

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

In the Matter of	)	
	)	File No. EB-08-SE-561
Bluegrass Cellular, Inc.	)	Acct. No. 201032100017
	)	FRN No. 0007000854

**ORDER**

**Adopted: February 12, 2010**

**Released: February 12, 2010**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Bluegrass Cellular, Inc. (“Bluegrass”). The Consent Decree terminates an investigation by the Bureau into Bluegrass’s possible violations of Part 4 of the Commission’s rules regarding the reporting of network outages.<sup>1</sup>

2. The Bureau and Bluegrass 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 investigations.

4. Based on the record before us, we conclude that our investigations raise no substantial or material questions of fact as to whether Bluegrass 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 Commission’s 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**.

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<sup>1</sup> 47 C.F.R. § 4.1 *et seq.*

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</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 Ronald R. Smith, President, Bluegrass Cellular, Inc., 2902 Ring Road, Elizabethtown, Kentucky 42702, and to Pamela L. Gist, Esq., Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Blvd., Suite 1500, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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In the Matter of	)	
	)	File No. EB-08-SE-561
Bluegrass Cellular, Inc.	)	Acct. No. 201032100017
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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) and Bluegrass Cellular, Inc. (“Bluegrass”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Bluegrass violated Section 4.9(e) of the Commission’s Rules<sup>1</sup> by failing to file network outage reports by the compliance deadlines.

**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) “Bluegrass” means Bluegrass Cellular, Inc., its affiliates, 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) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
  - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (h) “Investigation” means the investigation commenced by the Bureau’s July 14, 2008 and December 29, 2008 Letters of Inquiry<sup>2</sup> regarding whether Bluegrass

<sup>1</sup> 47 C.F.R. § 4.9(e).

<sup>2</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Ronald R. Smith, President, Bluegrass Cellular, Inc. (July 14, 2008); Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Scott W. McCloud, Vice President, Wireless Networks, Bluegrass Cellular, Inc. (December 29, 2008).

violated Section 4.9(e) of the Rules regarding the reporting of network outages.

- (i) “Parties” means Bluegrass 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 Section 4.9(e) of the Rules,<sup>3</sup> a wireless communications provider is required to submit to the Commission an electronic Notification within 120 minutes after discovering that it has experienced a network outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes of either telephony or paging; (2) affects at least 1,350 DS3 minutes; (3) potentially affects any special offices or facilities, as defined in Section 4.5(e) Rules<sup>4</sup>; or (4) potentially affects a 911 special facility, as defined by the Rules. Within 72 hours after discovering such an outage, a wireless communications provider is required to submit electronically an Initial Communications Outage Report, and within 30 days after discovering such an outage, a wireless communications provider is required to submit electronically a Final Communications Report.<sup>5</sup>

3. On July 14, 2008, the Bureau issued a Letter of Inquiry (“LOI”) to Bluegrass.<sup>6</sup> The July 14, 2008 LOI directed Bluegrass, among other things, to submit a sworn written response to a series of questions relating to Bluegrass’s compliance with the Commission’s network outage reporting rules. Bluegrass responded to the LOI on August 6, 2008.<sup>7</sup> On December 29, 2008, the Bureau issued a follow up LOI to Bluegrass.<sup>8</sup> Bluegrass responded to the follow-up LOI on January 14, 2009.<sup>9</sup> The Bureau and Bluegrass executed a Tolling Agreement on April 14, 2008,<sup>10</sup> and executed Tolling Agreement Extensions on July 8, 2009<sup>11</sup> and on October 30, 2009.<sup>12</sup>

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<sup>3</sup> 47 C.F.R. § 4.9(e).

<sup>4</sup> 47 C.F.R. § 4.5(e).

<sup>5</sup> 47 C.F.R. § 4.9(e).

<sup>6</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Ronald R. Smith, President, Bluegrass Cellular, Inc. (July 14, 2008).

<sup>7</sup> See Letter from Pamela L. Gist, Esq., Counsel for Bluegrass Cellular Inc., to Nissa Laughner, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 6, 2008).

<sup>8</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Scott W. McCloud, Vice President, Wireless Networks, Bluegrass Cellular, Inc. (December 29, 2008).

<sup>9</sup> See Letter from Pamela L. Gist, Esq., Counsel for Bluegrass Cellular, Inc., to Nissa Laughner, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 14, 2009).

<sup>10</sup> See Tolling Agreement, File No. EB-07-SE-561, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Scott W. McCloud, Vice President, Wireless Networks, Bluegrass Cellular, Inc. (April 14, 2009).

<sup>11</sup> See Tolling Agreement Extension, File No. EB-07-SE-561, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Ronald R. Smith, President, Bluegrass Cellular, Inc. (July 8, 2009).

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

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Bluegrass agrees to create within thirty (30) days a Compliance Plan related to Bluegrass's 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 Training Program.** Bluegrass shall establish and maintain a FCC outage reporting training program addressing FCC network outage reporting requirements, as detailed below, for all employees who are responsible for analyzing technical information regarding Bluegrass's network outages, entering information into any Bluegrass database(s) and/or record(s) that form the basis of Bluegrass's reporting of network outages to the Commission, and compiling and/or submitting Bluegrass's outage reports to the Commission.<sup>13</sup>

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<sup>12</sup> See Tolling Agreement Extension, File No. EB-07-SE-561, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and Ronald R. Smith, President, Bluegrass Cellular, Inc. (October 30, 2009).

<sup>13</sup> Under this provision, Bluegrass will not be required to provide outage reporting compliance training to employees other than those whose responsibilities include analyzing technical information regarding Bluegrass's network outages, entering information into Bluegrass's database(s) and/or record(s) that form the basis of Bluegrass's reporting of network outages to the Commission, and compiling and/or submitting Bluegrass's outage reports to the Commission.

- i. Bluegrass's Compliance Training Program shall address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the FCC's Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. Bluegrass's Compliance Training Program shall also address the methods and procedures adopted by Bluegrass to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the FCC's outage reporting Rules. The training program shall also include information on the potential internal and regulatory consequences of failing to comply with Bluegrass's methods and procedures and/or the FCC's outage reporting requirements.
  - ii. Bluegrass shall provide the foregoing outage reporting training within six months of the Effective Date and will update the training at least annually for employees who are responsible for analyzing technical information regarding Bluegrass's network outages, entering information into any Bluegrass database(s) and/or record(s) that form the basis of Bluegrass's reporting of network outages to the Commission, and compiling and/or submitting Bluegrass's outage reports to the Commission. Bluegrass will also provide training to new employees responsible for these activities.
  - iii. Bluegrass shall update and enhance the foregoing training regarding the FCC's outage reporting requirements as appropriate and necessary.
- (b) **Compliance Reports.** Bluegrass will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Bluegrass, stating that the officer has personal knowledge that Bluegrass 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 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division at Ricardo.Durham@fcc.gov and Nissa Laughner at Nissa.Laughner@fcc.gov.
- (c) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.
9. **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 Bluegrass 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 Bluegrass with the Act, the Rules, or Commission Orders.
10. **Voluntary Contribution.** Bluegrass agrees that it will make a voluntary contribution to the United States Treasury, in the amount of fifty thousand dollars (\$50,000). The contribution 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). Bluegrass will also send electronic notification on the date said payment is made to Ricardo.Durham @fcc.gov and Nissa.Laughner@fcc.gov.

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

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 Bluegrass does not expressly consent), that provision will be superseded by such Commission Rule or Order.

14. **Successors and Assigns.** Bluegrass 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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P. Michele Ellison  
Bureau Chief  
Enforcement Bureau

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Date

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Scott W. McCloud  
Vice President—Wireless Networks  
Bluegrass Cellular, Inc.

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Date