

UNITED STATES OF AMERICA  
DEPARTMENT OF COMMERCE

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In the Matter of )  
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**Tollgrade Communications Inc** )  
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Case No. 11 - 03

**ORDER**

The Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the “Act”)<sup>1</sup> and the Export Administration Regulations (currently codified at 15 C.F.R Parts 730-774 (2011)) (the “Regulations”), against Tollgrade Communications Inc (“Tollgrade”), a domestic concern, doing business in Pennsylvania, based on allegations set forth in the Proposed Charging Letter, dated 28 July 2011, that alleged that Tollgrade committed four violations of the Regulations;

<sup>1</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

Specifically, the charges are:

1. *Three Violations of 15 C.F.R. §760.2(d) - Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons*

During the years 2002 through 2004, Tollgrade engaged in transactions involving the sale, purchase and/or transfer of goods or services (including information) between the United States and Saudi Arabia, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

In connection with these activities, on three occasions, Tollgrade, with intent to comply with, further or support an unsanctioned foreign boycott, furnished information concerning its or another person's business relationships with or in a boycotted country, an activity prohibited by Section 760.2(d) of the Regulations, and not excepted.

2. *One Violation of 15 C.F.R. §760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States*

During the years 2002 through 2004, Tollgrade engaged in transactions involving the sale, purchase and/or transfer of goods or services (including information) between the United States and Saudi Arabia, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

In connection with these activities, Tollgrade, on one occasion, received a request to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. Tollgrade failed to report timely its receipt of this request to the Department of Commerce, as directed by Section 760.5 of the Regulations.

BIS and Tollgrade having entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby the parties have agreed to settle this matter in accordance with the terms and conditions set forth therein and the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED THAT:

FIRST, a civil penalty of \$ 10,000 is assessed against Tollgrade and shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment of this sum shall be made in the manner specified in the attached instructions.

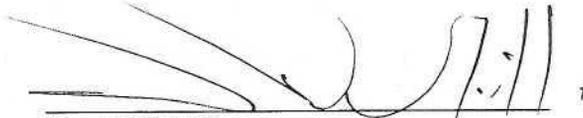
SECOND, pursuant to the Debt Collections Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice and, if payment is not made by the due date specified herein, Tollgrade will be assessed, in addition to the full amount of the penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, the timely payment of the sum of \$ 10,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Tollgrade.

Accordingly, if Tollgrade should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Tollgrade's export privileges for a period of one year from the date of the entry of this Order.

FOURTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Tollgrade.

This Order, which constitutes the final agency action in this matter, is effective immediately.



David W Mills  
Assistant Secretary of Commerce for  
Export Enforcement

Entered this 29 day of September, 2011

Attachments

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. Department of Commerce  
Bureau of Industry and Security  
**Room 6622**  
14th & Constitution Avenue, N.W.  
Washington, D.C. 20230

Attention: Francine Dodson

## NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (1983 and Supp. 2001)) and the Federal Claims Collection Standards (65 Fed. Reg. 70390-70406, November 22, 2000, to be codified at 31 C.F.R. Parts 900-904), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C. §3717 and 31 C.F.R. §901.9.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C. §3717 and 4 C.F.R. §901.9.

The foregoing constitutes the initial written notice and demand to respondent in accordance with Section 901.2 of the Federal Claims Collection Standards (31 C.F.R. §901.2(b)).



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Industry and Security**  
Washington, D.C. 20230

PROPOSED CHARGING LETTER

28 July 2011

Tollgrade Communications Inc  
3120 Unionville Road, Suite 400  
Cranberry Township, PA 16066

Attention : Jennifer Reinke, Esq  
General Counsel and Secretary

Case No. 11.03

Gentlemen/Ladies:

We, the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce ("BIS"), have reason to believe that you, Tollgrade Communications Inc, on four occasions, have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2011)) (the "Regulations"),<sup>1</sup> which are issued under the authority of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the "Act").<sup>2</sup>

We charge that you committed three violations of Section 760.2(d) of the Regulations, in that, on three occasions, with intent to comply with, further or support an unsanctioned foreign boycott, you furnished information concerning your or another person's past, present or proposed business relationships with or in a boycotted country.

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<sup>1</sup> The transactions and violations alleged occurred during the years 2002 through 2004. The Regulations governing the violations at issue are found in the 2002 through 2004 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2002, 2003 and 2004)). The prior years' Regulations are substantially the same as the 2011 version of the Regulations which govern the procedural aspects of this matter.

<sup>2</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 12, 2010 (75 Fed. Reg. 50681 (August 16, 2010)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).



We also charge that you committed one violation of Section 760.5 of the Regulations, in that, on one occasion, you failed to report timely to the Department of Commerce ("Department") your receipt of a request to engage in a restrictive trade practice or boycott, as required by the Regulations.

We allege that:

You, Tollgrade Communications Inc, are, and at all times relevant were, a domestic concern, doing business in Pennsylvania, as such, you are a United States person as defined in Section 760.1(b) of the Regulations.

During the years 2002 through 2004, you engaged in transactions involving the sale, purchase and/or transfer of goods or services (including information) between the United States and Saudi Arabia, activities in the interstate or foreign commerce of the United States, as defined in Section 760.1(d) of the Regulations.

**Charges 1 - 3 (15 C.F.R. § 760.2(d) - Furnishing Information about Business Relationships with Boycotted Countries or Blacklisted Persons)**

In connection with the activities referred to above, during the period September 2002 through April 2004, on three occasions, you furnished, to the Embassy of Saudi Arabia (Brussels), information, as described in Table A, which is attached and incorporated herein by this reference, concerning your or another person's business relationships with or in a boycotted country, with a business concern organized under the laws of a boycotted country, or with a national or resident of a boycotted country.

Providing the information described in Table A, with intent to comply with, further or support an unsanctioned foreign boycott, is an activity prohibited by Section 760.2(d) of the Regulations, and not excepted. We therefore charge you with three violations of Section 760.2(d).

**Charges 4 (15 C.F.R. § 760.5 - Failing to Report the Receipt of a Request to Engage in a Restrictive Trade Practice or Foreign Boycott Against a Country Friendly to the United States)**

In connection with the activities referred to above, on or about September 11, 2002, you received a request, to take an action which would have the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott. The boycott request set out a documentary requirement of the Embassy of Saudi Arabia (Brussels) that Tollgrade provide written certification regarding its business activities in or with Israel as a required condition to obtain a travel visa for Tollgrade's International Sales Consultant.

Section 760.5 of the Regulations requires United States persons to report to the Department their receipt of such request. You failed to report timely to the Department your receipt of this request.

By failing to report timely your receipt of this request, as directed by Section 760.5 of the Regulations, you are in violation of Section 760.5. We therefore charge you with one violation of Section 760.5 of the Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an Order imposing administrative sanctions.<sup>3</sup>

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. Under Sections 766.3(a) and 766.4 of the Regulations, you are entitled to be represented by counsel or other authorized representative who has power of attorney to represent you and, under Section 766.18 of the Regulations, to seek a settlement agreement without a hearing.

Under the Small Business Regulatory Enforcement Flexibility Act, you may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter.<sup>4</sup>

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

As provided in Section 766.3, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between BIS and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter.

Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

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<sup>3</sup> Administrative sanctions may include any or all the following:

- a. A maximum civil penalty of the greater of \$250,000 per violation or twice the value of the transaction that is the basis of the violation (see International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No.110-96, 121 Stat. 1011 (2007)).
- b. Denial of export privileges (see § 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice before BIS (see § 764.3(a)(3) of the Regulations).

<sup>4</sup> To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman>.

U.S. Coast Guard ALJ Docketing Center  
40 South Gay Street  
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Industry and Security at:

Office of the Chief Counsel for Industry and Security  
Room H-3839  
Bureau of Industry and Security  
U.S. Department of Commerce  
14th Street & Constitution Avenue, N.W.  
Washington, D.C. 20230

Sincerely,

Edward O Weant, III  
Director  
Office of Antiboycott Compliance

Enclosures

**TABLE A**

Schedule of Alleged Violations of Section 760.2(d)  
**Furnishing Prohibited Business Information**

**Tollgrade Communications Inc**  
Case No 11.03

<b>Item</b>	<b>Document Furnished</b>	<b>On or About</b>	<b>To</b>	<b>Information Furnished</b>
1	Tollgrade Letter	09.11.02	Embassy of Saudi Arabia (Brussels)	THIS LETTER IS TO CERTIFY THAT TOLLGRADE COMMUNICATIONS INC.....CURRENTLY IS NOT DOING BUSINESS IN ISRAEL
2	Tollgrade Letter	09.11.03	Embassy of Saudi Arabia (Brussels)	THIS LETTER IS TO CERTIFY THAT TOLLGRADE COMMUNICATIONS INC..... IS NOT CURRENTLY DOING BUSINESS IN ISRAEL
3	Tollgrade Letter	02.12.04	Embassy of Saudi Arabia (Brussels)	THIS LETTER IS TO CERTIFY THAT TOLLGRADE COMMUNICATIONS INC..... IS NOT CURRENTLY DOING BUSINESS IN ISRAEL

UNITED STATES OF AMERICA  
DEPARTMENT OF COMMERCE

In the Matter of

**Tollgrade Communications Inc**

**Case No. 11 - 03**

**SETTLEMENT AGREEMENT**

This agreement is made by and between Tollgrade Communications Inc (“Tollgrade”), a domestic concern, doing business in Pennsylvania, and the Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce (“BIS”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2011)) (the “Regulations”), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. §§ 2401-2420 (2000)) (the “Act”).<sup>1</sup>

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<sup>1</sup> Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent of which was August 12, 2011 (76 Fed. Reg. 50661 (August 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707 (2000)).

WHEREAS, Tollgrade has voluntarily disclosed information concerning certain of its transactions to BIS; and

WHEREAS, BIS has notified Tollgrade of its intention to initiate an administrative proceeding against Tollgrade pursuant to the Act and the Regulations by issuing the Proposed Charging Letter dated 28 July 2011, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Tollgrade has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; Tollgrade fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and Tollgrade states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Tollgrade neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Tollgrade agrees to be bound by the appropriate Order (“Order”) when entered;

NOW, THEREFORE, Tollgrade and BIS agree as follows:

1. Under the Act and the Regulations, BIS has jurisdiction over Tollgrade with respect to the matters alleged in the Proposed Charging Letter.
2. BIS will impose a civil penalty in the amount of \$ 10,000. Tollgrade will pay to the U.S. Department of Commerce, within 30 days from the date of entry of the Order, and in accordance with the terms of the Order, when entered, the amount of \$ 10,000 in complete settlement of all matters set forth in the Proposed Charging Letter.
3. The timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Tollgrade.

Failure to make payment of this amount shall result in the denial of all of Tollgrade’s export privileges for a period of one year from the date of entry of the Order.

4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Tollgrade hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:
  - A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
  - B. Request a refund of the funds paid by Tollgrade pursuant to this Settlement Agreement and the Order, when entered; or
  - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
  
5. BIS, upon entry of the Order, will not initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Tollgrade with respect to any violation of Section 8 of the Act or Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by BIS in the course of its investigation.

6. Tollgrade understands that BIS will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
  
7. This Settlement Agreement is for settlement purposes only, and does not constitute an admission by Tollgrade that it has violated the Regulations, or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement.

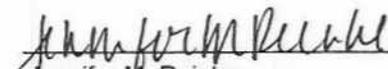
Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, BIS may not use this Settlement Agreement against Tollgrade in any administrative or judicial proceeding.

8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

This paragraph shall not limit Tollgrade's right to challenge any action brought by any other agency based on a referral by BIS or any employee thereof, in contravention of paragraph 5 of this Settlement Agreement.

9. This Settlement Agreement will become binding on BIS only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

TOLLGRADE COMMUNICATIONS INC

  
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Jennifer M. Reinke  
General Counsel and Secretary

DATE: 9/23/2011

U.S. DEPARTMENT OF COMMERCE

  
\_\_\_\_\_  
Edward O. Weant III  
Director  
Office of Antiboycott Compliance

DATE: 9-29-2011