



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 Eric Woody, Chief Technology and Operations Officer, Union Telephone Company, 850 North Highway 414 PO BOX 160 Mountain View, WY 82939.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion  
Deputy Chief  
Enforcement Bureau

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
UNION TELEPHONE COMPANY )
File No.: EB-SED-20-00031006
CD Acct. No.: 202032100011
FRN: 0001630201

CONSENT DECREE

1. The Commission requires covered 911 service providers to file annual reliability certifications regarding their 911 circuit auditing, central office backup power, and diverse network monitoring. Each year, covered 911 service providers must certify that they have taken reasonable measures to provide reliable 911 service by either implementing industry-backed "best practices" or alternative measures that are reasonably sufficient to ensure reliable 911 service. In furtherance of these requirements, the Federal Communication Commission's Enforcement Bureau and Union Telephone Company (Union or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Union violated section 9.19(c) of the Rules by its failure to timely file an annual 911 reliability certification for 2019. To resolve this matter, Union admits that it violated the Commission's rules, will implement a compliance plan, and will pay a \$4,000 civil penalty.

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) "911 Rules" means sections 9.1-9.20 of the Rules and other Communications Laws governing provision of 911 services.
(b) "Act" means the Communications Act of 1934, as amended.
(c) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
(e) "CD Acct No." means account number 202032100011, associated with payment obligations described in paragraph 17 of this Consent Decree.

1 See Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-75 and 11-60, Order on Reconsideration, 30 FCC Rcd 8650, 8651, para. 2 (2015); Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-75 and 11-60, Report and Order, 28 FCC Rcd 17476 (2013) (911 Reliability Certification Order).

2 47 CFR § 9.19(c) (previously codified at § 12.4(c)); see Implementing Kari's Law and Section 506 of RAY BAUM'S Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607, 6699, paras. 235-36 (2019), consolidating the Commission's existing 911 rules into a single rule part.

3 47 CFR §§ 9.1 – 9.20.

4 47 U.S.C. § 151 et seq.

- (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Union is subject by virtue of its business activities, including but not limited to the 911 Rules.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 12.
- (i) “Covered Employees” means all employees and agents of Union who perform, supervise, oversee, or manage the performance of, duties that relate to the Company’s responsibilities under the Communications Laws, including the 911 Rules.
- (j) “Effective Date” means the date by which both the Bureau and Union have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-20-00031006 regarding whether Union violated the 911 Rules.
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Union to implement the Compliance Plan.
- (m) “Parties” means Union 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.
- (o) “Union” or “Company” means Union Telephone Company and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

## II. BACKGROUND

3. Under section 9.19(c) of the Rules, a covered 911 service provider must file an annual 911 reliability certification regarding its 911 circuit auditing, central office backup power, and diverse network monitoring.<sup>5</sup> Through this annual reliability certification the provider must attest to whether it has met its obligation to implement specified best practices or reasonable alternative measures to mitigate the risk of a 911 service failure, or explain why a requirement is not applicable.<sup>6</sup>

4. Although Union filed its certification as a covered 911 service provider in 2018, the Company did not timely file its certification for 2019, which was due by October 15, 2019.<sup>7</sup> On April 21, 2020, the Commission’s Public Safety and Homeland Security Bureau (PSHSB) contacted Union about its failure to submit the 2019 annual reliability certification. Union promptly responded to PSHSB’s message, asserting its belief that it had filed the requested information; and subsequently provided PSHSB with dates for filings made in January and July 2019. PSHSB referred this matter to the Enforcement Bureau.

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<sup>5</sup> 47 CFR § 9.19(c).

<sup>6</sup> *Id.*; see also *911 Reliability Certification Order*, 28 FCC Rcd at 17492, para. 48.

<sup>7</sup> See *Public Safety and Homeland Security Bureau Announces Availability of 911 Reliability Certification System for Annual Reliability Certifications*, Public Notice, DA 19-740 (PSHSB Aug. 2, 2019). The 911 reliability certification should be filed electronically using the Commission’s online portal at <https://apps2.fcc.gov/rcs911/>.

5. On June 17, 2020, the Spectrum Enforcement Division (Division) sent a Letter of Inquiry (LOI) to Union pertaining to its apparent failure to file the 911 reliability certification for 2019.<sup>8</sup> In response, Union acknowledged, under penalty of perjury, that its response to PSHSB's April 21, 2020 inquiry was in error, as it had misinterpreted the filing in question and had inadvertently provided the 2019 filing dates for Wireless E911 Location Accuracy Reports. Union further admitted that it was a covered 911 service provider for the relevant reporting period, but noted the root cause of its failure to file the annual 911 reliability certification for 2019 was due to misunderstandings within the Company as to whether such a filing was required.<sup>9</sup> Union explained that it believed that because its selective router was no longer in use by a Public Safety Answering Point, Union no longer qualified as a 911 covered service provider for purposes of filing the annual 911 reliability certification under the rules. However, Union acknowledged that, during the relevant reporting period, it provided administrative lines to a Public Safety Answering Point in Saratoga, Wyoming. As such, based upon further clarification from relevant Commission staff, the Company then understood it was a covered 911 service provider, as defined under section 9.19(a)(4)(i)(B) of the Rules. Union noted that the failure to file the 911 reliability certification did not compromise service provided to the PSAP or put the public at risk. Union submitted its 911 reliability certification for 2019 on July 6, 2020.

### III. TERMS OF AGREEMENT

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

7. **Jurisdiction.** Union 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.

8. **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.

9. **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, Union 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, any new proceeding on its own motion against Union concerning the matters that were the subject of the Investigation, or to set for hearing the question of Union's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.<sup>10</sup>

10. **Admission of Liability.** Union admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that its actions violated the 911 Rules.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Union 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. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Union 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

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<sup>8</sup> See Letter of Inquiry from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. John Woody, Chief Executive Officer, Union Telephone Company, Inc. (June 17, 2020) (on file in EB-SED-20-00031006).

<sup>9</sup> See E-mail from Jason Wilcox, Corporate Counsel, Union Wireless, to Jane Kelly, Attorney, Spectrum Enforcement Division, FCC Enforcement Bureau (July 6, 2020, 18:56 EDT).

<sup>10</sup> See 47 CFR § 1.93(b).

her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the 911 Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, Union 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 911 Rules, Union will implement, at a minimum, the following procedures.

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees must follow to help ensure the Company's compliance with the 911 Rules. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company timely files required annual 911 reliability certifications. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the 911 Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the 911 Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the 911 Rules. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the 911 Rules and the Operating Procedures. The Compliance Training Program shall address, at a minimum: (i) the annual 911 reliability certification rules; (ii) required best practices to be reported on the annual 911 reliability certification, including circuit auditing, backup power, and network monitoring;<sup>11</sup> (iii) any alternative measures that are or will be reported on the annual 911 reliability certification;<sup>12</sup> (iv) any explanation as to why a requirement that is or will be reported on the annual 911 reliability certification does not apply;<sup>13</sup> and (v) the potential regulatory consequences of failing to properly file the annual 911 reliability certification. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the 911 Rules under paragraph 13 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 such person becomes a Covered Employee. The Company 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.

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<sup>11</sup> 47 CFR §§ 9.19(c)(1)-(3).

<sup>12</sup> 47 CFR § 9.19(b).

<sup>13</sup> 47 CFR §§ 9.19(c)(1)(ii)(B), (c)(2)(ii)(B), (c)(3)(ii)(B).

13. **Reporting Noncompliance.** The Company shall report any noncompliance with the 911 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 the Company 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 the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be electronically submitted to [Jane.Kelly@fcc.gov](mailto:Jane.Kelly@fcc.gov) a copy to [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov).

14. **Compliance Reports.** The Company 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 the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the 911 Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company: (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 13 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accomplished 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.<sup>14</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, 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 the Company 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 the Company 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 electronically submitted to [Jane.Kelly@fcc.gov](mailto:Jane.Kelly@fcc.gov), with a copy to [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov).

15. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 11 through 14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

16. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act<sup>15</sup> against the Company or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by the Company with the Communications Laws.

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<sup>14</sup> 47 CFR § 1.16.

<sup>15</sup> 47 U.S.C. § 208.

17. **Civil Penalty.** Union will pay a civil penalty to the United States Treasury in the amount of four thousand dollars (\$4,000) within thirty (30) calendar days of the Effective Date. Union acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).<sup>16</sup> Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Union shall send electronic notification of payment to [Jane.Kelly@fcc.gov](mailto:Jane.Kelly@fcc.gov) and [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov) on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),<sup>17</sup> or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>18</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>19</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. **Event of Default.** Union agrees that an Event of Default shall occur upon the failure by Union to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall

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<sup>16</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>17</sup> Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

<sup>18</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>19</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Union.

20. **Waivers.** As of the Effective Date, the Company 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. The Company 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 the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>20</sup> relating to the matters addressed in this Consent Decree.

21. **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.

22. **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.

23. **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 the Company does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

27. **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.

28. **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.

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<sup>20</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **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.

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Christopher L. Killion  
Deputy Chief  
Enforcement Bureau

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Date

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John G. Woody  
VP and CEO  
Union Telephone Company

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Date