

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

| | | |
|------------------|---|------------------------|
| In the Matter of |) | File No. EB-07-SE-222 |
| |) | |
| AT&T |) | Acct. No. 201132100025 |
| |) | |
| |) | FRN 0005193701 |

ORDER

Adopted: March 2, 2011

Released: March 9, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and AT&T. The Consent Decree terminates an investigation initiated by the Bureau against AT&T for possible violations of section 4.9 of the Commission’s rules¹ regarding the reporting of network outages.

2. The Bureau and AT&T 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 AT&T 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,² and sections 0.111 and 0.311 of the Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 4.9.

² 47 U.S.C. § 154(i).

³ 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 Jackie Flemming, Assistant Vice-President, External Affairs/Regulatory, AT&T Services, Inc., and to William A. Brown, General Attorney, AT&T Services, Inc., at 1120 20th Street, N.W., Suite 1000, Washington, D.C., 20038.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and AT&T, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether AT&T violated Part 4 of the Commission's rules ("Rules"),¹ including section 4.9.

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) "AT&T" means the subsidiaries of AT&T Inc. that are subject to section 4.9 of the Rules and their successors and assigns, including any such companies that may be created or acquired by AT&T during the term of this Consent Decree, subject to a 90-day grace period for newly acquired companies that begins with the date on which the acquisition is finalized.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 C.F.R. §§ 4.1 *et seq.*

- (g) “Investigation” means the investigation commenced by the Bureau’s July 18, 2007 letter of inquiry into AT&T’s compliance with Part 4 of the Rules.
- (h) “Parties” means AT&T and the Bureau, each of which is a “Party.”
- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Under section 4.9 of the Rules, wireless and wireline service providers such as AT&T must report to the Commission certain outages affecting the service provider’s network as defined by the Rules.² Upon discovery of such an outage, a service provider is required to file an electronic Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Outage Report within 30 days (collectively referred to as “Outage Reports”).³

3. On July 18, 2007, the Bureau issued a letter of inquiry (“LOI”) to AT&T.⁴ The LOI directed AT&T, among other things, to submit a sworn written response to a series of questions relating to AT&T’s compliance with the Commission’s network outage reporting rules. AT&T responded to the LOI on August 24, 2007.⁵ On March 28, 2008 the Bureau issued a follow-up LOI to AT&T.⁶ AT&T responded to the follow-up LOI on May 1, 2008.⁷ The Bureau issued additional LOIs on June 2, 2008⁸ and June 17, 2008.⁹ AT&T responded to these on June 23, 2008¹⁰ and July 8, 2008,¹¹ respectively. AT&T and the Bureau entered into a Tolling

² 47 C.F.R. § 4.9.

³ *Id.*

⁴ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jacquelyne Flemming, Executive Director Counsel, AT&T Services, Inc. (July 18, 2007).

⁵ Letter from Peter H. Jacoby, General Counsel, AT&T Services, Inc., to Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 24, 2007).

⁶ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Peter H. Jacoby, Senior Attorney, AT&T Services, Inc. (March 28, 2008).

⁷ Letter from Christopher M. Heimann, General Attorney, AT&T Services, Inc., to Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 1, 2008).

⁸ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Christopher M. Heimann, General Attorney, AT&T Services, Inc. (June 2, 2008).

⁹ Email from Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jackie Flemming, Executive Director, AT&T Services, Inc. (June 17, 2008).

¹⁰ Letter from William A. Brown, General Attorney, AT&T Services, Inc., to Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission. (June 23, 2008).

¹¹ Letter from William A. Brown, General Attorney, AT&T Services, Inc., to Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 8, 2008).

Agreement on December 4, 2007 (the “Tolling Agreement”),¹² which was extended by the Parties through and including March 15, 2011.¹³

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**. AT&T 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 Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission 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, AT&T 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, any new proceeding, formal or informal, or take any action on its own motion against AT&T 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 AT&T with respect to AT&T’s basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

8. **Compliance Plan**. In response to the Bureau’s Investigation, AT&T represents that it initiated certain remedial measures and, for purposes of settling the matters herein, agrees to maintain a Compliance Plan intended to ensure future compliance with the Act, the Rules, and the Commission’s Orders. The Compliance Plan will include, at a minimum, the following components:

¹² Tolling Agreement, File No. EB-07-SE-222, executed by and between Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, for the Enforcement Bureau; and Gary L. Phillips, General Attorney and Associate General Counsel, for AT&T Inc. (December 4, 2007).

¹³ Tolling Agreement Extension, File No. EB-07-SE-222, executed by and between Ricardo M. Durham, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, for the Enforcement Bureau; and William A. Brown, General Attorney, for AT&T Inc. (January 12, 2011).

- (a) **Compliance Officer**. AT&T shall designate a Compliance Officer within thirty (30) days of the Effective Date. The Compliance Officer shall be responsible for administering the Compliance Plan and shall be the senior corporate manager whose business unit is most directly responsible for reporting network outages to the FCC.
- (b) **Remedial Measures**. AT&T certifies that, since the onset of this Investigation, it has implemented changes to improve the accuracy and timeliness of its outage reporting process. Specifically, AT&T has consolidated the responsibilities for reporting most wireline and wireless service outages into a single operations center and implemented new report tracking tools that employ automated notifications, as well as escalations and reminders. AT&T has also required its 911 vendors to inform it of service outages that impact AT&T. Additionally, AT&T has implemented a monthly review with key stakeholders to drive further improvements in the reporting process. AT&T agrees to maintain these measures for the duration of the Compliance Plan and shall review and revise these measures as appropriate, including in the event of any changes in the network outage reporting rules.
- (c) **Training**. AT&T certifies that, as a result of this Investigation, it has implemented a network outage reporting training program. AT&T shall maintain for the duration of this Compliance Plan a Training Program as detailed below.
- i. AT&T's Compliance Training Program shall address, at a minimum, the Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the Commission. AT&T's Compliance Training Program shall also address the methods and procedures adopted by AT&T to identify and report those network outages that meet the Commission's reporting criteria. The Training Program shall also include information on the potential internal and regulatory consequences of failing to comply with the Commission's outage reporting requirements and/or AT&T's methods and procedures.
 - ii. Within sixty (60) days of the Effective Date, AT&T shall ensure that training and compliance materials regarding the Commission's network outage reporting requirements are provided to all of its employees who are responsible for gathering and/or analyzing information regarding AT&T's network outages, entering that information into any AT&T database and/or record that forms the basis of AT&T's reporting of network outages to the Commission, or compiling and/or submitting AT&T's outage reports to the Commission, as well as any managers overseeing such employees.¹⁴ This training shall be provided on an annual basis. Additionally, AT&T shall update the Training Program as necessary and appropriate, and in the event of changes and/or additions to section 4.9 of the Rules, shall update the Training Program within fifteen (15) days after the effective date of any such change or addition. AT&T will also train new and reassigned employees responsible for these activities within thirty (30) days of their assuming these responsibilities.

¹⁴ Under this provision, AT&T will not be required to provide outage reporting compliance training to employees whose responsibilities do not include gathering, analyzing, or entering data regarding AT&T's network outages or compiling AT&T's outage reports, managing such employees, or whose involvement in AT&T's outage reporting activities is limited to performing job functions that are not specific to outage reporting under the Commission's Rules.

- (d) **Outage Reporting**: Within sixty (60) days after the Effective Date, AT&T shall report the date and time each outage filed in the FCC's Network Outage Reporting System (NORS) was discovered to be reportable. AT&T shall include such information in either the Background Description or the Duration Explanation field in the exact same manner in each Outage Report Filed. The format shall be: Discovery Date/Time: mm/dd/yyyy hh:mm:ss.
- (e) **Compliance Report**: AT&T shall file Compliance Reports with the Commission covering the reporting periods six (6) months after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.
- i. Each Compliance Report shall include assertions by AT&T that it:
 1. has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 4.9 of the Rules, together with an accompanying statement explaining the basis for the assertion;
 2. has been utilizing these procedures for the entire term of the Compliance Plan;
 3. has disclosed any known instances of non-compliance with this Compliance Plan discovered during the reporting period;
 4. has taken steps to identify any late-filed outage reports; and
 5. has addressed any instances of late-filed outage reports and taken steps to remedy the cause of the late filings.
 - ii. Each Compliance Report must be supported by the declaration of the Compliance Officer as an agent of and on behalf of AT&T with personal knowledge of the representations provided in the report, verifying the truth and accuracy of the information. The declaration must comply with section 1.16 and be subscribed to as true under penalty of perjury in substantially the same form set forth therein.
 - iii. Any instance of non-compliance with the Compliance Plan disclosed in the report shall provide:
 1. a detailed explanation of the non-compliance;
 2. the steps AT&T has taken to remedy the non-compliance and ensure future compliance; and
 3. the schedule on which the proposed remedial actions will be taken.
- (f) **Filing**. All Compliance Reports shall be submitted within fifteen (15) days after the end of the reporting period to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Kevin M. Pittman, at Kevin.Pittman@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (g) **Progress Assessment**. Beginning on the Effective Date, AT&T shall, at the request of the Bureau, meet with the Bureau once each 60-day period during the term of the Compliance Plan to discuss AT&T's adherence to the Compliance Plan and its

performance under the Part 4 Rules. AT&T agrees to provide the Bureau with information the Bureau requests concerning these topics.

- (h) **Termination Date.** Unless stated otherwise, the provisions of this paragraph shall remain in effect for twenty-four (24) months 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 AT&T 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 AT&T with the Act, the Rules, or Commission Orders, except for alleged violations covered by this Consent Decree.

10. **Voluntary Contribution.** AT&T agrees that it will make a voluntary contribution to the United States Treasury, in the amount of one million eight hundred thousand dollars (\$1,800,000). The contribution will be made within thirty (30) days after the Effective Date. The Parties acknowledge that this voluntary payment does not constitute a forfeiture under the Act or FCC rules. 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 the 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). AT&T will also send electronic notification to JoAnn.Lucanik@fcc.gov and Kevin.Pittman@fcc.gov on the date that payment is made.

11. **Waivers.** AT&T 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 this Consent Decree without change, addition, modification, or deletion. AT&T shall retain the right to challenge the Commission's 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 AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T shall waive any statutory right to a trial *de novo*. AT&T 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 AT&T does not expressly consent), that provision will be superseded by such Commission Rule or Order.

14. **Successors and Assigns.** AT&T 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 with respect to the Investigation. 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.

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 Representatives.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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.

For the Enforcement Bureau:

P. Michele Ellison
Chief, Enforcement Bureau

Date

AT&T:

By: _____
Paul Mancini
Senior VP & Assistant General Counsel

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, DC 20036

Date