

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

In the Matter of)	
)	File Nos. EB-07-SE-140 and
)	EB-08-SE-121
IT&E Overseas, Inc.)	
)	Acct. Nos. 200732100028 and
)	200832100060
)	
		FRN No. 0001523125

ORDER

Adopted: July 25, 2008

Released: July 28, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and IT&E Overseas, Inc. (“IT&E”). The Consent Decree terminates an investigation and a Notice of Apparent Liability for Forfeiture (“NAL”) by the Bureau against IT&E for possible violations of section 20.19(f) of the Commission’s Rules (“Rules”) regarding IT&E’s failure to comply with the labeling requirements for digital wireless hearing aid-compatible handsets, and an investigation by the Bureau against IT&E for possible violations of section 20.19(d)(2) of the Rules regarding IT&E’s failure to offer at least two digital wireless handset models meeting the Commission’s standards for inductive coupling by the compliance deadline.

2. The Bureau and IT&E have negotiated the terms of the Consent Decree that resolve these matters. 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 investigations and canceling the Notice of Apparent Liability for Forfeiture.

4. In the absence of material new evidence relating to these matters, we conclude that our investigations raise no substantial or material questions of fact as to whether IT&E 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 sections 4(i) 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 above-captioned investigations **ARE TERMINATED** and that the Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

¹ 47 U.S.C. § 154(i), 503(b).

² 47 C.F.R. §§ 0.111, 0.311.

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 John A. Prendergast, Esq., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, 2120 L Street, N.W., Suite 300, Washington, DC 20037 and to John Borlas, IT&E Overseas, Inc., 1010 South Marine Drive, Tamuning, GU 96913.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and IT&E Overseas, Inc. (“IT&E”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigations into whether IT&E violated section 20.19(d)(2) of the Commission’s Rules (“Rules”)¹ regarding the inductive coupling hearing aid compatibility handset requirements, and section 20.19(f) of the Rules² regarding the labeling requirements for digital wireless hearing aid-compatible handsets.

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) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (f) “Investigations” means the investigation initiated by the Bureau regarding whether IT&E violated the hearing aid compatibility labeling requirements in section 20.19(f) of the Rules culminating in the *Notice of Apparent Liability for Forfeiture*, and the investigation by the Bureau regarding whether IT&E violated the inductive coupling hearing aid compatibility handset requirements of section 20.19(d)(2) of the Rules.
 - (g) “IT&E” means IT&E Overseas, Inc. and its corporate predecessors-in-interest and corporate successors-in-interest.

¹ 47 C.F.R. § 20.19(d)(2).

² 47 C.F.R. § 20.19(f).

- (h) “NAL” means *IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660 (Enf. Bur., Spectrum Enf. Div. 2007).
- (i) “Parties” means IT&E and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to section 20.19(f) of the Rules, hearing aid-compatible digital wireless handsets must clearly display the technical rating on the packaging material of the handset and an explanation of the hearing aid compatibility technical rating system must be included in the owner’s manual or as an insert in the packaging material for the handset. Pursuant to section 20.19(d)(2) of the Rules, wireless carriers were required to offer at least two handset models for each air interface that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006.³

3. On September 16, 2005, IT&E filed a Petition for Temporary Waiver or Temporary Stay⁴ of the requirements contained in section 20.19(c)(2)(i) of the Rules that IT&E include in its handset offerings two handset models per air interface that meet the radio frequency interference standard for hearing aid compatibility.⁵ On April 11, 2007, the Commission granted IT&E’s September 16, 2005 Petition for Temporary Waiver or Temporary Stay with respect to the requirements of section 20.19(c)(2)(i),⁶ but concluded that IT&E had failed to demonstrate unusual or unique circumstances, or the existence of any other factor, warranting relief from the associated labeling requirements set forth in Section 20.19(f) of the Rules.⁷ The Commission referred IT&E’s apparent violation of section 20.19(f) of the Rules to the Bureau for investigation. On April 25, 2007, the Bureau issued an NAL proposing that IT&E be held liable for a forfeiture of \$16,000 under section 503(b)(1)(B) of the Act⁸ for its apparent violation of section 20.19(f) of the Rules and ordered the Company either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled. On May 11, 2007, IT&E filed a Petition for Partial Reconsideration of the Commission’s denial of its September 16, 2005 Petition for Temporary Waiver or Temporary Stay with

³ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, 16780 (2003); see also 47 C.F.R. § 20.19(d) (2006). In February 2008, the Commission amended section 20.19 of the Rules to, among other things, establish new benchmarks for offering inductive coupling-capable handsets going forward. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008).

⁴ Petition for Temporary Waiver or Temporary Stay, filed by IT&E Overseas, Inc., WT Docket No. 01-309, September 16, 2005 at 1.

⁵ Petition for Temporary Waiver or Temporary Stay, filed by IT&E Overseas, Inc., WT Docket No. 01-309, September 16, 2005 at 1.

⁶ Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission’s Rules*, Memorandum Opinion and Order, 22 FCC Rcd 7171, 7193 ¶ 51 (2007).

⁷ *Id.*

⁸ 47 U.S.C. § 503(b)(1)(B).

respect to the requirements of section 20.19(f) of the Rules.⁹ On May 24, 2007, IT&E also filed a Response to Notice of Apparent Liability for Forfeiture¹⁰ with respect to the Bureau's NAL.

4. On September 13, 2006, IT&E filed its Petition for Temporary Waiver or Temporary Stay, up to and including September 18, 2007, of the requirements contained in section 20.19(d)(2) of the Rules that IT&E include in its handset offerings at least two handset models per air interface that comply with the inductive coupling standard for hearing aid compatibility set forth in section 20.19(b)(2) of the Rules.¹¹ On February 27, 2008, the Commission denied IT&E's September 13, 2006 Petition for Temporary Waiver or Temporary Stay of the requirements of section 20.19(d)(2) of the Rules,¹² and referred IT&E's apparent violation to the Bureau for investigation. On March 28, 2008, IT&E filed a Petition for Reconsideration of the Commission's denial of its September 13, 2006 Petition for Temporary Waiver or Temporary Stay of the requirements of section 20.19(d)(2) of the Rules.¹³

5. On April 4, 2008, IT&E Overseas, Inc. and PTI Pacifica Inc. filed applications for the assignment from IT&E to PTI Pacifica of IT&E's wireless licenses, including its broadband Personal Communications Service and Local Multipoint Distribution Service licenses in Guam and the Commonwealth of the Northern Mariana Islands, as well as private microwave licenses on Guam.¹⁴

III. TERMS OF AGREEMENT

6. **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.

7. **Jurisdiction.** IT&E 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.

8. **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.

9. **Termination of Investigations.** 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 investigations and to cancel the NAL. In consideration for the termination of said investigations and

⁹ Petition for Partial Reconsideration, filed by IT&E Overseas, Inc., WT Docket No. 01-309, May 11, 2007.

¹⁰ Response to Notice of Apparent Liability for Forfeiture, filed by IT&E Overseas, Inc., May 24, 2007.

¹¹ Petition for Temporary Waiver or Temporary Stay, filed by IT&E Overseas, Inc., WT Docket No. 01-309, September 13, 2006 at 1.

¹² See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Petitions for Waiver of Section 20.19 of the Commission's Rules, Memorandum Opinion and Order, 23 FCC Rcd 3352, 3365-66 ¶¶ 23-25 (2008).

¹³ Petition for Reconsideration, filed by IT&E Overseas, Inc., WT Docket No. 01-309, March 28, 2008.

¹⁴ See Application for Assignments of Authorization from IT&E Overseas, Inc. (assignor) to PTI Pacifica Inc. (assignee), File No. 000356838, April 4, 2008; Amendments to Application, FCC File No. 00356838, April 10, 2008 and May 2, 2008.

cancellation of the NAL, IT&E 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 the investigations 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 IT&E concerning the matters that were the subject of the investigations. The Bureau also agrees that it will not use the facts developed in the investigations 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 its own motion against IT&E with respect to IT&E's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

10. **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 IT&E 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 IT&E with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution.** IT&E agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$54,000. The payment will be made within 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 Account Numbers 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 Account numbers in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). IT&E shall also send electronic notification on the date said payment is made to Nissa Laughner at Nissa.Laughner@fcc.gov and to Ricardo M. Durham at Ricardo.Durham@fcc.gov.

12. **Waivers.** IT&E 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 adopts the Consent Decree without change, addition, modification, or deletion. IT&E 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 IT&E nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and IT&E shall waive any statutory right to a trial *de novo*. IT&E 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.

13. **Withdrawal.** IT&E agrees to request withdrawal of its pending May 11, 2007 Petition for Partial Reconsideration of the Commission's denial of IT&E's September 16, 2005 Petition for Temporary Waiver or Temporary Stay with respect to the waiver of the requirements of section 20.19(f) of the Rules, and its pending March 28, 2008 Petition for Reconsideration of the Commission's denial of IT&E's September 13, 2006 Petition for Temporary Waiver or Temporary Stay of the requirements of section 20.19(d)(2) of the Rules, within five (5) business days of the Effective Date. In addition, IT&E agrees to request withdrawal of its May 24, 2007 Response to Notice of Apparent Liability for Forfeiture with respect to the Bureau's NAL, within five (5) business days of the Effective Date.

14. **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.

15. **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 IT&E does not expressly consent) that provision will be superseded by such Commission rule or Order.

16. **Successors and Assigns.** IT&E agrees that the provisions of this Consent Decree shall be binding on its corporate successors, assigns, and transferees.

17. **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.

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

19. **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.

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

21. **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.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

John Borlas
President
IT&E Overseas, Inc.

Date