

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

In the Matter of)	File No. EB-07-SE-143
)	
)	Acct. No. 200932100069
CT Cube, Inc. d/b/a West Central Wireless)	
)	FRN No. 0001650860

ORDER

Adopted: July 8, 2009

Released: July 10, 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”) and CT Cube, Inc. d/b/a West Central Wireless (“CT Cube”). The Consent Decree terminates an investigation by the Bureau against CT Cube for possible violations of former section 20.19(c)(2)(i)(B)(1) of the Commission’s Rules (“Rules”)¹ regarding the offering of digital wireless handset models that meet the radio frequency interference standard for hearing aid compatibility, and former section 20.19(f) of the Rules² regarding the labeling requirements for digital wireless hearing aid-compatible handsets.

2. The Bureau and CT Cube 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 CT Cube 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**.

¹ 47 C.F.R. § 20.19 (c)(2)(i)(B)(1) (2007). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility Rules the Commission made several changes to these Rules, including, *inter alia*, the continuation and expansion of hearing aid compatibility reporting requirements, and the phasing in of new technical standards for hearing aid compatibility. *See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-11, 3418 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These revised rules, however, do not govern CT Cube’s conduct prior to the effective date of the revisions, June 6, 2008. *See* 73 Fed. Reg. 25,566 (May 7, 2008).

² 47 C.F.R. § 20.19(f) (2007). Former section 20.19(f) of the Rules was redesignated as section 20.19(f)(1) in February 2008.

³ 47 U.S.C. § 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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 Mike Higgins, Jr., General Manager, CT Cube, Inc. d/b/a West Central Wireless, 3389 Knickerbocker Road, P. O. Box 991, San Angelo, Texas 76902 and to counsel for CT Cube, Inc. d/b/a West Central Wireless, Kenneth Johnson, Esq., Bennet & Bennet, PLLC, 4350 East West Highway, Bethesda, Maryland 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and CT Cube, Inc. d/b/a West Central Wireless (“CT Cube”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether CT Cube violated former section 20.19(c)(2)(i)(B)(1) of the Commission’s Rules (“Rules”)¹ regarding the offering of digital wireless handset models that meet the radio frequency interference standard for hearing aid compatibility, and former section 20.19(f) of the Rules² regarding the labeling requirements for digital wireless hearing aid-compatible handsets.

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) “Compliance Plan” means the program described in this Consent Decree at paragraph 11.
 - (f) “CT Cube” means CT Cube, Inc. d/b/a West Central Wireless, and its corporate predecessors-in-interest and corporate successors-in-interest.

¹ 47 C.F.R. § 20.19 (c)(2)(i)(B)(1) (2007). In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility Rules the Commission made several changes to these Rules, including, *inter alia*, the continuation and expansion of hearing aid compatibility reporting requirements, and the phasing in of new technical standards for hearing aid compatibility. *See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-11, 3418 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These revised rules, however, do not govern CT Cube’s conduct prior to the effective date of the revisions, June 6, 2008. *See* 73 Fed. Reg. 25,566 (May 7, 2008).

² 47 C.F.R. § 20.19(f) (2007). Former section 20.19(f) of the Rules was redesignated as section 20.19(f)(1) in February 2008.

- (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (h) “Investigation” means the investigation initiated by the Bureau regarding whether CT Cube violated former section 20.19(c)(2)(i)(B)(1) of the Rules by failing to include in its digital wireless handset offerings at least two handset models meeting the radio frequency interference standard for hearing aid compatibility and whether CT Cube violated former section 20.19(f) of the Rules by failing to provide the proper labels and inserts with hearing aid-compatible wireless handsets.
- (i) “Parties” means CT Cube and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to former section 20.19(f) of the Rules,³ hearing aid-compatible digital wireless handsets must clearly display the technical rating on the packaging material of the handset. An explanation of the hearing aid compatibility technical rating system must also be included in the owner’s manual or as an insert in the packaging material for the handset. Pursuant to former section 20.19(c)(2)(i)(B)(1) of the Rules,⁴ Tier III wireless carriers were required to offer for each air interface at least two digital wireless handset models with reduced emission levels that meet at least a U3 rating for radio frequency interference by September 16, 2005. On September 8, 2005, the Commission provided relief for entities that offer dual-band Global System for Mobile Communications (“GSM”) digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands, holding that it would accept until August 1, 2006, subject to certain conditions, the hearing aid compatibility compliance rating of the handsets for 1900 MHz operation as the overall compliance rating for the handset.⁵

3. On September 16, 2005, CT Cube filed a Petition for Temporary and Limited Waiver of Section 20.19(c)(2)(i)(B)(1) of the Commission’s Rules requesting a limited waiver of the FCC’s requirement that CT Cube offer at least two U3-rated handsets by September 16, 2005. CT Cube’s petition requested an additional six months to include at least two certified U3-rated handsets per air interface in its handset offerings. CT Cube amended its petition on January 25, 2006, indicating that as of January 1, 2006, it was offering two handset models rated U3 or better, and that it therefore required relief only until January 1, 2006.

4. On April 25, 2006, CT Cube notified the Commission that it had availed itself of the relief afforded to GSM carriers pursuant to the Commission’s September 8, 2005 *Memorandum Opinion and Order*.⁶ CT Cube also reported, however, that one of its U3-rated handsets -- the LG L1400i -- did not have the labels and inserts required pursuant to the Commission’s Rules.

³ 47 C.F.R. § 20.19(f) (2007).

⁴ 47 C.F.R. § 20.19(c)(2)(i)(B)(1) (2007).

⁵ See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, *Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission’s Rules*, Memorandum Opinion and Order, WT Docket No. 01-309, 20 FCC Rcd 15108 (2005).

⁶ See Letter from Michael Bennet, Esq., Bennet & Bennet, Counsel for CT Cube d/b/a West Central Wireless to Angela E. Giancarlo, Associate Chief, Public Safety & Critical Infrastructure Division (April 25, 2006).

5. In its November 17, 2006 *Hearing Aid Compatibility Report*, CT Cube stated that only one of the four U3-rated handset models that it was then offering included proper labels and inserts.⁷

6. On April 11, 2007, the Commission issued a Memorandum Opinion and Order that, *inter alia*, denied CT Cube's Petition for Temporary and Limited Waiver of Section 20.19(c)(2)(i)(B)(1) of the Commission's Rules and referred CT Cube's apparent violations of the hearing aid compatibility requirements to the Bureau.⁸

III. TERMS OF AGREEMENT

7. **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.

8. **Jurisdiction.** CT Cube 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.

9. **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.

10. **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, CT Cube 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 CT Cube 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 CT Cube with respect to CT Cube's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, CT Cube 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.** CT Cube has designated Kim Tumlinson as its hearing aid compatibility officer. The designated hearing aid compatibility compliance officer will be familiar with the FCC's hearing aid compatibility regulations and associated selling and labeling benchmarks. The designated hearing aid compatibility

⁷ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Hearing Aid Compatibility Report of CT Cube d/b/a West Central Wireless, WT Docket No. 01-309 (November 17, 2006).

⁸ See Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Petitions for Waiver of Section 20.19 of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 7171, 7187 (2007).

compliance officer will also review the FCC's hearing aid compatibility regulations on a monthly basis in order to stay abreast of pending benchmarks and any new hearing aid compatibility requirements.

- (b) **Training.** The designated hearing aid compatibility compliance officer will be responsible for ensuring that all CT Cube retail staff receives training regarding the hearing aid compatibility capabilities of the handsets CT Cube offers for sale. Such training will be completed within ninety (90) days of the Effective Date and any new employees will receive training within sixty (60) days of their employment.
- (c) **Consumer Outreach.** CT Cube will advertise the availability of hearing aid-compatible handsets to ensure that all of its retail customers are aware that hearing aid-compatible handsets are available.
- (d) **Compliance Reports.** CT Cube 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 compliance report shall include a compliance certificate from an officer, as an agent of CT Cube, stating that the officer has personal knowledge that CT Cube 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 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 Nissa Laughner at Nissa.Laughner@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months from the Effective Date.

12. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against CT Cube or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by CT Cube with the Act, the Rules, or Commission orders.

13. **Voluntary Contribution.** CT Cube agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$14,000. 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). CT Cube shall also send electronic notification on the date said payment is made to Nissa.Laughner@fcc.gov and Ricardo.Durham@fcc.gov.

14. **Waivers.** CT Cube 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. CT Cube 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 CT Cube nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and CT Cube shall waive any statutory right to a trial *de novo*. CT Cube 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.

15. **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.

16. **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 CT Cube does not expressly consent) that provision will be superseded by such Commission rule or Order.

17. **Successors and Assigns.** CT Cube agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **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.

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

20. **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.

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

22. **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

Mike Higgins, Jr.
General Manager
CT Cube, Inc. d/b/a West Central Wireless

Date