

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

In the Matter of)	File No.: EB-IHD-14-00014134
)	
Rio Verde Wireless, LLC)	Acct. No.: 201532080009
)	
)	FRN: 002341995

ORDER

Adopted: October 6, 2015

Released: October 7, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Rio Verde Wireless, LLC (Rio Verde) failed to timely file FCC Form 477 and failed to fully respond to the Bureau's letter of inquiry. The information provided on FCC Form 477 allows the Commission to analyze broadband availability and adopt policies that help promote widespread broadband deployment throughout the United States. Responding fully to letters of inquiry allows the Bureau to conduct efficient and effective investigations. To settle this matter, Rio Verde admits that it failed to file a timely Form 477 and failed to respond properly to the Bureau's letter of inquiry, will implement a compliance plan, and will pay a \$10,500 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, including Rio Verde's showing of financial hardship and its stated commitment to future compliance with the Commission's rules, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture (NAL) regarding Rio Verde's compliance with Sections 1.7001 and 1.7002 of the Commission's rules (Rules)¹ and the Commission's requirement that entities subject to the Commission's jurisdiction must respond to letters of inquiry issued by the Bureau.²

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Rio Verde's basic qualifications to hold or obtain any Commission license or authorization.³

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act⁴ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

¹ 47 C.F.R. §§ 1.7001, 1.7002.

² See 47 U.S.C. §§ 154(i), 154(j), 403, 503(b)(1)(B); *SBC Communications Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, paras. 23–28 (2002); *Message Communications*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 8214, paras. 9–12 (Enf. Bur. 2014); *Calling Post Communications*, Notice of apparent Liability for Forfeiture, 29 FCC Rcd 8208, paras. 8–11 (Enf. Bur. 2014); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600, 7601–02, paras. 6–8 (Spectrum Enforcement Div., Enf. Bur. 2008); see also *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196, 2199, paras. 9–10 (Investigations & Hearings Div., Enf. Bur. 2015).

³ See 47 C.F.R. § 1.93(b).

⁴ 47 U.S.C. §§ 154(i), 503(b).

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS CANCELED**.

6. **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 Glenn Alan Burgess, Managing Member, Rio Verde Wireless, LLC, 30514 N. 162nd Street, Scottsdale, AZ 85262, and to Edward A. Maldonado, Esq., Maldonado Law Group, 800 Douglas Road, Suite 149, Coral Gables, FL 33134.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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⁵ 47 C.F.R §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Rio Verde Wireless, LLC (Rio Verde or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Rio Verde violated the Commission's rules requiring providers to report about their broadband service speeds and subscriptions,⁶ and a Commission order, in connection with its failure to fully respond to a letter of inquiry and failure to timely file the required report.

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.⁷
 - (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 Rio Verde is subject by virtue of its business activities, including but not limited to the Form 477 Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (g) "Covered Employees" means all employees and agents of Rio Verde who perform, or supervise, oversee, or manage the performance of, duties that relate to Rio Verde's responsibilities under the Communications Laws, including the Form 477 Rules.
 - (h) "Effective Date" means the date by which both the Bureau and Rio Verde have signed the Consent Decree.
 - (i) "Form 477 Rules" means Sections 1.7001 and 1.7002 of the Commission's Rules and other provisions of the Act, the Rules, and Commission orders related to the filing of broadband subscriber information on FCC Form 477.

⁶ 47 U.S.C. §§ 1.7001, 1.7002. These reports now require additional information based on changes made in June 2014, after the events of this Investigation.

⁷ 47 U.S.C. § 151 *et seq.*

- (j) "Investigation" means the investigation commenced by the Bureau in File No. EB-IHD-14-0014134 regarding whether Rio Verde violated the Form 477 Rules.
- (k) "LOI" means the Letter of Inquiry issued by the Bureau to Rio Verde on December 19, 2013, and again on February 14, 2014, seeking information from Rio Verde about the Company's compliance with the Form 477 Rules.
- (l) "NAL" means the Notice of Apparent Liability for Forfeiture issued to Rio Verde on March 11, 2015 proposing a \$20,000 forfeiture for apparent violations of a Commission order and the Form 477 Rules.
- (m) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Rio Verde to implement the Compliance Plan.
- (n) "Parties" means Rio Verde and the Bureau, each of which is a "Party."
- (o) "Rio Verde" or "Company" means Rio Verde Wireless, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (p) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. The Commission requires broadband service providers to file FCC Form 477 on which they report service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States and to further its broadband goals. The Commission uses the data collected to appropriately target universal service funds to unserved and underserved regions and to meet public safety obligations. Federal and state agencies also benefit from the data reported on Form 477. Data from rural areas is particularly important to the Commission's mission because these areas often lack widespread broadband availability. Section 1.7001 and 1.7002 of the Rules state that facilities-based providers of broadband service must file completed Forms 477 twice each year.

4. Additionally, all entities subject to the Commission's jurisdiction must respond to letters of inquiry issued by the Bureau. Entities that fail to respond properly to such inquiries may be subject to penalties.

5. Rio Verde is a Wireless Internet Service Provider (WISP) that provides broadband Internet service to consumers at fixed locations in Arizona. As a WISP, the Company uses unlicensed spectrum to serve customers in primarily rural areas. For several years, Rio Verde failed to file Forms 477. After the Bureau initiated its investigation, Rio Verde filed its completed Form 477, due in March 2014, more than five weeks late. Further, the Company did not cooperate with the Bureau's investigation of its failure to file Forms 477. Despite receiving clear direction from Bureau staff, Rio Verde never filed a formal response to the Bureau's LOI. On March 11, 2015, the Bureau issued an NAL finding Rio Verde apparently liable for a penalty totaling \$20,000 for filing a late Form 477 and for failing to respond properly to the Bureau's LOI.⁸

6. Rio Verde admits to failing to file Forms 477 for several years and missing the filing deadline for its March 2014 Form 477. The Company also admits to failing to properly respond to the Bureau's LOI. After the Bureau concluded its investigation, Rio Verde sought assistance to meet its filing deadlines and has timely filed complete Form 477s with the Commission. We expect the Company's compliance with these rules to continue.

⁸ *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (Investigations & Hearings Div., Enf. Bur. 2015).

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Rio Verde agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **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, Rio Verde agrees to the terms, conditions, and procedures contained herein. The Bureau further 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 new proceeding, formal or informal, or take any action on its own motion against Rio Verde 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 to set for hearing the question of Rio Verde's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.⁹

11. **Admission of Liability.** Rio Verde admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions as described in paragraphs 5 and 6 violated the Form 477 Rules and a Commission order.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Rio Verde 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 Rio Verde 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 or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Form 477 Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Rio Verde agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Form 477 Rules, Rio Verde will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Rio Verde shall establish Operating Procedures that all Covered Employees must follow to help ensure Rio Verde's compliance with the Form 477 Rules. Rio Verde's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Rio Verde files timely and complete Forms 477. Rio Verde shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Form 477 Rules.

⁹ See 47 C.F.R. 1.93(b).

- (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 Form 477 Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Rio Verde's compliance with the Form 477 Rules. Rio Verde shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Rio Verde shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Rio Verde shall establish and implement a Compliance Training Program on compliance with the Form 477 Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Rio Verde's obligation to report any noncompliance with the Form 477 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, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Rio Verde shall repeat 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.** Rio Verde shall report any noncompliance with the Form 477 Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Rio Verde 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 Rio Verde has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@fcc.gov.

15. **Compliance Reports.** Rio Verde 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 Rio Verde's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Form 477 Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Rio Verde, stating that the Compliance Officer has personal knowledge that Rio Verde: (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

Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁰

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Rio Verde, 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 Rio Verde 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 Rio Verde 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 Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Rio Verde will pay a civil penalty to the United States Treasury in the amount of ten thousand five hundred dollars (\$10,500) within thirty (30) days of the Effective Date. Rio Verde shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@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.¹¹ When completing the FCC Form 159, enter the NAL/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 that should be followed based on the form of payment selected:

- 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.

¹⁰ 47 C.F.R. § 1.16.

¹¹ 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.

18. **Waivers.** As of the Effective Date, Rio Verde 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. Rio Verde 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 Consent Decree or the Adopting Order, neither Rio Verde nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Rio Verde shall waive any statutory right to a trial *de novo*. Rio Verde hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹² relating to the matters addressed in this Consent Decree.

19. **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.

20. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Rio Verde does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

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

¹² See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

27. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or 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.

Paula L. Blizzard
Deputy Bureau Chief
Enforcement Bureau

Date

Glenn Alan Burgess
Managing Member
Rio Verde Wireless, LLC

Date