

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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| In the Matter of |) | |
| |) | |
| New Jersey Broadband, LP |) | File Number EB-05-PA-126 |
| |) | |
| and |) | NAL/Acct. No. 200732400001 |
| |) | |
| New Jersey Broadband, LLC |) | FRN 0015296874 |
| |) | |

ORDER

Adopted: October 26, 2006

Released: October 30, 2006

By: The Assistant Chief, Enforcement Bureau

1. The Enforcement Bureau (“Bureau”) has been investigating a Wireless Video Distribution System (“System”) operated by New Jersey Broadband, LLC, together with New Jersey Broadband, LP, of which it is the General Partner (together “Broadband”). The System provides service to the greater Atlantic City, New Jersey metropolitan area. The purpose of the investigation was to determine whether Broadband violated (1) Section 301 of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 301, by operating without certain required Commission authorizations; (2) Section 310(d) of the Act, 47 U.S.C. 310(d), by participating in an unauthorized transfer of control, and (3) Section 11.35 of the Commission’s rules, 47 C.F.R. §11.35, by failing to install Emergency Alert System equipment.

2. The Bureau and Broadband have negotiated the terms of a Consent Decree, a copy of which is attached hereto and incorporated herein by reference. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the above-captioned investigation concerning Broadband.

3. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹ and the authority delegated by sections 0.111 and 0.311 of the Commission’s Rules,² the attached Consent Decree **IS ADOPTED**.

¹ 47 U.S.C. §154(i)

² 47 C.F.R. §§ 0.111, 0.311.

4. **IT IS FURTHER ORDERED** that the above-captioned investigation into the matters described herein **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and New Jersey Broadband, LP, together with New Jersey Broadband, LLC, which is the General Partner of New Jersey Broadband LP, (together “Broadband”), hereby enter into this Consent Decree for the purpose of resolving the Enforcement Bureau's investigation of compliance by Broadband with Sections 301 and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 301, 310(d), and Section 11.35(a) of the Commission’s rules, 47 C.F.R. §11.35(a).

2. For purposes of this Consent Decree, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (b) “Adopting Order” means an order of the Bureau, adopting this Consent Decree, without any modifications adverse to Broadband.
- (c) “Broadband” means New Jersey Broadband, LP, and any affiliate, parent company (including, but not limited to New Jersey Broadband, LLC), wholly or partially owned subsidiary, and/or successors.
- (d) “Bureau” means the FCC's Enforcement Bureau.
- (e) “Commission” or “FCC” means the Federal Communications Commission.
- (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (g) “Final Order” means that, with respect to the Adopting Order: (1) no request for stay or similar request is pending, no stay is in effect, the Adopting Order has not been vacated, reversed, set aside, annulled or suspended, and any deadline for filing such request that may be designated by statute or regulation has passed; (2) no timely petition for rehearing or reconsideration of the Adopting Order, or protest of any kind, is pending before the FCC and the time for filing any such petition or protest is passed; (3) the FCC does not have the Adopting Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (4) the Adopting Order is not under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed.
- (h) “Inquiry” means the Bureau’s investigation, which commenced with inspections of July 22, 2004 and November 17, 2004; a telephone conversation of August 15, 2005; direction finding measurements of August 17, 2005; and the issuance of letters of inquiry, dated September 9, 2004, January 4, 2005, and November 1, 2005, from the Bureau to Broadband relating to: (a) whether Broadband’s operation of a wireless video distribution system in Mamora, New Jersey, complied with Section 11.35(a) of the Commission’s rules, 47 C.F.R. §11.35(a), which requires the installation of Emergency Alert System equipment; (b) whether there occurred any unauthorized operation of wireless video distribution system channels by Broadband in violation of Section 301 of the Act, 47 U.S.C. §301; and (c) whether there occurred any unauthorized transfer of control of the wireless video distribution system in Mamora, New Jersey in violation of Section 310(d) of the Act, 47 U.S.C. §310(d).

- (i) “Management Consulting Agreement” means the agreement entered into by and between Orion Broadcasting Systems, Inc. and New Jersey Broadband, L.P. on March 13, 2000, pursuant to which Broadband would manage a wireless video distribution system operating with, *inter alia*, Broadcast Radio Service and Educational Broadband Service licenses issued to Orion Broadcasting Systems, Inc.; the agreement provided that Orion Broadcasting Systems, Inc. would at all times remain in control of the day-to-day operations of the system.
- (j) “Parties” means the Bureau and Broadband.
- (k) “Wireless Video Distribution System” means the system providing service to the greater Atlantic City, New Jersey metropolitan area through, *inter alia*, Broadcast Radio Service and Educational Broadband Service licenses issued by the FCC to Orion Broadcasting Systems, Inc. The system operated from a transmitter site in Mamora, New Jersey, with a repeater site in Wildwood, New Jersey.

I. BACKGROUND

3. New Jersey Broadband, LP is a small, privately-held, limited partnership, whose General Partner is New Jersey Broadband, LLC. New Jersey Broadband, LP provided communications services to the public over the Wireless Video Distribution System it operated in Mamora, New Jersey, pursuant to the Management Consulting Agreement.

4. On January 5, 2006, the Wireless Telecommunications Bureau consented to the assignment of the Broadcast Radio Service and Educational Broadband Service licenses used in the operation of the Wireless Video Distribution System from Orion Broadcasting Systems, Inc. to Oneida Broadband, LLC. The assignment was consummated by the parties on March 1, 2006, the acceptance of which by the Wireless Telecommunications Bureau became effective on June 8, 2006. Broadband represents that it is in the process of removing itself from any management role(s) it may have had, or has, with respect to said Wireless Video Distribution System.

5. Broadband was, and its former operations remain, subject to the requirements of Sections 301 of the Act, 47 U.S.C. § 301, prohibiting unauthorized operations, Section 310(d) of the Act, 47 U.S.C. § 310(d), prohibiting unauthorized transfers of control, and Section 11.35(a) of the Commission’s rules, 47 C.F.R. §11.35(a), requiring the installation of Emergency Alert System equipment.

6. The Parties acknowledge that any forfeiture proceeding that might result from the Inquiry would be time consuming and require substantial expenditure of public and private funds and other resources. In order to conserve such resources, to resolve the Inquiry, and to promote Broadband’s future compliance with Sections 301 and 310(d) of the Act, and Section 11.35(a) of the Commission’s rules, the Parties are entering into this Consent Decree in consideration of the mutual commitments made herein.

II. AGREEMENT

7. Broadband agrees to be legally bound by the terms and conditions of this consent decree.

8. The Parties agree that the provisions of this Consent Decree shall be subject to approval by the Bureau, by incorporation of such provisions by reference in an Adopting Order.

9. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission, and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the Commission, or the Bureau pursuant to delegated authority, to exercise any rights and remedies attendant to the enforcement of a Commission order.

10. Broadband acknowledges that the Commission has jurisdiction to enforce Sections 301 and 310(d) of the Act, 47 U.S.C. §§ 301, 310(d), and Section 11.35(a) of its rules, 47 C.F.R. §11.35(a).

11. Broadband acknowledges that during a period of time while it operated the Wireless Video Distribution System from a transmission site at Mamora, New Jersey (with a repeater site at Wildwood, New Jersey), providing service to the greater Atlantic City, New Jersey metropolitan area, it may have unintentionally operated on certain frequencies which the system was not authorized to use. Broadband also acknowledges that, notwithstanding the Management Consulting Agreement, its operation of the Wireless Video Distribution System without proper oversight and control by the licensee, Orion Broadcasting Systems, Inc., may have constituted an unauthorized transfer of control. Further, Broadband acknowledges that, during the same time, it operated said facilities without having installed Emergency Alert System equipment as required by §11.35(a) of the Commission's rules.

12. The Bureau acknowledges that it commenced its Inquiry with inspections on July 22, 2004 and November 17, 2004, when an agent from its Philadelphia Office conducted inspections of the 31 channel system operating respectively at Wildwood and Mamora, New Jersey on frequencies between 2500 MHz and 2686 MHz, which frequencies are allotted to the Broadband Radio Service and Educational Broadband Service.

13. As part of the Adopting Order, the Bureau shall terminate the Inquiry. From and after the Effective Date, in the absence of material new information, the Bureau agrees that it will not, either on its own motion or in response to any petition, third-party motion or objection, complaint, or other information, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other actions, formal or informal, against Broadband for alleged or suspected violations of Sections 301 or 310(d) of the Act, 47 U.S.C. §§ 301, 310(d), and Section 11.35(a) of its rules 47 C.F.R. §11.35(a).

14. Broadband represents that it has conducted a thorough review of its operational procedures and developed the following Compliance Plan to ensure its future compliance with Sections 301 and 310(d) of the Act, 47 U.S.C. §§ 301, 310(d), and Section 11.35(a) of the Commission's rules, 47 C.F.R. §11.35(a).

(a) Commencing immediately upon the Effective Date, as defined in Section 2(f) hereof, Broadband will not (i) become, or request consent to become, the licensee of any FCC-licensed radio facility; (ii) apply for any FCC license or authorization; or, (iii) manage, or request approval to manage any FCC-licensed radio facility. Furthermore, Broadband is in the process of removing itself from any management role(s) it may have had, or has, with respect to said Wireless Video Distribution System.

(b) Should Broadband not remove itself from the wireless video distribution system business within thirty (30) days of the Consent Decree becoming a "Final Order," then it agrees to establish a company Compliance Manual consistent with the following:

(i) *Compliance Manual.* Broadband shall create, maintain and update an FCC Compliance Manual. Company personnel shall have ready access to the Compliance Manual and are to follow the procedures contained in it. The Compliance Manual will, among other things, describe the operational and equipment requirements of the Broadband Radio Service and the Educational Broadband Service as they apply to Broadband. The Compliance Manual will encourage Broadband personnel to contact FCC Legal Counsel with any questions or concerns that arise with respect to FCC Compliance. Broadband shall submit to the Bureau a final version of its Compliance Manual within thirty (30) days after the Consent Decree becomes a "Final Order."

(ii) *Designated Contact.* In addition, Broadband will designate an employee as the point of contact for regulatory compliance matters.

(iii) *Review.* Broadband will review the FCC Compliance Manual periodically to ensure that it is maintained up-to-date.

15. Broadband agrees to implement its Compliance Plan, to the extent it has not already done so, immediately upon the Effective Date and to keep such Compliance Plan in effect for two (2) years after the Effective Date.

16. Broadband agrees that it will make a voluntary contribution to the United States Treasury in the amount of Twelve Thousand Dollars (\$12,000.00), paid in ten (10) equal monthly installments of One Thousand Dollars (\$1,000.00), and an initial payment of Two Thousand Dollars (\$2,000.00). The initial payment of \$2,000.00 shall be made within fifteen (15) business days after the Adopting Order becomes a Final Order and monthly installments thereafter shall be made on the first day of each month. The payments shall be made by check, money order or similar instrument, payable to the order of the Federal Communications Commission and may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. The payment should reference NAL/Acct. No. 200632400003 and FRN 0015296874. Payment by overnight mail may be sent to Mellon Bank Lockbox 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.

17. Broadband waives any and all rights it 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 no modifications are made to the Consent Decree adverse to Broadband. If the Bureau, the Commission or the United States acting on its behalf, brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, Broadband will not contest the validity of this Consent Decree or of the Adopting Order. If Broadband brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, or both, neither the Commission nor the United States will contest the validity of this Consent Decree or of the Adopting Order.

18. The Parties agree that this Consent Decree and Broadband's voluntary contribution are for settlement purposes only and do not constitute an admission, denial, adverse finding, adverse final action, adverse adjudication on the merits, or waiver of legal rights except as otherwise expressly set forth herein.

19. Broadband'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 which adopts the

Consent Decree without change, addition or modification.

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

21. Broadband agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. §504 and the Commission's rules, 47 C.F.R. §1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

22. Broadband and the Bureau each represent and warrant to the other that they have full power and authority to enter into this Consent Decree.

23. This Consent Decree may be executed in counterparts.

**FEDERAL COMMUNICATIONS COMMISSION
ENFORCEMENT BUREAU**

By: _____
Kris Anne Monteith, Chief

Date: October __, 2006

NEW JERSEY BROADBAND, LP

By: _____
Thomas M. Balun, President of
New Jersey Broadband, LLC, General Partner

Date: October __, 2006

NEW JERSEY BROADBAND, LLC

By: _____
Thomas M. Balun, President

Date: October __, 2006