

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

In the Matter of)	File No.: EB-09-SE-080
)	
Airadigm Communications, Inc.)	Acct. No.: 201132100035
dba AirFire Mobile)	
)	FRN: 0002701688
)	

ORDER

Adopted: September 30, 2011

Released: September 30, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Airadigm Communications, Inc. dba AirFire Mobile (“Airadigm”). The Consent Decree resolves and terminates the Bureau’s investigation into Airadigm’s compliance with sections 1.1307(a)(4) and 1.1312(a) of the Commission’s Rules¹ concerning Airadigm’s obligation to assess the potential effect on the environment of the construction of a wireless communications facility.

2. The Bureau and Airadigm 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 Airadigm 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 Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned 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 Linda J. Springer, Director of Finance and Accounting, Airadigm Communications, Inc. dba AirFire Mobile, 2301 Kelbe Dr., 206, Little Chute, WI 54140-1201, and counsel for Airadigm, Todd Slamowitz, Esq., counsel for Airadigm Communications, Inc., Lukas, Nace, Gutierrez & Sachs, LLP, 1650 Tysons Blvd., Suite 1500, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

Before the
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In the Matter of)	File No.: EB-09-SE-080
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Airadigm Communications, Inc.)	Acct. No.: 201132100035
dba AirFire Mobile)	FRN: 0002701688

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Airadigm Communications, Inc., dba AirFire Mobile, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into possible violations of sections 1.1307(a)(4) and 1.1312(a) of the Commission’s rules,¹ pertaining to the required assessment of the potential effect on the environment of the construction of a wireless communications facility.

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) “Airadigm” means Airadigm Communications, Inc., dba AirFire Mobile, 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) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Airadigm is subject by virtue of its business activities, including but not limited to, the Environmental Laws.
 - (g) “Compliance Plan” means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (h) “Covered Employees” means all employees and agents of Airadigm who perform duties, or supervise, oversee, or manage the performance of duties, that relate to Airadigm’s responsibilities under the Environmental Rules.

¹ 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Environmental Rules” means sections 1.1307(a)(4) and 1.1312(a) of the Rules and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended.²
- (k) “Investigation” means the investigation commenced by the Bureau upon receipt of a referral from the Wireless Telecommunications Bureau regarding Airadigm’s possible violation of sections 1.1307(a)(4) and 1.1312(a) of the Rules.³
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Airadigm to implement the Compliance Plan.
- (m) “Parties” means Airadigm and the Bureau, each of which is a “Party”.
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Section 1.1307(a)(4) of the Rules requires applicants and licensees to consider whether their proposed facilities would affect properties listed or eligible for listing (“historic properties”) in the National Register of Historic Places (“National Register”). This obligation expressly applies to facilities for which no pre-construction authorization is required.⁴ In considering the potential effects on historic properties, applicants and licensees must, under section 1.1307(a)(4) of the Rules, follow the prescribed procedures established by the Programmatic Agreements for collocated antennas⁵ and for historic preservation review.⁶ The Collocation Agreement and the Nationwide Agreement⁷ are designed to tailor and streamline in the context of communications tower and antenna construction the review and consultation procedures required by the National Historic Preservation Act of 1966, as amended

² See, e.g., 42 U.S.C. §§ 4321-4335.

³ See 47 C.F.R. §§ 1.1307(a)(4), 1.1312(a).

⁴ 47 C.F.R. § 1.1312(a) (“In the case of facilities for which no Commission authorization prior to construction is required by the Commission’s rules and regulations, the licensee or applicant shall initially ascertain whether the proposed facility may have a significant environmental impact as defined in § 1.1307 of this part.”).

⁵ See 47 C.F.R. Part 1, App. B (“Collocation Agreement”); see also *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005).

⁶ See 47 C.F.R. Part 1, App. C (“Nationwide Agreement”); see also *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, WT Docket No. 03-128, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n. v. FCC*, No. 05-1008 (D.C. Cir. September 26, 2006) (“*Nationwide Agreement Report and Order*”).

⁷ Section 1.1307(a)(4) of the Rules incorporates by reference the Collocation Agreement and the Nationwide Agreement. The Nationwide Agreement attaches standardized packets for review of collocated antenna construction (FCC Form 621) and new tower construction (FCC Form 620). See *Nationwide Agreement Report and Order*, 20 FCC Rcd at 1180-1201, Appendix B, Attachments 3 and 4.

(“NHPA”),⁸ and the implementing regulations issued by the Advisory Council on Historic Preservation (“Advisory Council”).⁹

3. Airadigm, a Tier III wireless carrier serving rural areas in Wisconsin, constructed a 150-foot monopole tower in Red River, Wisconsin (“Red River site”) on July 1, 2005, prior to performing the required, pre-construction historic preservation review.¹⁰ Several years after construction of the tower, Airadigm hired a consultant to evaluate the Red River site for compliance with the Nationwide Agreement.¹¹ Based on this evaluation, Airadigm submitted an FCC Form 620 environmental assessment to the Commission’s Wireless Telecommunications Bureau (“WTB”) and to the relevant Wisconsin State Historic Preservation Officer (“SHPO”) concluding that the constructed Red River site did not have adverse direct or visual effects on historic properties located in the area of potential effects. WTB reviewed Airadigm’s FCC Form 620 and supporting documentation, including the evaluation by the Wisconsin SHPO, and concurred that this Airadigm tower did not have an adverse effect on historic properties. WTB then referred the matter to the Enforcement Bureau for investigation.

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.

5. **Jurisdiction.** Airadigm agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau 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 Effective Date as defined herein. As of 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

⁸ 16 U.S.C. § 470 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits, or approvals. *See* 16 U.S.C. §§ 470f, 470w(7). In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian Tribes or Native Hawaiian organizations, their representatives. *See* 16 U.S.C. §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council on Historic Preservation’s regulations, the Commission’s Environmental Rules delegate the task of identification and initial consideration of the effects that proposed facilities may have on historic properties, including identifying and ensuring contact is made with potentially affected Indian Tribes, to its licensees, permittees and applicants, but the Commission remains ultimately responsible for enforcement of the Environmental Rules. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *Nationwide Agreement Report and Order*, 20 FCC Rcd at 1076-77 ¶ 5.

⁹ *See* 36 C.F.R. § 800.1 *et seq.* Under the NHPA and the Advisory Council’s implementing regulations, a federal agency may, with the agreement of the Advisory Council and the relevant State Historic Preservation Officer or the National Conference of State Historic Preservation Officers, adopt Programmatic Agreements to tailor the historic preservation review and consultation procedures, as well as exempt actions that are unlikely to affect historic properties. *See* 16 U.S.C. § 470v; 36 C.F.R. § 800.14(b),(c).

¹⁰ *See* 47 C.F.R. § 1.1307(a)(4).

¹¹ *Id.*, Appendix A, Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission.

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 the Investigation. In consideration for the termination of the Investigation, Airadigm 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 the Investigation through the Effective Date, 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 Airadigm 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 the 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 Airadigm with respect to Airadigm's basic qualifications, including its character qualifications, to be a Commission licensee.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Airadigm shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan to help ensure future compliance with the Communications Laws, including the Environmental Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Airadigm shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Airadigm complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Agreement, the Compliance Officer shall have specific knowledge of the Environmental Rules prior to assuming his/her duties.
- (b) **Operating Procedures on Environmental Rules.** Within sixty (60) calendar days after the Effective Date, Airadigm shall establish Operating Procedures that all Covered Employees must follow to help ensure compliance with the Environmental Rules. Airadigm's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Airadigm performs the required review of the potential effects on the environment of any proposed facilities, including facilities for which no pre-construction authorization is required, prior to the initiation of construction of such proposed facilities. Airadigm's Operating Procedures shall incorporate a Compliance Checklist that describes the steps that a Covered Employee must follow to determine whether construction of the proposed facility is categorically excluded from environmental processing under section 1.1306 of the Rules¹² or may have a significant environmental effect, as defined in section 1.1307 of the Rules.¹³

¹² 47 C.F.R. § 1.1306.

¹³ 47 C.F.R. § 1.1307.

- (c) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Environmental Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Airadigm's compliance with the Environmental Rules. Airadigm shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Airadigm shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (d) **Compliance Training.** Airadigm shall establish and implement a Compliance Training Program on compliance with the Environmental Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Airadigm's obligation to report any non-compliance with the Environmental Rules under paragraph 9 of this Consent Decree and shall be instructed on how to disclose non-compliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Airadigm shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree shall expire twenty-four (24) months after the Effective Date.

9. **Reporting Non-Compliance.** Airadigm shall report any non-compliance with the Environmental Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after its discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Airadigm has taken or will take to remedy such non-compliance; (iii) the schedule on which such proposed remedial actions will be taken; and (iv) the steps that Airadigm has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 3C366, Washington, D.C. 20554, with copies submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov. The reporting obligations set forth in this paragraph 9 shall expire twenty-four (24) months after the Effective Date.

10. **Compliance Reports.** Airadigm shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Airadigm's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Environmental Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Airadigm, stating that the Compliance Officer has personal knowledge that Airadigm (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is

not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 9 hereof.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules¹⁴ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Airadigm, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of non-compliance; (ii) the steps that Airadigm has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Airadigm has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 3C366, Washington, D.C. 20554. All reports shall also be submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

11. **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 Airadigm 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 complaints 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 Airadigm with the Act, the Rules, or Commission orders.

12. **Voluntary Contribution.** Airadigm agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand dollars (\$7,000.00). The payment must be made 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. 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). Airadigm shall also send electronic notification to Nissa Laughner at Nissa.Laughner@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

¹⁴ 47 C.F.R. § 1.16.

13. **Waivers.** Airadigm 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 as defined herein. Airadigm 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 Airadigm nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Airadigm shall waive any statutory right to a trial *de novo*. Airadigm 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.

14. **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.

15. **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 Airadigm does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

17. **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, the Rules, or Commission orders.

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

19. **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.

20. **Authorized Representative.** The individual signing this Consent Decree on behalf of Airadigm represents and warrants that she is authorized by Airadigm to execute this Consent Decree and to bind the company to the obligations set forth herein. The FCC signatory represents that he is signing this agreement in his official capacity and that he is authorized to execute this Consent Decree.

21. **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.

John D. Poutasse
Acting Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Linda J. Springer
Director of Finance and Accounting
Airadigm Communications, Inc. dba AirFire Mobile

Date