

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

In the Matter of)	File No.: EB-SED-13-00009244 ¹
)	
Digital Antenna, Inc.)	NAL/Acct. No.: 200832100045
Sunrise, Florida)	
)	FRN: 0005061015

ORDER

Adopted: August 30, 2013

Released: August 30, 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 Digital Antenna, Inc. (Digital Antenna). The Consent Decree resolves and terminates the Bureau's investigation into Digital Antenna's compliance with Sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended,² in connection with its failure to respond fully to directives of the Bureau to provide certain information and documents.

2. The Bureau and Digital Antenna have negotiated the Consent Decree that resolves this matter. 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 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 Digital Antenna 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, and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ The investigation initiated under File No. EB-07-SE-390 was subsequently assigned File No. EB-SED-13-00009244.

² 47 U.S.C. §§ 154(i), 154(j), 403.

³ *Id.* §§ 154(i), 154(j), 503(b); 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 mail and certified mail, return receipt requested, to Joanne Johnson, President, Digital Antenna, Inc., 5325 NW 108th Avenue, Sunrise, FL 33351, and to Steven A. Augustino, Esq., Kelley Drye & Warren, LLP, Counsel for Digital Antenna, Inc., 3050 K Street NW, Suite 400, Washington DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Robert H. Ratcliffe
Acting Chief, Enforcement Bureau

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

In the Matter of)	File No.: EB-SED-13-00009244 ¹
)	
Digital Antenna, Inc.)	NAL/Acct. No.: 200832100045
Sunrise, Florida)	FRN: 0005061015
)	

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Digital Antenna, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of settling an enforcement proceeding against Digital Antenna regarding Digital Antenna's compliance with Sections 4(i), 4(j), and 403 of the Communications Act of 1934, as amended,² in connection with its failure to respond fully to directives of the Bureau to provide certain information and documents.

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) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Digital Antenna is subject by virtue of its business activities.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
 - (g) "Covered Employees" means all employees and agents of Digital Antenna who prepare responses, are responsible for responding, or otherwise possess the corporate or organizational authority to respond or direct a response, to Commission inquiries or directives on behalf of Digital

¹ The investigation initiated under File No. EB-07-SE-390 was subsequently assigned File No. EB-SED-13-00009244.

² 47 U.S.C. §§ 154(i), 154(j), 403.

Antenna.

- (h) “Digital Antenna” means Digital Antenna, Inc. and its subsidiaries as well as its predecessors-in-interest and its successors-in-interest.
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Investigation” means the investigation commenced by the Bureau’s November 5, 2007 letter of inquiry to Digital Antenna, concluding with Digital Antenna’s response to the Bureau’s directive in the *NAL&O* to fully respond to the Bureau’s inquiries.
- (k) “*Notice of Apparent Liability for Forfeiture and Order*” or “*NAL&O*” means *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600 (Enf. Bur. 2008).
- (l) “Parties” means Digital Antenna and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions,”³ and Section 4(j) states that the “Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”⁴ Section 403 likewise grants the Commission “full authority and power at any time to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of [the] Act.”⁵

3. On November 5, 2007, the Bureau issued a letter of inquiry to Digital Antenna, directing Digital Antenna to submit a sworn written response to a series of questions relating to Digital Antenna’s marketing of certain cellular boosters/repeaters.⁶ Digital Antenna responded to the First LOI on November 6, 2007, but failed to answer all of the Bureau’s questions.⁷ The Bureau issued a second letter of inquiry to Digital Antenna on February 4, 2008, directing Digital Antenna to provide the information

³ *Id.* § 154(i).

⁴ *Id.* § 154(j).

⁵ *Id.* § 403.

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Anthony Gallagher, President, Digital Antenna, Inc. (Nov. 5, 2007) (on file in EB-SED-13-00009244) (First LOI). In this regard, we note that Digital Antenna currently holds 14 equipment authorizations for various cellular boosters/repeaters.

⁷ See Letter from Anthony Gallagher, President, Digital Antenna, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 6, 2007) (on file in EB-SED-13-00009244).

that it failed to supply in its first response.⁸ Digital Antenna responded to the Second LOI on February 15, 2008, but again failed to fully provide the requested information.⁹

4. On May 12, 2008, the Bureau issued a *Notice of Apparent Liability for Forfeiture and Order* to Digital Antenna, proposing a monetary forfeiture in the amount of \$11,000 for its apparent willful and repeated failure to respond fully to the directives of the Bureau.¹⁰ In the *NAL&O*, the Bureau noted that “[p]rompt and full responses to Bureau inquiry letters are essential to the Commission’s enforcement function.”¹¹ The *NAL&O* also ordered Digital Antenna to respond fully to the Second LOI within thirty days of the *NAL&O*. Digital Antenna submitted a complete response to the *NAL&O* on June 11, 2008, contending, *inter alia*, that it in good faith attempted to respond to the Bureau inquiry letters.¹² The Parties agreed subsequently to negotiate a settlement. The Bureau and Digital Antenna entered into a tolling agreement to toll the applicable statute of limitations.¹³

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.

6. **Jurisdiction.** Digital Antenna 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.

7. **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

⁸ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Anthony Gallagher, President, Digital Antenna, Inc. (Feb. 4, 2008) (on file in EB-SED-13-00009244) (Second LOI).

⁹ See Letter from Anthony Gallagher, President, Digital Antenna, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 15, 2008) (on file in EB-SED-13-00009244).

¹⁰ *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600 (Enf. Bur. 2008).

¹¹ *Id.* at 7603, para. 10. It is well established that failure to respond to an LOI from the Bureau violates a Commission order. See, e.g., *Carrera Commc’ns, LP*, Notice of Apparent Liability for Forfeiture and Order, 20 FCC Rcd 13307, 13316, para. 22 (2005) (*Carrera*) (holding that company’s apparent willful and repeated failures to respond to the Bureau’s LOIs constitute violations of Commission orders); *LDC Telecomm., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 300, 301, para. 5 (Enf. Bur. 2012) (*LDC*) (holding that “[t]he Bureau’s LOI directed to LDC was a legal order of the Commission requiring LDC to produce the requested documents and information,” and that “LDC’s failure to provide the documents and information sought within the time and manner specified constitute[d] a violation of a Commission order”). In fact, such violations do not always entail a total failure to respond; the Commission has recognized that parties may violate a Commission order by providing incomplete or untimely responses to Bureau LOIs or by failing to properly certify the accuracy of their responses. See, e.g., *Carrera*, 20 FCC Rcd at 13319, para. 31 (proposing an \$8,000 forfeiture penalty against a company not represented by counsel that filed an untimely and incomplete response to a Bureau LOI).

¹² See Response of Digital Antenna, Inc. (June 11, 2008) (on file in EB-SED-13-00009244).

¹³ See Tolling Agreement, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Steve Augustino, Esq., Counsel for Digital Antenna, Inc. (Jan. 18, 2013) (on file in EB-SED-13-00009244).

Commission order, entitling the Commission 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. In consideration for the termination of the Investigation, Digital Antenna 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 Digital Antenna 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 Digital Antenna with respect to Digital Antenna's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Digital Antenna 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 Digital Antenna 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 obligations under Sections 4(i), 4(j), and 403 of the Act to respond to Commission inquiries and directives, including, without limitation, the process for both seeking and obtaining extensions of time to respond to Commission inquiries and directives, and the procedures set forth in Section 0.459 of the Rules for requesting that materials or information submitted to the Commission be withheld from public inspection.¹⁴

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Digital Antenna 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. As part of the Compliance Plan, Digital Antenna shall establish detailed internal procedures and policies specifically designed to ensure that Digital Antenna fully and completely responds to all future Commission inquiries and directives in a timely manner.

11. **Compliance Reports.** Digital Antenna 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 Digital Antenna's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Digital Antenna, stating that the Compliance Officer has personal knowledge that Digital Antenna (i) has established and implemented the Compliance Plan; and (ii) is not

¹⁴ 47 U.S.C. §§ 154(i), 154(j), 403; 47 C.F.R. § 0.459.

aware of any instances of noncompliance with the terms and conditions of this Consent Decree.

- (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 Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Digital Antenna, 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 Digital Antenna 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 Digital Antenna 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) The Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW, Room 3-C366, Washington, D.C. 20554, with a copy submitted electronically to Celia Lewis at Celia.Lewis@fcc.gov and to Daudeline Meme at Daudeline.Meme@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 9 through 11 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

13. **Voluntary Contribution.** Digital Antenna agrees that it will make a voluntary contribution to the United States Treasury in the amount of five thousand dollars (\$5,000) within thirty (30) calendar days after the Effective Date. Digital Antenna shall also send electronic notification of payment to Celia Lewis at Celia.Lewis@fcc.gov, Daudeline Meme at Daudeline.Meme@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.¹⁶ 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

¹⁵ 47 C.F.R. § 1.16.

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

14. **Waivers.** Digital Antenna 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. Digital Antenna 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 Digital Antenna nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Digital Antenna shall waive any statutory right to a trial de novo. Digital Antenna hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁷ relating to the matters addressed in this Consent Decree.

15. **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.

16. **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 Digital Antenna does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

18. **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 Communications Laws.

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

20. **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.

21. **Authorized Representative.** The individual signing this Consent Decree on behalf of Digital Antenna represents and warrants that she is authorized by Digital Antenna to execute this Consent

¹⁷ 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.

Decree and to bind Digital Antenna 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.

22. **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
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Joanne Johnson
President
Digital Antenna, Inc.

Date