

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

In the Matter of)	File No. EB-07-SE-276
)	
NE Colorado Cellular, Inc., dba Viaero)	Acct. No. 200832100056
Wireless)	FRN No. 0015360456

ORDER

Adopted: July 11, 2008

Released: July 14, 2008

By the Deputy Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and NE Colorado Cellular, Inc., dba Viaero Wireless (“Viaero”). The Consent Decree terminates an investigation by the Bureau against Viaero for possible violation of section 20.19(d)(2) of the Commission’s Rules¹ (“Rules”) regarding inductive coupling hearing aid compatibility handset requirements.

2. The Bureau and Viaero have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Viaero possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 20.19(d)(2).

² 47 U.S.C. § 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **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 Mike Felicissimo, Executive Vice-President, NE Colorado Cellular, Inc., dba Viaero Wireless, 1220 West Platte Avenue, Fort Morgan, Colorado 80701, and to its counsel, Todd Slamowitz, Esq., Lukas, Nace, Gutierrez & Sachs, Chartered, 1650 Tysons Boulevard, Suite 1500, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Susan McNeil
Deputy Chief, Enforcement Bureau

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	File No. EB-07-SE-276
)	
NE Colorado Cellular, Inc., dba Viaero)	Acct. No. 200832100056
Wireless)	FRN No. 0015360456

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and NE Colorado Cellular, Inc., dba Viaero Wireless (“Viaero”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Viaero violated section 20.19(d)(2) of the Commission’s Rules¹ (“Rules”) regarding inductive coupling hearing aid compatibility handset requirements.

I. DEFINITIONS

1. For the 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 the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s August 13, 2007 Letter of Inquiry² regarding whether Viaero violated the inductive coupling hearing aid compatibility requirements of section 20.19(d)(2) of the Rules.

¹ 47 C.F.R. § 20.19(d)(2).

² Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mike Felicissimo, NE Colorado Cellular, Inc., dba Viaero Wireless (August 13, 2007)(“August 13, 2007 LOI”).

- (h) “Parties” means Viaero and the Bureau.
- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (j) “Viaero” means NE Colorado Cellular, Inc., dba Viaero Wireless, and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Pursuant to section 20.19(d)(2) of the Rules, beginning September 18, 2006, carriers are required to offer at least two handset models for each air interface that meet the inductive coupling standards for hearing aid compatibility.

3. On August 13, 2007, the Bureau issued a letter of inquiry (LOI) to Viaero.³ The August 13, 2007 LOI directed Viaero, among other things, to submit a sworn written response to a series of questions relating to its compliance with the inductive coupling hearing aid compatibility handset requirements. Viaero responded to the August 13, 2007 LOI on August 27, 2007.⁴

III. TERMS OF AGREEMENT

4. **Adopting Order.** 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 without change, addition, modification, or deletion.

5. **Jurisdiction.** Viaero agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** 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 Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Viaero agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Viaero concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on

³ *Id.*

⁴ See Letter from Thomas Gutierrez, Esq. and Todd Slamowitz, Esq., Lukas, Nace, Gutierrez & Sachs, Chartered, to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (August 27, 2007).

its own motion against Viaero with respect to Viaero's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Viaero agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Viaero has designated Mike Felicissimo as its hearing aid compatibility compliance officer. The designated hearing aid compatibility compliance officer will be familiar with the FCC's hearing aid compatibility regulations and associated selling and labeling benchmarks. The designated hearing aid compatibility compliance officer will also review the FCC's hearing aid compatibility regulations on a monthly basis in order to stay abreast of pending benchmarks and any new hearing aid compatibility requirements.
- (b) **Training.** The designated hearing aid compatibility compliance officer will be responsible for ensuring that all Viaero retail staff receives training regarding the hearing aid compatibility capabilities of the handsets Viaero offers for sale. Such training will be completed within ninety days of the Effective Date and any new employees will receive training within sixty days of their employment.
- (c) **Consumer Outreach.** Viaero will advertise the availability of hearing aid-compatible handsets to ensure that all of its retail customers are aware that hearing aid-compatible handsets are available.
- (d) **Compliance Reports.** Viaero will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of Viaero, stating that the officer has personal knowledge that Viaero has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Susan Stickley at Susan.Stickley@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months from the Effective Date.

9. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Viaero or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Viaero with the Act, the Rules, or the Order.

10. **Voluntary Contribution.** Viaero agrees that it will make a voluntary contribution to the United States Treasury in the amount of twelve thousand dollars (\$12,000). The payment will be made within thirty (30) days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to

U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Viaero will also send electronic notification on the date said payment is made to Susan.Stickley@fcc.gov and Ricardo.Durham@fcc.gov.

11. **Waivers.** Viaero 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 the Bureau Adopting Order adopts the Consent Decree without change, addition, modification, or deletion. Viaero shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. 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 Viaero nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Viaero shall waive any statutory right to a trial de novo. Viaero hereby agrees to waive any claims it may otherwise have under 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.

12. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety 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.

13. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Viaero does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Viaero agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further 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.

16. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

17. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

18. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

19. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Susan McNeil
Deputy Chief
Enforcement Bureau

Date

Mike Felicissimo
Executive Vice-President
NE Colorado Cellular, Inc. dba Viaero Wireless

Date