

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

In the Matter of) File No.: EB-09-IH-1048
)
Nevada Utilities, Inc.) NAL/Acct. No.: 201132080036
)
) FRN: 0014886931

ORDER

Adopted: September 12, 2011

Released: September 12, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Nevada Utilities, Inc. (“NUI”).¹ The Consent Decree resolves and terminates the Bureau’s investigation into NUI’s compliance with section 214 of the Communications Act of 1934, as amended (the “Act”), and the Commission’s Rules and Orders concerning NUI’s obligation to obtain Commission approval before transferring control of Commission authority granted under section 214 of the Act.²

2. A copy of the Consent Decree negotiated by the Bureau and NUI 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 NUI 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 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 NUI is a subsidiary of BroadRiver, Inc.

² 47 U.S.C. § 214; *see* 47 C.F.R. Pt. 63.

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 Michael Landreth, Chief Financial Officer, BroadRiver Communication Corporation, 1000 Hemphill Avenue, Atlanta, Georgia 30318.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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

In the Matter of)	File No.: EB-09-IH-1048
)	
Nevada Utilities, Inc.)	NAL/Acct. No.: 201132080036
)	
)	FRN: 0014886931

CONSENT DECREE

1. The Enforcement Bureau and Nevada Utilities, Inc. (“NUI” or the “Company”),¹ by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into NUI’s compliance with section 214 of the Communications Act of 1934, as amended (the “Act”), and the Commission’s Rules and Orders concerning NUI’s obligation to obtain Commission approval before transferring control of Commission authority granted under section 214 of the Act.²

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) “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 compliance obligations and program described in this Consent Decree at paragraph 9.
- (f) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (g) “Investigation” means the investigation commenced by the Bureau’s August 5, 2009 letter of inquiry³ regarding the Companies’ compliance with section 214 of the Act, and part 63 of the Commission’s Rules, concerning NUI’s obligation to obtain Commission

¹ NUI is a subsidiary of BroadRiver, Inc. (“BroadRiver”).

² 47 U.S.C. § 214; *see* 47 C.F.R. Pt. 63.

³ *See Nevada Utilities, Inc.*, EB-09-IH-1048, Letter from Trent B. Harkrader, Deputy Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, to Jack Pestaner, Nevada Utilities, Inc. (Aug. 5, 2009) (“LOI”).

approval before transferring control of Commission authority granted under section 214 of the Act.⁴

- (h) NUI” or the “Company” means Nevada Utilities, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means NUI and the Bureau, each of which is a “Party.”
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 214 of the Act requires telecommunications carriers to obtain a certificate of public convenience and necessity from the Commission before constructing, acquiring, operating or engaging in transmission over lines of communications, or before discontinuing, reducing or impairing service to a community.⁵ In accordance with section 63.03 of the Rules, any domestic carrier seeking to transfer control of lines or authorization to operate pursuant to section 214 must obtain prior approval from the Commission.⁶ Section 63.04 of the Rules sets forth the required contents of domestic transfer of control applications.⁷

4. NUI is a telecommunications services provider in Las Vegas, Nevada.⁸ On April 25, 2008, Nevada Telecom Solutions (“NTS”) acquired 100% of NUI’s stock.⁹ After this acquisition, NUI became a wholly-owned subsidiary of NTS. On February 24, 2009, almost one full year after NTS acquired NUI, NTS and NUI jointly applied for Commission authorization to transfer, from NUI to NTS, NUI’s authority to provide domestic and international telecommunications services under section 214 of the Act.¹⁰ The Commission granted the application to transfer NUI’s authority to provide international telecommunications services on March 26, 2009.¹¹ The Commission granted the application to transfer NUI’s authority to provide domestic telecommunications services on April 16, 2009.¹² On August 5, 2009, the Bureau issued a Letter of Inquiry (“LOI”) to NUI.¹³ The LOI directed NUI, among other things, to submit a sworn written response to a series of questions relating to NUI’s compliance with

⁴ 47 U.S.C. § 214; 47 C.F.R. Pt. 63.

⁵ See 47 U.S.C. § 214(a).

⁶ See 47 C.F.R. § 63.03; *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Rcd 5517, 5521, ¶ 5 (2002) (“2002 Streamlining Order”).

⁷ 47 C.F.R. § 63.04.

⁸ *Nevada Utilities, Inc.*, EB-09-IH-1048, Nevada Utilities Response, at 3 (Sept. 1, 2009) (“LOI Response”).

⁹ *Id.* at 2. Until April 25, 2008, NUI was jointly owned by Robert and Anita Jankovics.

¹⁰ *Id.* at 4.

¹¹ *International Authorizations Granted*, Public Notice, 24 FCC Rcd. 3644 (International Bureau 2009).

¹² *Notice of Domestic Section 214 Authorization Granted*, Public Notice, 24 FCC Rcd. 4601 (Wireline Competition Bureau 2009).

¹³ See *supra* note 3.

section 214 of the Act and part 63 of the Rules. NUI responded to the LOI on September 1, 2009, confirming that it filed for Commission authorization to transfer its authority to provide domestic and international telecommunications services under section 214 of the Act after it was acquired by NTS.¹⁴

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.** NUI agrees that the Bureau has jurisdiction over NUI 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 as defined herein. 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.

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, NUI 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, 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 against NUI concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it 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 any proceeding, formal or informal, or take any action on its own motion against NUI with respect to NUI's basic qualifications, including its character qualifications, to hold Commission authorizations.

9. **Compliance Plan.** NUI agrees that it will implement, within thirty (30) calendar days from the Effective Date, a Compliance Plan related to compliance with the Act, the Rules, and the Commission's Orders, with particular emphasis on compliance with the Rules concerning the purchase, sale, acquisition, assignment or transfer of control of NUI or NUI assets potentially subject to FCC regulation. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, NUI will designate a Compliance Officer who is responsible for administering the Compliance Plan, supervise NUI's compliance with the Act, Rules, and Commission Orders, and serve as the point of contact on behalf of NUI for all FCC-related compliance matters.

¹⁴ See LOI Response at 4. Subsequently, in 2010, control of NUI was transferred from NTS to BroadRiver. NTS and BroadRiver timely sought and received Commission approval for the 2010 transfer of control of the domestic and international section 214 authorizations held by NUI.

- (b) **Internal Controls.** NUI will institute internal processes that ensure (i) future transactions contemplating a change in control of any corporate entities controlled by NUI, and that hold FCC authorizations, are communicated to NUI's 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 authorizations require Commission consent to transfer the authorizations.
- (c) **Compliance Manual.** Within sixty (60) calendar days of the Effective Date, NUI will develop and distribute a Compliance Manual to employees and others who perform duties at NUI that trigger or may trigger responsibilities related to regulatory compliance with the Act and the Rules. The Compliance Manual will be reviewed annually and updated as appropriate, and any revisions will be distributed within thirty (30) calendar days.
- (d) **Compliance Training Program.** Within ninety (90) calendar days of the Effective Date, all NUI employees and others who perform duties at NUI that trigger or may trigger compliance-related responsibilities must complete a Compliance Training Program focused on those portions of the Act, Rules, and Commission Orders that relate to the purchase, sale, acquisition, assignment or transfer of control of NUI or NUI assets potentially subject to FCC regulation. The Compliance Training Program will contain, at a minimum, information regarding the need to conduct due diligence regarding potential FCC authorizations of any company in a potential merger or acquisition transaction, the need to monitor any corporate reorganization for potential assignment or transfer issues, and the need to obtain prior FCC approval for all assignments and transfers of control of FCC authorizations. This Compliance Training Program will also be presented to new employees who are engaged in such activities, within the first 30 calendar days of employment, and to employees who are reassigned to such duties within 30 calendar days of reassignment. This Compliance Training Program will track the Compliance Manual, focusing on proper implementation of the Compliance Manual and will be tailored to specific user groups.
- (e) **Compliance Reports.** NUI will file compliance reports with the Commission ninety (90) calendar days; twelve (12) months; twenty-four (24) months; and thirty-six (36) 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 NUI (1) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, with section 214 of the Act, and the Rules and FCC Orders concerning NUI's obligations to obtain Commission approval before transferring control of Commission 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,¹⁵ and be substantially in the form set forth therein.

- (f) **Reporting Non-Compliance.** NUI will report to the Bureau any non-compliance with this Consent Decree or sections of the Act, Rules, or Commission Orders that relate to the purchase, sale, acquisition, assignment or transfer of control of NUI or NUI assets, within 15 days after the discovery of non-compliance.
- (g) **Termination.** The provisions of this paragraph shall remain in effect for three (3) years from the Effective Date.

10. **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 NUI 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 NUI with the Act, the Rules, or Commission Orders.

11. **Voluntary Contribution.** NUI agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$12,000 in 24 monthly installments of \$500. The first payment will be made within 10 days after the Effective Date, with subsequent payments made by the 15th day of each subsequent month for 23 months. 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. 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). NUI shall send electronic notification of each installment payment to David Janas at david.janas@fcc.gov on the date payments are made.

12. **Waivers.** NUI 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. NUI 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 NUI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NUI shall waive any statutory right to a trial *de novo*. NUI hereby agrees to waive any claims it may 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 47 C.F.R. § 1.16.

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

15. **Successors and Assigns.** NUI 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 with respect to the matters set forth herein. 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 Commission's 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.** The individual signing this Consent Decree on behalf of NUI represents and warrants that he is authorized by NUI to execute this Consent Decree and to bind NUI to the obligations set forth herein. The FCC signatory represents that she is signing this agreement in her official capacity and that she is authorized to execute 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
Federal Communications Commission

Date

Michael Oken
Chief Technology Officer
BroadRiver, Inc.
On behalf of Nevada Utilities, Inc.

Date