

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

In the Matter of	)	File No.: EB-08-SE-065
	)	
Westchester Services LLC	)	Acct. No.: 200832100042
	)	
	)	FRN No.: 0014015226

**ORDER**

**Adopted: April 24, 2008**

**Released: April 28, 2008**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Westchester Services LLC (“Westchester”). The Consent Decree terminates an investigation by the Bureau against Westchester for possible violations of sections 1.1307(a)(3) and 1.1307(a)(4) of the Commission’s Rules (“Rules”)<sup>1</sup> with respect to Westchester’s construction of three wireless communications facilities in Bismark, Newman, and Oblong, Illinois.

2. The Bureau and Westchester 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 Westchester 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,<sup>2</sup> and sections 0.111 and 0.311 of the Rules,<sup>3</sup> 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 Westchester Services LLC shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, 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.

<sup>1</sup> 47 C.F.R. §§ 1.1307(a)(3) and 1.1307(a)(4).

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111 and 0.311.

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).

8. **IT IS FURTHER ORDERED** that Westchester will file reports with the Commission ninety days, twelve months, and twenty-four months after the Effective Date of this Order. Each report shall include a compliance certificate from an officer, as an agent of Westchester, stating that the officer has personal knowledge that Westchester 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 the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

9. **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 Westchester's counsel, William J. Sill, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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In the Matter of	)	File No.: EB-08-SE-065
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Westchester Services LLC	)	Acct. No.: 200832100042
	)	
	)	FRN No.: 0014015226

**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and Westchester Services LLC (“Westchester” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Westchester violated the environmental regulations set forth in section 1.1307(a)(4)<sup>1</sup> of the Commission’s Rules with respect to the construction of three wireless communications facilities in Bismark, Newman, and Oblong, Illinois.

**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) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (d) “Compliance Plan” means the program described in this Consent Decree at paragraph nine.
  - (e) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (f) “Investigation” means the investigation initiated by the Bureau into whether Westchester violated the environmental regulations set forth in section 1.1307(a)(4) of the Commission’s Rules with respect to the construction of three wireless communications facilities in Bismark, Newman, and Oblong, Illinois.
  - (g) “Westchester” means Westchester Services LLC and its predecessors-in-interest and successors-in-interest.
  - (h) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.

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<sup>1</sup> 47 C.F.R. § 1.1307(a)(4).

- (i) “Parties” means Westchester and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Section 1.1307(a)(4) of the Rules requires licensees to consider whether their proposed facilities would affect properties listed or eligible for listing (“historic properties”) in the National Register of Historic Places (“National Register”). In considering potential effects on historic properties, Section 1.1307(a)(4) requires licensees to follow the prescribed procedures established by the Programmatic Agreements for collocated antennas<sup>2</sup> and for historic preservation review.<sup>3</sup> The Collocation and Nationwide Agreements<sup>4</sup> are designed to tailor and streamline the review and consultation procedures required by the National Historic Preservation Act of 1966, as amended (“NHPA”),<sup>5</sup> and the implementing regulations issued by the Advisory Council on Historic Preservation (“Advisory Council”).<sup>6</sup>

3. Westchester is an engineering consulting firm that owns a total of nine communications towers. In 2006, Westchester constructed three towers in Bismark, Newman, and Oblong, Illinois without fully completing the environmental review process. Subsequently, after learning of its obligations under the *Nationwide Agreement*, Westchester contacted the FCC’s Wireless Telecommunications Bureau (“WTB”) to discuss the matter and hired a consultant to perform a post-construction evaluation of the three sites. The consultant concluded that none of the towers would affect any listed or eligible properties and the WTB agreed with this determination. On February 8, 2008, the WTB referred the matter to the Enforcement Bureau for investigation.

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<sup>2</sup> See *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005) (“*Collocation Agreement*”).

<sup>3</sup> See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, WT Docket No. 03-128, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n. v. FCC*, No. 05-1008 (D.C. Cir. September 26, 2006) (“*Nationwide Agreement*”).

<sup>4</sup> Section 1.1307(a)(4) of the Rules incorporates by reference the Collocation Agreement and the Nationwide Agreement.

<sup>5</sup> 16 U.S.C. § 470 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. See 16 U.S.C. §§ 470f, 470w(7). In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian tribes or Native Hawaiian organizations, their representatives. See 16 U.S.C. §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council’s regulations, the Commission’s environmental rules delegate the task of identification and consideration of the effects that proposed facilities may have on historic properties, including the initiation of consultation, to its licensees, permittees and applicants, but the Commission remains ultimately responsible for enforcement of the environmental rules. See 47 C.F.R. § 1.1307(a)(4); see also 36 C.F.R. § 800.2(a)(3); *Nationwide Agreement*, 20 FCC Rcd at 1076-77 ¶ 5.

<sup>6</sup> See 36 C.F.R. § 800.1 *et seq.* Under the NHPA and the Advisory Council’s implementing regulations, a federal agency may, with the agreement of the Advisory Council and the relevant State Historic Preservation Officer or the National Conference of State Historic Preservation Officers, adopt Programmatic Agreements to tailor the historic preservation review and consultation procedures, as well as exempt actions that are unlikely to affect historic properties. See 16 U.S.C. § 470v; 36 C.F.R. § 800.14(b),(c).

### 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.** Westchester 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 Westchester 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 Westchester 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 Westchester with respect to Westchester's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Westchester agrees to create within 30 days of the Effective date of this Consent Decree and 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) Westchester will establish written policies and procedures governing its compliance with the FCC's environmental rules.
- (b) Westchester will designate a Regulatory Compliance Officer responsible for implementing these environmental policies and training Westchester personnel and consultants with regard to the FCC's environmental rules.
- (c) Westchester will regularly receive updates from communications counsel concerning relevant FCC developments and decisions and modify its environmental compliance policies as appropriate.
- (d) Westchester will, for a period of two years, agree to report to the Wireless Telecommunications Bureau staff any problems related to the historic consultation for towers constructed after the Effective Date of the Adopting Order.
- (e) **Compliance Reports.** Westchester will file compliance reports with the Commission ninety days, twelve months, and twenty four months after the Effective Date of the Order adopting

this Consent Decree. Each compliance report shall include a compliance certificate from an officer, as an agent of Westchester, stating that the officer has personal knowledge that Westchester 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 compliance reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

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

10. **Voluntary Contribution.** Westchester agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixteen thousand five hundred dollars (\$16,500.00). 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 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).

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

a. **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 Westchester does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Westchester 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.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Date

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Jack Auriema  
Manager  
Westchester Services LLC

\_\_\_\_\_  
Date