

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

In the Matter of	)	
	)	File No. EB-08-SE-601
Marathon Petroleum Company, LLC	)	Acct. No. 201032100005
	)	FRN No. 0003012192

**ORDER**

**Adopted: January 13, 2010**

**Released: January 15, 2010**

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 Marathon Petroleum Company, LLC (“Marathon”). The Consent Decree terminates an investigation by the Bureau into Marathon’s possible violations of Section 301 of the Communications Act of 1934, as amended, (“Act”),<sup>1</sup> and Sections 1.903 and 1.949(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

2. The Bureau and Marathon 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 new material evidence relating to this matter, we conclude that our investigation raises no substantial or material question of fact as to whether Marathon 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,<sup>3</sup> and sections 0.111 and 0.311 of the Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

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

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903 and 1.949(a).

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

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 C. Douglas Jarrett, Esq., Keller and Heckman, LLP, 1001 G Street, N.W., Washington DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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

In the Matter of	)	File No. EB-08-SE-601
	)	
	)	Acct. No. 201032100005
Marathon Petroleum Company LLC	)	
	)	FRN No. 0003012192

**CONSENT DECREE**

The Enforcement Bureau of the Federal Communications Commission (“Commission”) and Marathon Petroleum Company LLC (“Marathon” or “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of resolving the Enforcement Bureau’s investigation of compliance by Marathon with Section 301 of the Communications Act of 1934, as amended, (“Act”),<sup>1</sup> and Sections 1.903 and 1.949(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

**I. DEFINITIONS**

8. For 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 8.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigation” means the investigation commenced by the Bureau’s March 18, 2009 Letter of Inquiry<sup>3</sup> (“LOI”) relating to whether Marathon complied with Section 301 of the Act<sup>4</sup> and Sections 1.903(a) and 1.949(a) of the Rules.<sup>5</sup>

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903 and 1.949(a).

<sup>3</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to C. Douglas Jarrett, Esq., counsel for Marathon Petroleum Company LLC (initially referred to as Marathon Oil Company) (March 18, 2009) (“March 18, 2009 LOI”).

- (h) “Marathon” means Marathon Petroleum Company LLC and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means Marathon and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

9. 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.<sup>6</sup> Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”<sup>7</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>8</sup>

10. On March 18, 2009, the Bureau issued a Letter of Inquiry to Marathon. The March 18, 2009 LOI directed Marathon, among other things, to submit a sworn written response to a series of questions relating to the unauthorized operation and the failure to timely renew the license of Station WPJY 949, the land mobile radio system at Marathon’s Catlettsburg, Kentucky refinery.<sup>9</sup> Marathon responded to the March 18, 2009 LOI on May 1, 2009.<sup>10</sup>

## 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.** Marathon 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 Adopting Order or the terms or conditions of this Consent Decree shall constitute a separate

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<sup>4</sup> 47 U.S.C. § 301.

<sup>5</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>6</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>7</sup> 47 C.F.R. § 1.949(a).

<sup>8</sup> 47 C.F.R. § 1.955(a)(1).

<sup>9</sup> See March 18, 2009 LOI.

<sup>10</sup> See Letter from C. Douglas Jarrett, Esq., counsel for Marathon Petroleum Company LLC (initially referred to as Marathon Oil Company) to Susan M. Stickle, Esq., Spectrum Enforcement Division, Enforcement Bureau (May 1, 2009).

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, Marathon 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 Marathon 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 Marathon with respect to Marathon's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Marathon agrees to create within thirty (30) days of the Effective Date a Compliance Plan ("the Plan") related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include the following components:

- (a) **Leadership and Management Commitment.** Marathon shall designate a responsible staff person as a Single Point of Accountability ("SPA") who will be responsible for ensuring that all radio systems operated by the Company are duly authorized and operated pursuant to the terms of the Commission's authorizations and the Commission's rules. The SPA or specifically authorized employees will oversee the preparation and filing of all applications for new, modified and renewal authority.
- (b) **Audit.** The SPA will oversee a physical inspection of all private land mobile radio systems operated by Marathon to confirm that these radio systems are being operated pursuant to effective Commission authorizations. Marathon shall conduct these inspections and submit a report thereof to the Commission no later than nine months after the Effective Date. This Audit Report will be certified by a corporate officer and the SPA or his designee as being true and accurate.
- (c) **Compliance Officer.** Marathon will appoint a Compliance Officer who will be responsible for overseeing Marathon's compliance with this Compliance Plan and applicable FCC requirements.
- (d) **Compliance Reports.** Marathon will file compliance reports with the Commission ninety (90) days after the Effective Date, six months after the Effective Date, and twelve months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Marathon, stating that the officer has personal knowledge that Marathon 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. All reports shall also be submitted electronically to Ricardo M. Durham, Senior Deputy Chief,

Enforcement Bureau, Spectrum Enforcement Division, Ricardo.Durham @fcc.gov, and Susan Stickley, Attorney Advisor, Enforcement Bureau, Spectrum Enforcement Division, Susan.Stickley@fcc.gov.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twelve months after the Effective Date.

9. **Voluntary Contribution.** Marathon agrees to make a voluntary contribution to the United States Treasury in the amount of seven thousand five hundred dollars (\$7,500) 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 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). Marathon will also send electronic notification on the date said payment is made to Ricardo.Durham @fcc.gov and Susan.Stickley@fcc.gov.

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

11. **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.

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

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

14. **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.

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

16. **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.

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

18. **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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Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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Date

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James F. Cantrell  
Refinery Division Manager  
Marathon Petroleum Company LLC

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Date