

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

In the Matter of	)	
	)	File No. EB-06-SE-274
Applied Wireless Identifications Group, Inc.	)	NAL/Acct. No. 200632100018
	)	FRN # 0012350286

**ORDER**

**Adopted: July 31, 2006**

**Released: August 1, 2006**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Applied Wireless Identifications Group, Inc. (“AWID”). The Consent Decree terminates an investigation initiated by the Enforcement Bureau into whether certain radio frequency identification (“RFID”) devices imported and marketed in the United States by AWID comply with the requirements of Section 302(b) of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and Parts 2 and 15 of the Commission’s Rules (“Rules”).<sup>2</sup>

2. The Enforcement Bureau and AWID have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

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

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act,<sup>3</sup> and Sections 0.111 and 0.311 of the Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the Enforcement Bureau’s investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that AWID shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by credit card through the Commission’s Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O.

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.1 *et seq.* and § 15.101 *et seq.*

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

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 Larry Kellam, Chairman and CEO, Applied Wireless Identifications Group, Inc., 18300 Sutter Blvd., Morgan Hill, CA 95037, and to David H. Solomon, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

## CONSENT DECREE

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Applied Wireless Identifications Group, Inc. (“AWID”) hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether certain radiofrequency identification (“RFID”) devices imported and marketed in the United States by AWID comply with the requirements of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> and Parts 2 and 15 of the Commission’s Rules (“Rules”).<sup>6</sup>

### Background

1. Under Parts 2 and 15 of the Rules, certain RFID devices must be authorized in accordance with the Commission’s rules and comply with all applicable technical standards and labeling requirements prior to importation or marketing in the United States. In April 2006, AWID voluntarily disclosed to Bureau and Office of Engineering and Technology (“OET”) staff that it had recently discovered issues regarding AWID’s compliance with Parts 2 and 15 with respect to some of its RFID products. On June 23, 2006, AWID met with Bureau and OET staff and provided additional information regarding its compliance with Parts 2 and 15 of the Rules.

### Definitions

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Commission” and “FCC” mean the Federal Communications Commission.
  - (b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (c) “AWID” means Applied Wireless Identifications Group, Inc., its subsidiaries, affiliates and any successors or assigns.
  - (d) “Parties” means AWID and the Bureau.
  - (e) “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigation” means the Bureau investigation commenced by AWID’s disclosure to the Bureau of issues regarding AWID’s compliance with Parts 2 and 15 of the Commission’s Rules.
  - (h) “Rules” means the Commission’s Rules found in Title 47 of the Code of Federal Regulations.
  - (i) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.*

### Terms of Agreement

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 the Adopting Order.

4. The Parties 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 Act or the Commission’s Rules and orders. The Parties further agree that this Consent Decree is for settlement purposes only and that, by agreeing to this Consent Decree, AWID does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with matters that are the subject of this Consent Decree.

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<sup>5</sup> 47 U.S.C. § 302a(b).

<sup>6</sup> 47 C.F.R. § 2.1 *et seq.* and § 15.1 *et seq.*

5. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order.

6. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between AWID and the Bureau regarding possible violations of the Act and the Rules with respect to the import and marketing of RFID devices by AWID prior to the Effective Date of this Consent Decree.

7. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of scarce public resources, the Bureau agrees to terminate its Investigation into whether AWID may have violated the Act or the Rules with respect to AWID's RFID devices prior to the Effective Date of this Consent Decree.

8. In consideration for termination by the Bureau of the Investigation and in accordance with the terms of this Consent Decree, AWID agrees to the terms set forth herein.

9. AWID acknowledges that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. AWID will implement a Federal Communications Commission Compliance Plan ("FCC Compliance Plan") related to AWID's future compliance with the Act, the Commission's Rules, and the Commission's orders. The FCC Compliance Plan will include, at a minimum, the following components:

- (a) **FCC Compliance Procedures.** AWID shall develop and update as necessary appropriate FCC Compliance Procedures. Relevant AWID personnel shall be trained on the FCC Compliance Procedures and shall be required to follow them. The FCC Compliance Procedures will, among other things, address the equipment authorization requirements of the Act and the Commission's Rules applicable to RFID devices and accessories imported, marketed and sold by AWID in the United States, as well as the Commission's Rules regarding labeling and user manual statements for such devices.
- (b) **Compliance Officer.** AWID shall designate an FCC Compliance Officer ("Compliance Officer") who will administer the FCC Compliance Plan, supervise AWID's compliance with the Act, the Commission's Rules and the Consent Decree, and serve as the AWID point of contact for all Commission-related compliance matters. The Compliance Officer will be assigned responsibility within AWID for determining whether the manufacture, importation, marketing, sale, labeling and user manual requirements for such devices are in compliance with FCC Compliance Procedures.
- (c) **Interference Complaints.** Any interference complaints received by AWID shall be promptly forwarded to the Compliance Officer for appropriate consideration and action. To the extent AWID concludes, after appropriate investigation in response to a complaint, that the interference results from the fact that the device was non-compliant with Parts 2 and 15 of the Commission's Rules, AWID shall take appropriate remedial action at no charge to the complainant.
- (d) **Review and Monitoring.** AWID will review the FCC Compliance Plan annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.

11. AWID agrees that every RFID device and accessory that is imported or marketed by AWID in the United States on or after the Effective Date of this Consent Decree shall be compliant with Parts 2 and 15 of the Rules before importation and marketing by AWID.

12. The Bureau agrees that it will not entertain or institute, or use the facts developed in this Investigation or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, nor take any action on its own motion, or recommend to the full Commission any forfeiture or other sanction, against AWID for any alleged violation of the Act or the Rules with respect to any AWID device and accessories that occurred prior to the Effective Date of this Consent Decree.

13. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that AWID fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

14. The Parties agree that AWID's obligations under the Consent Decree shall expire twenty-four (24) months after the Effective Date of the Consent Decree.

15. AWID agrees that it will make a voluntary contribution to the United States Treasury in the amount of Forty Thousand Dollars (\$40,000) within 30 calendar days after the Effective Date. Such contribution shall be made, without further protest or recourse, by credit card through the Commission's Debt and Credit Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. The payment should reference NAL/Acct. No. 200632100018 and FRN # 0012350286.

16. AWID's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree and that adopts the Consent Decree without change, addition, modification, or deletion.

17. The Parties waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, modification, or deletion.

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

19. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AWID nor the Commission shall contest the continuing validity of this Consent Decree or the Adopting Order. The Parties agree to comply with, defend and support the validity of this Consent Decree and the Adopting Order in any proceeding seeking to nullify, void, or otherwise modify the Consent Decree or the Adopting Order.

20. The Parties agree that any provision of this Consent Decree that conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

21. AWID waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. This Consent Decree cannot be modified without the advance written consent of both Parties.

23. This Cnsent Decree may be signed in counterparts.

For the Enforcement Bureau:

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Kris Anne Monteith  
Chief, Enforcement Bureau

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Date

For Applied Wireless Identifications Group, Inc.:

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Larry Kellam  
Chairman and Chief Executive Officer

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Date