

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Mobilitie, LLC) File No.: EB-SED-17-00024244
) Acct. No.: 201832100005
) FRN: 0025628553

ORDER

Adopted: April 10, 2018

Released: April 10, 2018

By the Acting Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve the Bureau’s investigation into allegations that Mobilitie, LLC, (Mobilitie) failed to comply with the Commission’s wireless infrastructure rules in effect during the investigation, including rules implementing the National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA).1 The Consent Decree also resolves the Bureau’s investigation into whether Mobilitie commenced construction of certain towers prior to registering the structures with the Commission. To implement NEPA and Section 106 of the NHPA, the Commission’s rules require that current and prospective licensees and tower registrants assess certain types of proposed facilities, prior to the start of any construction, to determine the potential for a significant impact on the environment or historic properties.2 Commission rules also direct these entities to coordinate with relevant State governments and Tribal Nations. These requirements promote the nationwide deployment of wireless facilities while balancing such deployments against other important federal, state, and sovereign Tribal interests. Entities that unilaterally choose to begin construction of wireless facilities prior to completing a Commission required environmental and historic preservation review violate federal law and show contempt for the respective jurisdictional authorities.

2. To settle this matter, Mobilitie will implement a robust compliance plan to ensure that it does not violate the Commission’s environmental and historic preservation rules in the future, and pay a \$1,600,000 settlement amount.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Mobilitie’s compliance with environmental protection and historic preservation requirements found in NEPA and NHPA, and Sections 1.1307, 1.1312, and 17.4 of the Commission’s rules.3

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Mobilitie’s basic qualifications to hold or obtain any Commission license or authorization.4

1 See National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 et seq.) (NEPA); National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. § 300101 et seq.) (NHPA).

2 See 47 CFR § 1.1301 et seq.

3 47 CFR §§ 1.1307, 1.1312, 17.4.

4 See 47 CFR § 1.93(b).

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act⁵ and the authority delegated by Sections 0.111 and 0.311 of the Commission's rules,⁶ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

6. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

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 Christopher Glass, General Counsel, Mobilite, LLC, 660 Newport Center Drive, Suite 200, Newport Beach, CA 92660, and to David H. Solomon, Counsel for Mobilite, LLC, 1800 M Street, NW, Suite 800N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Acting Deputy Chief
Enforcement Bureau

⁵ 47 U.S.C. § 154(i).

⁶ 47 CFR §§ 0.111, 0.311.

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Mobilitie, LLC) File No.: EB-SED-17-00024244
) Acct. No.: 201832100005
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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Mobilitie, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Mobilitie, LLC violated Sections 1.1307 and 1.1312 of the Commission’s rules7 pertaining to the required assessment of the potential effect on the environment of the construction of wireless communications facilities, and Section 17.4 of the Commission’s rules regarding registration of certain antenna structures with the Commission’s antenna structure registration system.8

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.9
(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 Mobilitie is subject by virtue of its business activities, including but not limited to the Wireless Infrastructure 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, agents, and contractors of Mobilitie who perform, or supervise, oversee, or manage the performance of, duties that relate to Mobilitie’s responsibilities under the Wireless Infrastructure Rules.
(h) “Effective Date” means the date by which both the Bureau and Mobilitie have signed the Consent Decree.

7 47 CFR §§ 1.1307, 1.1312.

8 47 CFR § 17.4.

9 47 U.S.C. § 151 et seq.

- (i) “Wireless Infrastructure Rules” means Section 303(q) of the Act, Section 17.4 of the Rules,¹⁰ other provisions of the Communications Laws related to the registration of certain antenna structures according to Federal Aviation Administration and Commission specifications, and Section 1.1301, *et seq.*, of the Rules and other Communications Laws implementing the National Environmental Policy Act of 1969, as amended, (NEPA)¹¹ and the National Historic Preservation Act, as amended (NHPA).¹²
- (j) “Investigation” means the investigation commenced by the Bureau in EB-SED-17-00024244 regarding whether Mobilitie violated the Wireless Infrastructure Rules.
- (k) “Mobilitie” or “Company” means Mobilitie, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Mobilitie to implement the Compliance Plan.
- (m) “Parties” means Mobilitie and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Under the Commission’s Wireless Infrastructure Rules, applicants and licensees are required to assess whether certain proposed facilities may significantly affect the environment, as defined in Section 1.1307 of the Rules. This obligation expressly applies to certain facilities for which no preconstruction authorization is required.¹³ Section 1.1307(a) addresses facilities that may affect threatened or endangered species or their critical habitats, or are likely to jeopardize proposed threatened or endangered species or destroy or adversely modify proposed critical habitats; that may affect districts, sites, buildings, structures or objects that are listed, or eligible for listing, in the National Register; that may affect Native American religious sites; that will involve significant change in surface features; or that will be located in residential neighborhoods and will be equipped with high intensity white lights.¹⁴ In considering potential effects on historic properties, Section 1.1307(a)(4) requires applicants to follow the prescribed procedures set forth in the rules of the Advisory Council on Historic Preservation (Advisory Council),¹⁵ as modified by the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement)¹⁶ and the Nationwide Programmatic Agreement Regarding the Section

¹⁰ 47 U.S.C. § 303(q); 47 CFR § 17.4.

¹¹ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 *et seq.*) (NEPA).

¹² National Historic Preservation Act, Pub. L. No. 89-665, 80 Stat. 915 (1966) (codified as amended at 54 U.S.C. § 300101 *et seq.*) (NHPA).

¹³ *See* 47 CFR § 1.1312(a).

¹⁴ *Id.* § 1.1307(a). National Register refers to the National Register of Historic Places, which is maintained by the Secretary of the Interior’s office of the Keeper of the National Register. 47 CFR Pt. 1, App. C, Section II. A. 10.

¹⁵ 36 CFR Pt. 800.

¹⁶ 47 CFR Pt. 1, App. B. *See Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with respect to Collocating Wireless Antennas on Existing Structures*, Public Notice, 16 FCC Rcd 5574 (WTB 2001), *recon. denied*, 20 FCC Rcd 4084 (WTB 2005).

106 National Historic Preservation Act Review Process (NPA).¹⁷ These agreements tailor and streamline the review and consultation procedures routinely required by the NHPA¹⁸ and the implementing regulations issued by the Advisory Council. Additionally, Section 17.4 of the Rules requires that the owner of any existing or proposed antenna structure, which requires notice of construction to the Federal Aviation Administration, register the structure with the Commission.¹⁹ Applicants and licensees that do not adhere to these regulations potentially jeopardize sensitive environmental areas and invaluable cultural, historic, and religious sites. Additionally, an applicant or licensee's failure to strictly adhere to the rules means that the Commission does not fulfill its obligation under NEPA to ensure that the effect of its licensing or approval of wireless infrastructure does not cause a significant adverse impact on the environment.²⁰

4. Mobilitie, LLC is a privately held, non-licensed entity that constructs, owns, and leases wireless infrastructure for carriers across the United States. The company holds more than a dozen competitive local exchange carrier registrations and holds authorizations from state public utility commissions. Mobilitie typically deploys wireless infrastructure along rights of way, including small cells, communications towers, indoor and outdoor neutral host systems, and Wi-Fi networks. Mobilitie entered into a contractual arrangement with a wireless carrier to construct thousands of small cells, monopoles, and other wireless facilities for the purpose of densifying the carrier's network.

5. On May 9, 2017, the Bureau's Spectrum Enforcement Division issued a Letter of Inquiry to Mobilitie, directing Mobilitie to submit a sworn written response to a series of questions relating to Mobilitie's compliance with the Commission's environmental review process under NEPA and the Commission's historic preservation review process under Section 106 of NHPA. Mobilitie filed responses on June 15, 2017, October 12, 2017, November 13, 2017, January 3, 2018, and February 1, 2018. The Bureau and Mobilitie entered into Tolling Agreements to toll the statute of limitations, and negotiated the terms of the Consent Decree. The Investigation revealed that, in an effort to meet certain deadlines, Mobilitie had commenced construction of certain wireless facilities without securing all necessary regulatory and environmental approvals required under the Commission's Wireless

¹⁷ 47 CFR Pt. 1, App. C. See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), *clarified*, 20 FCC Rcd 17995 (2005), *aff'd*, *CTIA-The Wireless Ass'n. v. FCC*, 466 F.3d 105 (D.C. Cir. 2006) (*NPA Report and Order*).

¹⁸ 54 U.S.C. § 300101 *et seq.* The NHPA requires that a federal agency consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits, or approvals. See 54 U.S.C. §§ 306108, 300320. This review is commonly referred to as "Section 106 Review" because the provision requiring the review was originally enacted as Section 106 of the NHPA. In considering such effects, the NHPA further requires the federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council, which is the federal agency responsible for implementing the NHPA; the appropriate State Historic Preservation Officer; and, if historic properties of religious or cultural significance to federally recognized Tribal Nations or Native Hawaiian organizations may be affected, their representatives. See 54 U.S.C. §§ 302104, 302706, 306108, 304101. As authorized by the Advisory Council, the Commission's environmental rules delegate to its licensees, permittees, and applicants initial responsibility for identifying historic properties and evaluating the effects that their proposed facilities may have on such properties, but the Commission remains ultimately responsible for ensuring that the Section 106 process occurs in accordance with applicable statutory and regulatory provisions, as well as for government-to-government consultation with federally recognized Tribal Nations. See 47 CFR § 1.1307(a)(4); see also 36 CFR § 800.2(a)(3); *NPA Report and Order*, 20 FCC Rcd at 1076-77, para. 5.

¹⁹ See 47 CFR § 17.4.

²⁰ *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, 1084, para. 27 (2004), *aff'd sub nom.*, *CTIA-Wireless Ass'n v. FCC*, 466 F.3d 105 (2006) (explaining that the Commission's treatment of tower registrations as federal undertakings within the meaning of Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, is a permissible interpretation in light of the required preconstruction approval process).

Infrastructure Rules. Specifically, prior to construction, Mobilitie did not timely complete registration of certain antenna structures with the Commission as required under Section 17.4 of the Rules and did not complete the environmental and/or historic preservation review process set forth in Section 1.1307(a) of the Rules.

6. To settle this Investigation, Mobilitie has agreed to pay a one million six hundred thousand dollar (\$1,600,000) settlement amount to the United States Treasury. Additionally, Mobilitie has agreed to enhance its environmental and historic property review compliance procedures by reviewing and updating, as necessary, its existing compliance guidelines, by training all current and new Covered Employees on the current requirements, by requiring Covered Employees to report to management instances of noncompliance with the Wireless Infrastructure Rules, and by self-reporting any apparent violations to the Bureau until the end of the compliance period.

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.** Mobilitie 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, Mobilitie 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 Mobilitie 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 Mobilitie's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.²¹

11. **Representations and Warranties.** Mobilitie agrees that it will not treat any payment of the Settlement Amount described below in paragraph 17 as tax deductible for purposes of federal, state, or local law.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Mobilitie 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 Mobilitie 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 Wireless Infrastructure Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Mobilitie 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 Wireless Infrastructure Rules and with

²¹ See 47 CFR § 1.93(b).

the terms and conditions of this Consent Decree. Such Compliance Plan must include, at a minimum, the following procedures:

- (a) **Operating Procedures on Wireless Infrastructure Rules.** Within sixty (60) calendar days after the Effective Date, Mobilitie shall establish Operating Procedures that all Covered Employees must follow to help ensure Mobilitie's compliance with the Wireless Infrastructure Rules.
 - i. Mobilitie's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Mobilitie performs the required review of the potential effects on the environment of any proposed facilities, including facilities for which no preconstruction authorization is required.
 - ii. Mobilitie's Operating Procedures shall incorporate a Compliance Checklist that describes the steps that a Covered Employee must follow to determine whether construction of the proposed facility is within the scope of our Wireless Infrastructure Rules, is categorically excluded from environmental processing under Section 1.1306 of the Rules,²² or may have a significant environmental effect, as defined in Section 1.1307 of the Rules.²³
 - iii. Mobilitie's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Mobilitie performs the required review to ensure compliance with the antenna structure registration requirements.
- (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 Wireless Infrastructure Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Mobilitie's compliance with the Wireless Infrastructure Rules. Mobilitie shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Mobilitie shall distribute any revisions to the Compliance Manual promptly to all Covered Employees. With respect to third parties that employ Covered Employees, Mobilitie shall: (i) distribute the Compliance Manual to each such third party and instruct the third party to distribute the Compliance Manual to each such Covered Employee; and (ii) distribute any revisions to the Compliance Manual to each such third party and instruct the third party to distribute the revisions to the Compliance Manual to each such Covered Employee.
- (c) **Compliance Training Program.** Mobilitie shall establish and implement a Compliance Training Program on compliance with the Wireless Infrastructure Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Mobilitie's obligation to report any noncompliance with the Wireless Infrastructure Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees employed by Mobilitie shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee employed by Mobilitie at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person

²² 47 CFR § 1.1306.

²³ *Id.* § 1.1307.

becomes a Covered Employee. Mobilitie 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. With respect to third parties that employ Covered Employees, Mobilitie shall instruct such third party to ensure that each such Covered Employee receives training in accordance with the Compliance Training Program.

14. **Reporting Noncompliance.** Mobilitie shall report any noncompliance with the Wireless Infrastructure 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 Mobilitie 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 Mobilitie has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Kevin Pittman at kevin.pittman@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, with a copy submitted electronically to EB-SED-Response@fcc.gov.

15. **Compliance Reports.** Mobilitie 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 Mobilitie's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Wireless Infrastructure Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Mobilitie, stating that the Compliance Officer has personal knowledge that Mobilitie: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; (iii) has not entered into business arrangements to bypass regulatory approval processes; and (iv) 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.²⁴
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Mobilitie, 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 Mobilitie 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 Mobilitie 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 Kevin Pittman at Kevin.Pittman@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, with a copy submitted electronically to EB-SED-Response@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.

²⁴ 47 CFR § 1.16.

17. **Settlement Amount.** Mobilitie will pay a settlement amount to the United States Treasury in the amount of one million six hundred thousand dollars (\$1,600,000) within thirty (30) calendar days of the Effective Date. Mobilitie shall send electronic notification of payment to Kevin Pittman at Kevin.Pittman@fcc.gov and to SED's mailbox at EB-SED-Response@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 Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁵ 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 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.

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, Mobilitie 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. Mobilitie 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 Mobilitie nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Mobilitie shall waive any statutory right to a trial *de novo*. Mobilitie hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁶ 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

²⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁶ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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 Mobilitie does not expressly consent) that provision will be superseded by such Rule or Order.

22. **Successors and Assigns.** Mobilitie 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. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a legal finding or determination regarding any compliance or noncompliance with the Communications Laws with regards to the matters described in paragraphs 3-6.

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.

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.

Christopher L. Killion
Acting Deputy Chief
Enforcement Bureau

Date

Christopher Glass
Senior Vice President and General Counsel
Mobilitie, LLC

Date