

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
inContact, Inc.

)
)
)
)
)
)
)

File No.: EB-IHD-15-00020237
Acct. No.: 201632080005
FRN: 0004977997

ORDER

Adopted: May 9, 2016

Released: May 9, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether inContact, Inc. (inContact), a long distance carrier and provider of call center-related services, failed to ensure that the providers it used to deliver its calls to a consumer in a rural area were doing so reliably. Rural call completion problems have significant and immediate public interest ramifications. They cause rural businesses to lose revenue, impede medical professionals from reaching patients in rural areas, cut families off from their relatives, and create the potential for dangerous delays in public safety communications. To settle this matter, inContact admits that it failed to ensure that its intermediate providers were performing adequately in delivering service to the rural consumer and that it failed to cooperate with the Commission's investigation of this problem. inContact will implement a compliance plan to prevent recurrence of these violations and will pay a \$100,000 civil penalty.

2. 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 referenced investigation regarding inContact's compliance with Sections 201(b) and 202(a) of the Communications Act of 1934, as amended, in connection with its call completion to a consumer in a rural area, and its compliance with Sections 4(i), 4(j), 218, and 403 of the Act in connection with its failure to cooperate with the Commission's investigation of the problem.

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of inContact's basic qualifications to hold or obtain any Commission license or authorization.

4. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Act and the authority delegated by Sections 0.111 and 0.311 of the Rules, the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 47 U.S.C. §§ 201(b), 202(a); see Developing an Unified Intercarrier Compensation Regime, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012); see also FCC Enforcement Advisory: Rural Call Completion, Long Distance Providers Must Take Consumer Complaints about Rural Call Completion Problems Seriously, Public Notice, 28 FCC Rcd 10347 (Enf. Bur. 2013).

2 See 47 U.S.C. §§ 154(i), (j), 218, 403.

3 See 47 CFR § 1.93(b).

4 47 U.S.C. § 154(i).

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

6. **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 Daniel G. Lloyd, Esq., General Counsel, inContact, Inc., 75 West Towne Ridge Parkway, Tower 1, Salt Lake City, UT 84070, and to Allison D. Rule, Esq., Marashlian & Donahue, PLLC, The CommLaw Group, 1420 Spring Hill Road, Suite 401, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

(Continued from previous page) _____
⁵ 47 CFR §§ 0.111, 0.311.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
inContact, Inc.

)
)
)
)
)
)
)

File No.: EB-IHD-15-00020237
Acct. No.: 201632080005
FRN: 0004977997

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and inContact, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether inContact violated Sections 201(b) and 202(a) of the Communications Act of 1934, as amended, in connection with substandard delivery of long distance calls to a consumer in a certain rural area, and its compliance with Sections 4(i), 4(j), 218, and 403 of the Act, in connection with its failure to cooperate with the Commission’s investigation of the problem.

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.
(b) “Adopting Order” means an order of the Commission or 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 inContact is subject by virtue of its business activities, including but not limited to the Rural Call Completion Rules.
(f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 19.
(g) “Covered Employees” means all employees and agents of the Company who perform, or supervise, oversee, or manage the performance of, duties that relate to inContact’s responsibilities under the Communications Laws, including the Rural Call Completion Rules.
(h) “Effective Date” means the date by which both the Bureau and inContact have

1 See 47 U.S.C. §§ 201(b), 202(a); see also Developing an Unified Intercarrier Compensation Regime, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012) (Rural Call Completion Declaratory Ruling).

2 See 47 U.S.C. §§ 154(i), 154(j), 218, 403.

3 47 U.S.C. § 151 et seq.

signed the Consent Decree.

- (i) “inContact” or “Company” means inContact, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (j) “Investigation” means the informal complaints referenced in paragraphs 11-12 below and the investigation commenced by the Bureau under File No. EB-IHD-15-00020237 regarding whether inContact violated Sections 201(b) and 202(a) of the Act.
- (k) “Intermediate Provider” has the meaning provided in Section 64.1600(f) of the Rules.⁴
- (l) “OCN” means an Operating Company Number that is an alphanumeric code that uniquely identifies providers of local telecommunications service.⁵
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by inContact to implement the Compliance Plan.
- (n) “Parties” means inContact and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “*Rural Call Completion Declaratory Ruling*” means the declaratory ruling captioned as *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351 (Wireline Comp. Bur. 2012). “*Rural Call Completion Enforcement Advisory*” or “*Advisory*” means the advisory captioned as *FCC Enforcement Advisory: Rural Call Completion, Long Distance Providers Must Take Consumer Complaints about Rural Call Completion Problems Seriously*, Public Notice, 28 FCC Rcd 10347 (Enf. Bur. 2013). “*Rural Call Completion Order*” means the order captioned as *Rural Call Completion, Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd 16154 (2013), *modified in part on recon.*, 29 FCC Rcd 14026 (2014).
- (q) “Rural Call Completion Rules” means Sections 201(b) and 202(a) of the Act, as interpreted in the *Rural Call Completion Declaratory Ruling*, the Rules adopted in the *Rural Call Completion Order*, 47 CFR Sections 64.2101, 64.2103, 64.2105, 64.2107, 64.2109 and 64.2201, and other provisions of the Act, the Rules, and Commission orders related to Rural Call Completion, including those addressed in the *Rural Call Completion Enforcement Advisory*.

II. BACKGROUND

3. Section 201(b) of the Act provides that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate and foreign] communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”⁶ Section 202(a) states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any

⁴ 47 CFR § 64.1600(f).

⁵ See Alliance for Telecommunications Industry Solutions, *ATIS Telecom Glossary*, <http://www.atis.org/glossary/definition.aspx?id=8448> (last visited Apr. 27, 2016).

⁶ 47 U.S.C. § 201(b).

means or device, . . . or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”⁷

4. The Commission has emphasized that “it is vital that our Nation maintains a communications network that offers reliable and resilient service.”⁸ The Commission has also recognized that “permitting blocking or the refusal to deliver voice telephone traffic, whether as a means of ‘self-help’ to address perceived unreasonable intercarrier compensation charges or otherwise, risks ‘degradation of the country’s telecommunications network.’”⁹ To prevent that result, the Commission has consistently held that telecommunications carriers, including interexchange carriers, generally may not “block, choke, reduce or restrict traffic in any way.”¹⁰

5. In June 2011, a coalition of trade associations representing rural rate-of-return incumbent local exchange carriers (LECs) sent a letter to the Bureau concerning “a nationwide and industry-wide epidemic” of calls to rural LEC service areas failing to complete or having poor call quality.¹¹ In September 2011, the Commission announced that it had created a Rural Call Completion Task Force “to investigate and address the growing problem of calls to rural customers that are being delayed or that fail to connect.”¹²

6. On February 6, 2012, the Commission’s Wireline Competition Bureau (WCB) issued the *Rural Call Completion Declaratory Ruling*, which “clarif[ied] that a carrier that knows or should know that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively allow these conditions to persist, may be liable for a violation of section 201 of the Act.”¹³ It found that “it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately. This is particularly the case when the problems are brought to the carrier’s attention by customers, rate-of-return carriers serving rural areas, or others, and the carrier nevertheless fails to take corrective action that is within its power.”¹⁴ WCB further clarified that

⁷ *Id.* § 202(a).

⁸ *Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Notice of Inquiry, 26 FCC Rcd 5614, 5616, para. 5 (2011); see also *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, para. 1 (Wireline Comp. Bur. 2007) (explaining that “the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit goals of the Communications Act”) (*Call Blocking Declaratory Ruling*).

⁹ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18029, para. 973 (2011) (footnotes omitted) (quoting *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9933, para. 24 (2001)), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁰ *Id.* at 17903, para. 734 (quoting *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6). The Commission has permitted call blocking “only under rare and limited circumstances.” See *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631, para. 6 n.20.

¹¹ Letter from Michael Romano, National Telecommunications Cooperative Association, *et al.*, to Theresa Z. Cavanaugh, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Margaret Dailey, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau at 3 (Jun. 13, 2011).

¹² *FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems in Rural America*, News Release, 2011 WL 4454097 (Sept. 26, 2011), <http://www.fcc.gov/document/fcc-launches-rural-call-completion-task-force-sets-oct-18-workshop>. The Task Force conducted a workshop on rural call completion issues on October 18, 2011. See <http://www.fcc.gov/events/rural-call-completion-workshop> (lasted visited Apr. 27, 2016).

¹³ *Rural Call Completion Declaratory Ruling*, 27 FCC Rcd at 1355, para. 11.

¹⁴ *Id.* at 1355–56, para. 12 (footnote omitted).

“adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act.”¹⁵

7. On July 19, 2013, the Enforcement Bureau issued the *Rural Call Completion Enforcement Advisory* warning long distance providers that the Commission intended to take enforcement action against providers that submit deficient responses to informal complaints about rural call completion problems.¹⁶ The Advisory reminded providers that “any” consumer may file an informal complaint, even if the consumer is not a customer of the provider against whom the complaint is filed, and further explained that providers could satisfy rural call completion complaints “by contacting the complainant, testing and troubleshooting call completion, and permanently moving traffic onto known well-performing routes when either testing or repeated complaints reveal a problem.”¹⁷

8. On November 8, 2013, the Commission released the *Rural Call Completion Order*, which adopted rules requiring covered providers to record, retain, and report to the Commission call answer rates for long-distance calls.¹⁸ The Commission found that “rural call completion problems are serious and widespread,”¹⁹ and that “[t]hese failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.”²⁰

9. In its 2014 *Rural Call Completion Reconsideration Order*, the Commission stated that a failure “to investigate evidence of a rural call delivery problem or to correct a problem of degraded service about which [a carrier] knows or should know . . . may lead to enforcement action.”²¹

10. inContact provides cloud-based application services for contact center call management and operates a communications network that allows its customers the option of using Company-provisioned communications to route calls to and from the Company's platform. inContact customers may select a private dedicated connection or allow calls to originate and terminate through the public switched telecommunications network using inContact's network and long distance carriers that inContact interconnects with at a wholesale level.²²

11. In December 2014, a consumer filed an informal complaint with the Commission's Bureau of Consumer and Governmental Affairs (CGB). The complaint detailed the consumer's ongoing problem receiving work calls. These calls were sent over inContact's long distance network to the

¹⁵ *Id.* at 1357–58, para. 14.

¹⁶ *FCC Enforcement Advisory: Rural Call Completion, Long Distance Providers Must Take Consumer Complaints about Rural Call Completion Problems Seriously*, Public Notice, 28 FCC Rcd 10347 (Enf. Bur. 2013) (*Rural Call Completion Enforcement Advisory*).

¹⁷ *Id.* at 10348-49.

¹⁸ See *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16211–14, Appendix A (2013) (*Rural Call Completion Order*), modified in part on recon., 29 FCC Rcd 14026 (2014).

¹⁹ *Id.* at 16161, para. 14.

²⁰ *Id.* at 16155, para. 1 (footnote omitted). The new rules, which took effect April 1, 2015 require covered providers to record, retain, and report to the Commission detailed information about long-distance calls to customers of incumbent rural LECs, identified by OCN. See *id.* at 16211-14 Appendix A.

²¹ *Rural Call Completion*, Order on Reconsideration, 29 FCC Rcd 14026, 14040–41, para. 38 (2014) (*Rural Call Completion Reconsideration Order*) (citing *Rural Call Completion Declaratory Ruling*, 27 FCC Rcd at 1355-56, 1358-59, paras. 12, 16; *Rural Call Completion Enforcement Advisory*, 28 FCC Rcd 10347).

²² See Letter from Allison D. Rule, Marashlian & Donohue, PLLC, to Marlene Dortch, Secretary, FCC (Jan. 13, 2016) at 3 (Supplemental Response to Inquiry 8 of the Letter of Inquiry) (on file in EB-IHD-15-00020237).

consumer's home office, which is served by a rural local exchange carrier. inContact responded to the informal complaint in January 2015 by appending an email chain showing that its customer did not respond to an inContact email about the complaint. inContact also stated that the complainant was not its customer.

12. Because the response was deficient under Section 208 of the Act and Section 1.717 of the Rules, as explained in the *Rural Call Completion Enforcement Advisory*,²³ CGB referred the response to the Bureau. After the Bureau contacted inContact and reminded it of its obligation to ensure that the intermediate providers it used to deliver calls to rural areas were performing adequately, inContact took action in March 2015 but the problem recurred. The consumer filed additional complaints in May and June of 2015. Although these repeated complaints evidenced a persistent rural call completion problem, inContact failed until late July of 2015 to ensure that the intermediate providers it used to deliver traffic to the complainant were performing adequately. The Bureau issued a Letter of Inquiry to the Company and reviewed its written responses.

III. TERMS OF AGREEMENT

13. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

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

15. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

16. **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. In consideration for the termination of the Investigation, inContact agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the 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 inContact 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 the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any proceeding, formal or informal, or to set for hearing the question of inContact's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.

17. **Admission of Liability.** inContact admits for the purpose of this Consent Decree and for civil enforcement purposes, and in express reliance on the provisions of paragraph 16 herein, that it violated the Rural Call Completion Rules by failing to ensure that its Intermediate Providers were performing adequately in delivering service to a consumer in a rural OCN, and that it failed to cooperate with the Commission's investigation of the problem.

18. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, inContact 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

²³ See *Rural Call Completion Enforcement Advisory*, 28 FCC Rcd at 10348 (Under Section 208, “‘any’ consumer may file an informal complaint against a carrier even if he is not a customer of that carrier” (citing 47 U.S.C. § 208)); *id.* at 10349 (“Providers that fail to respond properly to informal rural call completion complaints by satisfying such complaints, adequately explaining why they cannot satisfy such complaints, or explicitly refusing to satisfy such complaints, may be subject to enforcement action for failure to comply with section 208 and Rule 1.717” (citing 47 U.S.C. § 208; 47 CFR § 1.717)).

Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that inContact complies with the terms and conditions of the Compliance Plan and this Consent Decree, including the investigation and resolution of rural call completion complaints. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Rural Call Completion Rules prior to assuming his/her duties.

19. **Compliance Plan.** For purposes of settling the matters set forth herein, inContact 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.

(a) With respect to the Rural Call Completion Rules, inContact will implement, at a minimum, the following procedures:

(1) Operating Procedures. Within sixty (60) calendar days after the Effective Date, inContact shall establish Operating Procedures that all Covered Employees must follow to help ensure inContact's compliance with the Rural Call Completion Rules and this Consent Decree. inContact's Operating Procedures shall include internal procedures and policies specifically designed to ensure that inContact will timely investigate evidence of potential rural call completion problems about which it knows or should know, based upon complaints from the FCC or other regulatory agencies, customers of inContact or their agents, consumers, rural carriers, or other sources and, if inContact's investigation reveals a rural call completion problem, that the Company will take appropriate steps to attempt to resolve the problem. inContact shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Rural Call Completion Rules.

(2) 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 Rural Call Completion Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure inContact's compliance with the Rural Call Completion Rules and this Consent Decree. inContact shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. inContact shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(3) Compliance Training Program. inContact shall establish and implement a Compliance Training Program on compliance with the Rural Call Completion Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of inContact's obligation to report any noncompliance with the Rural Call Completion Rules under paragraph 20 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, except that 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. inContact shall repeat 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.

(b) **Industry Engagement.** To advance an industry solution to rural call completion problems, inContact agrees to provide information and data regarding call completion to rural areas to the grantee of the rural call completion academic study in progress under the terms of the Consent

Decree between the Bureau and Verizon²⁴ and to provide reasonable access, consistent with all legal obligations, to traffic data for the academic study.

20. **Reporting Noncompliance.** inContact shall report any noncompliance with the Rural Call Completion Rules and with the terms and conditions of this Consent Decree within fifteen (15) business days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that inContact 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 inContact 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, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Margaret Dailey at Margaret.Dailey@fcc.gov.

21. **Compliance Reports.** inContact 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 inContact's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Rural Call Completion Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of inContact, stating that the Compliance Officer has personal knowledge that inContact: (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 20 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.²⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of inContact, 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 inContact 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 inContact 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 and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Margaret Dailey at Margaret.Dailey@fcc.gov.

22. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 18 through 21 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

²⁴ See *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245, 256 at para. 18.(b)[2] (2015).

²⁵ 47 CFR § 1.16.

23. **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 Act²⁶ against inContact 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 inContact with the Communications Laws.

24. **Civil Penalty.** inContact will pay a civil penalty to the United States Treasury in the amount of One Hundred Thousand Dollars (\$100,000) within thirty (30) calendar days of the Effective Date. inContact shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Margaret Dailey at Margaret.Dailey@fcc.gov on the date said payment is made. The 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.²⁷ 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 that should be followed based on the form of payment selected:

- 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.

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.

25. **Waivers.** As of the Effective Date, inContact 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. inContact 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 Consent Decree or the Adopting Order, neither inContact nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and inContact shall waive any statutory right to a trial *de novo*.

²⁶ 47 U.S.C. § 208.

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/forms#159.pdf>.

inContact hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁸ relating to the matters addressed in this Consent Decree.

26. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

27. **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.

28. **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 inContact does not expressly consent) that provision will be superseded by such Rule or Order.

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

30. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

32. **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.

33. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

34. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or 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.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Daniel G. Lloyd

²⁸ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

General Counsel
inContact, Inc.

Date