

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File Nos.: EB-11-SE-045;
)	EB-SED-12-00003753
)	
Airadigm Communications, Inc. dba Airfire Mobile)	Acct. No.: 201232100010
)	
)	FRN: 0002701688

ORDER

Adopted: June 21, 2013

Released: June 21, 2013

By the Acting Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Airadigm Communications, Inc. dba Airfire Mobile (Airadigm). The Consent Decree resolves and terminates the Bureau's investigations into possible violations of Sections 20.19(c)(3) and 20.19(d)(3) of the Commission's rules (Rules)¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets.

2. The Bureau and Airadigm have negotiated the Consent Decree that resolves these matters. A copy of the Consent Decree is attached hereto and incorporated herein 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 investigations.

4. In the absence of material new evidence relating to these matters, we conclude that our investigations raise 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), 4(j), and 503(b) 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 investigations **ARE TERMINATED**.

¹ 47 C.F.R. § 20.19(c)(3), (d)(3).

² 47 U.S.C. §§ 154(i), 154(j), 503(b).

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 Robert Galle, Chief Executive Officer, Airadigm Communications, Inc. dba Airfire Mobile, 2301 Kelbe Drive, P.O. Box 206, Little Chute, WI 54140-1201, and to Todd Slamowitz, Esq., Lukas, Nace, Gutierrez & Sachs, LLP, Counsel for Airadigm Communications, Inc. dba Airfire Mobile, 8300 Greensboro Drive, Suite 1200, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe
Acting Chief, Enforcement Bureau

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Airadigm Communications, Inc. dba Airfire Mobile)	Acct. No.: 201232100010
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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 investigations into possible violations of Sections 20.19(c)(3) and 20.19(d)(3) of the Commission's rules¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets.

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 Hearing Aid Compatibility Rules.
 - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.

¹ 47 C.F.R. § 20.19(c)(3), (d)(3).

- (h) “Covered Employees” means all employees and agents of Airadigm who perform, or supervise, oversee, or manage the performance of, duties that relate to Airadigm’s responsibilities under the Hearing Aid Compatibility Rules.
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Hearing Aid Compatibility Rules” means Section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid compatibility, such as the Rules governing the design, selection, or acquisition of wireless handsets and the marketing or distribution of such handsets to consumers in the United States.
- (k) “Investigations” means (1) the investigation commenced by the Bureau pertaining to Airadigm’s deployment of digital wireless hearing-aid-compatible handsets during calendar year 2010, which culminated in the issuance of the *NAL*; and (2) the investigation commenced by the Bureau’s August 28, 2012 letter of inquiry² regarding Airadigm’s deployment of digital wireless hearing aid-compatible handsets during calendar year 2011.
- (l) “*NAL*” means the Notice of Apparent Liability and Admonishment issued to Airadigm on December 23, 2011, which proposed a forfeiture in the amount of \$30,000 for Airadigm’s apparent willful and repeated violation of Sections 20.19(c)(3)(ii) and 20.19(d)(3)(ii) of the Rules, and which admonished Airadigm for its earlier violation of Section 20.19(c)(3)(ii).³
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Airadigm to implement the Compliance Plan.
- (n) “Parties” means Airadigm and the Bureau, each of which is a “Party.”
- (o) “Rules” means 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 consumers with hearing loss to access digital wireless telecommunications.⁴ The Commission established technical standards for radio frequency

² Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Robert Galle, Chief Executive Officer, Airadigm Communications, Inc. dba Airfire Mobile (Aug. 28, 2012) (on file in EB-SED-12-00003753).

³ *Airadigm Communications Inc. dba Airfire Wireless*, Notice of Apparent Liability for Forfeiture and Admonishment, 26 FCC Rcd 16914 (Enf. Bur. 2011).

⁴ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 610(b)(2)(C). See *Section 68.4(a) of the Commission’s Rules*

interference (the M rating) and inductive coupling (the T rating)⁵ that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, respectively. For each of these standards, the Commission further established deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard.⁷ 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 2008.⁸

3. On January 17, 2011, Airadigm submitted its annual hearing aid compatibility status report for the January 1, 2010 to December 31, 2010 reporting period.⁹ The Commission's Wireless Telecommunications Bureau (Wireless Bureau) subsequently referred Airadigm's apparent hearing aid-compatible handset deployment violations during the January 1, 2010 to December 31, 2010 reporting period to the Bureau's Spectrum Enforcement Division (Division) for investigation and possible enforcement action. On December 23, 2011, the Bureau issued the

Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753, 16787, para. 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

⁵ As subsequently amended, Section 20.19(b)(1) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document "American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids," ANSI C63.19-2006 (June 12, 2006) or ANSI C63.19-2007 (June 8, 2007). Beginning January 1, 2010, a newly certified handset must meet at least an M3 rating under ANSI C63.19-2007 to be considered hearing aid-compatible for radio frequency interference. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008 and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in ANSI C63.19-2006 or ANSI C63.19-2007, and beginning January 1, 2010, it is deemed hearing aid-compatible for inductive coupling if it meets at least a T3 rating under ANSI C63.19-2007. 47 C.F.R. § 20.19(b)(2). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. A recently adopted further amendment to Section 20.19(b) of the Rules will permit manufacturers to test handsets for hearing aid compatibility using the 2011 version of the ANSI standard (ANSI C63.19-2011) as an alternative to ANSI C63.19-2007. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732 (WTB/OET 2012).

⁶ The term "air interface" refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁷ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; 47 C.F.R. § 20.19(c), (d).

⁸ 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).

⁹ See Airadigm Communications, Inc. Hearing Aid Compatibility Status Report (filed Jan. 17, 2011), available at http://wireless.fcc.gov/hac_documents/110210/5947902_278.PDF.

NAL to Airadigm.¹⁰ On January 23, 2012, Airadigm filed a response to the *NAL* requesting that the proposed forfeiture be reduced or canceled.¹¹

4. On January 17, 2012, Airadigm submitted its annual hearing aid compatibility status report for the January 1, 2011 to December 31, 2011 reporting period.¹² The Wireless Bureau subsequently referred Airadigm's apparent hearing aid-compatible handset deployment violations during the January 1, 2011 to December 31, 2011 reporting period to the Division for investigation and possible enforcement action. On August 28, 2012, the Division issued a letter of inquiry (LOI) to Airadigm, which directed the company to submit a sworn written response to a series of questions related to its compliance with the Hearing Aid Compatibility Rules.¹³

5. Airadigm responded to the LOI on September 17, 2012.¹⁴ In its LOI Response, Airadigm claimed that during the 2011 reporting period, it relied on inaccurate hearing aid compatibility ratings information provided by its third party vendor.¹⁵ The Bureau and Airadigm entered into a tolling agreement to toll the statute of limitations.¹⁶

III. TERMS OF AGREEMENT

6. **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.

7. **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.

8. **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 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.

¹⁰ See *supra* note 3.

¹¹ Airadigm Communications, Inc. dba Airfire Mobile, Response to Notice of Apparent Liability for Forfeiture (Jan. 23, 2012) (on file in EB-11-SE-045).

¹² See Airadigm Communications, Inc. Hearing Aid Compatibility Report, (Jan. 17, 2012) available at http://wireless.fcc.gov/hac_documents/120307/6565414_251.PDF.

¹³ See *supra* note 2.

¹⁴ See Letter from Todd Slamowitz, Esq., Lukas, Nace, Gutierrez & Sachs, LLP, Counsel for Airadigm Communications, Inc. dba Airfire Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 17, 2012) (on file in EB-SED-00003753) (LOI Response).

¹⁵ *Id.* at 3.

¹⁶ See Tolling Agreement, File No. EB-SED-12-00003753, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Robert Galle, Chief Executive Officer, Airadigm Communications, Inc. dba Airfire Mobile (Aug. 28, 2012).

9. **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 Investigations. In consideration for the termination of the Investigations, 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 these Investigations 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 Investigations. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigations 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 or to hold Commission licenses or authorizations.

10. **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 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 Consent Decree, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules prior to assuming his/her duties.

11. **Compliance Plan**. For purposes of settling the matters set forth herein, Airadigm agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Hearing Aid Compatibility Rules, Airadigm shall implement the following procedures:

- (a) **Operating Procedures on Hearing Aid Compatibility**. Within sixty (60) calendar days after the Effective Date, Airadigm shall establish Operating Procedures that all Covered Employees must follow to help ensure Airadigm's compliance with the Hearing Aid Compatibility Rules. Airadigm's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Airadigm offers the requisite number or percentage of hearing aid-compatible digital wireless handset models to consumers as required by the Hearing Aid Compatibility Rules. Airadigm also shall develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that the inclusion of a new handset model, or discontinuance of an existing handset model offering, will not result in a violation of the Commission's digital wireless hearing aid-compatible handset deployment requirements. At a minimum, the Compliance Checklist shall require Covered Employees to verify the hearing aid compatibility rating of each existing and proposed handset model offering using the Commission's equipment authorization database.
- (b) **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 Hearing Aid Compatibility Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Airadigm's compliance with the Hearing Aid Compatibility 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.

- (c) **Compliance Training Program.** Airadigm shall establish and implement a Compliance Training Program on compliance with the Hearing Aid Compatibility Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Airadigm's obligation to report any noncompliance with the Hearing Aid Compatibility Rules under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance 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.

12. **Reporting Noncompliance.** Airadigm shall report any noncompliance with the Hearing Aid Compatibility Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Airadigm has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Airadigm has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to Pamela Hairston at Pamera.Hairston@fcc.gov.

13. **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, twenty-four (24) months after the Effective Date, and thirty-six (36) 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 Hearing Aid Compatibility 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 noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 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 Rules¹⁷ 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 noncompliance; (ii) the steps that Airadigm has taken or will take to remedy such noncompliance, 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 noncompliance, 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., Washington, DC 20554, with a copy submitted electronically to Kathy Harvey at Kathy.Harvey@fcc.gov and to Pamela Hairston at Pamera.Hairston@fcc.gov.

14. **Termination Date.** The obligations set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **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 Communications Laws.

16. **Voluntary Contribution.** Airadigm agrees that it will make a voluntary contribution to the United States Treasury in the amount of two hundred and sixty thousand dollars (\$260,000) (Voluntary Contribution) within ninety (90) calendar days after the Effective Date. Airadigm acknowledges and agrees that upon execution of this Consent Decree, the voluntary contribution shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).¹⁸ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Airadigm shall also send electronic notification of payment to Kathy Harvey at Kathy.Harvey@fcc.gov, Pamela Hairston at Pamera.Hairston@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁹

¹⁷ 47 C.F.R. § 1.16.

¹⁸ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

17. **Event of Default.** Airadigm agrees that an Event of Default shall occur upon the failure by Airadigm to pay the full amount of the Voluntary Contribution on or before the due date specified in this Consent Decree.

18. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Airadigm.

19. **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 Act²⁰ relating to the matters addressed in this Consent Decree.

20. **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.

21. **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.

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

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to these Investigations. 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 Communications Laws.

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

25. **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.

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

²⁰ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

27. **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.

Robert H. Ratcliffe
Acting Chief
Enforcement Bureau

Date

Robert Galle
Chief Executive Officer
Airadigm Communications, Inc. dba Airfire Mobile

Date