

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

In the Matter of)

Access 700, LLC)

and)

Chevron North America Exploration and)
Production Company, a Division of Chevron)
U.S.A. Inc., successor in interest to Chevron)
Texaco Exploration and Production Company)

File No.: EB-08-SE-712

Acct. No.: 200932100060

FRN No.: 0014650329

File No.: EB-08-SE-711

ORDER

Adopted: May 19, 2009

Released: May 21, 2009

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"), Access 700, LLC ("Access 700") and Chevron North America Exploration and Production Company, a Division of Chevron U.S.A. Inc., successor in interest to Chevron Texaco Exploration and Production Company ("Chevron"). The Consent Decree terminates an investigation by the Bureau against Access 700 and Chevron for possible violation of Section 301 of the Communications Act of 1934, as amended ("Act")¹ and Section 1.903(a) of the Federal Communications Commission's rules ("rules")² by operating on frequencies not authorized by Access 700's license or a valid Special Temporary Authorization ("STA").

2. The Bureau, Access 700, and Chevron 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, which terminates 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 Access 700 or Chevron possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

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 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 Mr. Michael I. Gottdenker, Chairman and Chief Executive Officer, and Mr. Andrew J. Rein, Compliance Officer and Director, Strategy and Operations, Access 700, LLC, 2 Bethesda Metro Center, Bethesda, MD 20814-6319, and to counsel for Access 700, LLC, Charles W. Logan and Gunnar D. Halley, Esqs., Lawler, Metzger, Milkman & Keeney, LLC, 2001 K Street, NW, Suite 802, Washington DC 20006; and to James G. Larre, Assistant Secretary, Chevron U.S.A., Inc., 6001 Bollinger Canyon Road, San Ramon, CA 94583, and to counsel for Chevron U.S.A., Inc., Jack Richards, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³ 47 U.S.C. §§ 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

The Enforcement Bureau (“Bureau”), Access 700, LLC (“Access 700”), Chevron North America Exploration and Production Company, a Division of Chevron U.S.A. Inc., successor in interest to Chevron Texaco Exploration and Production Company (“Chevron”), by their authorized representatives, hereby enter into this Consent Decree for the purposes of terminating the Bureau’s investigation into whether Access 700 and Chevron (collectively, the “Companies”) violated Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 1.903(a) of the Federal Communications Commission’s rules (“rules”)² by operating on frequencies not authorized by Access 700’s license or a valid Special Temporary Authorization (“STA”).

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Access 700” means Access 700, LLC.
 - (b) “Act” means the Communications Act of 1934, as amended *47 U.S.C. § 151 et seq.*
 - (c) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Chevron” means Chevron North America Exploration and Production Company, a Division of Chevron U.S.A. Inc., successor in interest to Chevron Texaco Exploration and Production Company.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

- (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
- (g) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
- (h) "Companies" means Access 700 and Chevron, collectively.
- (i) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (j) "Investigation" means the investigation commenced by the Bureau upon receipt of a referral from the Wireless Telecommunications Bureau regarding the possible violation of Section 301 of the Act and Section 1.903(a) of the Commission's regulations by Access 700 and Chevron.
- (k) "Parties" means Access 700, Chevron, and the Bureau.
- (l) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 301 of the Act and Section 1.903(a) of the Rules, the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station is prohibited except under, and in accordance with, a Commission authorization.³

3. In a July 25, 2008 letter to Commission staff, counsel for Chevron described events regarding Chevron's operation on what had formerly been 700 MHz Guard Band frequencies in MEA027 and MEA031 from October 23, 2007 to April 18, 2008. Chevron previously had entered into an agreement with Access 700, a 700 MHz Guard Band Manager, to lease the use of these frequencies in these and other MEAs from Access 700 during the period in question. The Wireless Telecommunications Bureau subsequently referred the matter to the Enforcement Bureau for 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.** The Companies agree that the Bureau has jurisdiction over them 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.

³ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

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, the Companies agree 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 the Companies 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 the Companies with respect to their basic qualifications, including their character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan/Access 700.** For purposes of settling the matters set forth herein, Access 700 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 include, at a minimum, the following components:

- (a) **Compliance Officer.** Access 700 will designate an employee familiar with the Commission's rules, regulations and associated policies relating to spectrum leasing agreements ("Access 700 Compliance Officer"). Access 700 has designated its Director of Strategy and Operations as its Access 700 Compliance Officer. The designated Access 700 Compliance Officer will also review the FCC's leasing regulations on a quarterly basis to stay abreast of any new requirements, and will review all spectrum leasing agreements before they are entered into by Access 700 and ensure that such agreements comply with FCC rules and policies.
- (b) **Training.** Within ninety (90) days of the Effective Date, Access 700 shall conduct training sessions for any Access 700 personnel engaged in spectrum leasing ("Covered Employees") to inform them about the FCC rules and policies regarding spectrum leasing agreements. In addition, all new Covered Employees of Access 700 will undergo such training within sixty (60) days of the commencement of their employment. Access 700 will also provide refresher training for all Covered Employees on at least an annual basis. In addition, Access 700 will prepare and distribute a written compliance guide that sets forth company and Commission policies for spectrum leasing agreements. Access 700 will update the guide, as necessary.
- (c) **Compliance Reports.** Access 700 shall 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 Access 700 Compliance Officer, as an agent of Access 700, stating that the company has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the compliance certification. All reports shall be submitted to Kathryn S. Berthot, 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 Durham at ricardo.durham@fcc.gov, and to Deborah Broderon at deborah.broderon@fcc.gov.
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire twenty-four (24) months from the Effective Date or at such time as Access 700 ceases to be a Commission licensee, whichever occurs first.

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

- (a) **Compliance Officer.** Chevron will designate an employee familiar with the Commission's rules, regulations and associated policies relating to spectrum leasing agreements under the Band Manager program ("Chevron Compliance Officer"). The Chevron Compliance Officer will review the FCC's leasing regulations on a quarterly basis to stay abreast of any new requirements and will review all spectrum leasing agreements under the Band Manager program before they are entered into by Chevron to ensure that such agreements comply with FCC rules and policies governing Band Manager leases. The Chevron Compliance Officer shall review the Commission's records on a quarterly basis to ensure that any Commission licensee entering into a spectrum lease agreement with Chevron under the Band Manager program is and continues to be duly authorized by the Commission for the frequencies and at the locations contained in the spectrum use agreement.
- (b) **Compliance Reports.** Chevron shall 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 Chevron Compliance Officer, as an agent of Chevron, stating that the company has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the compliance certification. All reports shall be submitted to Kathryn S. Berthot, 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 Durham at ricardo.durham@fcc.gov, and to Deborah Broderson at deborah.broderson@fcc.gov.
- (c) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire twenty-four (24) months from the Effective Date.

10. **Voluntary Contribution.** Access 700 agrees that it will make a voluntary contribution on its behalf and on behalf of Chevron to the United States Treasury in the amount of sixteen thousand dollars (\$16,000). 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 applicable 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). Access 700 also will send electronic notification on the date said payment is made to Ricardo.Durham@fcc.gov and Deborah.Broderson@fcc.gov.

11. **Waivers.** The Companies waive any and all rights they 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 the Adopting Order without change, addition, modification, or deletion. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any of the Parties (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order,

neither the Parties nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they 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. **Invalidity.** 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 the Companies do not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

15. **Final Settlement.** The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, the Companies do not admit or deny noncompliance, violation, or liability for violating the Act, Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree. 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 all 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 others 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

Michael I. Gottdenker
Chairman and Chief Executive Officer
Access 700, LLC

Date

Andrew J. Rein
Compliance Officer and Director, Strategy
& Operations
Access 700, LLC

Date

James G. Larre
Assistant Secretary
Chevron U.S.A. Inc.
Chevron North America Exploration and Production Company,
A Division of Chevron U.S.A. Inc.,
Successor in interest to Chevron Texaco Exploration and Production Company

Date