

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

In the Matter of)	File No. EB-08-SE-144
)	
Wavetrend Technologies, Ltd.)	Acct. No. 200832100082
)	
)	FRN No. 0007642531

ORDER

Adopted: September 9, 2008

Released: September 11, 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 Wavetrend Technologies, Ltd. (“Wavetrend”). The Consent Decree terminates an investigation by the Bureau against Wavetrend for possible violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”)² regarding the marketing of certain radio frequency identification devices.

2. The Bureau and Wavetrend 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 Wavetrend 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,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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 Jeffrey L. Sheldon, Esq., Counsel

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ 47 U.S.C. § 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

for Wavetrend Technologies, Ltd., McDermott Will & Emery LLP, 600 Thirteenth Street, N.W.,
Washington, D.C. 20005-3096.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Wavetrend Technologies Limited (“Wavetrend”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Wavetrend violated section 302(b) of the Communications Act of 1934, as amended,¹ and section 2.803(a)(1) of the Commission’s Rules² regarding the marketing of certain radio frequency identification (“RFID”) devices.

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) “Investigation” means the investigation initiated by the Bureau regarding whether Wavetrend violated the requirements of section 2.803(a)(1) of the Rules in connection with its marketing of certain RFID devices.
 - (g) “OET” means the FCC’s Office of Engineering and Technology of the Commission.
 - (h) “Parties” means Wavetrend and the Bureau.
 - (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
 - (j) “Wavetrend” means Wavetrend Technologies Limited, and its predecessors-in-interest and successors-in-interest.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

II. BACKGROUND

2. Pursuant to section 302(b) of the Act and section 2.803(a)(1) of the Rules, radio frequency devices subject to certification may not be marketed unless authorized by the Commission in accordance with the applicable technical and administrative provisions of the Rules. Section 15.231(e) of the Rules³ requires that devices operating under the provisions of the section be provided with a means for automatically limiting operation so that the silent period between transmissions may be no less than 10 seconds in duration.

3. On February 28, 2008, OET sent a letter⁴ to Wavetrend to inquire whether Wavetrend was marketing certain RFID devices that were previously certified for operation under section 15.231 of the Rules, and whether each device complied with the minimum silent period between transmissions as required by section 15.231(e) of the Rules.⁵

4. Wavetrend responded to the OET Letter on March 10, 2008.⁶ Representatives of Wavetrend met with staff of the Bureau and OET on March 19, 2008, to discuss the OET Letter and the Wavetrend response. On May 21, 2008, in response to an informal request by the Bureau, Wavetrend submitted additional information relating to the Bureau's investigation of this matter.⁷

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** Wavetrend 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.

7. **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.

8. **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, Wavetrend agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence related to this matter, the Bureau will not use the facts developed in this

³ 47 C.F.R. § 15.231.

⁴ See Letter from Raymond LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology, Federal Communications Commission, to Wavetrend Technologies, Ltd. (Feb. 28, 2008) ("OET Letter").

⁵ See OET Letter.

⁶ See Letter from Saleem Miyan, CEO, Wavetrend, to Raymond LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology, Federal Communications Commission (March 10, 2008).

⁷ See Letter from Saleem Miyan, CEO, Wavetrend, to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 21, 2008).

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 Wavetrend 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 Wavetrend with respect to Wavetrend's basic qualifications to hold Commission licenses or authorizations.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, Wavetrend 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, at a minimum, include the following components:

(a) **Software Development.** Wavetrend agrees to develop new firmware for its RFID tags and new software and firmware for its RFID programmers intended for the U.S. market that will prevent its tags from being programmed for a repetition interval that does not comply with the Rules. Wavetrend will also revise its software licensing agreements for U.S. customers using such programmers to more clearly mandate that the programmers and software may not be used to configure devices outside of the Rules.

(b) **Device Programmability.** Wavetrend will offer each of its U.S. customers that previously purchased a programmer one of Wavetrend's new programmers in order to control tag programmability as specified in the Rules. Until the new software or modified programmers are available, Wavetrend will continue to program its customers' tags at no cost to ensure that its new tag orders comply with the Rules.

(c) **Marketing.** Wavetrend will revise its marketing materials in order to remove any confusion with regards to transmission rates and programmability of its tags.

(d) **Compliance Officer.** Wavetrend will place compliance with this Consent Decree under the direct supervision of Wavetrend's CEO, Mr. Saleem Miyan.

(e) **Training.** Wavetrend will retrain, and provide materials concerning Parts 2 and 15 of the FCC's Rules and the requirements of the Consent Decree to, all of its employees who are involved directly or indirectly in the design, development, testing, marketing, and distribution of radiofrequency products. Such training will address the equipment authorization requirements of the Act and the FCC's Commission's Rules applicable to RFID devices and accessories imported, marketed, and sold by Wavetrend in the United States.

(f) **Compliance Reports.** Wavetrend 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 the Compliance Officer asserting that the Compliance Officer has personal knowledge that Wavetrend 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 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 Ricardo M. Durham at Ricardo.Durham@fcc.gov and Kevin M. Pittman at Kevin.Pittman@fcc.gov.

(g) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months from the Effective Date.

10. **Voluntary Contribution.** Wavetrend agrees that it will make a voluntary contribution to the United States Treasury in the amount of twenty-eight thousand dollars (\$28,000). 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 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 Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Wavetrend will also send electronic notification on the date said payment is made to Ricardo M. Durham at Ricardo.Durham@fcc.gov and Kevin M. Pittman at Kevin.Pittman@fcc.gov.

11. **Waivers.** Wavetrend 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 issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. Wavetrend 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 Wavetrend nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Wavetrend shall waive any statutory right to a trial *de novo*. Wavetrend 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 Wavetrend does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Wavetrend 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.

Kathryn S. Berthot
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Saleem Miyan
Chief Executive Officer
Wavetrend Technologies Limited
Parkshot House
5 Kew Road
Richmond, Surrey TW9 2PR
United Kingdom

Date