

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

In the Matter of)	File No.: EB-IHD-14-00014314
)	
Great American Broadband, Inc.)	Acct. No.: 201432080037
)	
)	FRN: 0017176173

ORDER

Adopted: November 21, 2014**Released: November 21, 2014**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has resolved its investigation into whether Great American Broadband, Inc. (GAB or Company) complied with certain Designated Entity bidding credit and alien ownership requirements applicable to 700 MHz band licenses obtained during the Commission's Auction 73. The bidding credit requirements protect the integrity of the Commission's Designated Entity program, which encourages the dissemination of radio communication licenses among a wide variety of auction applicants, including small businesses. The Communications Act of 1934, as amended (Act), requires the Commission to review alien ownership of radio station licenses, and impose specific restrictions on who may hold certain types of radio licenses.

2. In 2008, GAB was the winning bidder for four 700 MHz licenses the Commission auctioned in Auction 73. GAB paid discounted prices for those licenses in 2009 because, at that time, it qualified as a Designated Entity with "very small business" status. GAB admits that it made subsequent management and ownership changes that deprived it of that status and also caused GAB to exceed the 20 percent alien ownership cap set forth in Section 310(b)(3) of the Act.¹ GAB also admits that it violated Commission rules (Rules) requiring prior approval of changes resulting in loss of Designated Entity status and the repayment of the financial benefit (i.e., Unjust Enrichment) that the Company had received from that status. GAB admits further that it violated Rules requiring that it obtain Commission approval before consummating a *pro forma* transfer of control and timely notify the Commission of the changes in its ownership. To resolve this investigation, GAB will pay a civil penalty of \$100,000 and Unjust Enrichment of approximately \$165,000.

3. In this Order, we adopt the attached Consent Decree entered into between the Bureau and GAB. The Consent Decree resolves and terminates the Bureau's investigation into possible violations of Section 310(b)(3) of the Act and Sections 1.919(b)(5), 1.948(c)(1), 1.2111(d), and 1.2114(a) of the Rules pertaining to loss of Designated Entity status, payment of Unjust Enrichment, excessive alien ownership, *pro forma* transfers of control, and updating ownership records.²

4. The Bureau and GAB have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

5. 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.

¹ 47 U.S.C. § 310(b)(3).

² 47 U.S.C. § 310(b)(3); 47 C.F.R. §§ 1.919(b)(5), 1.948(c)(1), 1.2111(d), 1.2114(a).

6. 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 GAB possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

7. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

9. **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 L. Schmidt, President, Vice President, Great American Broadband, Inc., 46788 Glen Mary Farm Road, Park Hall, Maryland, 20667; and to Stephen E. Coran, Esq., Lerman Senter PLLC, Counsel for Great American Broadband, Inc., 2000 K Street N.W., Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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

⁴ 47 C.F.R. §§ 0.111, 0.311.

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Great American Broadband, Inc.)	Acct. No.: 201432080037
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Great American Broadband, Inc. (GAB or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether GAB complied with certain Designated Entity bidding credit and alien ownership requirements applicable to the four 700 MHz band licenses that GAB obtained during the Commission's Auction 73.

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) "Alien Ownership Rules" means Section 310 of the Act, Section 1.990 of the Rules, and other Communications Laws that regulate the level of authorized alien ownership in entities that hold licenses and authorizations issued by the Commission.
 - (d) "AT&T" means AT&T Mobility Spectrum LLC.
 - (e) "Bidding Credit" has the meaning set forth in Section 1.2110(f) of the Rules, 47 C.F.R. § 1.2110(f).
 - (f) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (g) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (h) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which GAB is subject by virtue of being a licensee.
 - (i) "Consummation" means the completion of the assignment of 700 MHz licenses described in the 2013 Assignment Application.
 - (j) "Consummation Date" means the date on which Consummation occurs.
 - (k) "Contingent Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 18.
 - (l) "Covered Employees" means all the employees and agents of GAB who perform, or supervise, oversee, and/or manage the performance of duties that relate to GAB's responsibilities under the Act and Rules.
 - (m) "Declaratory Ruling" has the meaning set forth at Section 1.2 of the rules, 47 C.F.R.

§ 1.2.

- (n) “Designated Entity” has the meaning set forth in Section 1.2110(a) of the Rules, 47 C.F.R. § 1.2110(a).
- (o) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (p) “Eligibility Event” has the meaning set forth in Section 1.2114 of the Rules, 47 C.F.R. § 1.2114.
- (q) “GAB” or “Company” means Great American Broadband, Inc., its predecessors-in-interest, and its successors-in-interest.
- (r) “Investigation” means the investigation commenced by the Bureau following GAB’s voluntary disclosure to the Bureau of possible violations of the provisions of the Act and Rules pertaining to lost eligibility for a bidding credit, payment of Unjust Enrichment, alien ownership, pro forma transfers of control, and updating ownership records.
- (s) “Licensing Rules” means Title III of the Act, Part 1 of the Rules, and other Communications Laws applicable to licenses issued for the provision of Wireless Communications Services as described at Part 27 of the Rules, including all associated Commission orders and decisions.
- (t) “Material Relationship” has the meaning set forth in Section 1.2110 of the Rules, 47 C.F.R. § 1.2111(d).
- (u) “Non-Consummation Date” means the date on which GAB and/or AT&T decide to not complete the assignment of 700 MHz licenses described in the 2013 Assignment Application.
- (v) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by GAB to implement the Contingent Compliance Plan.
- (w) “Parties” means GAB and the Bureau, each of which is a “Party.”
- (x) “Pro Forma” has the meaning set forth in Section 1.948(c)(1) of the Rules, 47 C.F.R. § 1.948(c)(1).
- (y) “Pro Forma Transfer of Control Application” means the Application for the Pro Forma Transfers of Control of licenses WQKH494 (California 6 – Mono), WY-CMA-341-B; WQKH496 (Nevada 4 – Mineral), WY-CMA-546-B; and WQKH497 (Wyoming 5 – Converse), WY-CMA-722-B, which GAB filed with the Commission on November 26, 2013, and revised on December 13, 2013 and on July 7, 2014 (ULS File No.: 0006023405).
- (z) “Radio Communication” has the meaning set forth in Section 3(40) of the Act, 47 U.S.C. § 153(40).
- (aa) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (bb) “Telecommunications,” “Telecommunications Carrier,” and “Telecommunications Service” have the meanings set forth in Sections 3(50), 3(51), and 3(53) of the Act, 47 U.S.C. §§ 153(50), 3(51), and 3(53).
- (cc) “2012 Assignment Application” means the Application for the Assignment of Authorization of license WQKH495 (Huntington 3 - Indiana), WY-CMA 405-B, filed with the Commission on July 11, 2012 (Universal Licensing System (ULS) File No. 0005300675).

- (dd) “2013 Assignment Application” means the Application for the Assignment of Authorizations of licenses WQKH494 (California 6 – Mono), WY-CMA 341-B; WQKH496 (Nevada 4 – Mineral), WY-CMA-546-B; and WQKH497 (Wyoming 5 – Converse), WY-CMA-722-B, filed with the Commission on April 24, 2013 (ULS File No. 0005744542).
- (ee) “Unjust Enrichment” has the meaning set forth in Section 1.2111(d) of the Rules, 47 C.F.R. § 1.2111(d).

II. BACKGROUND

2. Section 309(j) of the Act directs the Commission to assign licenses for radio communication through a competitive bidding process that promotes, among other objectives, “economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses”¹ To meet this statutory mandate, the Commission’s license auction process offers bidding credits (i.e., percentage discounts) to small businesses that do not exceed certain gross revenue caps.² An auction applicant that meets those criteria is deemed to be a Designated Entity,³ a status that allows a successful bidder to apply its bidding credit to any license won at auction and, assuming the entity is otherwise qualified to become a Commission licensee, pay a discounted amount for that license.

3. If a successful Designated Entity auction applicant that has been awarded a bidding credit seeks to make an ownership change within five years after a license grant that would make it ineligible for the bidding credit, the Designated Entity must meet certain requirements. First, the Designated Entity must apply for and obtain Commission approval before making any changes that result in such an Eligibility Event.⁴ In addition, as a condition to Commission approval, the Designated Entity must make an Unjust Enrichment payment to the U.S. Treasury.⁵ This payment equals a percentage of the discount the licensee received as a result of the bidding credit, plus interest.⁶ Section 1.919 requires that if the proposed Eligibility Event change is approved, the licensee must update its ownership information on FCC Form 602 so that it reflects any ownership changes that may have resulted from the Eligibility Event.⁷ A Designated Entity licensee that is subject to an Unjust Enrichment payment obligation also must obtain Commission approval before making a *pro forma* assignment or transfer of control.⁸

4. In addition to the Designated Entity Rules, the Commission’s Alien Ownership Rules are also relevant to this matter. Section 310(b)(3) of the Act sets a 20 percent limit on the equity and voting interests that foreign governments, corporations organized under the laws of a foreign government, and foreign individuals may hold in certain classes of radio station licensees, including common carrier radio licensees.⁹ Prior to August 22, 2012, Section 310(b)(3) precluded alien equity or voting interests in

¹ See 47 U.S.C. § 309(j).

² See 47 C.F.R. § 1.2110.

³ See *id.* § 1.2110(a).

⁴ See *id.* § 1.2114(a)(2).

⁵ See *id.* § 1.2111(d).

⁶ See *id.* If the Eligibility Event occurs within the first two years of the license term, for example, the required Unjust Enrichment payment equals the full discount plus interest. See *id.*

⁷ See *id.* § 1.919.

⁸ See *id.* § 1.948(c)(1).

⁹ See 47 U.S.C. § 310(b)(3).

common carrier licensees in excess of the 20 percent cap. Effective August 22, 2012, the Commission adopted a policy of forbearing, on a case-by-case basis, from the cap for those common carrier licensees in which the foreign investment is held through a U.S.-organized entity that does not control the licensee.¹⁰ Under that revised policy, a common carrier must seek and obtain Commission approval prior to exceeding the 20 percent cap.¹¹ It is under this new policy that GAB submitted its request for a declaratory ruling for permission to exceed the alien ownership cap.¹²

5. GAB is a Delaware corporation formed in 2007.¹³ On March 18, 2008, GAB was the winning bidder on four 700 MHz licenses in the Commission's Auction No. 73: WQKH494 (California 6 – Mono); WQKH 495 (Indiana 3 – Huntington); WQKH496 (Nevada 4 – Mineral); and WQKH497 (Wyoming 5 – Converse).¹⁴ These licenses are for commercial common carrier wireless services.¹⁵ GAB's winning bids for these licenses totaled \$699,000. GAB qualified to participate in Auction No. 73 as a Designated Entity with a "very small business" status, which entitled it to a 25 percent discount from that amount (\$174,750) and required it to pay a net of \$524,250 for the four licenses.¹⁶ On May 20, 2009, after confirming that GAB qualified as a very small business Designated Entity, the Wireless Telecommunications Bureau (WTB) granted GAB the four licenses.¹⁷

6. On May 29, 2008, Pearl Capital (Pearl) agreed to lend GAB \$1 million pursuant to a loan agreement and convertible promissory note (Promissory Note).¹⁸ Pearl is a Delaware limited liability company whose sole member is The Amethyst Trust (Amethyst).¹⁹ Amethyst's investment trustee and

¹⁰ See 47 C.F.R. § 1.990(a)(2); *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as amended*, First Report and Order, 27 FCC Rcd 9832 (2012); *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licenses*, 77 Fed. Reg. 50,628 (Aug. 22, 2012).

¹¹ See 47 C.F.R. § 1.990(a)(2).

¹² See Great American Broadband, Inc., Petition for Declaratory Ruling Under Section 310(b)(3) of the Communications Act of 1934, as amended, Filed with IB, International Bureau Filing System (IBFS) File No. ISP-PDR-20131126-00010 (Nov. 26, 2013) (amendment filed Dec. 19, 2013) (*Petition for Declaratory Ruling*).

¹³ See Great American Broadband, Inc., Application for Assignments of Authorization, Wireless Telecommunications Bureau (Form 603), Universal Licensing System (ULS) File No. 0006023405 at Exhibit 1 (Nov. 26, 2013), amended Dec. 13, 2013 and July 7, 2014 (*Pro Forma Transfer of Control Application*); *Petition for Declaratory Ruling*, *supra* note 12; *see also Non Streamlined International Applications/Petitions Accepted for Filing: Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b) Petitions*, Public Notice, Report No. TEL-01651NS, 2014 WL 198151 (Int'l Bur. 2014).

¹⁴ See *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572, 4617, 4621, 4632, 4643 (Wireless Tel. Bur. 2008) (*Auction 73 Winning Bidders PN*).

¹⁵ See *Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15291–94, paras. 1–11 (2007); *see also Auction of 700 MHz Band Licenses Scheduled for January 24, 2008: Notice of Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, 22 FCC Rcd 18141, 18143–44, 18147, paras. 1, 10–11 (Wireless Telecom. Bur. 2007); 47 C.F.R. § 27.5(b).

¹⁶ See *Action 73 Winning Bidders PN*, 23 FCC Rcd at 4617, 4621, 4632, 4643; *Auction of 700MHz Band Licenses: 214 Bidders Qualified to Participate in Auction 73*, Public Notice, 23 FCC Rcd 276, 292 (Wireless Telecom. Bur. 2008); *Auction of 700 MHz Band Licenses Scheduled for January 24, 2008*, Public Notice, 22 FCC Rcd 18141, 18162, para. 70 (Wireless Telecom. Bur. 2007).

¹⁷ See *Wireless Telecommunications Bureau Grants 700 MHz Band Licenses: Auction 73*, Public Notice, 24 FCC Rcd 5753, 5755 (Wireless Telecomm. Bur. 2009).

¹⁸ See *Pro Forma Transfer of Control Application* at Amended Exhibit 1.

¹⁹ See *id.*

sole beneficiary is Iftikhar Shirazi, a citizen of Pakistan.²⁰ On March 10, 2011, GAB appointed Mr. Shirazi to its Board of Directors and named him the Company's Chief Financial Officer.²¹ Each of these actions constituted an Eligibility Event.²² Under the Rules, GAB therefore was required to obtain Commission approval before making the appointments.²³ In addition, because the appointments deprived GAB of its Designated Entity status within two years of its having been granted its licenses, the Rules required that GAB repay its entire bidding credit plus interest.²⁴ GAB failed to take either of these required actions.

7. On March 31, 2011, Pearl became a 39.3 percent equity stakeholder in GAB by operation of the terms of GAB's Promissory Note with Pearl.²⁵ This diluted the equity interest of Robert L. Schmidt, GAB's Chairman and Chief Executive Officer, from 85 percent to 43.02 percent.²⁶ Under Section 1.948(c)(1) of the Rules, the dilution of Mr. Schmidt's interest constituted a *pro forma* transfer of control.²⁷ This *pro forma* transfer required prior Commission approval because GAB was subject to the Unjust Enrichment provisions of the Rules.²⁸ Because Mr. Shirazi was a citizen of Pakistan, Pearl's holding of a greater than 20 percent interest in GAB violated Section 310(b)(3) of the Act.²⁹ GAB should have taken corrective action, yet failed to do so until November 26, 2013.³⁰

8. On October 19, 2012, GAB assigned one of the 700 MHz licenses that GAB had acquired through Auction 73 to AT&T.³¹ On April 24, 2013, GAB filed its 2013 Assignment Application, which sought Commission approval for GAB to assign to AT&T the three remaining 700 MHz licenses that it had acquired through Auction 73.³² On July 12, 2013, WTB consented to the

²⁰ See *id.*

²¹ See *id.*

²² See 47 C.F.R. § 1.2114(a)(2).

²³ See *id.*

²⁴ See 47 C.F.R. § 1.2111(d). We note that GAB had repaid a portion of that bidding credit in connection with the transaction described in its 2012 Assignment Application.

²⁵ See *Pro Forma Transfer of Control Application* at Amended Exhibit 1; *Petition for Declaratory Ruling*, *supra* note 12 at 4.

²⁶ See *Pro Forma Transfer of Control Application* at Amended Exhibit 1.

²⁷ See 47 C.F.R. § 1.948(c)(1).

²⁸ See *id.*

²⁹ See 47 U.S.C. § 310(b)(3).

³⁰ See *infra* para. 9.

³¹ See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report No.: 8045, 2012 WL 3860850 (Wireless Telecomm. Bur. 2012) (WTB consent to transaction described in the 2012 Assignment Application); *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report No.: 8178, 2012 WL 5267889 (Wireless Telecomm. Bur. 2012) (recording the consummation date of the transaction described in the 2012 Assignment Application).

³² See Great American Broadband, Inc., Application for Assignments of Authorization, Wireless Telecommunications Bureau (Form 603), Universal Licensing System (ULS) File No. 0005744542 (Apr. 11, 2012) (Application for the assignment from GAB to AT&T Mobility Spectrum LLC, of Lower 700 MHz B Block, Call

assignment of these licenses.³³

9. GAB states that it did not become aware of its violations of the Act or Rules until August 22, 2013, when GAB's counsel discovered them while reviewing files in connection with the sale of three 700 MHz licenses proposed in its 2013 Assignment Application.³⁴ On September 19, 2013, GAB met with staff of the Commission's Wireless Telecommunications Bureau to voluntarily disclose the potential violations of which it became aware.³⁵ On November 26, 2013, GAB took two corrective actions:

- GAB filed with the Commission's Wireless Telecommunications Bureau a *pro forma* transfer of control application in which it disclosed all of its potential violations of the Act and Rules and sought a waiver of all Rules "necessary or appropriate for grant of this [*pro forma*] application." GAB's application discussed, among other matters, the ownership changes that had resulted in a *pro forma* transfer of control as well as the timing of the events that had precipitated its loss of Designated Entity status.³⁶
- GAB also filed a petition seeking a declaratory ruling that the 39.3 percent ownership in GAB that Pearl had held since March 31, 2011 is in the public interest.³⁷

III. TERMS OF AGREEMENT

10. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order without change, addition, deletion, or modification.

11. **Jurisdiction.** GAB 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.

12. **Admission of Liability.** GAB admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 14 of this Consent Decree, that the circumstances described in paragraphs 6 and 7 of this Consent Decree constitute violations of the Alien Ownership Rules and the Licensing Rules. Specifically, GAB admits that it violated Rules requiring prior approval of changes resulting in loss of Designated Entity status and the repayment of the Unjust Enrichment that the Company had received from that status. GAB also admits that it violated the alien ownership cap in Section 310(b)(3) of the Act as well as Rules requiring that it obtain Commission approval before consummating a *pro forma* transfer of control and timely notify the Commission of the changes in its ownership.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. 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.

Sign WQKH494, California 6 – Mono (CMA 341-B), Call Sign WQKH496, Nevada 4 – Mineral (CMA 546-B). Call Sign WQKH497, Wyoming 5 – Converse (CMA 722-B) (2013 Assignment Application).

³³ See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, and Designated Entity Annual Reports Action*, Public Notice, Report No.: 8867D, 2013 WL 3753656 (Wireless Telecomm. Bur. 2013) (WTB consent to the transaction described in the 2013 Assignment Application).

³⁴ See *Pro Forma Transfer of Control Application* at Amended Exhibit 1.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *Petition for Declaratory Ruling*, *supra* note 12.

14. **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, GAB agrees to the terms, conditions, and procedures contained in this Consent Decree. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, 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 GAB concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in the Investigation through the Effective Date, 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 GAB with respect to GAB's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

15. **Civil Penalty.** GAB agrees that it will pay a civil penalty to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within sixty (60) calendar days after the Effective Date. GAB shall send electronic notification of payment to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@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.³⁸ 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 GAB should follow based on the form of payment it selects:

- Payment by check or money order must be made payable in United States Dollars 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 GAB has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Unjust Enrichment Payment.** Pursuant to Section 1.2111(d) of the Commission's Rules, GAB must pay to the United States Government prior to the Consummation Date of the license assignments described in the 2013 Assignment Application, and no later than sixty (60) calendar days after the Effective Date, all remaining Unjust Enrichment owed from the loss of GAB's Designated Entity status on March 10, 2011 for: WQKH494 (California 6 – Mono); WQKH 495 (Indiana 3 – Huntington); WQKH496 (Nevada 4 – Mineral); and WQKH497 (Wyoming 5 – Converse). That amount equals

³⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

\$165,057 as of November 19, 2014, and will continue to accumulate interest until paid. GAB must make this Unjust Enrichment Payment in accordance any instructions provided by the Commission's Wireless Telecommunications Bureau. GAB shall send electronic notification of its Unjust Enrichment payment to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov on the date said payment is made.

17. **Reporting Obligations with Respect to the License Assignments Described in the 2013 Assignment Application.** In addition to complying with any reporting obligations in the Rules regarding its 2013 Assignment Application, GAB agrees to notify the Investigations and Hearings Division, Enforcement Bureau, regarding whether there has been a Consummation of the license assignments described in the 2013 Assignment Application. Such notification of Consummation must take place within thirty (30) calendar days of the Consummation Date. GAB shall send this notification electronically to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov. In the event that GAB and/or AT&T decide to not consummate the license assignments described in the 2013 Assignment Applications, GAB shall: (a) provide the Investigations and Hearings Division with notice of that decision within ten (10) calendar days of the Non-Consummation Date; and (b) commence adherence to the Contingent Compliance Plan obligations set forth in paragraph 18 and the reporting obligations set forth in paragraph 19 within thirty (30) calendar days of the Non-Consummation Date. GAB shall send this notice to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov.

18. **Contingent Compliance Plan and Reporting Obligations; Termination Date.** GAB agrees that if a Non-Consummation Date occurs the Company will appoint a Compliance Officer, develop and implement a Compliance Plan, and file periodic Compliance Reports, as set forth in this paragraph.

- A. **Contingent Compliance Officer.** Within thirty (30) calendar days after any Non-Consummation Date, GAB shall designate a senior manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. Any person designated as the Compliance Officer after a Non-Consummation Date shall be responsible for developing, implementing, and administering the Contingent Compliance Plan and ensuring that GAB complies with the terms and conditions of the Contingent Compliance Plan and the Consent Decree. Any person designated as the Compliance Officer after a Non-Consummation Date, in addition to possessing the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, shall have specific knowledge of the Alien Ownership Rules and the Licensing Rules prior to assuming his/her duties and shall commit to enforcing high standards with respect to the Alien Ownership Rules and the Licensing Rules to avoid violations.
- B. **Contingent Compliance Plan.** GAB agrees that it shall, within sixty (60) calendar days of any Non-Consummation Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of the Consent Decree. As part of any such Compliance Plan, GAB shall implement the following procedures with respect to the Alien Ownership Rules and the Licensing Rules:
 1. **Operating Procedures.** Within sixty (60) calendar days after any Non-Consummation Date, GAB shall establish Operating Procedures that all Covered Employees must follow to help ensure GAB's compliance with the Alien Ownership Rules and the Licensing Rules. Any such Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Compliance Officer, or management-level employee of GAB directly supervised by the Compliance Officer, conducts a review of any proposed change in alien ownership and any proposed assignment or transfer of control. Any such Operating Procedures also shall include internal procedures and policies specifically designed to ensure that GAB timely submits to the Commission any applications and notification filings pursuant to the Alien Ownership Rules and the Licensing Rules. As part of such Operating Procedures, GAB also shall develop a Compliance Checklist that describes the steps that a

Covered Employee must follow to ensure GAB's compliance with the Alien Ownership Rules and the Licensing Rules.

2. Compliance Manual. Within sixty (60) calendar days after any Non-Consummation Date, the Compliance Officer (with the assistance of counsel, as appropriate) shall develop and distribute a Compliance Manual to all Covered Employees. Any such Compliance Manual shall explain the Alien Ownership Rules and the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure GAB's compliance with the Communications Laws. GAB shall periodically review and revise any such Compliance Manual as necessary to ensure that it remains current and complete. GAB shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
3. Compliance Training Program. If a Non-Consummation Date occurs, GAB shall establish and implement a Compliance Training Program on compliance with the Alien Ownership Rules and the Licensing Rules. As part of any such Compliance Training Program:
 - (a) Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with Alien Ownership Rules and the Licensing Rules under paragraph 19 of this Consent Decree, and shall be instructed how to disclose noncompliance to the Compliance Officer;
 - (b) all Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after any Non-Consummation Date;
 - (c) any person who becomes a Covered Employee at any time after the initial Compliance Training Program is conducted shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee; and
 - (d) the Licensee 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.
4. Contingent Compliance Reports. If a Non-Consummation Date occurs, GAB shall file Compliance Reports with the Commission ninety (90) 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, which shall meet the following criteria:
 - (a) Each Compliance Report shall include a detailed description of GAB's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, the Alien Ownership Rules, and the Licensing Rules.
 - (b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on the behalf of GAB, stating that the Compliance Officer has personal knowledge that GAB (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 19 of this Consent Decree.
 - (c) 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 Rules³⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth in that Rule.
 - (d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of GAB, 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 GAB has taken or will take to remedy such

³⁹ 47 C.F.R. § 1.16.

noncompliance; and (iii) the steps that GAB has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken.

- (e) All Compliance Reports shall be submitted on paper to the Chief, Hearings and Investigations Divisions, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 204554, with a copy submitted electronically to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov

19. **Reporting Noncompliance.** If the Contingent Compliance Plan and Reporting obligations are triggered as a consequence of a Non-Consummation Date, GAB shall report any noncompliance with the Alien Ownership Rules and the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that GAB 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 GAB has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Hearings and Investigations Divisions, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to William A. Kehoe at William.Kehoe@fcc.gov and Robert B. Krinsky at Robert.Krinsky@fcc.gov.

20. **Termination Date.** If the Contingent Compliance Plan and Reporting obligations are triggered as a consequence of a Non-Consummation Date, unless stated otherwise in this Consent Decree, the requirements set forth in paragraphs 18 and 19 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

21. **Waivers.** GAB 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 in this Consent Decree. GAB shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained in this Consent Decree. 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 GAB nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and GAB shall waive any statutory right to a trial *de novo*. GAB hereby agrees to waive any claims it may have under the Equal Access to Justice Act⁴⁰ relating to the matters addressed in this Consent Decree.

22. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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 GAB does not expressly consent) that provision will be superseded by such Rule or Commission order.

⁴⁰ 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.

25. **Successors and Assigns.** GAB 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.

28. **Third Party Beneficiaries.** Nothing in this Consent Decree, express or implied, is intended to confer upon or create for any person other than the parties any rights or remedies. Notwithstanding anything to the contrary contained in the Consent Decree, including without limitation the provisions of paragraphs 15, 16, 24 and 25, AT&T shall not be liable or responsible for GAB's violations of the Alien Ownership Rules and/or Licensing Rules and shall not be legally or otherwise liable or responsible to the FCC for any sanctions imposed on GAB by the Bureau as a result thereof.

29. **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.

30. **Authorized Representative.** The individual signing this Consent Decree on behalf of GAB represents and warrants that he is authorized by GAB to execute this Consent Decree and to bind GAB to the obligations set forth in this Consent Decree. 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.

31. **Counterparts.** This Consent Decree may be signed in counterpart (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.

Travis LeBlanc
Chief, Enforcement Bureau

Date

Robert L. Schmidt
President,
Great American Broadband, Inc.

Date