

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

In the Matter of)	File No. EB-09-SE-162
)	
ACS Wireless, Inc. a subsidiary of Alaska Communications Systems)	Acct. No. 201032100009
)	
)	FRN No. 0019483718
)	

ORDER

Adopted: January 18, 2011

Released: January 19, 2011

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and ACS Wireless, Inc. (“ACSW”). The Consent Decree terminates an investigation by the Bureau and cancels the Notice of Apparent Liability for Forfeiture (“NAL”)¹ issued against ACSW for possible violations of Sections 20.19 (h) and (i)(1) of the Commission’s Rules (“Rules”),² regarding compliance with the Commission’s regulations pertaining to hearing aid compatibility for wireless handsets.

2. The Bureau and ACSW have negotiated the terms of the 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, which terminates the investigation and cancels the NAL.

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 ACSW 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,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture **IS CANCELLED**.

¹ *ACS Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 291 (Enf. Bur., Spectrum Enf. Div. 2010) (response received).

² 47 C.F.R. §§ 20.19(h), 20.19(i)(1).

³ 47 U.S.C. §§ 154(i), 503(b).

⁴ 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 counsel for ACS Wireless, Inc., James H. Lister, Esq., Birch, Horton, Bittner and Cherot, P.C., 1155 Connecticut Avenue, N.W., Suite 1200, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Ricardo M. Durham
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and ACS Wireless, Inc. (“ACSW”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether ACSW violated Sections 20.19(h) and 20.19(i)(1) of the Commission’s Rules¹ regarding web site posting and reporting of information concerning ACSW’s compliance with the wireless handset hearing aid compatibility rules.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “ACSW” means ACS Wireless, Inc. and its predecessors-in-interest and successors-in-interest.
 - (b) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*
 - (c) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (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 9.
 - (g) “Effective Date” means the date the Bureau releases the Adopting Order.
 - (h) “Investigation” means the investigation initiated by the Bureau’s October 1, 2009 Letter of Inquiry² regarding whether ACSW violated the web site posting and

¹ 47 C.F.R. §§ 20.19(h), 20.19(i)(1).

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Liane Pelletier, President, Alaska Communications Systems (Oct. 1, 2009) (“October 1, 2009 LOI”).

reporting requirements of Sections 20.19(h) and 20.19(i)(1) of the Rules.

- (i) “NAL” means *ACS Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 291 (Enf. Bur., Spectrum Enf. Div. 2010).
- (j) “Parties” mean ACSW and the Bureau.
- (k) “Rules” mean the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.³ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the hearing aid compatibility rules, the Commission released an order that, among other things, adopted new compatible handset deployment benchmarks beginning in 2008.⁴ Pursuant to Section 20.19(i)(1) of the Rules, service providers must submit hearing aid compatibility status reports regarding hearing aid compatibility compliance on January 15, 2009 (covering the six month period ending December 31, 2008) and then annually thereafter.⁵ Pursuant to Section 20.19(h) of the Rules, beginning January 15, 2009, each service provider that operates a publicly-accessible web site must make available on its web site a list of all hearing aid-compatible handset models currently offered, the ratings of those models, an explanation of the rating system, and related information.⁶ Any changes to a service provider’s offerings must be reflected on its public web site listing within 30 days of the change.⁷

3. On October 1, 2009, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) issued the October 1, 2009 LOI to ACSW.⁸ The October 1, 2009 LOI directed ACSW to, among other things, submit a sworn written response to a series of questions relating to the web site posting and reporting requirements of Sections 20.19(h) and 20.19(i)(1) of the Rules. ACSW responded to the October 1, 2009 LOI on October 16, 2009.⁹

4. On January 14, 2010, the Division issued a Notice of Apparent Liability for Forfeiture¹⁰ proposing that ACSW be held liable for a forfeiture of \$12,000 under Section 503(b)(1)(B) of the Act, and ordering ACSW either to pay the proposed forfeiture or file a written response within thirty (30) days of the NAL release date stating why the proposed forfeiture should be reduced or canceled.

³ See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787 ¶ 89 (2003); Erratum, 18 FCC Rcd 18047 (2003); *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005).

⁴ See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008).

⁵ 47 C.F.R. § 20.19(i)(1).

⁶ 47 C.F.R. § 20.19(h). See also *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

⁷ See *Hearing Compatibility First Report and Order*, 23 FCC Rcd at 3450 ¶ 112.

⁸ See *supra* footnote 2.

⁹ See Letter from Lisa Phillips, Manager, Regulatory Affairs, ACSW, to Peter Waltonen, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (Oct. 16, 2009).

¹⁰ *ACS Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 291 (Enf. Bur., Spectrum Enf. Div. 2010) (response received).

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.** ACSW 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.

7. **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.

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 the Investigation and cancel the NAL. In consideration for the termination of said Investigation and cancellation of the NAL, ACSW 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 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 ACSW 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 the 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 ACSW with respect to ACSW's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, ACSW agrees to maintain a Compliance Plan related to 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 Officer.** ACSW has designated a hearing aid compatibility compliance officer. The designated hearing aid compatibility compliance officer will be familiar the Commission's hearing aid compatibility regulations, including the reporting and web site posting requirements. The designated hearing aid compatibility compliance officer will also review the Commission's hearing aid compatibility regulations on a monthly basis in order to stay abreast of pending benchmarks and any new hearing aid compatibility requirements.
- (b) **Training and Compliance Manual.** The designated hearing aid compatibility compliance officer will be responsible for ensuring that all ACSW regulatory staff, ACSW's web master, and ACSW's product managers responsible for wireless phone offerings receive training regarding: (a) the functionalities and hearing aid compatibility capabilities of the handsets ACSW offers for sale, (b) the necessary annual information reporting to the FCC regarding such capabilities, and (c) the necessary web site posting of information regarding such capabilities. Such training will be completed within ninety days of the Effective Date and any new employees will receive training within sixty days of their employment. The designated hearing aid compatibility compliance officer will prepare within 90 days after the Effective Date a Compliance Manual reviewing

these training requirements and specific business processes that ACSW is undertaking to ensure that the necessary annual reports are timely filed and that ACSW's web site contains the necessary information and is timely updated. This will include a business interface between the product managers and the web master so that the web master is automatically apprised of new product offerings and so can update the web site promptly.

- (c) **Consumer Outreach.** ACSW will continue to advertise the availability of hearing aid-compatible handsets on its web site and in such other media as it normally utilizes for business advertising, in order to ensure that all of its retail customers are aware that hearing aid-compatible handsets are available.
- (d) **Compliance Reports.** ACSW will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of ACSW, stating that the officer has personal knowledge that ACSW 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.Durham@fcc.gov and to Linda.Nagel@fcc.gov.
- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months 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 ACSW 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 ACSW with the Act, the Rules, or the Order.

11. **Voluntary Contribution.** ACSW agrees that it will make a voluntary contribution to the United States Treasury in the amount of eight thousand five hundred dollars (\$8,500). The payment will be made within 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). ACSW will also send electronic notification to Ricardo.Durham@fcc.gov and to Linda.Nagel@fcc.gov on the date said payment is made.

12. **Waivers.** ACSW 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 Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. ACSW 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 ACSW nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ACSW shall waive any statutory right to a trial de novo. ACSW 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.

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

15. **Successors and Assigns.** ACSW 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. 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 and shall not be construed as an admission by ACSW.

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.** 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.

Ricardo M. Durham
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Michael R. Todd
Senior Vice President, Engineering and Operations
ACS Wireless, Inc., a subsidiary of Alaska Communications Systems

Date