

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

In the Matter of	)	
	)	File No. EB-01-TC-057
Yestel, Inc.	)	FRN No. 0007322456
	)	

**ORDER**

**Adopted: October 16, 2002;**

**Released: October 17, 2002**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree terminating an investigation regarding unauthorized preferred carrier conversions by Yestel, Inc. (Yestel).

2. The Bureau and Yestel have negotiated the terms of a Consent Decree that would resolve this matter and the staff's investigation. A copy of the Consent Decree is attached and is incorporated by reference.

3. We have reviewed the terms of the Consent Decree, and we conclude that the public interest would be served by approving the Consent Decree and terminating the investigation.

4. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial and material questions of fact as to whether Yestel possesses the basic qualifications, including its character qualifications, to hold or obtain any FCC licenses or authorizations.

5. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 503(b) of the Communications Act, 47 U.S.C. §§ 154(i), 503(b), and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the attached Consent Decree IS ADOPTED.

6. IT IS FURTHER ORDERED that the above-captioned case as well as the Commission staff inquiry into the matter described herein ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

## CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (“FCC” or “Commission”) and Yestel, Inc., (Yestel) hereby enter into a Consent Decree terminating an informal Bureau investigation into possible violations of section 258 of the Communications Act and the Commission’s rules relating to unauthorized preferred interexchange carrier (“PIC”) conversions and third party verification procedures.<sup>1</sup> Yestel is a reseller of interstate interexchange telecommunications services as well as international telecommunications services and is subject to the Commission’s regulations pursuant to its status as a common carrier. This Consent Decree is the result of an informal investigation that was initiated on November 14, 2001.

2. For the purposes of this Consent Decree the following definitions shall apply:

- a) “Commission” or “FCC” means the Federal Communications Commission;
- b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
- c) “Division” means the Telecommunications Consumers Division of the Enforcement Bureau;
- d) “Yestel ” means Yestel, Inc., its successors and assigns;
- e) “Parties” means Yestel and the Commission or Bureau;
- f) “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree;
- g) “Effective Date” means the date on which the Commission adopts the Adopting Order.
- h) “Preferred carrier change” shall mean an order or request submitted by a carrier to a local exchange carrier (“LEC”) to effect a change in the customer’s preferred carrier;
- i) “Informal Complaint” or “Consumer Complaint” means a complaint filed under 47 C.F.R. § 1.716;
- j) “Formal Complaint” means a complaint filed under 47 U.S.C. § 208;

3. 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 an Adopting Order of the Bureau.

4. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission Order entitling the Commission to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a

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<sup>1</sup> See 47 C.F.R. §§ 64.1100; 64.1120.

Commission Order.

5. Yestel admits the jurisdiction of the Commission for purposes of this Consent Decree and any Adopting Order.

6. Yestel waives any rights that it may have to further procedural steps and any rights it may have to seek judicial review or otherwise challenge or contest the validity of the Adopting Order or this Consent Decree.

7. Yestel waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

### **Terms of Settlement**

8. Yestel represents and warrants that it is the properly named party to this Consent Decree and is solvent and has sufficient funds available to meet fully all financial and other obligations set forth herein. Yestel further represents and warrants that it has caused this Consent Decree to be executed by its authorized representative, as a true act and deed, as of the date affixed next to said representative's signature. Said representative and Yestel respectively affirm and warrant that said representative is acting in his capacity and within his authority as a corporate officer of Yestel, and on behalf of Yestel and that by his signature said representative is binding Yestel to the terms and conditions of this Consent Decree. Yestel also represents that it has been represented by counsel of its choice in connection with this Decree and is fully satisfied with the representation of counsel.

9. Yestel represents and warrants that it shall not effect any change in its form of doing business or its organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Decree or the obligations of this Decree.

10. In consideration for the termination by the Bureau of its investigation into whether Yestel has violated the Communications Act and/or Commission rules or orders, and in accordance with the terms of this Consent Decree, Yestel agrees to the following terms.

11. The Bureau and Yestel 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 requirements of the Communications Act or the Commission's rules, including section 258 of the Act. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Yestel does not admit or deny any liability for violating the Act or Commission rules in connection with the matters that are the subject of this Consent Decree.

12. Yestel shall make a voluntary contribution to the United States Treasury in the total amount of \$150,000 (one hundred fifty thousand dollars). This amount shall be paid within 30 days of the date the order adopting this Consent Decree becomes final. Such contribution shall be made, without further protest or recourse, by certified check, cashier's check, or money order drawn to the order of the Federal Communications Commission, and shall be mailed to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

13. Yestel agrees to reimburse in full all affected consumers whose long distance service was switched without authorization to Yestel's network. Specifically, Yestel agrees to reimburse, through billing credits for unpaid balances and through issuance of checks for amounts already paid, all affected consumers the full amount of any unauthorized Yestel charges whether or not the consumer paid the charges in error or disputed them. Yestel also agrees to return affected consumers, where necessary, to their preferred carriers of choice and order all collection agencies to close out all outstanding disputes and remove any negative credit reports for all affected consumers. Furthermore, Yestel agrees to notify all affected consumers verbally of the unauthorized conversion and apprise them of their credit for Yestel charges; if after two attempts to reach the consumer, Yestel is unable to speak to the consumer, Yestel will notify the consumer in writing of the unauthorized conversion and credit. No attempt will be made by Yestel personnel to market Yestel services to the consumer in these notification efforts. All preferred carrier change charges associated with the switch of the consumer back to his or her preferred long distance carrier shall be paid by Yestel. All credits and checks will be issued no later than sixty (60) days from the date on which this Consent Decree is adopted.

14. In addition, Yestel agrees to ensure that all preferred carrier change notifications are the product of current and valid third party verification procedures. Yestel shall not, under any circumstances, rely on communications from its underlying carrier to effectuate a preferred carrier change for any customer, -- former, current, or prospective. Yestel will also create a task force to ensure, more generally, that information regarding customer records is kept current and updated monthly. Yestel will meet these obligations no later than sixty (60) days from the date on which this Consent Decree is adopted.

15. Yestel agrees that it will send each consumer whose line was switched to Yestel without authorization, a \$10.00 prepaid Yestel calling card within sixty (60) days of the date on which the Consent Decree is adopted. Yestel is giving these prepaid cards as an additional gesture of goodwill and apology. It will be made clear that acceptance and use of this prepaid card in no way constitutes a request by the recipient for Yestel direct-dial service. Yestel shall not include marketing materials in this mailing. A sample of this mailing shall be provided to the Bureau ten (10) calendar days before it is used.

16. Yestel agrees that, in the future, it shall not knowingly submit to any LEC any preferred carrier change request unless Yestel has complied with all Commission rules and orders concerning preferred carrier changes, in effect or as they may be hereafter modified or amended. In the event that Yestel discovers that its procedures for acquiring customers have been compromised by poor communication with its underlying carrier, or by any actions taken by its employees or its authorized agents, resulting in the unauthorized conversion of a consumer's line to Yestel, Yestel agrees to notify such consumer verbally of the unauthorized conversion; if after two attempts to reach the consumer, Yestel is unable to speak to the consumer, Yestel will notify the consumer in writing of the unauthorized conversion. No attempt will be made by Yestel personnel to market Yestel services to the consumer in these notification efforts. Yestel shall take any and all necessary and reasonable steps to ensure that the customer is promptly returned to his or her authorized carrier with the least possible inconvenience to the customer. Yestel further agrees to credit such consumer in full for all Yestel charges incurred between the date on which the consumer was switched to the Yestel network until the consumer is switched back if desired. Yestel further agrees to reimburse the consumer for any switching fees assessed by the local exchange carrier as a result of the unauthorized conversion and return the consumer to his or her preferred carrier.

17. Yestel agrees to subject all of its employees and agents to the following oversight mechanisms to help ensure compliance with the Commission's regulations:

a) Yestel shall require each employee or agent both at the time of hiring and at least twice a

year thereafter to receive formal training on the Commission's rules regarding preferred carrier change requests. Should those rules and orders change, Yestel will ensure that its employees and agents are promptly apprised of such changes and that the training material is updated to reflect the new rules.

- b) Yestel shall observe its employees and agents, through on-site or telephonic monitoring, as they process orders for service and complaints to ensure that Yestel employees and agents are operating in compliance with the Commission's preferred carrier change rules. The telephonic monitoring shall take place weekly, with the calls monitored on a random basis. Should Yestel receive information indicating that a particular employee or agent has engaged in practices that may violate the Commission's preferred carrier change rules, either knowingly or inadvertently, Yestel shall monitor the calls of that agent for a period of time sufficient to determine whether he or she is operating in compliance with the Commission's rules and orders. If Yestel discovers noncompliance, such agent shall be terminated in accordance with Yestel's standard termination procedures.
- c) Yestel shall further ensure that its third party verifier collects all required information pursuant to section 64.1120(c)(3)(iii) of the Commission's rules.

18. While this Consent Decree is in effect, Yestel agrees to maintain and make available to the Bureau, on a quarterly basis and within 14 days of the receipt of any specific written request from the Bureau, business records demonstrating compliance with the terms and provisions of this Consent Decree.

19. In light of the covenants and representations in this Consent Decree, and in particular, in light of the fact that Yestel apparently took steps to correct the problem causing the unauthorized preferred carrier conversions shortly after it was discovered, the Bureau agrees to terminate its investigation into unauthorized conversions described above, without any finding of liability on the part of Yestel. The Bureau further agrees that, in the absence of substantial additional and material facts, the Bureau shall not on its own motion institute against Yestel new proceedings of any kind relating to any allegation of unauthorized preferred carrier changes that may have occurred as a result of the unlawful actions described above and up to the date on which this Consent Decree is adopted.

20. Nothing in this Consent Decree shall prevent the Commission from adjudicating complaints against Yestel for alleged misconduct regarding unauthorized preferred carrier changes or for any other type of alleged misconduct regardless of when such misconduct took place, or from instituting new investigations or enforcement proceedings against Yestel in the event of alleged future misconduct. If such enforcement proceeding is initiated, Yestel's earlier conduct may be adduced, but not for the purpose of assessing monetary forfeitures.

21. The Parties agree that any provision of the Consent Decree that conflicts with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

22. The Parties agree that this Consent Decree shall expire in three (3) years from the release date of the Order adopting this Consent Decree. Yestel shall issue a report to the Bureau within 60 days from the release date demonstrating compliance with the terms and provisions herein.

23. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,  
Federal Communications Commission

For Yestel, Inc.

\_\_\_\_\_  
David H. Solomon  
Chief

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Robert Wu  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date