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Consent Decree

I. Introduction

1. This Consent Decree is entered into by the Enforcement  
Bureau, Federal Communications Commission ("Bureau") and  
International Business Machines Corporation ("IBM").

II. Background

2. There are four separate transfers that are the subject  
of this Consent Decree. The first two transactions  
involve microwave and land mobile stations<sup>1</sup> originally  
licensed to Advantis, a general partnership owned 70  
percent by IBM and 30 percent by Sears Roebuck & Co.  
(``Sears'').<sup>2</sup> IBM's 70 percent interest was held by  
Tarrytown Holdings, a wholly owned subsidiary of ISSC,  
which was in turn a wholly owned subsidiary of IBM. On  
June 11, 1997, Tarrytown Holdings became a subsidiary of  
ISSC Holdings, Inc., a newly created subsidiary of ISSC.  
On June 12, 1997, THP, Inc., another wholly owned  
subsidiary of ISSC Holdings, Inc., acquired Sears'  
interest in Advantis. At that time, IBM owned 100 percent  
of Advantis. On July 1, 1997, Tarrytown Holdings merged  
into THP, Inc., causing the dissolution of the Advantis  
partnership. THP, Inc., the surviving entity, was  
renamed Advantis Corporation. On October 1, 1997, IBM's  
restructuring of its interest in Advantis was completed  
when Advantis Corporation, ISSC, and ISSC Holdings, Inc.  
were all merged into IBM.
3. IBM, Advantis, and the other corporations involved did  
not file applications for Commission consent to the  
transfers of control of the subject stations that took  
place when these transactions were effectuated. IBM  
admits that it was not until a ``review of the licenses  
in connection with the filing of renewal applications for  
the stations that the earlier failure to obtain FCC  
consent came to light.'' IBM attributes Advantis's, and  
subsequently its own, oversight, in part, to ``the fact

that licensees of private operational fixed microwave radio stations are not required to provide detailed ownership information at the time of filing of their initial applications for new licenses.' IBM admits that it did not review the transfer of control implications of the transaction ``because the transaction was, at the time, viewed only as a corporate restructuring.'<sup>3</sup>

4. IBM states that shortly before October 26, 1998, it determined that it had failed to obtain Commission consent to the pro forma transfers of control. On November 2, 1998, IBM filed a Request for Special Temporary Authority, which was granted on November 12, 1998.<sup>4</sup> Also on November 2, 1998, IBM filed an application for the Commission's consent to assign the licenses to IBM.<sup>5</sup> That application was granted on December 2, 1998.<sup>6</sup>
5. On July 20, 1999, the Enforcement Division of the Wireless Telecommunications Bureau<sup>7</sup> issued a Notice of Apparent Liability for Forfeiture (``NAL''), finding IBM apparently liable for a forfeiture in the total amount of \$20,000.<sup>8</sup> Specifically, the NAL concluded that IBM had ``engaged in unauthorized pro forma transfers of control of the stations, in apparent repeated violation of Section 310(d) of the Communications Act of 1934, as amended ("Act") and Section 101.53 of the Commission's Rules.''
6. On August 19, 1999, IBM submitted a response to the NAL in which it argued that as a matter of policy, the Commission should not impose a forfeiture on IBM.<sup>9</sup> IBM also argued in the alternative that if the Commission did impose a forfeiture, it should reduce the amount of the forfeiture significantly.<sup>10</sup> IBM subsequently withdrew this response.<sup>11</sup>
7. On September 24, 1999, IBM met with Commission staff. At this meeting, IBM informed the Commission that it may have prematurely transferred control of 20 of the 22 licenses that were the subject of the NAL to the Boeing Company (``Boeing'') as part of a very large and complex transaction involving the transfer of information technology facilities and services between the two corporations. Prior to the meeting, IBM and Boeing had filed applications for the Commission's consent to assign the licenses in question to Boeing. Those applications were granted on October 6, 1999. At this meeting, IBM also informed the Commission that it had discovered another license that should have been included in the pro forma transfer of licenses from Advantis to IBM.
8. IBM committed to conducting a comprehensive due diligence review of its operations and licenses. On December 17, 1999, IBM reported the results of its due diligence review. IBM reported two additional instances where it had acquired control of Commission licenses without seeking prior approval of the Commission. The first such instance occurred on July 7, 1995, when IBM acquired control of two currently active land mobile licenses from Lotus Development Corporation (call signs KNJJ238 and WNZT528). The second instance occurred on September 24, 1999, when IBM acquired control of three

land mobile licenses held by Sequent Computer Systems, Inc. (call signs WNXT503, WNSA207, and WNYM818).

### III. Definitions

9. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Commission" means the Federal Communications Commission.
  - (b) "Bureau" means the Commission's Enforcement Bureau.
  - (c) "IBM" means International Business Machines Corporation and all of its subsidiaries and affiliates.
  - (d) ``NAL'' means International Business Machines, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 11667 (WTB released July 20, 1999)
  - (e) ``Advantis transactions'' means the series of transactions that culminated on October 1, 1997, with the merging of Advantis Corporation, ISSC, and ISSC Holdings, Inc. into IBM.
  - (f) ``Boeing transactions'' means the series of transactions that culminated in the January 1, 1999, transfer of stations formerly licensed to Advantis from IBM to the Boeing Company.
  - (g) ``Lotus transaction'' means the transaction that culminated on July 7, 1995, with the transfer of licenses formerly held by Lotus Development Group to IBM.
  - (h) ``Sequent transaction'' means the transaction that culminated on September 24, 1999, with the transfer of licenses formerly held by Sequent Computer Systems, Inc. to IBM.
  - (i) "Order" means an order of the Enforcement Bureau adopting this Consent Decree.
  - (j) "Final Order" means an Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

### IV. Agreement

10. Without admitting to any violation of the Commission's rules, IBM agrees not to contest findings in the NAL that IBM apparently violated Section 310(d) of the Communications Act of 1934, as amended, and Sections 90.113 and/or 101.53 of the Commission's rules with respect to the Advantis transactions, provided that these findings shall not be used by the Bureau against IBM or its affiliates in any other current or future proceedings before the Bureau, except as set forth in paragraph 17 of this Consent Decree.
11. IBM and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by IBM arising out of the Advantis, Boeing, Lotus, or Sequent transactions.
12. IBM shall make a voluntary contribution to the United States Treasury in the amount of \$70,000 within 10 calendar days after the Bureau releases an Order adopting

this Consent Decree.

13. IBM agrees to implement a comprehensive Compliance Program to ensure compliance with the Communications Act and the Commission's rules and policies. Documents describing the Compliance Program are contained in a letter from James C. Rendeiro III, Vice President, Associate General Counsel, IBM Global Services, to John J. Schauble, Special Counsel, Investigations and Hearings Division, Enforcement Bureau dated April 6, 2000 and are incorporated herein by reference.
14. In express reliance upon the covenants and representations contained herein, the Bureau agrees to terminate the investigation into the Advantis, Boeing, Lotus, and Sequent transactions upon the Order adopting this Consent Decree becoming a Final Order.
15. In consideration for the termination of these proceedings in accordance with the terms of this Consent Decree, IBM agrees to the terms, conditions and procedures contained herein.
16. The Bureau agrees not to institute any new proceeding, formal or informal, of any kind against IBM for violations of Section 310(d) the Communications Act or Sections 90.113 and 101.53 of the Commission's rules regarding the Advantis, Boeing, Lotus, or Sequent transactions that are the subject of this Consent Decree.
17. In the event that IBM is found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 10 of this Consent Decree, IBM and the Bureau agree that the apparent misconduct described in paragraph 10 may be used by the Bureau only to fashion an appropriate sanction, provided that IBM shall not be precluded or estopped from litigating de novo any and all of the issues arising from the facts and allegations presented in the NAL as necessary to defend, in any forum, its interest from challenge by any person or entity not a party to this Consent Decree.
18. IBM admits the jurisdiction of the Bureau to adopt this Consent Decree.
19. IBM waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without change, addition, or modification.
20. IBM and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition, or modification.
21. IBM and the Bureau recognize that in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.



proceeding. On November 8, 1999, pursuant to the Commission's reorganization, the proceeding was transferred to the Investigations and Hearings Division of the Enforcement Bureau. Establishment of the Enforcement and Consumer Information Bureau, FCC 99-172 (released October 27, 1999).

8 See International Business Machines, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 11667 (WTB released July 20, 1999).

9 See Response of International Business Machines Corporation to Notice of Apparent Liability for Forfeiture, (filed Aug. 19, 1999) at 9-11.

10 Id. at 11-16.

11 See Letter, dated September 28, 1999 from J.C. Rendeiro III, Vice President, Associate General Counsel, IBM Global Services, to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC.