UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Telogy LLC)
3200 Whipple Road)
Union City, CA 94587)
)
Respondent)

ORDER RELATING TO TELOGY LLC

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS") has notified Telogy LLC ("Telogy"), of its intention to initiate an administrative proceeding against Telogy pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),[2] through issuance of a proposed charging letter to Telogy that alleged that it committed three violations of the Regulations. Specifically, these charges are:

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred between 2005 and 2007. The Regulations governing the violations at issue are found in the 2005 through 2007 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2005-2007)). The 2009 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001 the Act has been in lapse. However, the President, though 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 being that of August 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*).

Charge 1 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about May 12, 2005 and on or about May 19, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that two oscilloscopes controlled for nuclear non-proliferation reasons be exported to India. The oscilloscopes were items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 3A292, and required a license for export from the United States to India under Section 742.3 of the Regulations. Telogy determined that the export of the oscilloscopes to India required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the items to India and instead followed a scheme by which it shipped them first to its affiliate in Belgium, with the understanding that the items would then be sent to India. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 2 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about June 1, 2005 and on or about June 3, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that a spectrum analyzer controlled for national security reasons be exported to the People's Republic of China (PRC). The spectrum analyzer was an item subject to the Regulations and classified under ECCN 3A002, and required a license for export to the PRC under Section 742.4 of the Regulations. Telogy determined that the export of the spectrum analyzer to the PRC required a license from BIS, and informed its Belgian affiliate that Telogy was accordingly "unable" to ship the item to the PRC. To avoid the license requirement, Telogy instead followed a scheme by which it shipped the items first to an import/export company in California identified by its Belgian affiliate, with the understanding that the item would then be sent to the PRC. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 3 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about June 20, 2007 and on or about July 5, 2007, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that an oscilloscope controlled for nuclear non-proliferation reasons be exported to Israel. The oscilloscope was an item subject to the Regulations and classified under ECCN 3A292, and required a license for export to Israel under Section 742.3 of the Regulations. Telogy determined that the export of the oscilloscope to Israel required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the item to Israel and instead followed a scheme by which it shipped it first to a company in Canada identified by Telogy's Belgian affiliate, with the understanding that the item would then be sent to Israel. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

WHEREAS, BIS and Telogy have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of $76,000 is assessed against Telogy, the payment of which shall be suspended for a period of one (1) year from the date of issuance of the Order, and thereafter shall be waived, provided that during the period of suspension, Telogy has committed no violation of the Act, or any regulation, order, or license issued thereunder.

SECOND, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

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

David W. Mills
Assistant Secretary of Commerce
for Export Enforcement

Issued this 5 day of May, 2010.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:	)
	)
Telogy LLC	)
3200 Whipple Road	)
Union City, CA 94587	)
	)
Respondent	)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Telogy LLC ("Telogy") and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations"),[1] issued pursuant to the Export Administration Act of 1979, as amended (the "Act").[2]

WHEREAS, Telogy filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The charged violations occurred between 2005 and 2007. The Regulations governing the violations at issue are found in the 2005 through 2007 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2005-2007). The 2009 Regulations govern the procedural aspects of this case.

[2] 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001 the Act has been in lapse. However, the President, though 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 being that of August 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*).

WHEREAS, BIS has notified Telogy of its intention to initiate an administrative proceeding against it, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to Telogy that alleged that Telogy committed three violations of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about May 12, 2005 and on or about May 19, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that two oscilloscopes controlled for nuclear non-proliferation reasons be exported to India. The oscilloscopes were items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 3A292, and required a license for export from the United States to India under Section 742.3 of the Regulations. Telogy determined that the export of the oscilloscopes to India required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the items to India and instead followed a scheme by which it shipped them first to its affiliate in Belgium, with the understanding that the items would then be sent to India. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 2 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about June 1, 2005 and on or about June 3, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that a spectrum analyzer controlled for national security reasons be exported to the People's Republic of China (PRC). The spectrum analyzer was an item subject to the Regulations and classified under ECCN 3A002, and required a license for export to the PRC under Section 742.4 of the Regulations. Telogy determined that the export of the spectrum analyzer to the PRC required a license from BIS, and informed its Belgian affiliate that Telogy was accordingly "unable" to ship the item to the PRC. To avoid the license requirement, Telogy instead followed a scheme by which it shipped the items first to an import/export company in California identified by its Belgian affiliate, with the understanding that the item would then be sent to the PRC. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 3 15 C.F.R. § 764.2(h) – Evasion of the Regulations

Between on or about June 20, 2007 and on or about July 5, 2007, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that an oscilloscope controlled for nuclear non-proliferation reasons be exported to Israel. The oscilloscope was an item subject to the Regulations and classified under ECCN 3A292, and required a license for export to Israel under Section 742.3 of the Regulations. Telogy determined that the export of the oscilloscope to Israel required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the item to Israel and instead followed a scheme by which it shipped it first to a company in Canada identified by Telogy's Belgian affiliate, with the understanding that the item would then be sent to Israel. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

WHEREAS, Telogy has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

WHEREAS, Telogy fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Telogy enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Telogy states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Telogy neither admits nor denies the allegations contained in the Proposed Charging Letter;

WHEREAS, Telogy wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement;

WHEREAS, Telogy has commenced a case under chapter 11 of title 11 of the United States Code, which is pending before the United States Bankruptcy Court for the District of Delaware, which has approved Telogy's entry into this Agreement; and

WHEREAS, Telogy agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Telogy, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Telogy in complete settlement of the alleged violations of the Regulations relating to the transactions specifically detailed in the Proposed Charging Letter: Telogy shall be assessed a civil penalty in the amount of $76,000, the payment of which shall be suspended for a period of one (1) year from the date of issuance of the Order, and thereafter shall be waived, provided that during the period of suspension, Telogy has committed no violation of the Act, or any regulation, order, or license issued thereunder.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Telogy hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued.

4. BIS agrees that, upon issuance of the Order, it will not initiate any further administrative proceeding against Telogy in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

5. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind it respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

John Sonderman
Acting Director
Office of Export Enforcement

Date: 4/29, 2010

TELOGY LLC

Gary Phillips
Chief Executive Officer
Telogy LLC

Date: 7 APR, 2010

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Telogy LLC
3200 Whipple Road
Union City, CA 94587

Attention: Mr. Gary Phillips, CEO

Dear Mr. Phillips:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that Telogy LLC, of Union City, California ("Telogy"), both in its own capacity and as the successor corporation to Telogy, Inc.,[1] is liable for three violations of the Export Administration Regulations (the "Regulations"),[2] which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").[3] Specifically, BIS charges that Telogy is liable for the following violations:

Charge 1 15 C.F.R. § 764.2(h) – Evasion of the Regulations

As further described in the attached Schedule of Violations, which is incorporated herein by reference, between on or about May 12, 2005 and on or about May 19, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that two oscilloscopes controlled for nuclear non-proliferation reasons be exported to India. The oscilloscopes were items subject to the Regulations and classified under Export Control Classification Number ("ECCN") 3A292, and required a license for export from the United States to India under Section

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[1] Telogy LLC was formed on July 28, 2006, when it acquired the assets of Telogy, Inc. pursuant to a plan of reorganization approved by the United States Bankruptcy Court for the Northern District of California on May 19, 2006.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2009). The violations charged occurred in 2005 and 2007. The Regulations governing the violations at issue are found in the 2005 and 2007 versions of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2005; 2007). The 2009 Regulations govern the procedural aspects of this case.

[3] 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, the President, though 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 being that of August 13, 2009 (74 Fed. Reg. 41,325 (Aug. 14, 2009)), has continued the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1707).

742.3 of the Regulations. Telogy determined that the export of the oscilloscopes to India required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the items to India and instead followed a scheme by which it shipped them first to its affiliate in Belgium, with the understanding that the items would then be sent to India. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 2 15 C.F.R. § 764.2(h) – Evasion of the Regulations

As further described in the attached Schedule of Violations, which is incorporated herein by reference, between on or about June 1, 2005 and on or about June 3, 2005, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that a spectrum analyzer controlled for national security reasons be exported to the People's Republic of China (PRC). The spectrum analyzer was an item subject to the Regulations and classified under ECCN 3A002, and required a license for export to the PRC under Section 742.4 of the Regulations. Telogy determined that the export of the spectrum analyzer to the PRC required a license from BIS, and informed its Belgian affiliate that Telogy was accordingly "unable" to ship the item to the PRC. To avoid the license requirement, Telogy instead followed a scheme by which it shipped the items first to an import/export company in California identified by its Belgian affiliate, with the understanding that the item would then be sent to the PRC. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

Charge 3 15 C.F.R. § 764.2(h) – Evasion of the Regulations

As further described in the attached Schedule of Violations, which is incorporated herein by reference, between on or about June 20, 2007 and on or about July 5, 2007, Telogy took action with the intent to evade the Regulations. Specifically, Telogy received an order from its Belgian affiliate requesting that an oscilloscope controlled for nuclear non-proliferation reasons be exported to Israel. The oscilloscope was an item subject to the Regulations and classified under ECCN 3A292, and required a license for export to Israel under Section 742.3 of the Regulations. Telogy determined that the export of the oscilloscope to Israel required a license from BIS. However, to avoid the license requirement, Telogy refused to directly ship the item to Israel and instead followed a scheme by which it shipped it first to a company in Canada identified by Telogy's Belgian affiliate, with the understanding that the item would then be sent to Israel. By engaging in this conduct, Telogy committed one violation of Section 764.2(h) of the Regulations.

* * * * *

Accordingly, Telogy is hereby notified that an administrative proceeding is instituted against Telogy pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of $250,000 per violation, or twice the value of the transaction that is the basis of the violation;[4]

- Denial of export privileges; and/or

- Exclusion from practice before BIS.

If Telogy fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7 (2009). If Telogy defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without a hearing or further notice to Telogy. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty based on the charge in this letter.

Telogy is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6 (2009). Telogy is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2009).

Telogy is additionally notified that under the Small Business Regulatory Enforcement Flexibility Act, it may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: http://www.sba.gov/ombudsman/.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2009). Should Telogy have a proposal to settle this case, Telogy or its representative should transmit it through the attorney representing BIS, who is named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Telogy's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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

In addition, a copy of Telogy's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security

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[4] *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Attention: Charles Wall, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Charles Wall is the attorney representing BIS in this case; any communications that Telogy may wish to have concerning this matter should occur through him. Mr. Wall may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman
Acting Director
Office of Export Enforcement