

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

In the Matter of)	
)	File No. EB-07-IH-5364
)	
U.S. Wireless Data, Inc.)	NAL/Acct. No. 200832080012
)	
)	FRN No. 0016385478
)	

ORDER

Adopted: March 4, 2008

Released: March 6, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “Commission”) and U.S. Wireless Data, Inc. (“USWDI”). The Consent Decree terminates an investigation initiated by the Enforcement Bureau against USWDI for possible violations of Section 214 of the Communications Act of 1934, as amended (“the Act”),¹ relating to extension of lines, and sections 63.03, 63.04, 63.18 and 63.24 of the Commission’s rules relating to transfer of control.²

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

3. Based on the record before us, and in the absence of material new evidence relating to this matter, we conclude that there are no substantial or material questions of fact as to whether USWDI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by adopting the Consent Decree.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 214.

² 47 C.F.R. §§ 63.03, 63.04, 63.18 and 63.24.

³ 47 U.S.C. § 154(i).

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

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (the “Bureau”) and U.S. Wireless Data, Inc. (“USWDI”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into USWDI’s compliance with section 214 of the Communications Act of 1934, as amended (the “Act”),¹ relating to extension of lines and sections 63.03, 63.04, 63.18 and 63.24 of the Commission’s rules relating to transfer of control.²

2. 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 this Consent Decree.
- (c) The “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (d) The “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
- (e) “CTI” means Capital Telecommunications, Inc., a wholly-owned subsidiary of StarVox.
- (f) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (g) “Investigation” means the investigation commenced by the Bureau’s September 11, 2007 Letter of Inquiry³ regarding whether USWDI violated the requirements of section 214 of

¹ 47 U.S.C. § 214.

² 47 C.F.R. §§ 63.03, 63.04, 63.18 and 63.24.

³ See Letter from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Thomas E. Rowley, CEO and Director, U.S. Wireless Data, Inc., dated September 11, 2007 (“September 11, 2007 LOI”).

the Act⁴ and/or sections 63.03, 63.04, 63.18, and 63.24 of the Commission's rules relating to transfer of control.⁵

- (h) "Parties" means USWDI and the Bureau.
- (i) "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations.
- (j) "StarVox" means StarVox Communications, Inc., a wholly-owned subsidiary of USWDI.
- (k) "USWDI" means U.S. Wireless Data, Inc., and any predecessor-in-interest, affiliate, parent company, wholly or partially owned subsidiary, other affiliated company or business, or its successors or assigns.

I. BACKGROUND

3. Section 214 of the Act requires telecommunications carriers to obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communications, or before discontinuing, reducing or impairing service to a community.⁶ In accordance with section 63.03 of the Commission's rules, any domestic carrier seeking to transfer control of lines or authorization to operate pursuant to section 214 of the Act must obtain prior approval from the Commission.⁷ Similarly, pursuant to section 63.24, a transfer of control of an international section 214 authorization requires application to and prior approval from the Commission.⁸ section 63.24(e) requires that the proposed transferee apply to the Commission for approval prior to the consummation of the proposed transfer of control.⁹ Sections 63.04 and 63.18 set forth the required

⁴ 47 U.S.C. § 214.

⁵ 47 C.F.R. §§ 63.03-04, 63.18, 63.24.

⁶ See 47 U.S.C. § 214(a).

⁷ See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order 17 FCC Rcd 5517, 5521, ¶ 5 (2002) ("2002 Streamlining Order"); 47 C.F.R. §§ 63.03. See also *id.* § 63.03(d)(1) excluding all *pro forma* transactions, which do not result in a change in the carrier's ultimate ownership or control, from the domestic section 214 application and approval requirements); *id.* § 63.04(d)(2) (requiring that a post-transaction notice be filed with the Commission within 30 days of a *pro forma* transfer of a domestic section 214 authorization to a trustee, a debtor-in-possession, or any other party pursuant to any applicable chapter of the Bankruptcy Code).

⁸ 47 C.F.R. § 63.24(a).

⁹ See generally 47 C.F.R. § 63.24(e); see also *id.* 47 C.F.R. § 63.24(d) (excluding *pro forma* applications, or non-substantive assignments and transfers of control that do not result in a change in the actual controlling party or do not require prior Commission approval). Section 63.24(g) of the Commission's rules also establishes a narrow exception to this application requirement for specified involuntary transfers involving bankruptcy, foreclosure action, legal disability or death, for which only a post-transaction notification is required. In a case involving involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the transferee must provide post-transaction notice no later than 30 days after the event causing the involuntary assignment or transfer of control. See 47 C.F.R. § 63.24(g). But see *id.* 47 C.F.R. § 63.03 (categorizing these types of involuntary transactions as *pro forma* assignments or transfers of control for domestic section 214 applications).

contents of domestic and international transfer of control applications.¹⁰ The Commission employs a public interest standard under section 214(a) of the Act that involves the examination of the public interest impact of a proposed transaction.¹¹

4. StarVox is a non-dominant telecommunications carrier holding section 214 authority to provide switched and dedicated intrastate, interstate, and international long distance message toll telecommunications services to business, enterprise, and carrier customers on a retail and wholesale basis. StarVox was a privately-held company prior to the transfer of control, with three individuals or entities each holding a 10% or greater direct equity and voting interest.

5. CTI is a non-dominant telecommunications carrier holding section 214 authority to provide domestic interstate and international telecommunications services. CTI was a wholly-owned subsidiary of StarVox prior to the transfer of control and remained a wholly-owned subsidiary of StarVox after the transfer of control.

6. USWDI is a holding company that does not provide telecommunications services except through StarVox and CTI. USWDI is a publicly-traded company that had no operations, employees or assets prior to the transfer of control.

7. On March 23, 2007, StarVox completed a reverse merger with USWDI (the “merger”). Pursuant to the transaction, a wholly-owned subsidiary of USWDI merged with and into StarVox, with StarVox surviving as a wholly-owned subsidiary of USWDI. The merger diluted the ownership interests of some individuals and entities that had previously held a cognizable interest in StarVox. CTI remained a direct, wholly-owned subsidiary of StarVox.

8. On May 23, 2007, USWDI and StarVox filed separate Joint International and Domestic Applications for Consent to Transfer Control of StarVox and CTI to USWDI.

9. On June 1, 2007, StarVox, CTI and USWDI requested special temporary authority from the Commission that would allow StarVox and CTI to provide service under the ownership of USWDI pending approval of their applications for transfer of control.

10. On June 5, 2007, the Commission granted the request for Special Temporary Authority.

11. On June 6, 2007, the Commission released a Public Notice accepting the section 214 applications for streamlined processing under the Commission’s rules.

12. On September 11, 2007, the Bureau issued a letter of inquiry (“LOI”) directing USWDI, among other things, to submit a sworn written response to a series of questions relating to the apparent unauthorized transfer of control of StarVox and CTI to USWDI.¹²

II. AGREEMENT

13. The Parties agree that the provisions of the Consent Decree shall be subject to final approval by the Bureau through entry of the Adopting Order which shall resolve and terminate the Investigation.

¹⁰ 47 C.F.R. §§ 63.04 and 63.18.

¹¹ See 47 U.S.C. § 214(a).

¹² See September 11, 2007 LOI.

14. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties of the Investigation. In express reliance on the covenants and representations in this Consent Decree, the Bureau agrees to terminate the Investigation without any finding of liability or violations on the part of USWDI, StarVox or CTI. In consideration for the termination of the Investigation and in accordance with the terms of this Consent Decree, USWDI agrees to the terms, conditions, and procedures contained herein.

15. USWDI acknowledges that the Commission has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

16. The Parties 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. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, USWDI does not admit or deny liability for violating any statute, regulation, or administrative rule in connection with the matters that are the subject of this Consent Decree.

17. USWDI agrees that it will make a voluntary contribution to the United States Treasury in the amount of eleven thousand dollars ((\$11,000 US), to be paid within thirty (30) calendar 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[s] 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, and enter the letters "FORF" in block number 24A (payment type code).

18. USWDI agrees that it will develop, within sixty (60) calendar days from the Effective Date, an internal Compliance Plan to ensure USWDI's future compliance with the Act, the Commission's rules, and the Commission's orders governing telecommunications carriers' reporting and contribution requirements for universal service and other Commission programs. The Compliance Plan shall include the following components:

- (a) Compliance Manual. USWDI shall create, maintain and update an FCC Compliance Manual. USWDI personnel who engage in activities related to FCC regulation of USWDI will have ready access to the Compliance Manual and are to follow the procedures contained therein. The Compliance Manual will, among other things, describe the rules and requirements as they apply to USWDI regarding requirements governing transfer of control of USWDI. The Compliance Manual will require personnel to contact USWDI's Designated Contact with any questions or concerns that arise with respect to USWDI's FCC compliance.
- (b) Compliance Training Program. USWDI will establish an FCC compliance training program for any employee who engages in activities related to FCC regulation of USWDI. Training sessions will be conducted at least annually for such employees to ensure compliance with the Act and the FCC's regulations and policies and, for new

employees who are engaged in such activities, within the first sixty (60) days of employment.

- (c) Designated Contact. USWDI will designate one employee as the point of contact for all FCC compliance matters.
- (d) Review and Monitoring. USWDI management will review the FCC Compliance Manual and FCC Compliance Training Program annually to ensure that they are maintained in a proper manner and continue to address the objectives set forth therein.
- (e) License Assignments and Transfers. The Compliance Manual and related training will contain information for USWDI personnel regarding the need to conduct thorough due diligence regarding 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.
- (f) Annual Report. Twelve months and twenty-four months after the Effective Date, USWDI shall submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of USWDI with personal knowledge of the representations therein, verifying that USWDI has complied with the terms of this Consent Decree. The declaration shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The declaration or affidavit must comply with section 1.16 of the Commission's rules, 47 C.F.R. § 1.16, and be substantially in the form set forth therein.
- (g) Termination. USWDI's obligations under this Paragraph shall expire twenty-four (24) months after the Effective Date.

19. The Bureau agrees that in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, 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 USWDI 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, 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 USWDI with respect to USWDI's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

20. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating any formal or informal complaint filed against USWDI pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take action in response to such formal complaint. If any such complaint is made, the adjudication of that complaint will be based solely on the record developed in that proceeding and the Commission shall not use any facts developed through the Investigation or the existence of this Consent Decree in any such proceeding. Except as expressly provided in this Consent Decree, nothing herein shall prevent the Commission or its delegated authority from investigating new evidence of noncompliance by USWDI of the Act, the Commission's rules, or this Consent Decree.

21. USWDI 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 Adopting Order adopts this Consent Decree without change,

addition, deletion or modification. USWDI shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein.

22. USWDI's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of the Adopting Order without change, addition, deletion or modification.

23. In the event that this Consent Decree 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.

24. The Parties agree that 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 USWDI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and USWDI will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree. USWDI, however, may present evidence that it has not violated the Consent Decree.

25. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of any term of this Consent Decree shall constitute a separate violation of a Commission order entitling the Commission to exercise any rights and remedies authorized by law attendant to the enforcement of a Commission order.

26. The Parties also 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 USWDI does not expressly consent) that provision will be superseded by such Commission rule or order.

27. The Parties acknowledge that USWDI neither waives nor alters its rights to assert and seek protections from disclosure of any privileged or otherwise confidential and protected documents and information or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

28. USWDI 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.

29. USWDI and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

30. This Consent Decree may be signed in counterparts.

Kris Anne Monteith
Chief, Enforcement Bureau
Federal Communications Commission

Date

Chris McKee
General Counsel
U.S. Wireless Data, Inc.

Date