

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

In the Matter of)	File No. EB-07-IH-8571
)	
GE MDS LLC)	NAL/Acct. No. 200832080095
)	
Licensee of Various Authorizations in the Microwave Radio Services)	FRN No. 0016050429
)	

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and GE MDS LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation of compliance by GE MDS LLC with Section 310(d) of the Communications Act of 1934, as amended, and Section 1.948 of the Commission’s Rules regarding the assignment of 170 licenses in the Private Operational Fixed Microwave Service.

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) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “Cancellation Licenses” means the licenses that GE MDS will arrange to have surrendered to the Commission for immediate cancellation, a list of which is appended hereto as Attachment A. The 100 licenses that comprise the Cancellation Licenses are a subset of the 170 licenses that comprise the Station Licenses.
 - (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 Commission releases the Adopting Order.
 - (g) “GE MDS” means GE MDS LLC and any wholly or partially owned subsidiary, and each of the respective officers, directors, and partners of the foregoing.

- (h) “Investigation” means the investigation commenced by the Bureau’s October 30, 2007, Letter of Inquiry¹ into compliance by GE MDS with Section 310(d) of the Communications Act of 1934, as amended, and Section 1.948 of the Commission’s rules² regarding the assignment of Station Licenses from MDS to GE MDS.
- (i) “Station Licenses” means the 170 station licenses in the Private Operational Fixed Microwave Service acquired by GE MDS from MDS.
- (j) “MDS” means Microwave Data Systems, Inc. and any affiliate, parent company, wholly or partially owned subsidiary, and all owners, including but not limited to, officers, directors, and partners of the foregoing.
- (k) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (l) “Parties” means GE MDS and the Bureau.
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “WTB” means the FCC’s Wireless Telecommunications Bureau.

II. BACKGROUND

- 2. Pursuant to section 310(d) of the Act and section 1.948 of the Rules, no station license shall be transferred, assigned, or disposed of by a transfer of control without prior application to and approval by the Commission.
- 3. On January 16, 2007, GE MDS acquired the assets of MDS, a manufacturer of radio equipment, grantee of various equipment authorizations, and licensee of 170 Station Licenses in the Private Operational Fixed Microwave Service. The Station Licenses consisted of 168 Multiple Address Service (“MS”) and two Microwave Industrial/Business Pool (“MG”) authorizations. In accordance with the notification requirements of section 2.929 of the Commission’s rules,³ on or about January 19, 2007, GE MDS duly notified the Commission of the assignment of the equipment authorizations involved in the asset acquisition. GE MDS mistakenly interpreted Section 2.929, however, as permitting the same notification procedure in connection with its consummation of the assignment of the Station Licenses.⁴ GE MDS

¹See Letter from Jennifer A. Lewis, Assistant Chief, Investigations & Hearings Division, Federal Communications Commission to Dennis McCarthy, GE MDS LLC, dated October 30, 2007.

² 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

³ 47 C.F.R. § 2.929.

⁴ See Letter From Jack Richards, Keller & Heckman LLP to Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated November 21, 2007 at 2.

subsequently became aware that the transaction may have resulted in an assignment of licenses for which prior Commission consent was required, and, on March 2, 2007, it voluntarily notified the Commission of such and filed remedial applications on FCC Forms 603 seeking Commission consent to the assignment of the Station Licenses from MDS to GE MDS.⁵ Those applications remain before the Commission pending resolution of the Investigation.

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.** GE MDS 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 FCC 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, GE MDS 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 GE MDS 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 its own motion against GE MDS with respect to GE MDS's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, GE MDS agrees to develop and implement 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:

⁵ ULS File Nos. 0002907739 and 0002909134.

- a. Compliance Manual. Within 30 days of the Effective Date, GE MDS will develop and distribute a Compliance Manual to company lawyers, managers, and other parties responsible for the establishment, purchase, sale, and use of GE MDS's wireless assets, which shall be designed to ensure compliance with Section 310(d) of the Act in connection with transactions and/or proposed transactions within GE MDS that trigger or may trigger compliance-related responsibilities. The Compliance Manual will include an overview of the Commission's requirements for license ownership and transfers of control, including the Commission's rules and the requirements of the Act, regarding the need for prior approval of assignments of Commission authorizations and the transfer of control of the holders of such authorizations. The Compliance Manual will be updated from time to time as needed.
- b. Compliance Training Program. Within 90 days of the Effective Date, GE MDS will conduct an initial education program for company lawyers, managers, and other parties responsible for the establishment, purchase, sale, and use of GE MDS's wireless assets. This education program will include an overview of the Commission's requirements for license ownership and transfers of control, including the Commission's rules and the requirements of the Act, regarding the need for prior approval of assignments of Commission authorizations and the transfer of control of the holders of such authorizations. This education program will be updated and presented from time to time as needed to ensure that new employees are informed of regulatory compliance requirements and that existing employees are reminded of the same.
- c. License Database. GE MDS will assemble and maintain a database of all of GE MDS's wireless license holdings. The database will be updated regularly and be accessible by all employees who deal with FCC wireless regulatory compliance or wireless systems.
- d. License Assignments and Transfers. The Compliance Manual and related training program will contain information for GE MDS personnel regarding the need to conduct thorough due diligence regarding the potential FCC licenses of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential license assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses.
- e. Compliance Reports. GE MDS will file compliance reports with the Commission 90 days after the Effective Date and 12 months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of GE MDS, stating that the officer has personal knowledge that GE MDS 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. The compliance reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

9. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire one year after the Adopting Order becomes a Final Order. On that date, GE MDS shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of GE MDS with personal knowledge of the representations therein, verifying that GE MDS has complied with the terms of this Consent Decree. The affidavit or declaration shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

10. **Voluntary Contribution.** GE MDS agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty-five thousand (\$35,000). The payment will be made within 10 calendar days after the Effective Date. 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). GE MDS will also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov and Jennifer.Lewis@fcc.gov.

11. **Cancellation of Licenses.** GE MDS agrees that within 10 calendar days of the Effective Date, it shall modify its assignment application (FCC File no. 0002909134) by deleting the Cancellation Licenses from the application. GE MDS further agrees that, within 10 calendar days of the Commission’s grant of such modification, it shall seek to effectuate the surrender and immediate cancellation of the Cancellation Licenses. GE MDS also agrees to cooperate as is necessary and appropriate to effectuate the surrender and immediate cancellation of the Cancellation Licenses.

12. **Waivers.** GE MDS 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 Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. GE MDS 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 GE MDS nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and GE MDS shall waive any statutory right to a trial *de novo*. GE MDS 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. **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.

14. **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 GE MDS does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. This Consent Decree is not and shall not be construed as an admission by GE MDS that the above-described conduct would constitute a willful violation of any provision of the Rules or the Act.

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

18. **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.

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

20. **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 Bureau Chief
Enforcement Bureau

Date

Roberto Vengochea
General Manager
GE MDS
175 Science Parkway
Rochester, NY 14620

Date

ATTACHMENT A
Cancellation Licenses

1.	WPUM 688	52.	WPUM 771
2.	WPUM 689	53.	WPUM 772
3.	WPUM 690	54.	WPUM 773
4.	WPUM 691	55.	WPUM 774
5.	WPUM 692	56.	WPUM 775
6.	WPUM 693	57.	WPUM 776
7.	WPUM 694	58.	WPUM 777
8.	WPUM 695	59.	WPUM 778
9.	WPUM 696	60.	WPUM 797
10.	WPUM 697	61.	WPUM 798
11.	WPUM 698	62.	WPUM 799
12.	WPUM 699	63.	WPUM 800
13.	WPUM 700	64.	WPUM 801
14.	WPUM 714	65.	WPUM 802
15.	WPUM 715	66.	WPUM 803
16.	WPUM 716	67.	WPUM 804
17.	WPUM 717	68.	WPUM 805
18.	WPUM 718	69.	WPUM 806
19.	WPUM 719	70.	WPUM 807
20.	WPUM 720	71.	WPUM 808
21.	WPUM 721	72.	WPUM 809
22.	WPUM 722	73.	WPUM 810
23.	WPUM 723	74.	WPUM 811
24.	WPUM 724	75.	WPUM 812
25.	WPUM 725	76.	WPUM 813
26.	WPUM 726	77.	WPUM 814
27.	WPUM 727	78.	WPUM 815
28.	WPUM 728	79.	WPUM 816
29.	WPUM 729	80.	WPUM 821
30.	WPUM 730	81.	WPUM 822
31.	WPUM 731	82.	WPUM 823
32.	WPUM 732	83.	WPUM 824
33.	WPUM 749	84.	WPUM 825
34.	WPUM 750	85.	WPUM 826
35.	WPUM 751	86.	WPUM 841
36.	WPUM 752	87.	WPUM 842
37.	WPUM 753	88.	WPUM 843
38.	WPUM 754	89.	WPUM 844
39.	WPUM 755	90.	WPUM 845
40.	WPUM 756	91.	WPUM 846
41.	WPUM 757	92.	WPUM 847
42.	WPUM 758	93.	WPUM 848
43.	WPUM 759	94.	WPUM 849
44.	WPUM 760	95.	WPUM 850
45.	WPUM 764	96.	WPUM 851
46.	WPUM 765	97.	WPUM 852
47.	WPUM 766	98.	WPUM 853
48.	WPUM 767	99.	WPUM 854
49.	WPUM 768	100.	WPUM 855
50.	WPUM 769		
51.	WPUM 770		