

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

In the Matter of)	File No.: EB-09-IH-1049
)	
EDS Spectrum Corporation)	NAL/Acct. No.: 201132080013
)	
Hewlett-Packard Company)	FRN: 0001652429

ORDER

Adopted: August 12, 2011

Released: August 12, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”), EDS Spectrum Corporation (“EDS”), and the ultimate parent company of EDS, Hewlett-Packard Company (“HP”).¹ The Consent Decree resolves and terminates the Bureau’s investigation into the Companies’ compliance with section 310(d) of the Communications Act of 1934, as amended (the “Act”), and the Commission’s Rules and Orders concerning the Companies’ obligations to obtain Commission approval before transferring control of Commission licenses.²

2. The Bureau and the Companies have negotiated the terms of a Consent Decree that resolves 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 the Companies possess 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 sections 4(i) and 503(b) of the Act,³ and sections 0.111 and 0.311 of the Commission’s Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ EDS and HP are referred to collectively herein as the “Companies.”

² 47 U.S.C. § 310(d); 47 C.F.R. § 25.119; 47 C.F.R. Pt. 90.

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-referenced investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class certified mail, return receipt requested, to counsel for the Companies, Timothy J. Cooney, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau, EDS Spectrum Corporation, and the ultimate parent company of EDS, Hewlett-Packard Company, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into the Companies' compliance with section 310(d) of the Communications Act of 1934, as amended, and the Commission's Rules and Orders concerning the Companies' obligations to obtain Commission approval before transferring control of Commission licenses.¹

I. DEFINITIONS

2. 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) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (c) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) "Companies" means EDS Spectrum Corporation and Hewlett-Packard Company.
 - (e) "Compliance Plan" means the program described in this Consent Decree at paragraph 9.
 - (f) "EDS Spectrum Corporation" or "EDS" means EDS Spectrum Corporation and its predecessors-in-interest and successors-in-interest.
 - (g) "Effective Date" means the date on which the Commission releases the Adopting Order.
 - (h) "Hewlett-Packard Company" or "HP" means Hewlett-Packard Company and its predecessors-in-interest and successors-in-interest.

¹ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119; 47 C.F.R. Pt. 90.

- (i) “Investigation” means the investigation commenced by the Bureau’s August 5, 2009, letter of inquiry² regarding the Companies’ compliance with section 310(d) of the Act and the Rules and Commission Orders concerning the Companies’ obligations to obtain Commission approval before transferring control of Commission licenses.³
- (j) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (k) “Parties” means EDS Spectrum Corporation, Hewlett-Packard Company and the Bureau, each of which is a Party.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Pursuant to section 310(d) of the Act,⁴ Commission licensees are prohibited from transferring or assigning FCC licenses without prior Commission approval. Furthermore, the Rules require Commission licensees of wireless communications to apply for, and obtain, Commission approval before transferring or assigning FCC licenses.⁵

4. On August 5, 2009, the Bureau issued an LOI to EDS.⁶ The LOI directed EDS, among other things, to submit a sworn written response to a series of questions relating to EDS’s compliance with section 310(d) of the Act and section 25.119 of the Rules. EDS responded to the LOI on September 4, 2009.⁷ Subsequently, the Companies voluntarily disclosed to the Bureau issues regarding the compliance of HP, the ultimate parent company of EDS, with requirements of the Act and the Rules governing the assignment or transfer of control of FCC licenses.⁸

² See *EDS Spectrum Corp.*, EB-09-IH-1049, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Ms. Sylvia Hodges, EDS FCC Licensing Coordinator, EDS Spectrum Corporation (Aug. 5, 2009) (“LOI”) (concerning EDS licensing issues). See also Electronic Mail from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Timothy Cooney, Esq. and David Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel for EDS Spectrum Corporation (Dec. 9, 2009) (concerning HP licensing issues).

³ 47 U.S.C. § 310(d); 47 C.F.R. § 25.119; 47 C.F.R. Pt. 90.

⁴ 47 U.S.C. § 310(d).

⁵ See 47 C.F.R. § 25.119 (governing transfer or assignment of satellite communications licenses); 47 C.F.R. Pt. 90 (governing transfer or assignment of private land mobile radio services licenses).

⁶ See *supra* note 2.

⁷ *EDS Spectrum Corp.*, EB-09-IH-1049, EDS Spectrum Corporation Responses to LOI dated August 5, 2009 (Sept. 4, 2009) (“LOI Response”).

⁸ See Electronic Mail from David Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel for EDS Spectrum Corporation, to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Nov. 24, 2009); Letter from Timothy Cooney, Esq. and David Solomon, Esq., Wilkinson Barker Knauer, LLP, Counsel for EDS Spectrum Corporation to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (Dec. 16, 2009).

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** The Companies agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree, and the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, 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.

8. **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, or the existence of this Consent Decree, to institute, on its own motion or in response to a third party objection, or recommend to the Commission, any new proceeding, formal or informal, or take any action on its own motion, or recommend to the Commission any action, against the Companies concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not, in the absence of new material evidence, use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion or in response to a third party objection, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion, or recommend to the Commission any action, against the Companies with respect to the Companies' basic qualifications, including their character qualifications, to be Commission licensees.

9. **Compliance Plan.** The Companies agree that they will develop, within thirty (30) calendar days from the Effective Date, an internal Compliance Plan to address the Companies' future compliance with the licensing provisions of the Act and the Rules and Commission Orders related thereto, including those governing the assignment or transfer of control of FCC licenses. The Compliance Plan shall include the following components:

- (a) **Compliance Officer.** The Companies will, within thirty (30) calendar days of the Effective Date, designate a senior corporate officer ("Compliance Officer") who is responsible for administering the Compliance Plan and ensuring the Companies' future compliance with the licensing provisions of the Act and the Rules and Commission Orders related thereto, including those governing the assignment or transfer of control of FCC licenses.
- (b) **FCC License Database.** The Companies will conduct a thorough review of their holdings and will create, maintain and update a database ("FCC License Database") listing relevant information regarding FCC licenses held by HP, EDS, and all other corporate entities controlled by HP. The FCC License Database will be compiled within ninety (90) calendar days of the Effective Date. The Companies will monitor

and review every ninety (90) calendar days the information contained in the database to ensure the information is accurate and for compliance purposes.

- (c) **Internal Controls**. The Companies will institute internal processes that ensure (i) future transactions contemplating a change in control of HP, EDS, or any other corporate entities controlled by HP that hold FCC licenses, are communicated to the Companies' management in advance of any actual transfer of control; and (ii) that the requirements of all appropriate regulatory authorities are timely satisfied. The Companies' management will be informed when transactions that involve a transfer of FCC licenses require Commission consent to transfer the licenses.
- (d) **Compliance Manual**. Within sixty (60) calendar days of the Effective Date, the Companies will develop and distribute a Compliance Manual to employees and others who perform duties at the Companies that trigger or may trigger responsibilities related to regulatory compliance with respect to the Companies' FCC licenses. The Compliance Manual will include an overview of such Commission requirements, including the need for prior approval for assignments and transfers of FCC licenses and authorizations. The Compliance Manual will be reviewed annually and updated as appropriate, and any revisions will be distributed within thirty (30) calendar days.
- (e) **Compliance Training Program**. The Companies will establish within ninety (90) calendar days of the Effective Date an FCC compliance training program for employees who, as part of their responsibilities, are substantially engaged in activities related to the purchase, sale, acquisition, assignment or transfer of control of companies, entities or assets potentially subject to FCC regulation. Such employees will be trained within sixty (60) calendar days of establishing a Compliance Training Program, and future training sessions will be conducted at least annually to ensure compliance with those provisions of the Act and the FCC's regulations and policies pertaining to assignments and transfers of control. The Compliance Training Program will contain information regarding the need to conduct due diligence regarding potential FCC licenses of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential license assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses.
- (f) **Compliance Reports**. The Companies will file compliance reports with the Commission twelve (12) months and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from the Compliance Officer stating that the officer has personal knowledge that the Companies (1) have established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, with Section 310(d) of the Act, and the Rules and Orders concerning the Companies' obligations to obtain Commission approval before transferring control of Commission licenses and authorizations; (2) have been utilizing those procedures at all times since the previous Compliance Report was submitted; and (3) are not aware of any instances of non-compliance. If the Compliance Officer is not able to so certify, he or she shall explain fully the reason(s) therefore. All Compliance Reports shall be directed to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. The

certification must comply with section 1.16 of the Rules, and be substantially in the form set forth therein.

- (g) **Self-Disclosure**. Within thirty (30) calendar days of the Compliance Officer or senior executive management becoming aware of the matter (whether from a report from an employee or otherwise), the Companies will report any occurrences of noncompliance with the terms and conditions of this Consent Decree; with section 310(d) of the Act; or with the Rules and Orders concerning the Companies' obligations to obtain Commission approval before transferring control of Commission licenses, to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (h) **Termination**. The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

10. **Subsequent Investigations**. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Companies with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution**. HP, on behalf of the Companies, agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixty thousand dollars (\$60,000) within thirty (30) calendar days after the Effective Date. 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 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. The Companies shall send electronic notification of payment to David Janas at david.janas@fcc.gov on the date the payment is made.

12. **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 Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree 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 either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies 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* regarding the terms and conditions of this Consent Decree. The Companies hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act,⁹ 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.

⁹ 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

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 the Companies do not expressly consent) that provision will be superseded by such Commission Rule or Order.

15. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on its successors and any entity to which the Companies assign or transfer substantially all of their assets.

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 Rules and Orders. 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 or Commission Rules or Orders in connection with the matters that are the subject of this Consent Decree.

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

P. Michele Ellison
Chief
Enforcement Bureau

Date

Paul T. Porrini
Vice President, Deputy General Counsel and
Assistant Secretary
Hewlett-Packard Company
On behalf of EDS Spectrum Corporation and
Hewlett-Packard Company

Date