ORDER NO. 2015-012

IN THE MATTER OF: § BEFORE:

§ § §

§ THE BANKING

INTELLIPAYMENT LLC, § COMMISSIONER OF TEXAS

§

NEW YORK, NEW YORK § AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of IntelliPayment LLC, a New York limited liability company whose principal address is in New York, New York (Respondent), was submitted to me, Charles G. Cooper, Banking Commissioner of the State of Texas (Commissioner), for consideration and action.

- 1. Respondent is a New York limited liability company, with its principal address listed as 350 Fifth Avenue, 59th Floor, New York, New York 10118.
- 2. Mickey Cavuoti is the Founder and Chief Executive Officer of Respondent.
- 3. The Texas Department of Banking (Department) has jurisdiction over Respondent and the subject matter of this proceeding pursuant to Texas Finance Code Chapter 151. The Commissioner has the authority to issue this Consent Order (Order) pursuant to Texas Finance Code §§ 151.702, 151.705, 151.706, and 151.707.
- 4. Respondent has been properly notified regarding its right to an administrative hearing under Texas Finance Code Chapter 151 (Chapter 151). Respondent is represented in this matter by Bryan Cave LLP and Bieging Shapiro & Barber LLP.
- 5. The statutory provisions at issue in this matter include Texas Finance Code §§ 151.301 151.306, 151.702, and 151.705 151.707.
- 6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Texas Finance Code Chapter 151, Subchapter H, and other provisions of Texas law. Nothing in this Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.
- 7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. Service upon Respondent of this Order;

- b. The right to present defenses to the allegations in this proceeding;
- c. Notice and hearing prior to imposition of this Order;
- d. The filing of proposed findings of fact and conclusions of law;
- e. The issuance of a proposal for decision by an administrative law judge;
- f. The filing of exceptions and briefs with respect to such proposal for decision;
- g. Any review of this Order by the Texas Finance Commission; and
- h. Judicial review of this Order as provided by Texas Government Code § 2001.171 et seq., and any other challenge to the validity of this Order.
- 8. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent's admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondent that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
- 9. The Commissioner has considered the matter and finds as follows:
 - a. Respondent contracts with borrowers to make biweekly loan payments for the borrowers, which Respondent states may more quickly reduce the borrower's principal balance. Pursuant to a written agreement, Respondent debits a customer's bank account and subsequently pays the customer's creditor. Under Texas Finance Code § 151.301(b)(4)(A)(iii), these third party bill payment services constitute money transmission.
 - b. The Department regulates money transmission under the authority of Texas Finance Code Chapter 151, Subchapter B.
 - c. The Department has not licensed Respondent to engage in the business of money transmission in Texas.
 - d. Texas Finance Code § 151.302(a) provides that "a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission" without a license. Because Respondent is currently making third party bill payments for consumers in Texas, Respondent is in violation of Texas Finance Code § 151.302(a).
 - e. As required by Texas Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Respondent's compliance history, and Respondent's good faith in attempting to comply with Chapter 151. The Commissioner finds that

the violations are very serious because (1) Respondent is required to be a licensed money transmitter in Texas but has been operating without said license; and (2) Respondent has contracted with Texas residents and transmitted money without the protections in place that are required of a company that holds a money transmission license.

- f. The Commissioner finds Respondent's prior compliance history unsatisfactory because it has failed to apply for a Texas money transmitter license.
- g. Based on these findings and based on the representations made by Respondent as to the volume of transactions and length of time it has been conducting an unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$43,780 is appropriate.
- 10. Respondent has agreed to comply with the terms that are set out in the Order below.
- 11. Nothing in this Order shall prohibit the Respondent from submitting an application to the Department for a money transmission license or a temporary money transmission license.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that Respondent will do the following:

- 12. Upon the Effective Date of this Order, Respondent will cease and desist any and all money transmission for any new customers in Texas until a money transmission license or temporary money transmission license is granted by the Texas Department of Banking. Upon the Effective Date of this Order, Respondent will ensure that its website automatically blocks anyone from enrolling as a new customer if they list Texas as their state of residence. This includes business conducted directly or through the activity of others and includes but is not limited to advertising and soliciting persons in Texas, and the acceptance of customers who are located in Texas;
- 13. Within 45 days of the Effective Date, notify its existing Texas customers that it will cease providing bill payment services to them, and make reasonable efforts to communicate with and ensure that these customers understand their responsibilities to resume making their own payments or they may engage with an independent, properly licensed replacement provider of services at each customer's own discretion and choosing. This

notification must be made in writing, and a copy of the notice must be sent to the

Department for approval within seven business days of the Effective Date.

14. Within 120 days of the Effective Date, stop engaging in the business of money

transmission in Texas with respect to customers currently under contract at the time of

the notification.

15. Within 120 days of the Effective Date, return to its customers all funds held by

Respondent for payment of loans and any other funds that are due to the customers.

16. Within seven days of achieving full compliance with the preceding paragraph, confirm to

the Department in writing that it has ceased all unlicensed activities in Texas.

17. Within 10 days after the Effective Date of this Order, Respondent will have delivered a

check made payable to the Texas Department of Banking in the amount of \$23,780 as

partial payment of the administrative penalty.

18. By September 15, 2015, Respondent will have delivered a check made payable to the

Texas Department of Banking in the amount of \$20,000 as the remaining payment due

for the administrative penalty.

19. It is further ORDERED that the parties to this Order shall each be responsible for their

own fees and costs associated with this matter.

EFFECTIVE DATE

This Order against Respondent is effective on May 18, 2015, and subject to its terms,

Respondent may not appeal.

Signed on this 18th day of May, 2015.

/s/ Stephanie Newberg *for*

Charles G. Cooper

Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

IntelliPayment LLC

By:/s/ Mickey Cavuoti

Mickey Cavuoti

Founder and Chief Executive Officer

Date: May 15, 2015

APPROVED AS TO FORM:

/s/ F. John Podvin, Jr.

F. John Podvin, Jr.
Bieging Shapiro & Barber LLP
Counsel for IntelliPayment LLC

Date: May 15, 2015

/s/ Deborah H. Loomis

Deborah H. Loomis
Deputy General Counsel
Texas Department of Banking

Date: May 15, 2015