

July 28, 2015

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **In the Matter of a Commission Investigation of TerraCom's Data Retention Practices**  
Docket No. P6861/CI-13-401

Dear Mr. Wolf:

On May 23, 2013, the Minnesota Public Utilities Commission (Commission), noting that it had become aware by way of the press and information posted on TerraCom Inc.'s (TerraCom or the Company) website that "personal information of some of TerraCom's customers ha[d] become public," issued a Notice of Commission Investigation and Solicitation of Comments with respect to the above referenced matter.

The Department filed comments on August 8, 2013 recommending, among other things, that the Commission defer consideration of whether TerraCom had taken adequate steps to prevent a future breach of security, and whether TerraCom's continued designation as an ETC in Minnesota is in the public interest. The Department also recommended that the Commission require TerraCom to provide free credit monitoring for one year to all of the Minnesota customers that were affected by the breach.<sup>1</sup>

On October 24, 2014, the Federal Communications Commission issued a Notice of Apparent Liability, finding that TerraCom and YourTel America, Inc.<sup>2</sup> (YourTel) (collectively, the Companies) "apparently willfully and repeatedly violated Sections 201(b) and 222(a) of the Communications Act of 1934, as amended, when they:

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<sup>1</sup> The Department also recommended that the Commission find that TerraCom had violated FCC rules then in place, prohibiting retention of the data it reviewed to confirm applicants' eligibility for Lifeline benefits. However, since that time, the FCC has modified its rules to eliminate the prohibition on retaining data and **requiring that** the eligibility data be securely retained. The FCC reasoned that doing so would "improve the auditability and enforceability of [its] rules, significantly reduce falsified records, and provide certainty to the industry regarding the documents that need to be retained in the event of an audit or investigation." (See In the Matter of Lifeline and Link Up Reform and Modernization et al, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum, Opinion and Order, WC Docket 11-42, et al, para. 231.)

<sup>2</sup> YourTel America, Inc. and TerraCom, according to the Consent Decree, have certain common shareholders and share key employees (Dale Schmick, for example, is the Chief Operating Officer for both companies), but operate as separate corporate entities.(See Consent Decree Order, page 4, para.5.) YourTel America Inc. does not operate as an ETC in Minnesota.

- i. failed to properly protect the confidentiality of consumers' [private information] they collected from applicants for the Companies' wireless and wired Lifeline telephone services;
- ii. failed to employ reasonable data security practices to protect consumers' private information;
- iii. engaged in deceptive and misleading practices by representing to consumers in the Companies' privacy policies that they employed appropriate technologies to protect consumers' private information when, in fact, they had not; and
- iv. engaged in unjust and unreasonable practices by not fully informing consumers that their private information had been compromised by third-party access.<sup>3</sup>

The FCC proposed a forfeiture of \$10,000,000.

On July 9, 2015, the Federal Communications Commission (FCC) issued an Order<sup>4</sup> noting that the FCC's Enforcement Bureau had entered into a Consent Decree "resolving its investigation into whether TerraCom and YourTel failed to protect the confidentiality of proprietary information that they received from Lifeline applicants to demonstrate eligibility for the program..."<sup>5</sup>

According to the terms of the Consent Decree, TerraCom and YourTel will pay a civil penalty of \$3,500,000. In addition the Companies will "develop and implement a compliance plan to ensure that appropriate procedures are in place to protect consumers against similar data breaches in the future."<sup>6</sup>

Within thirty days of the effective date, each company is required to designate a senior corporate manager who is a certified privacy professional as a Compliance Officer, to discharge the duties enumerated in the Compliance Plan set forth in the Consent Decree.

Specifically, the Compliance Plan requires that each company:

- Conduct a privacy risk assessment;
- Implement a written information security program;
- Maintain reasonable oversight of third party vendors;
- Implement a data breach response plan, and

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<sup>3</sup> In the Matter of TerraCom, Inc. and YourTel America, Inc., File No. EB-TCD-13-00009175, Notice of Apparent Liability for Forfeiture, para. 2, October 24, 2014.

<sup>4</sup>In the Matter of TerraCom, Inc. and YourTel America, Inc., File No. EB-TCD-13-00009175, Order, July 9, 2015.

<sup>5</sup>In the Matter of TerraCom, Inc. and YourTel America, Inc., File No. EB-TCD-13-00009175, Order, July 9, 2015, para. 1.

<sup>6</sup> *Id.* para.4.

- Provide privacy and security awareness training to employees.
- File regular compliance reports with the FCC.<sup>7</sup>

The agreement requires that the Companies make reasonable efforts to identify and notify each affected customer that his or her private information was compromised and offer to provide one year of complimentary credit monitoring service to each affected customer.

The FCC found that the public interest would be served by terminating its investigation and adopting the terms of the Consent Decree.

The Department believes that the conclusions reached by the FCC in its July 15, 2015 Order and the specific remedial actions and reporting requirements set forth in the Consent Decree address the Department's concerns expressed in its August 8, 2013 comments. The FCC Order and Consent Decree provide sufficient assurance that TerraCom will inform all customers appropriately, that TerraCom will provide ongoing protection to the customers affected by the breach, and that TerraCom has a reasonable plan in place to safeguard customer's private information on an ongoing basis.

The Department recommends that the Commission take no further action on this matter, and that the docket be closed.

Sincerely,

/s/ KATHERINE DOHERTY  
Rate Analyst

KD/lt

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<sup>7</sup> *Id.*

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Letter**

**Docket No. P6861/CI-13-401**

**Dated this 28<sup>th</sup> day of July 2015**

**/s/Sharon Ferguson**

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