concerning required contributions to the Universal Service Fund.

**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, 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) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which NTS is subject by virtue of its business activities.
  - (f) "Compliance Plan" means the compliance obligations and program described in this Consent Decree at paragraph 12.
  - (g) "Covered Employees" means all employees and agents of NTS who perform, or supervise, oversee, or manage the performance of, duties that relate to NTS's responsibilities under the Communications Laws, including Section 254(d) of the Act and the Rules governing Universal Service and contributions to the USF.
  - (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.
  - (i) "Investigation" means the investigation commenced by the Bureau's July 31, 2009 Letter of Inquiry<sup>3</sup> regarding whether the Company failed to contribute timely and fully to the USF in violation of Section 254(d) of the Act and Section 54.706(a) of the Rules.

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<sup>1</sup> 47 U.S.C. § 254(d).

<sup>2</sup> 47 C.F.R. § 54.706(a).

<sup>3</sup> Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Barbara Baldwin, Chief Executive Officer, NTS Communications, Inc. (July 31, 2009) (LOI).

- (j) “NAL” means *NTS Communications, Inc., Apparent Liability for Forfeiture*, File No. EB-09-IH-1219, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137 (2010).
- (k) “NTS” or the “Company” means NTS Communications, Inc. and its predecessors-in-interest and successors-in-interest.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by NTS to implement the Compliance Plan.
- (m) “Parties” means NTS and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Telecommunications” or “Telecommunications Service” have the meanings set forth in Sections 3(50) and 3(53) of the Act, 47 U.S.C. §§ 153(50), 153(53).
- (p) “USAC” means the Universal Service Administrative Company.
- (q) “Universal Service Rules” means Section 254(d) of the Act and other Communications Laws governing the payment of full and timely contributions to the USF, including any Rules implementing Section 254(d) and any related Commission orders.
- (r) “USF” means the Universal Service Fund.

## II. BACKGROUND

3. Pursuant to Section 254(d) of the Act and Section 54.706(a) of the Rules, telecommunications carriers that provide interstate Telecommunications Services are required to contribute to the USF.<sup>4</sup> 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.”<sup>5</sup> In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services and certain other providers of interstate telecommunications to register with the Commission, comply with annual and quarterly filing requirements, and contribute to the USF based upon their interstate and international end-user telecommunications revenues.<sup>6</sup>

4. NTS is a Texas-based company that has provided Telecommunications Services since 1981.<sup>7</sup> Through subsidiaries, NTS provides facilities-based and resold long distance, private line, frame relay, ATM, and toll-free Telecommunications Services<sup>8</sup> and accordingly is subject to the provisions of Section 254(d) of the Act and Section 54.706(a) of the Rules. NTS is owned by Xfone, Inc.<sup>9</sup>

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<sup>4</sup> 47 U.S.C. § 254(d); 47 C.F.R. § 54.706(a).

<sup>5</sup> 47 U.S.C. § 254(d).

<sup>6</sup> 47 C.F.R. §§ 54.706(b), 54.711, 64.1195; *see also* 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.”). Contributions are based on a contributor’s projected revenues, and individual universal service contribution amounts that are based upon quarterly filings are subject to an annual true-up. *Id.*; 47 C.F.R. § 54.709(b).

<sup>7</sup> *See* Response of NTS Communications, Inc. to the Enforcement Bureau’s July 31, 2009 Letter of Inquiry at responses to Questions 1 and 2 (Aug. 3, 2009) (LOI Response).

<sup>8</sup> *Id.* at response to Question 4(b).

<sup>9</sup> *Id.* at response to Question 4(c).

5. In July 2009, USAC referred NTS to the Bureau for potential enforcement action, alleging that NTS had failed to comply with the Commission's USF contribution rules. The Bureau initiated the Investigation against NTS on July 31, 2009, issuing a letter of inquiry ("LOI") to NTS seeking information about its compliance with USF and other related regulatory obligations.<sup>10</sup> NTS responded to the LOI on August 31, 2009.<sup>11</sup>

6. On May 6, 2010, the Commission released the *NAL*, finding that NTS was apparently liable for a total forfeiture of \$284,250 for apparently failing to meet its federal regulatory obligations and its apparent accrual of a significant delinquent balance owed to the USF.<sup>12</sup> The *NAL* ordered the Company either to pay the proposed forfeiture or to file a written response stating why the proposed forfeiture should be reduced or canceled.<sup>13</sup> The *NAL* also ordered NTS to submit a report detailing its plan to come into compliance with the obligations discussed in the *NAL*.<sup>14</sup> Following release of the *NAL*, the Bureau and NTS have engaged in discussions aimed at resolving the issues associated with the Investigation. In order to resolve the Investigation with a Consent Decree, the Bureau extended the date by which NTS was required to respond to the allegations contained in the *NAL* or pay the forfeiture amount. As of the Effective Date, NTS has paid all invoiced amounts to the USF.

### III. TERMS OF AGREEMENT

7. **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.

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

9. **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 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.

10. **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 and to cancel the *NAL*. In consideration for the termination of the Investigation and cancellation of the *NAL*, the Company agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence the Bureau 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 take any action on its own motion against the Company 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

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<sup>10</sup> LOI.

<sup>11</sup> See LOI Response.

<sup>12</sup> See *NAL*, 25 FCC Rcd at 5137, para. 1.

<sup>13</sup> *Id.* at 5143, paras. 15-16.

<sup>14</sup> *Id.* at 5143, para. 17.

against the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as 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 the Company 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/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Universal Service Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company 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 Universal Service Rules, the Company shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees must follow to help ensure the Company's compliance with the Universal Service Rules. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Universal Service Rules. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Universal Service 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 Universal Service Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Universal Service Rules. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to Covered Employees.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the Universal Service Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the Universal Service Rules under paragraph 13 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. Any person who becomes a Covered Employee at any time after the Initial Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. The Company shall repeat the 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.

13. **Reporting Noncompliance.** The Company shall report any noncompliance with the Universal Service Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after NTS's Compliance Officer or any Covered Employee becomes aware of the matter (whether from a report from an employee or otherwise). Such reports shall include a detailed explanation

of (i) each instance of noncompliance; (ii) the steps that the Company 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 the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Margaret S. Dailey at Margaret.Dailey@fcc.gov.

14. **Compliance Reports.** The Company 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, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Universal Service Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company (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 13 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.<sup>15</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, 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 the Company 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 the Company has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Margaret S. Dailey at Margaret.Dailey@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11 through 14 of this Compliance Plan shall expire thirty-six (36) months after the Effective Date.

16. **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<sup>16</sup> against the Company 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

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<sup>15</sup> 47 C.F.R. § 1.16.

<sup>16</sup> 47 U.S.C. § 208.

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 Company with the Communications Laws.

17. **Voluntary Contribution.** The Company agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$215,000 (two hundred fifteen thousand dollars) (Voluntary Contribution). Due to the Company's inability to make a lump sum payment, such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of \$30,714.26 (thirty thousand seven hundred fourteen dollars and twenty-six cents) is due within thirty (30) calendar days after the Effective Date. The balance of the Voluntary Contribution will be made in six consecutive payments of \$30,714.29 (thirty thousand seven hundred fourteen dollars and twenty-nine cents), payable every six (6) months beginning on the first day of the sixth month following the Effective Date. The seventh and final payment is due on the first day of the thirty-sixth month following the Effective Date (Maturity Date). The Company acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).<sup>17</sup> Upon an Event of Default, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, the Company agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. The Company shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Margaret S. Dailey at margaret.dailey@fcc.gov on the date said Installment Payments are made.

18. Installment Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>18</sup> 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 regarding the form of payment:

- 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, 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 –

<sup>17</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>18</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://transition.fcc.gov/fees/form159.html>.

Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

20. **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 Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), 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 the Company.

21. **Waivers.** The Company 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, provided the Bureau issues an Adopting Order as defined in this Consent Decree. The Company 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 Adopting Order, neither the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>19</sup> relating to the matters addressed in this Consent Decree.

22. **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.

23. **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 the Company does not expressly consent) that provision will be superseded by such Commission rule or order.

24. **Successors and Assigns.** The Company agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **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.

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

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<sup>19</sup> See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

27. **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.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including 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.

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P. Michele Ellison  
Chief  
Enforcement Bureau

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Date

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NTS Communications, Inc.  
By: Niv Krikov  
Its: Executive Vice President and  
Chief Financial Officer

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Date