

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

In the Matter of)	File No.: EB-IHD-13-00010711 ¹
)	
U.S. Satellite Corporation)	Acct. No.: 201432080012
)	
)	FRN: 0003747821

ORDER

Adopted: November 12, 2013

Released: November 13, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and U.S. Satellite Corporation (U.S. Satellite). The Consent Decree resolves and terminates an investigation by the Bureau into whether U.S. Satellite violated sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission’s rules.² These rules address various regulatory fee and reporting obligations as well as required contributions to the Universal Service Fund, the Telecommunications Relay Service Fund, and North American Numbering Plan and Local Number Portability administration.

2. A copy of the Consent Decree negotiated by the Bureau and U.S. Satellite is attached hereto and incorporated herein by reference.

3. After evaluating the facts before us and reviewing the terms of the Consent Decree, 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 U.S. Satellite possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authority.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act³ and Sections 0.111 and 0.311 of the Commission’s rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ This investigation, initiated under File No. EB-10-IH-4132, was subsequently assigned File No. EB-IHD-13-00010711.

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

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

⁴ 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 George M. Foote, Counsel for U.S. Satellite Corporation, Dorsey & Whitney LLP, 1801 K Street, NW, Suite 750, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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

In the Matter of)	File No.: EB-IHD-13-00010711 ¹
)	
U.S. Satellite Corporation)	Acct. No.: 201432080012
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)	FRN: 0003747821

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and U.S. Satellite Communications Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether U.S. Satellite violated sections 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Commission's rules.² These rules address various regulatory fee and reporting obligations as well as required contributions to the Universal Service Fund, the Telecommunications Relay Service Fund, and North American Numbering Plan and Local Number Portability administration.

I. DEFINITIONS

2. 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 U.S. Satellite is subject by virtue of its business activities, including but not limited to the Federal Regulatory Reporting and Contribution Rules.
 - (f) "Compliance Plan" means the plan described in this Consent Decree at paragraph 13.

¹ This investigation, initiated under File No. EB-10-IH-4132, was subsequently assigned File No. EB-IHD-13-00010711.

² 47 C.F.R. §§ 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

- (g) “Covered Employees” means all employees and agents of U.S. Satellite who perform, or supervise, oversee, or manage the performance of duties that relate to U.S. Satellite’s responsibilities under the Federal Regulatory Reporting and Contribution Rules.
- (h) “Effective Date” means the date on which the Commission releases the Adopting Order.
- (i) “Federal Regulatory Reporting and Contribution Rules” means Sections 9, 251, and 254 of the Act,³ Sections 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, and 64.1195 of the Rules,⁴ and other provisions of the Act, the Rules, and Commission orders governing federal regulatory reporting and contribution obligations.
- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-10-IH-4132 (which was subsequently assigned File No. EB-IHD-13-1000010711) regarding possible violations of the Federal Regulatory Reporting and Contribution Rules.
- (k) “LNP” means Local Number Portability.
- (l) “NANP” means the North American Numbering Plan.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by U.S. Satellite to implement the Compliance Plan.
- (n) “Parties” means U.S. Satellite 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.
- (p) “Telecommunications” or “Telecommunications Service” have the meanings set forth in Sections 3(50) and 3(53) of the Act, 47 U.S.C. §§ 153(50), 153(53).
- (q) “TRS Fund” means the Telecommunications Relay Services Fund.
- (r) “USF” means the Universal Service Fund.
- (s) “U.S. Satellite” or the “Company” means U.S. Satellite Corporation and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

3. Pursuant to Section 254(d) of the Act and Sections 54.706 and 54.711 of the Rules, telecommunications service providers that provide interstate telecommunications services are required to file annual and quarterly Telecommunications Reporting Worksheets (FCC Form 499-A and FCC Form 499-Q) and contribute to the federal USF.⁵ Pursuant to Section 64.1195 of the Rules, interstate

³ 47 U.S.C. §§ 159, 251, 254.

⁴ 47 C.F.R. §§ 1.1154, 1.1157, 52.17, 52.32, 54.706, 54.711, 64.604, 64.1195.

⁵ See 47 U.S.C. § 254(d); 47 C.F.R. §§ 54.706, 54.711.

telecommunications carriers are required to file registration information on FCC Form 499-A.⁶ Pursuant to Section 225(b)(1) of the Act and Section 64.604 of the Rules, providers of interstate telecommunications services are required to contribute to the TRS Fund.⁷ Pursuant to Section 251(e) of the Act and Sections 52.17 and 52.32 of the Rules, telecommunications service providers are required to contribute to the costs of establishing numbering administration and local number portability.⁸ Pursuant to Section 9(a)(1) of the Act and Sections 1.1154 and 1.1157 of the Rules, interstate telecommunications carriers are required to pay regulatory fees.⁹

4. U.S. Satellite is incorporated in Utah.¹⁰ In 1980, U.S. Satellite began operating a domestic satellite transmit/receive earth station and providing satellite communications services, primarily for the distribution of customers' video and audio programming.¹¹ Following its acquisition by SUPERVALU INC. (Supervalu), U.S. Satellite began to receive the overwhelming majority of its revenues from the provision of interstate telecommunications services from its parent company.¹²

5. On October 10, 2010, U.S. Satellite submitted a letter to the Bureau self-disclosing that it "unintentionally and potentially upon incorrect advice from prior counsel, failed to file the required FCC Form 499 in order to report possible eligible revenues for [USF] and other federal regulatory support mechanisms."¹³ Upon discovering this mistake, U.S. Satellite registered with and began making filings to the Universal Service Administrative Corporation (USAC).¹⁴

6. On April 19, 2011, the Bureau sent a Letter of Inquiry (LOI) to U.S. Satellite regarding its compliance with its federal regulatory reporting and contribution obligations.¹⁵ On May 19, 2011, U.S. Satellite filed its response to the LOI.¹⁶ U.S. Satellite supplemented that response on January 31, 2013,¹⁷ and February 26, 2013.¹⁸ Thereafter, the Parties entered into settlement negotiations.

⁶ See 47 C.F.R. § 64.1195.

⁷ See 47 U.S.C. § 225(b)(1); 47 C.F.R. § 64.604.

⁸ See 47 U.S.C. § 251(e); 47 C.F.R. §§ 52.17, 52.32.

⁹ See 47 U.S.C. § 159(a)(1); 47 C.F.R. §§ 1.1154, 1.1157.

¹⁰ See Letter from Karly Baraga Werner, Dorsey & Whitney, LLP, Attorney for U.S. Satellite, to Marlene H. Dortch, Secretary, FCC, 1 (filed May 19, 2011) (on file in EB-IHD-13-00010711) (*LOI Response*).

¹¹ *Id.*

¹² See Letter from Stefan M. Lopatkiewicz, Dorsey & Whitney, LLP, Attorney for U.S. Satellite, to Hillary S. DeNigro Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 8, 2010) (on file in EB-IHD-13-00010711) (*Self-Disclosure Letter*).

¹³ *Id.* at 1.

¹⁴ *Id.* On September 30, 2010, U.S. Satellite filed its FCC Form 499-A for 2010 and its FCC Form 499-Qs for the first three quarters of 2010 with USAC. We note that on March 17, 2011, U.S. Satellite filed a petition with the FCC requesting a declaratory ruling that U.S. Satellite's revenues from providing service to Supervalu should be excluded from the revenue base used to calculate U.S. Satellite's USF contribution obligations. See *Federal-State Joint Board on Universal Service; Petition of U.S. Satellite for Declaratory Ruling*, WC Docket No. 96-45, filed by U.S. Satellite Corporation (filed Mar. 17, 2011) (U.S. Satellite Petition). That petition remains pending.

¹⁵ See Letter from Pamela S. Kane, Deputy Div. Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Max Worthington, Vice President, U.S. Satellite Corporation (Apr. 19, 2011) (on file in EB-IHD-13-00010711) (LOI).

¹⁶ See *LOI Response*.

7. As of the Effective Date, U.S. Satellite has paid all invoiced amounts for the USF, TRS Fund, cost recovery mechanisms for NANP and LNP administration, and regulatory fees and has complied with the regulatory reporting obligations discussed above.

III. TERMS OF AGREEMENT

8. **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.

9. **Jurisdiction.** U.S. Satellite 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.

10. **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.

11. **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 said Investigation, U.S. Satellite 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 U.S. Satellite 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 U.S. Satellite with respect to U.S. Satellite's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, U.S. Satellite shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a 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 U.S. Satellite 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 Federal Regulatory Reporting and Contribution Rules prior to assuming his/her duties.

¹⁷ See Letter from George M. Foote, Dorsey & Whitney, LLP, Attorney for U.S. Satellite, to Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (filed Jan. 31, 2013) (on file in EB-IHD-13-00010711).

¹⁸ See Letter from George M. Foote, Dorsey & Whitney, LLP, Attorney for U.S. Satellite, to Pam Slipakoff, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (filed Feb. 26, 2013) (on file in EB-IHD-13-00010711).

13. **Compliance Plan.** For purposes of settling the matters set forth herein, U.S. Satellite 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, including the Federal Regulatory Reporting and Contribution Rules, and with the terms and conditions of this Consent Decree. With respect to the Federal Regulatory Reporting and Contribution Rules, the Compliance Plan shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, U.S. Satellite shall establish Operating Procedures that all Covered Employees shall follow to help ensure U.S. Satellite's compliance with the Federal Regulatory Reporting and Contribution Rules. U.S. Satellite's Operating Procedures shall include internal procedures and policies specifically designed to ensure that U.S. Satellite complies with the Federal Regulatory Reporting and Contribution Rules. U.S. Satellite shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Federal Regulatory Reporting and Contribution Rules.
- (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 Federal Regulatory Reporting and Contribution Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure U.S. Satellite's compliance with the Federal Regulatory Reporting and Contribution Rules. U.S. Satellite shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. U.S. Satellite shall distribute any revisions to the Compliance Manual promptly to Covered Employees.
- (c) **Compliance Training Program.** U.S. Satellite shall establish and implement a Compliance Training Program on compliance with the Federal Regulatory Reporting and Contribution Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of U.S. Satellite's obligation to report any noncompliance with the Federal Regulatory Reporting and Contribution Rules under paragraph 14 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. Any person who becomes a Covered Employee at any time after the Initial Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. U.S. Satellite 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.

14. **Reporting Noncompliance.** U.S. Satellite shall report any noncompliance with the Federal Regulatory Reporting and Contribution Rules and 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 U.S. Satellite 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 U.S. Satellite has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at

Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov. The reporting obligations set forth in this paragraph shall expire twenty-four (24) months after the Effective Date.

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

- (a) Each Compliance Report shall include a detailed description of U.S. Satellite's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Federal Regulatory Reporting and Contribution Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of U.S. Satellite, stating that the Compliance Officer has personal knowledge that U.S. Satellite (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 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules¹⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of U.S. Satellite, 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 U.S. Satellite 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 U.S. Satellite 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, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

17. **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 Act²⁰ against U.S. Satellite 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

¹⁹ 47 C.F.R. § 1.16.

²⁰ 47 U.S.C. § 208.

as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by U.S. Satellite with the Communications Laws.

18. **Voluntary Contribution.** U.S. Satellite agrees that it will make a voluntary contribution to the United States Treasury in the aggregate amount of Five-Hundred Thousand dollars (\$500,000) (Voluntary Contribution). Such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of Two Hundred and Fourteen Thousand dollars (\$214,000) is due within thirty (30) calendar days after the Effective Date. The second payment of One Hundred and Forty-Three Thousand dollars (\$143,000) is due within one year after the Effective Date. The third and final payment of One Hundred and Forty-Three Thousand dollars (\$143,000) is due within two years after the Effective Date. U.S. Satellite acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²¹ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. In addition, U.S. Satellite agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. U.S. Satellite shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, William A. Kehoe at William.Kehoe@fcc.gov, and Pam Slipakoff at Pam.Slipakoff@fcc.gov on the date each such said Installment Payment is made.

19. Each of the Installment Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² 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 regarding the form of payment:

- 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.

²¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Event of Default.** U.S. Satellite agrees that an Event of Default shall occur upon the failure by U.S. Satellite to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

21. **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 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 U.S. Satellite.

22. **Waivers.** U.S. Satellite 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 the Adopting Order as defined in this Consent Decree. U.S. Satellite 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 U.S. Satellite nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and U.S. Satellite shall waive any statutory right to a trial *de novo*. U.S. Satellite hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,²³ relating to the matters addressed in this Consent Decree.

23. **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.

24. **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 U.S. Satellite does not expressly consent) that provision will be superseded by such Commission Rule or order.

25. **Successors and Assigns.** U.S. Satellite agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

26. **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.

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

²³ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

28. **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.

29. **Authorized Representative.** The individual signing this Consent Decree on behalf of U.S. Satellite represents and warrants that he is authorized to execute this Consent Decree and to bind U.S. Satellite 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.

30. **Counterparts.** This Consent Decree may be signed in counterpart (including by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Paul Rowan
Executive Vice President and General Counsel
New Albertson's, Inc.

Date