

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

In the Matter of)	
)	File No.: EB-12-IH-1351
TerraCom, Inc.)	Acct. No.: 201332080015
)	FRN: 0010-1037-45

ORDER

Adopted: February 26, 2013

Released: February 26, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and TerraCom, Inc. (TerraCom). The Consent Decree terminates and resolves an investigation by the Bureau against TerraCom for possible violations of Sections 54.403(a), 54.407, 54.409, 54.413, and 54.414 of the Commission's rules (Rules)¹ concerning TerraCom's failure to maintain adequate records and to submit accurate claims for reimbursement, and the collection of Lifeline and Link Up support to which it was not entitled.

2. The Bureau and TerraCom have negotiated the Consent Decree that resolves this matter, including a detailed, three-year compliance plan requirement. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. 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 investigation.

4. Based solely on the record developed to date in this investigation and in the absence of material new evidence relating to this matter, we conclude that the investigation raises no substantial or material questions of fact as to whether TerraCom possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act,² and Sections 0.111 and 0.311 of the Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ 47 C.F.R. §§ 54.403(a), 54.407, 54.409, 54.413, 54.414.

² 47 U.S.C. §§ 154(i), 154(j), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jonathan D. Lee, Esq., J.D. Lee Consulting, LLC, 1776 I Street, N.W., Suite 900, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
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Washington, D.C. 20554**

In the Matter of)	File No.: EB-12-IH-1351
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TerraCom, Inc.)	Acct. No.: 201332080015
)	
)	FRN: 0010-1037-45

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and TerraCom, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether TerraCom, Inc. violated Sections 54.403(a), 54.407, 54.409, 54.413, and 54.414 of the Commission’s rules,¹ concerning the company’s failure to maintain adequate records and to submit accurate claims for reimbursement for revenues it was forgoing in providing Lifeline and Link Up service, and for the collection of Lifeline and Link Up support to which it was not entitled.

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 TerraCom is subject by virtue of its business activities.
 - (f) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 14.
 - (g) “Covered Employees” means all employees and agents of TerraCom who perform, or supervise, oversee, or manage the performance of, duties that relate to TerraCom’s responsibilities under the Communications Laws, including the Lifeline Rules.
 - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (i) “ETC” means an eligible telecommunications carrier designated pursuant to 47 U.S.C. § 214(e).

¹ 47 C.F.R. §§ 54.403(a), 54.407, 54.409, 54.413, 54.414.

- (j) “Investigation” means the investigation initiated by the Bureau in File No. EB-12-IH-1351 regarding possible violations of Sections 54.403(a), 54.407, 54.409, 54.413, and 54.414 of the Rules.
- (k) “Lifeline” is a federal benefit program under which an ETC offers a retail telecommunications service to qualifying low-income consumers, who pay reduced or no monthly service charges as a result of application of the Lifeline support from the USF.
- (l) “Lifeline Rules” means the federal regulatory obligations concerning the provision of Lifeline Service and Link Up Service.
- (m) “Lifeline Service” means telecommunications service offered under the Lifeline program.
- (n) “Link Up” is a federal benefit program under which an ETC offers qualifying low-income consumers discounts on the initial costs of installing telephone service.
- (o) “Link Up Service” means the ETC’s act of commencing telecommunications service to a single telecommunications connection offered under the Link Up program.
- (p) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by TerraCom to implement the Compliance Plan.
- (q) “Parties” means TerraCom, Inc. and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.
- (s) “TerraCom” or “Company” means TerraCom, Inc. and its predecessors-in-interest and successors-in-interest.
- (t) “USF” means the Universal Service Fund.

II. BACKGROUND

3. Lifeline and Link Up are federal benefit programs that ensure the availability of telecommunications services for eligible low-income households by providing discounts on basic telephone service.² These programs are part of the USF and help qualifying consumers have the opportunities and security that phone service brings, including being able to connect to jobs, family members, and emergency services. Lifeline provides a single discounted wireline or wireless phone service to each qualifying low-income consumer’s household.³ Link Up provides some of those consumers with discounts on the initial costs of installing telephone service.⁴ An ETC designated under

² See 47 C.F.R. §§ 54.400–54.422.

³ 47 C.F.R. § 54.401. See also 47 C.F.R. § 54.400(h) (defining “household” as “any individual or group of individuals who are living together at the same address as one economic unit”); *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6760, para. 241 (2012) (*Lifeline Reform Order*) (noting that the cost of wireless handsets are not supported by the Lifeline program).

⁴ 47 C.F.R. § 54.413(a).

the Act⁵ that provides Lifeline or Link Up Service may seek and receive reimbursement from the USF for revenues it forgoes in providing the discounted services to eligible customers.⁶ Section 254(e) of the Act provides that an ETC that receives such support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁷

4. The Lifeline Rules establish explicit requirements that ETCs must meet to receive federal low-income support.⁸ Section 54.407(a) of the Rules states that Lifeline support “shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers it serves.”⁹ The Rules define a “qualifying low-income consumer” as one who—among other things—“must not already be receiving a Lifeline service;” in addition, “there must not be anyone else in the subscriber’s household subscribed to a Lifeline service.”¹⁰ Section 54.403(a) of the Rules specifies that an ETC may receive \$9.25 per month for each qualifying low-income consumer receiving Lifeline Service and up to an additional \$25 per month if the consumer resides on Tribal lands.¹¹ Until April 2012, each ETC could also receive Link Up support, a one-time reimbursement for installation costs associated with each new qualifying consumer’s account.¹² ETCs are required to pass these discounts along to eligible low-income consumers.

5. In addition to verifying customer eligibility,¹³ ETCs have an ongoing duty to ensure that they provide Lifeline service to no more than one qualified consumer per household.¹⁴ This obligation requires, among other steps, that each ETC search its own internal records before signing up a customer for Lifeline Service to ensure that the ETC does not already provide Lifeline Service to someone in the same household.¹⁵ Additionally, an ETC must implement policies and procedures to ensure that its Lifeline subscribers are eligible to receive Lifeline services.¹⁶ An ETC receives duplicative support, in violation of the Rules, when it concurrently receives Lifeline support or Link Up support for two or more subscribers in a household.¹⁷

⁵ 47 U.S.C. § 254(e) (providing that “only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support”); 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

⁶ 47 C.F.R. § 54.403.

⁷ 47 U.S.C. § 254(e).

⁸ See 47 U.S.C. § 254(a)–(c), (e); 47 C.F.R. §§ 54.400–54.422.

⁹ 47 C.F.R. § 54.407(a).

¹⁰ 47 C.F.R. §§ 54.400(a), 54.409(c).

¹¹ 47 C.F.R. § 54.403(a).

¹² See 47 C.F.R. § 54.413(a) (amended effective April 1, 2012, to restrict Link Up support to ETCs serving eligible residents of Tribal lands for which the ETCs also receive high-cost support); see also 47 C.F.R. § 54.414 (setting forth requirements for ETC reimbursement for Tribal Link Up provided pursuant to Section 54.413 of the Rules).

¹³ ETCs must obtain a certification, under penalty of perjury, that the consumer and the other members of his or her household do not already receive Lifeline-supported service. See 47 C.F.R. § 54.410(d)(3)(vi).

¹⁴ See *Lifeline and Link Up Reform and Modernization*, Report and Order, 26 FCC Rcd 9022, 9026, para. 7 (2011) (*Lifeline Duplicates Order*).

¹⁵ See *Lifeline Reform Order*, 27 FCC Rcd at 6691, para. 78.

¹⁶ 47 C.F.R. § 54.410(a).

¹⁷ 47 C.F.R. § 54.400(g).

6. The Universal Service Administrative Company (USAC) administers the Lifeline and Link Up programs. ETCs that provide qualifying low-income consumers with Lifeline or Link Up discounts file FCC Form 497 with USAC, either quarterly or monthly, to request support that reimburses them for providing service at the discounted rates. An ETC's FCC Form 497 documents the number of low-income customers served and the total amount of Lifeline support claimed by the ETC during the specified time period. USAC reviews the claims for reimbursement for consistency with the Lifeline Rules, and then disburses support to the ETC in accordance with its review. An ETC may revise its Form 497 data within 12 months after it is submitted. In addition to reviewing claims submitted by ETCs, USAC conducts oversight audits and in-depth validations (IDVs) to ensure compliance with the Lifeline Rules. In 2011, the Commission directed USAC to begin conducting IDVs relating to Lifeline support after oversight audits had revealed that several ETCs were seeking duplicative support.¹⁸

7. On August 26, 2004, the Oklahoma Corporation Commission (Oklahoma Commission) designated TerraCom, incorporated and headquartered in Oklahoma, as an ETC to provide wireline Lifeline and Link Up Service in that state. The Oklahoma Commission authorized TerraCom to provide wireless Lifeline and Link Up Service in Oklahoma on August 18, 2011.¹⁹

8. USAC conducted an IDV of the Lifeline benefits received by TerraCom in Oklahoma for the month of June, 2012. The IDV revealed that TerraCom had received duplicative Lifeline and Link Up support to such extent that further inquiry was warranted. Based on the IDV results, the Bureau issued a Letter of Inquiry (LOI) to TerraCom on August 28, 2012.²⁰ The Company responded to the LOI on September 27, 2012, and supplemented its responses several times thereafter.²¹

III. TERMS OF AGREEMENT

9. **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.

10. **Jurisdiction.** TerraCom 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.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. 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.

¹⁸ See *Lifeline Duplicates Order*, 26 FCC Rcd at 9026, para. 7.

¹⁹ See Oklahoma Corporation Commission, "Eligible Telecommunications Carriers," <http://www.occeweb.com/pu/ETC%20Designation/2012-11-01ETCInformationreport.pdf> (last visited Feb. 22, 2013). TerraCom also provides Lifeline service in Arkansas, Indiana, Maryland, Nevada, Texas, West Virginia, Iowa, Louisiana, Puerto Rico, and Wisconsin.

²⁰ See Letter of Inquiry from Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Jonathan D. Lee, Esq., Counsel for TerraCom (dated Aug. 28, 2012) (on file in EB-12-IH-1351) (LOI).

²¹ See TerraCom LOI Responses (submitted Sept. 27, 2012) and supplemental responses submitted by TerraCom on Oct. 22, Oct. 23, Oct. 24, Nov. 5, Dec. 5, and Dec. 14, 2012.

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 its Investigation. In this regard, TerraCom expressly represents that it is unaware of any intentional effort to submit inaccurate Form 497 data to USAC in order to obtain duplicative support. In consideration for the termination of the Investigation, TerraCom 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 TerraCom concerning the matters that were the subject of the Investigation. The Bureau also agrees that, based solely on the record developed to date in this Investigation, and 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 against TerraCom with respect to TerraCom's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, TerraCom 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 TerraCom 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 Lifeline Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, TerraCom 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 Lifeline Rules, TerraCom shall implement the following components:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, TerraCom shall establish Operating Procedures that all Covered Employees shall follow to help ensure TerraCom's compliance with the Lifeline Rules. In addition to implementing the required policies and procedures in Section 54.410 of the Rules, TerraCom's Operating Procedures shall include internal procedures and policies specifically designed to ensure that TerraCom keeps accurate records of revenues it forgoes in providing Lifeline Service; that it provide Lifeline Service only to qualifying low-income consumers; and that it submits accurate claims for reimbursement for providing Lifeline Service. TerraCom shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline 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 Communications Laws that apply to TerraCom, including the Lifeline Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure TerraCom's compliance with the Lifeline Rules. TerraCom shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. TerraCom shall distribute any revisions to the Compliance Manual promptly to Covered Employees. The Compliance Manual will

require personnel, including Covered Employees, to contact TerraCom's Compliance Officer and, if appropriate, regulatory legal counsel, with any questions or concerns that arise with respect to TerraCom's obligations under the Lifeline Rules.

- (c) **Compliance Training Program.** TerraCom shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including the Lifeline Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of TerraCom's obligation to report any noncompliance with the Lifeline Rules under paragraph 15 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 Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. TerraCom 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.

15. **Reporting Noncompliance.** TerraCom shall report any noncompliance with the Lifeline 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 TerraCom 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 TerraCom 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 3-C330, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, William Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov.

16. **Compliance Reports.** TerraCom 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 TerraCom's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of TerraCom, stating that the Compliance Officer has personal knowledge that TerraCom (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 15 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

Rules²² and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of TerraCom, 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 TerraCom 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 TerraCom 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, Pamela S. Kane at Pamela.Kane@fcc.gov, William Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **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 Act²³ against TerraCom 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 TerraCom with the Communications Laws.

19. **Reimbursement to the Universal Service Fund.** TerraCom agrees that it shall reimburse the Universal Service Fund in an amount totaling Four Hundred Two Thousand Seven Hundred Sixty dollars (\$402,760), which constitutes the amount of support received by the Company to which it was not entitled, plus accrued interest (Reimbursement Payment). TerraCom represents that it has submitted to USAC revised Form 497 reimbursement requests, and other appropriate documentation, to enable recovery of this Reimbursement Payment (except that the accrued interest portion of the Reimbursement Payment shall be made to USAC within thirty (30) calendar days after the Effective Date). TerraCom acknowledges and agrees that upon execution of this Consent Decree, the Reimbursement Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁴

20. **Voluntary Contribution.** TerraCom agrees that it will make a voluntary contribution to the United States Treasury in the aggregate amount of Four Hundred Forty Thousand dollars (\$440,000) (Voluntary Contribution). Such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of One Hundred Ten Thousand dollars (\$110,000) is due within thirty (30) calendar days after the Effective Date. The balance of the

²² 47 C.F.R. § 1.16.

²³ 47 U.S.C. § 208.

²⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

Voluntary Contribution will be made in three payments of One Hundred Ten Thousand dollars (\$110,000), payable on July 1, 2013, October 1, 2013, with the final payment due on January 1, 2014 (Maturity Date). TerraCom 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).²⁵ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. In addition, TerraCom 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. TerraCom shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, William Kehoe at William.Kehoe@fcc.gov, and Mindy Littell at Mindy.Littell@fcc.gov on the date said Installment Payment is made. The Installment Payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁶ 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 you should follow based on the form of payment you select:

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

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

21. **Event of Default.** TerraCom agrees that an Event of Default shall occur upon the failure by TerraCom to pay the full amount of 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 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

²⁵ *Id.*

²⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 TerraCom.

23. **Waivers.** TerraCom 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 the Adopting Order as defined herein. TerraCom 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 TerraCom nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and TerraCom shall waive any statutory right to a trial *de novo*. TerraCom hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²⁷ relating to the matters addressed in this Consent Decree.

24. **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.

25. **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 TerraCom does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

27. **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, or any other laws. The Parties also agree that this Consent Decree does not constitute an admission of liability by TerraCom or a concession by the Commission that its investigation was not well-founded.

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

29. **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.

30. **Authorized Representative.** The individual signing this Consent Decree on behalf of TerraCom represents and warrants that he is authorized by TerraCom to execute this Consent Decree and to bind TerraCom to the obligations set forth herein. 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.

²⁷ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

31. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Dale R. Schmick
Vice President
TerraCom, Inc.

Date