

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

| | | |
|-----------------------------------|---|------------------------------|
| In the Matter of |) | File No.: EB-07-TC-4006 |
| |) | NAL /Acct. No.: 200832170013 |
| Horizon Telecom, Inc. |) | FRN: 0009704925 |
| |) | |
| and |) | |
| |) | |
| Reduced Rate Long Distance, LLC |) | File No.: EB-08-TC-1067 |
| |) | NAL /Acct. No.: 200832170026 |
| Apparent Liability for Forfeiture |) | FRN: 0005003025 |
| |) | |

ADOPTING ORDER

Adopted: March 30, 2012

Released: April 5, 2012

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 (Commission) and Horizon Telecom, Inc. (Horizon) and Reduced Rate Long Distance, LLC (Reduced Rate Long Distance). The Consent Decree terminates the investigation initiated by the Bureau regarding Horizon's compliance with Sections 201(b) and 258 of the Communications Act of 1934, as amended (Act),¹ and Sections 1.717, 64.1120, and 64.1130 of the Commission's rules,² and finds that the forfeiture proposed in the Notice of Apparent Liability for Forfeiture should not be imposed.³ The Consent Decree also terminates the investigation initiated by the Bureau regarding Reduced Rate Long Distance's compliance with Section 1.717 of the Commission's rules,⁴ and finds that the forfeiture proposed in the Notice of Apparent Liability for Forfeiture should not be imposed.⁵

2. The Bureau and Horizon and Reduced Rate Long Distance have negotiated the terms of a Consent Decree that resolves these matters. A copy of the Consent Decree is attached hereto and incorporated by reference.

¹ 47 U.S.C. §§ 201(b), 258.

² 47 C.F.R. §§ 1.717, 64.1120, 64.1130.

³ *In the Matter of Horizon Telecom, Inc., Notice of Apparent Liability for Forfeiture*, Apparent Liability for Forfeiture, 23 FCC Rcd 3485 (2008)(*Horizon NAL*).

⁴ 47 C.F.R. § 1.717.

⁵ *In the Matter of Reduced Rate Long Distance*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2697 (Enf. Bur. 2008)(*Reduced Rate Long Distance NAL*).

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 referenced investigations.

4. In the absence of material new evidence relating to this matter, we conclude that our investigations raise no substantial or material questions of fact as to whether Reduced Rate Long Distance possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.⁶

5. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended⁷ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,⁸ that the attached Consent Decree **IS ADOPTED**.

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

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 Thomas K. Crowe, Partner, Law Offices of Thomas K. Crowe, P.C., 1250 24th Street, N.W., Suite 300, Washington, D.C. 20037.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁶ Horizon permanently discontinued all interstate, international, and intrastate long distance services in April 2007. Horizon's telecommunications assets, including its customer base, were transferred to Reduced Rate Long Distance on January 23, 2009.

⁷ 47 U.S.C. § 154(i).

⁸ 47 CFR §§ 0.111, 0.311.

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| Reduced Rate Long Distance, LLC |) | File No.: EB-08-TC-1067 |
| |) | NAL /Acct. No.: 200832170026 |
| Apparent Liability for Forfeiture |) | FRN: 0005003025 |
| |) | |

CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission and Horizon Telecom, Inc. and Reduced Rate Long Distance, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the investigations initiated by the Bureau into whether Horizon Telecom, Inc. violated Sections 201(b) and 258 of the Communications Act of 1934, as amended,¹ and Sections 1.717, 64.1120, and 64.1130 of the Commission's rules,² and whether Reduced Rate Long Distance, LLC violated Section 1.717 of the Commission's rules. In addition to terminating the investigations, the Consent Decree finds that the forfeitures proposed in the related Notices of Apparent Liability for Forfeiture should not be imposed.³

III. DEFINITIONS

2. For 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.

¹ 47 U.S.C. §§ 201(b), 258.

² 47 C.F.R. §§ 1.717, 64.1120, 64.1130.

³ *In the Matter of Horizon Telecom, Inc., Notice of Apparent Liability for Forfeiture*, Apparent Liability for Forfeiture, 23 FCC Rcd 3485 (2008)(*Horizon NAL*). *In the Matter of Reduced Rate Long Distance*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2697 (Enf. Bur. 2008)(*Reduced Rate Long Distance NAL*).

- b. “Adopting Order” or “Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigations.
- c. “Affiliate” shall have the same meaning as that term is defined in Section 153(1) of the Communications Act. 47 U.S.C. § 153(1).
- d. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- e. “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
- f. “Effective Date” means the date on which the Bureau releases the Adopting Order.
- g. “Horizon” means Horizon Telecom, Inc., its affiliates, and its predecessors-in-interest and successors-in-interest.
- h. “Horizon Obligations” means the requirements described in this Consent Decree at paragraph 12.
- i. “Horizon Investigation” means the Bureau’s investigation regarding Horizon’s compliance with Sections 201(b) and 258 of the Act, 47 U.S.C. §§ 201(b), 258, and Sections 1.717, 64.1120, and 64.1130 of the Commission’s rules, 47 C.F.R. §§ 1.717, 64.1120, 64.1130, commenced by the Bureau’s June 28, 2007 letter of inquiry to Horizon, described in paragraph 5 below.
- j. “Investigations” means, collectively, the Horizon Investigation and the Reduced Rate Long Distance Investigation.
- k. “Parties” means Horizon, Reduced Rate Long Distance, and the Bureau, each of which is a “Party.”
- l. “Rules” means those rules and regulations codified in Title 47 of the Code of Federal Regulations.
- m. “Reduced Rate Long Distance” means Reduced Rate Long Distance, LLC, its affiliates, and its predecessors-in-interest and successors-in-interest.
- n. “Reduced Rate Long Distance Compliance Plan” means the program described in this Consent Decree at paragraph 13.
- o. “Reduced Rate Long Distance Investigation” means the Bureau’s investigation regarding Reduced Rate Long Distance’s compliance with Section 1.717 of the Commission’s rules, 47 C.F.R. § 1.717, commenced by the Bureau’s January 24, 2008 letter of inquiry to Reduced Rate Long Distance, described in paragraph 6 below.

- p. “Slamming Rules” means the Rules set forth at 47 C.F.R. § 64.1120 *et seq.*

II. BACKGROUND

3. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Act.⁴ Section 258 makes it unlawful for any telecommunications carrier to “submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.”⁵ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶ The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁷ Pursuant to Section 258, carriers are absolutely barred from changing a customer’s preferred local or long distance carrier without first complying with one of the Commission’s verification procedures.⁸ Specifically, a carrier must: (1) obtain the subscriber’s written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber’s order.⁹

4. Horizon was a provider of telecommunications services that primarily used the internet to market its products to residential customers from approximately February 2006 through April 2007. Horizon also engaged in a telemarketing program that was suspended in

⁴ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁵ 47 U.S.C. § 258(a).

⁶ *See generally Section 258 Order.*

⁷ 47 C.F.R. § 64.1120.

⁸ 47 U.S.C. § 258(a).

⁹ 47 C.F.R. § 64.1120(c).

May 2007. On December 1, 2007, Horizon and Reduced Rate Long Distance entered into a management agreement, whereby Reduced Rate Long Distance agreed to manage the business of Horizon. The companies also contemporaneously entered into an asset purchase agreement, whereby Horizon's telecommunications assets, including its customer base, would be transferred to Reduced Rate Long Distance. The transfer was consummated on January 23, 2009. The companies state that all affected customers have been notified pursuant to Section 64.1120(e)(3) of the Commission's rules.¹⁰

Horizon NAL

5. The Bureau sent a letter of inquiry (LOI) to Horizon on June 28, 2007.¹¹ Horizon provided a Response to the LOI on July 27, 2007¹² and supplemented its Response on September 19, 2007 and October 5, 2007.¹³ On February 29, 2008, the Commission released an NAL against Horizon for its apparent willful and repeated failure to respond on a timely basis to twenty-one informal complaints that had been served upon it by the Commission's Consumer and Governmental Affairs Bureau (CGB), and for apparently changing the preferred carriers of one hundred twenty-five consumers without proper authorization.¹⁴ On March 31, 2008, Horizon filed its response to the NAL.¹⁵

Reduced Rate Long Distance NAL

6. The Bureau sent an LOI to Reduced Rate Long Distance on January 24, 2008.¹⁶ Reduced Rate Long Distance submitted its responses on March 3, 2008¹⁷ and March 12, 2008.¹⁸

¹⁰ 47 C.F.R. § 64.1120(e)(3). Additionally, according to the companies, a copy of the notice to affected customers was filed by Horizon and Reduced Rate Long Distance on December 22, 2008 in CC Docket No. 00-257, pursuant to Section 64.1120(e)(1) of the Commission's rules, 47 C.F.R. § 64.1120(e)(1), and the Notification of Pro Forma Assignment of Customer Base from Horizon Telecom, Inc. to Reduced Rate Long Distance, LLC was filed with the Commission on February 3, 2009, pursuant to Sections 63.03(d) and 63.24(f)(2), 47 C.F.R. §§ 63.03(d), 63.24(f)(2).

¹¹ Letter from Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Cheyenne Devine, Customer Service Manager, Horizon Telecom, Inc. (June 28, 2007) (on file in EB-07-TC-4006).

¹² Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Horizon Telecom, Inc., to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, (July 27, 2007) (on file in EB-07-TC-4006).

¹³ Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Horizon Telecom, Inc., to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, (September 19, 2007) (on file in EB-07-TC-4006).

¹⁴ See *supra* note 1.

¹⁵ Written Statement in Response to Notice of Apparent Liability for Forfeiture from Thomas K. Crowe and Cheng-yi Liu, Law Offices of Thomas K. Crowe, P.C., Counsel to Horizon Telecom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, filed March 31, 2008 (on file in EB-07-TC-4006).

¹⁶ Letter from Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Robert Sorrentino, Chief Executive Officer, Reduced Rate Long Distance, LLC, and Adam Z. Solomon, The Lustigman Firm, P.C. (January 24, 2008) (on file in EB-08-TC-1067).

On February 19, 2008, the Bureau released an NAL against Reduced Rate Long Distance for its failure to respond to two informal consumer complaints served upon it by CGB in apparent violation of Section 1.717 of the Commission's rules.¹⁹ On March 20, 2008, Reduced Rate Long Distance filed its response to the NAL.²⁰

IV. 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 without change, addition, modification, or deletion. Horizon's and Reduced Rate Long Distance's decisions to enter into this Consent Decree are expressly contingent upon the Bureau's issuance of an Adopting Order.

8. **Jurisdiction.** Horizon and Reduced Rate Long Distance agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and 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. Upon 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 contained herein, and to avoid expenditure of additional public resources, the Bureau agrees to terminate the Investigations. In consideration for the termination of said Investigations and in accordance with the terms of this Consent Decree, Horizon and Reduced Rate Long Distance agree to the terms, conditions, and procedures contained herein. The Bureau agrees that, in the absence of new material evidence related to the Investigations, it will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take, on its own motion, or refer to the Commission, any action against Horizon or Reduced Rate Long Distance, concerning the matters that were the subject of the Investigations, or with respect to Reduced Rate Long Distance's basic qualifications, including its character qualifications, to be a Commission licensee or hold other Commission authorizations.

¹⁷ Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Reduced Rate Long Distance, LLC, to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau (March 3, 2008) (on file in EB-08-TC-1067).

¹⁸ Letter from Andrew Lustigman, The Lustigman Firm, P.C., Counsel to Reduced Rate Long Distance, LLC, to Marcy Greene, Deputy Division Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, (March 12, 2008) (on file in EB-08-TC-1067).

¹⁹ See *supra* note 2.

²⁰ Written Statement in Response to Notice of Apparent Liability for Forfeiture from Thomas K. Crowe and Cheng-yi Liu, Law Offices of Thomas K. Crowe, P.C., and Andrew Lustigman and Adam Z. Solomon, The Lustigman Firm, P.C., Counsel to Reduced Rate Long Distance, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed March 3, 2008 (on file in EB-08-TC-1067).

11. **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 against Horizon or Reduced Rate Long Distance 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 Horizon or Reduced Rate Long Distance with the Act, the Rules, or the Adopting Order.

12. **Horizon Obligations.** To resolve and terminate the Horizon Investigation, Horizon agrees to certain obligations consistent with this paragraph 12.

A. **No Marketing or Sales of Telecommunications Services.** Irrespective of other terms that may be set forth in this Consent Decree, Horizon shall not, at any time, market or sell, or resume marketing or sales of, telecommunications services.

B. **Discontinuance of Service.** Horizon represents that it has transferred its telecommunications assets, including its customer base, to Reduced Rate Long Distance and permanently discontinued all interstate, international, and intrastate long distance services as of April 2007. Irrespective of other terms that may be set forth in this Consent Decree, Horizon shall not, at any time, resume the provision of telecommunications services in the future.

C. **Notice of Consent Decree.** Within sixty (60) calendar days after the Effective Date, Horizon shall notify all of its directors, officers, managers, employees, and agents, including all sales representatives and Third Party Verification firms utilized by Horizon, of the terms and conditions set forth in this Consent Decree.

D. **Reporting Non-Compliance.** Horizon shall report any non-compliance with this Consent Decree to the Enforcement Bureau within thirty (30) calendar days after the discovery of non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Horizon has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Horizon has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554, with a copy submitted electronically to donna.cyrus@fcc.gov and kimberly.wild@fcc.gov.

13. **Reduced Rate Long Distance Compliance Plan.** To resolve and terminate the Reduced Rate Long Distance Investigation, Reduced Rate Long Distance agrees to implement a Compliance Plan consistent with this paragraph 13.

A. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Reduced Rate Long Distance shall designate a Compliance Officer responsible for administering Reduced Rate Long Distance's Compliance Plan. The

Compliance Officer shall ensure compliance with this Consent Decree and the Slamming Rules.

B. **Consumer Remedies.** Reduced Rate Long Distance shall take the necessary steps to address any and all consumer complaints regarding an alleged unauthorized switch of service provider by:

- i. having all such complaints addressed by appropriately-trained customer service representatives; and
- ii. acting in good faith to resolve all such complaints during the first call; and where it is necessary to call the customer back or leave a message, striving to resolve the complaint in the same business day and at the latest within twenty-four (24) hours, excluding weekends and federal holidays; and
- iii. providing all appropriate remedies, including credits and refunds, if necessary; and
- iv. implementing improvements to its customer service program, including upgrading its complaint logging database to allow timely responses to informal complaints served by the FCC.

C. **Revised Sales Scripts, Third Party Verification Scripts, and Letters of Authorization.** Reduced Rate Long Distance shall revise its sales scripts, third party verification scripts, and any other marketing or verification scripts, including written or electronic Letters of Authorization to ensure compliance with the Rules.

D. **Customer Service Record Retention.**

- i. In addition to the Third Party Verification retention requirements set forth in Section 64.1120(a)(1)(ii) of the Commission's rules, Reduced Rate Long Distance shall retain records of all consumer complaints and customer service responses, including consumer credits, for the term of this Consent Decree. The records shall be maintained in an accurate and easy-to-review format. These records shall be made available to the Bureau for inspection within twenty (20) business days from receipt of a Bureau request.
- ii. Consumer complaint records shall include all written consumer complaints filed directly with Reduced Rate Long Distance by consumers or submitted to Reduced Rate Long Distance by the Commission or other state or federal authority.
- iii. The record of consumer complaints shall include the name, address, and telephone number of each complainant, Reduced Rate Long Distance's response, and the status or final disposition of each complaint. For the purposes of this provision, consumer

complaint records shall include all non-privileged writings, computer records, electronic, or email communications, all written notes regarding such writings, verbal discussions, and electronic mail communications.

E. **Sales Training Materials.**

- i. Reduced Rate Long Distance shall implement a new Policy Manual (Manual) within thirty (30) calendar days after the Effective Date. The Manual will prohibit any activity that violates any federal or state law, misrepresents the sales caller's identity or purpose, or involves any other misleading, untrue, or incomplete statements. The Manual shall impose a "zero tolerance" policy for acts of misrepresentation for which Reduced Rate Long Distance may immediately terminate its relationship with any employee, affiliate, agent, contractor, or any other individual or entity acting on behalf of, or for the benefit of, Reduced Rate Long Distance. All such sales and marketing individuals or entities shall be provided with a copy of the Manual, and be required to review the Manual, and an explanation of the provisions in the Manual shall be a part of their initial training.
- ii. The activity prohibited by the Manual shall include, but will not be limited to:
 - a. any activity that violates any federal or state law or results in violation of any regulation enacted by any federal or state governmental body including the FCC or any state public utilities commission. Any activity that would constitute a violation of federal or state slamming or cramming laws is strictly prohibited; and
 - b. any act of misrepresentation or fraud made in relation to Reduced Rate Long Distance's services, rates, surcharges, terms, and conditions. This may include, but is not limited to, the following:
 - 1) claiming that a sales call is for a purpose other than to sell Reduced Rate Long Distance's long distance services;
 - 2) claiming that a sales call is only for the purpose of verifying or confirming the consumer's current services;
 - 3) falsely claiming that the call will not result in a change of the consumer's long distance carrier;

- 4) claiming to be affiliated with or working for any telecommunications carrier or any other company other than Reduced Rate Long Distance;
- 5) claiming that another carrier (or the consumer's current carrier) cannot make or complete certain long distance calls;
- 6) failing to adequately identify the marketing representative or Reduced Rate Long Distance on a sales call;
- 7) making any false, untrue, misleading, or incomplete statements;
- 8) any conduct which generally violates standard industry ethical practices.

F. **Sales and Marketing Contracts.** Reduced Rate Long Distance shall require contracts from all sales and marketing companies it employs obligating them to abide by all applicable federal, state, and local laws and regulations, including the Act. Said contracts shall allow Reduced Rate Long Distance, in its sole discretion, to terminate any contract upon suspicion of illegal or unethical conduct.

G. **Counsel Review.** Prior to distributing the new Policy Manual and the new sales scripts, TPV scripts, and other marketing or verification scripts described herein, Reduced Rate Long Distance shall submit the same to legal counsel of its own designation for review and editing regarding conformity with the requirements of this Compliance Plan and all applicable federal and state laws. Such counsel shall have experience with federal telecommunications and consumer protection laws, including the law relating to fraudulent, deceptive, unconscionable, and unfair acts or practices.

H. **Notice of Consent Decree.** Within sixty (60) calendar days after the Effective Date, Reduced Rate Long Distance shall notify all directors, officers, managers, employees and agents, including all sales representatives and Third Party Verification firms utilized by Reduced Rate Long Distance, of the terms and conditions set forth therein.

I. **Reporting Non-Compliance.** Reduced Rate Long Distance shall report any non-compliance with this Consent Decree, or with the Slamming Rules, to the Bureau within thirty (30) calendar days after the discovery of non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Reduced Rate Long Distance has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Reduced Rate Long Distance has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, D.C. 20554, with a copy submitted electronically to donna.cyrus@fcc.gov.

J. **Compliance Report.** The Compliance Officer, as an agent of and on behalf of Reduced Rate Long Distance, shall file compliance reports ninety (90) calendar days after the Effective Date, one (1) year after the Effective Date, and at the end of the two (2) year term, in compliance with the terms of this paragraph 13(J).

- i. Each compliance report shall include a detailed description of Reduced Rate Long Distance's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's Slamming Rules.
- ii. Each compliance report shall include a certification by the Compliance Officer, as an agent of and on behalf of Reduced Rate Long Distance, stating that the Compliance Officer has personal knowledge that Reduced Rate Long Distance (A) has established and implemented the Compliance Plan; (B) has been following all aspects of the Compliance Plan for the entire term of the Consent Decree; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree that have not been disclosed as required by paragraph 13(I) above. The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must be substantially in the form set forth in Section 1.16 of the Rules.²¹
- iii. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Reduced Rate Long Distance, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that Reduced Rate Long Distance has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that Reduced Rate Long Distance has taken or will take to prevent recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- iv. Such certification must be mailed within fifteen (15) calendar days of the one (1) and the two (2) year anniversary of the Effective Date, and Reduced Rate Long Distance must mail the certification to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the file number listed above. Reduced Rate Long Distance shall also send an electronic copy of its

²¹ 47 C.F.R. § 1.16.

certification to kimberly.wild@fcc.gov and donna.cyrus@fcc.gov.

K. **Duration of the Compliance Plan.** Reduced Rate Long Distance shall implement the Reduced Rate Long Distance Compliance Plan within sixty (60) calendar days after the Effective Date. The term of the Reduced Rate Long Distance Compliance Plan shall expire two (2) years after the Effective Date.

14. **Voluntary Contribution.** In consideration for the termination of the Investigations in accordance with the terms of this Consent Decree, Horizon and Reduced Rate Long Distance agree to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of fifty-three thousand dollars (\$53,000) within thirty (30) calendar days after the Effective Date. Horizon and Reduced Rate Long Distance agree that they are jointly and severally liable for the payment, which is reduced from the proposed NAL amounts based upon their demonstrated inability to pay.²² The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York and account number 27000001. Horizon and Reduced Rate Long Distance will also send electronic notification on the date said payment is made to Johnny.Drake@fcc.gov.

15. **Waivers.** Horizon and Reduced Rate Long Distance waive any and all rights they 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. Horizon and Reduced Rate Long Distance shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein, and of the Rules. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, neither Horizon, Reduced Rate Long Distance, nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and Horizon and Reduced Rate Long Distance shall waive any statutory right to a trial *de novo* and shall consent to a judgment incorporating the terms of this Consent Decree. Horizon and Reduced Rate Long Distance hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters contained in this Consent Decree.

16. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its

²² See *supra* note 3.

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.

17. **Privileged and Confidential Documents**. By this Consent Decree, Horizon and Reduced Rate Long Distance neither waive nor alter their rights to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

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

19. **Successors and Assigns**. Horizon and Reduced Rate Long Distance agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

20. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigations. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Horizon or Reduced Rate Long Distance with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, Horizon and Reduced Rate Long Distance do not admit or deny any noncompliance, violation, or liability associated with or arising from their actions or omissions involving the Act or the Rules that are the subject of this Consent Decree.

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

22. **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.

23. **Counterparts**. This Consent Decree may be signed in counterparts (including by facsimile or electronic mail), 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.

24. **Authorized Representative.** Each Party represents and warrants that it has full power and authority to enter into this Consent Decree.

For: Horizon Telecom, Inc.

Date Robert Sorrentino
 President

For: Reduced Rate Long Distance, LLC

Date Robert Sorrentino
 President

For: Federal Communications Commission

Date P. Michele Ellison
 Chief, Enforcement Bureau