

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

In the Matter of)	
)	
Entergy Services, Inc.)	File No. EB-02-OR-259
)	
Owner of Antenna Structure)	NAL/Acct. No. 200332620002
Registration Number 1020649)	
Little Rock, Arkansas)	FRN 0001-7125-87

ORDER

Adopted: February 12, 2003

Released: February 14, 2003

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Entergy Services, Inc. ("ESI"). The Consent Decree terminates the forfeiture proceeding initiated by the Enforcement Bureau against ESI for apparently failing to exhibit the prescribed tower lighting on the above-captioned antenna structure in violation of Section 17.51(a) of the Commission's Rules.

2. The Consent Decree provides that, among other things, ESI will implement a Compliance Plan to ensure its future compliance with the Commission's rules and will make a \$7,500 voluntary contribution to the United States Treasury.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether ESI possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After having reviewed the record and the Consent Decree, including the incorporated Compliance Plan, we believe that the public interest will be served by adopting the Consent Decree and terminating the Enforcement Bureau's forfeiture proceeding against ESI.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Communications Act of 1934, as amended,¹ and Sections 0.111 and 0.311 of the Commission's Rules,² the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau's forfeiture proceeding against ESI **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that ESI shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal

¹ 47 U.S.C. §§ 4(i), 4(j), 503(b).

² 47 C.F.R. §§ 0.111, 0.311.

Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200332620002 and FRN 0001-7125-87.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to T. Michael Twomey, Esq., Entergy Services, Inc., 639 Loyola Avenue, P.O. Box 61000, New Orleans, Louisiana 70161-1000.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

I. Introduction

1. This Consent Decree is made and entered into by and between the Enforcement Bureau of the Federal Communications Commission ("FCC") and Entergy Services, Inc. and its affiliates and subsidiaries ("ESI"), which own and manage antenna structures located in Arkansas, Louisiana, Mississippi, and Texas.

II. Background

2. On November 6, 2002, the FCC's New Orleans, Louisiana Field Office issued a Notice of Apparent Liability to ESI in the amount of \$10,000, stating that it appeared that ESI had violated the provisions of 47 C.F.R. § 17.1 *et seq.*, by failing to exhibit the prescribed tower lighting on its antenna structure (Antenna Structure Registration No. 1020649) located in Labadieville, Louisiana.

3. On December 3, 2002, ESI representatives participated in a conference call with Enforcement Bureau staff to detail ESI's compliance efforts through that date and present the Enforcement Bureau with ESI's Compliance Plan. The Compliance Plan outlines the processes and procedures that ESI has been implementing in an effort to ensure compliance with the FCC's Rules in the future.

III. Definitions

4. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "FCC" means the Federal Communications Commission.
 - (b) "Bureau" means the FCC's Enforcement Bureau.
 - (c) "ESI" means Entergy Services, Inc. and its affiliates and subsidiaries.
 - (d) "Enforcement Proceeding" means the investigation of the alleged rule violation by ESI culminating in the *Notice of Apparent Liability for Forfeiture*.
 - (e) "Notice of Apparent Liability for Forfeiture" or "NAL" means *Entergy Services, Inc.*, File No. EB-02-OR-259, NAL/Acct. No. 200323620002 (Enf. Bur., New Orleans Office, released November 6, 2002).
 - (f) "FCC's Rules" means the FCC's tower-related rules in 47 C.F.R. § 17.1 *et seq.*
 - (g) "Order" means an order of the FCC adopting this Consent Decree.
 - (h) "Final Order" means an action by the FCC or by its staff pursuant to delegated authority (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended, (ii) with respect to which no timely appeal, request for stay or petition of rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending, and (iii) as to which the time for filing any such appeal, request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1943, as amended, and the FCC's rules and regulations, has expired.

- (i) “Compliance Plan” means the processes and procedures developed by ESI in an effort to ensure compliance with the FCC’s Rules regarding antenna structures registered in accordance with 47 C.F.R. § 17.4, as summarized in an attachment to this Consent Decree.

IV. Agreement

5. ESI and the Bureau agree to be legally bound by this Consent Decree.
6. ESI and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any compliance or noncompliance by ESI with the FCC’s Rules arising out of the NAL. ESI and the Bureau agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, ESI does not admit or deny any noncompliance, violation, or liability associated with or arising from the NAL before the date of this Consent Decree.
7. In consideration of the actions of the Bureau described in Paragraph 8 below:
 - (a) As part of its effort to ensure future compliance with the FCC’s Rules, ESI will implement the Compliance Plan, which is summarized in an attachment hereto. The Compliance Plan addresses ESI’s field maintenance practices, monitoring requirements, notification procedures, and record-keeping practices relating to tower lighting. ESI may modify the Compliance Plan as necessary to better ensure continuing compliance with the FCC’s Rules. ESI contemporaneously will notify, in writing, the Chief, Enforcement Bureau, Federal Communications Commission, Washington, D.C., of any modification to the Compliance Plan. The Chief, Enforcement Bureau, may disapprove, in writing, any such modification within 25 calendar days of receipt of ESI’s notification where it finds that the modification is inconsistent with the terms of the Consent Decree or the Commission’s rules or policies.
 - (b) ESI will make a voluntary contribution to the United States Treasury in the amount of Seven Thousand Five Hundred Dollars (\$7,500) within ten days after the Order adopting this Consent Decree has become a Final Order. ESI will make this contribution without further protest or recourse by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332620002 and FCC Registration Number 0001-7125-87.
8. In express reliance upon the covenants and representations contained herein:
 - (a) The Bureau agrees to terminate the Enforcement Proceeding at such time as both parties sign this Consent Decree and the Bureau adopts this Consent Decree.
 - (b) In the absence of material new evidence concerning the Consent Decree or the NAL that implicates ESI’s basic qualifications (e.g. disqualifying misrepresentation or lack of candor), the Bureau will not use the fact of this Consent Decree or the NAL or the underlying facts, behavior, acts or omissions which relate to them, to initiate on its own motion any proceeding against ESI.
9. In consideration for the actions taken pursuant to Paragraphs 7 and 8, ESI and the Bureau agree to the terms, conditions and procedures contained herein.
10. In the event that the Commission or its delegated authority finds that ESI violates the provisions of 47 C.F.R. § 17.1 et seq. subsequent to the release of this Consent Decree and Order, ESI

agrees that the Commission or its delegated authority may consider the matters raised in the NAL when determining an appropriate sanction.

11. ESI agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

12. ESI hereby waives its right to seek administrative or judicial review of this Consent Decree or the Order, or otherwise to contest or challenge their validity, provided that the Consent Decree is adopted without change, addition, or modification.

13. ESI and the Bureau agree that the effectiveness of this Consent Decree is expressly conditioned upon issuance of the Order, provided that the Consent Decree is adopted without change, addition, or modification.

14. ESI and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. If the United States on behalf of the FCC or ESI should bring an action to enforce the terms of this Consent Decree, the parties agree that they will not contest the validity of the Consent Decree, they will waive any statutory right to a trial de novo with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification) and they will consent to a judgment incorporating the terms of this Consent Decree.

16. Each party to this Consent Decree shall bear its own attorney fees and costs and ESI agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 et seq., relating to the matters discussed in this Consent Decree.

17. ESI agrees that any violation of this Consent Decree shall constitute a violation of an FCC order, entitling the FCC to exercise any rights and remedies attendant to the enforcement of an FCC Order.

18. ESI and the Bureau agree that the terms and conditions of Sections 7(a) of this Consent Decree shall remain in effect for twenty-four (24) months from the effective date of this Consent Decree, which shall be the release date of the Order and that the terms and conditions of Section 8 shall survive the expiration of this Consent Decree. ESI and the Bureau also agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability, or other decision of general applicability adopted by the FCC will be superseded by such rule, order or other decision.

19. This Consent Decree represents the complete agreement between the parties to the Consent Decree and supersedes any other agreements, understandings and representations, if any. The parties represent, warrant and agree that the provisions of this Consent Decree are binding on each of them in accordance with their terms, and that the signatories hereto have been authorized by the parties to execute this Consent Decree on their behalf. This Consent Decree may be signed in counterparts and may be amended only by a written instrument signed by all the parties hereto.

FEDERAL COMMUNICATIONS COMMISSION

By: _____ Date: _____
David H. Solomon
Chief, Enforcement Bureau

ENTERGY SERVICES, INC. on behalf of itself and its affiliates and subsidiaries

By: _____ Date: _____
William P. Alt
Director, Infrastructure and Enterprise Services

**Summary of Part 17 Compliance Plan
of
Entergy Services, Inc.**

As part of its effort to ensure compliance with the Communications Act of 1934, as amended, and the FCC's rules and regulations, ESI has developed the following Compliance Plan:

1. A review of FAA and FCC obstruction marking and lighting requirements has been conducted with operational management responsible for maintaining Entergy's tower marking and monitoring equipment to confirm Entergy's compliance with such marking and lighting requirements. Entergy will conduct additional reviews to confirm its compliance with FAA and FCC obstruction marking and lighting requirements every six months.
2. A review of field maintenance practices for antenna structure light monitoring systems has been completed. Future operational checks of Entergy's automatic monitoring system will include remote terminal unit ("RTU") actuation and will be formally documented using the Entergy Information Technology work management system. Such future operational checks will be conducted every 90 days.
3. A review of Entergy's antenna structures has been conducted against FAA monitoring requirements to insure all towers are currently being adequately monitored for light failure. Entergy will conduct additional reviews to insure all towers are currently being adequately monitored for light failure every six months.
4. A review of the FAA notification process for antenna structure light failures has also been conducted. As a result, FAA notification and tracking responsibility will be centralized within Entergy's Network Operations Center to insure prompt notification and correction of any tower light failures.
5. Entergy will maintain records of all observed or otherwise known lighting outages or improperly functioning antenna structure lights in accordance with Section 17.49 of the FCC's Rules. These records will include the nature of the outage or improper functioning; the date or time the outage or improper functioning was observed or otherwise noted; the date and time of FAA notification, if applicable; and the date, time and nature of adjustments, repairs or replacements made.

The Compliance Plan will be overseen by ESI's Director, Infrastructure and Enterprise Services. ESI may modify the Compliance Plan as necessary to better ensure compliance with the FCC's Rules. ESI contemporaneously will notify, in writing, the Chief, Enforcement Bureau, Federal Communications Commission, Washington, D.C., of any modification to the Compliance Plan. The Chief, Enforcement Bureau, may disapprove, in writing, any such modification within 25 calendar days of receipt of ESI's notification where it finds that the modification is inconsistent with the terms of the Consent Decree or the Commission's rules or policies.