

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

In the Matter of)	File No. EB-06-SE-174
)	
Audiovox Corporation)	Acct. No. 200932100046
)	
)	FRN No. 0017363979

ORDER

Adopted: February 12, 2009

Released: February 13, 2009

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Audiovox Corporation (“Audiovox”). The Consent Decree terminates an investigation by the Bureau into whether certain satellite radio equipment imported and marketed by Audiovox and intended for use with XM Radio, Inc.’s (“XM”) satellite radio service complies with Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Parts 2 and 15 of the Commission’s rules (“Rules”).²

2. The Bureau and Audiovox 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 Audiovox 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 Act,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 all third-party complaints against Audiovox before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.1 *et seq.* and § 15.101 *et seq.*

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

8. **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. Patrick M. Lavelle, President and Chief Executive Officer, Audiovox Corporation, 180 Marcus Blvd., Hauppauge, New York 11788, and to its counsel, Albert H. Kramer, Esq., Dickstein Shapiro LLP, 1825 Eye Street NW, Washington DC 20006-5403.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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Audiovox Corporation)	Acct. No. 200932100046
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)	FRN No. 0017363979

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Audiovox Corporation (“Audiovox”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether certain satellite radio equipment imported and marketed by Audiovox and intended for use with XM Radio, Inc.’s (“XM”) satellite radio service complies with Section 302(b) of the Communications Act of 1934, as amended,¹ and Parts 2 and 15 of the Commission’s rules.²

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) “Audiovox” means Audiovox Corporation and its predecessors-in-interest and successors-in-interest.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging that certain radio receivers imported by Audiovox and intended for use with XM’s satellite radio service are not or may not be in compliance with Section 302(b) of the Act³ and Parts 2 and 15 of the Rules.⁴

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.1 *et seq.* and § 15.101 *et seq.*

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. §§ 2.1 *et seq.* and 15.1 *et seq.*

- (g) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the investigation commenced by the Bureau’s May 10, 2006, Letter of Inquiry⁵ regarding whether certain satellite radio receivers (with wireless FM modulators) imported and marketed by Audiovox and intended for use with XM Radio, Inc.’s (“XM”) satellite radio service comply with Section 302(b) of the Act⁶ and Parts 2 and 15 of the Rules.⁷
- (j) “Parties” means Audiovox and the Bureau.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act and Parts 2 and 15 of the Rules, certain radio frequency devices, including wireless FM modulators, must be authorized in accordance with the processes set forth in the Rules and comply with all applicable technical standards prior to importation into, or marketing in, the United States.

3. On May 10, 2006, the Bureau issued a Letter of Inquiry (“LOI”) to Audiovox initiating an investigation into the manufacture, authorization, importation, distribution and marketing of certain satellite radio receivers (with wireless FM modulators) intended for use with XM’s satellite radio service.⁸ The May 10, 2006 LOI directed Audiovox, among other things, to submit a sworn written response to a series of questions relating to potential violation of the operating bandwidth specifications and/or the radiated emission limits of sections 15.239(a) and/or 15.239(b) of the Rules. Audiovox responded to the May 10, 2006 LOI on June 22, 2006.⁹

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.** Audiovox 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.

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau to Mr. Patrick Lavelle, President, Audiovox Corporation (“May 10, 2006 LOI”).

⁶ 47 U.S.C. § 302a(b).

⁷ 47 C.F.R. §§ 2.1 *et seq.* and 15.1 *et seq.*

⁸ See May 10, 2006 LOI.

⁹ See Letter from Albert H. Kramer, Esq., Dickstein Shapiro Morin & Oshinsky LLP, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (June 22, 2006).

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 and dismiss the Complaints. In consideration for the termination of said investigation and dismissal of the Complaints, Audiovox 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 Audiovox 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 Audiovox with respect to Audiovox's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Audiovox agrees to create within 30 days and maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will provide for the following components:

- (a) **Compliance Officer.** Audiovox will designate a Compliance Officer who will be responsible for implementing and administering the Compliance Plan.
- (b) **Compliance Measures.** Audiovox will establish procedures to ensure that Audiovox maintains its control over products to be licensed to Audiovox throughout the equipment authorization process, from testing and/or submission for testing to final certification. The procedures will be designed also to ensure there is no material variance between the product as tested for certification and as manufactured and sold. All employees involved in the process will be instructed in the procedures and the need for adherence to them.

9. **Compliance Reports.** Audiovox will file reports with the Commission ninety days after the Effective Date, twelve months after the Effective Date, and twenty-four months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of Audiovox, stating that the officer has personal knowledge that Audiovox 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 Neal McNeil at Neal.McNeil@fcc.gov and to Kathy Berthot at Kathy.Berthot@fcc.gov.

10. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four months after the Effective Date.

11. **Voluntary Contribution.** Audiovox agrees that it will make a voluntary contribution to the United States Treasury in the amount of five thousand dollars (\$5,000). 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). Audiovox will also send electronic notification on the date said payment is made to Neil.McNeil@fcc.gov and Kathy.Berthot@fcc.gov.

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

13. **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.

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

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

16. **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.

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

18. **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.

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

20. **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.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Thomas C. Malone
Senior Vice President
Audiovox Corporation

Date