

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Archer Daniels Midland Company) File No.: EB-IHD-19-00030265
) Acct. No.: 202032080018
Holding Various Licenses in the Wireless Radio) FRN: 0004781712
Services)
)

ORDER

Adopted: June 25, 2020

Released: June 25, 2020

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Archer Daniels Midland Company (ADM or Company) violated sections 308(b) and 310(d) of the Communications Act of 1934, as amended (Act),1 and sections 1.17 and 1.948 of the Commission’s rules2 regarding the Company’s failure to provide accurate licensee qualification information in wireless license applications and its participation in unauthorized transfers of control and assignments in connection with the Company’s transfer of business entities holding various FCC licenses. A wireless licensee circumvents the Commission’s ability to determine whether a license transfer is in the public interest, convenience, and necessity when it provides inaccurate qualification information in its license applications or effectuates unauthorized transfers of control. To settle this matter, ADM admits that it failed to provide accurate licensee qualification information in its wireless license applications, and that it participated in unauthorized transfers of control and assignments in connection with various FCC licenses. In addition, ADM agrees to implement a compliance plan and pay a \$240,000 civil penalty.

2. The Commission must be able to rely on the completeness and accuracy of its regulatees’ submissions. Even large organizations whose primary lines of business are not subject to the Commission’s jurisdiction must file complete and accurate wireless license applications. The Company failed to meet its statutory and regulatory obligation to disclose prior felony convictions on the wireless license applications that it filed with the Commission. ADM’s unauthorized transfers, coupled with its failures to disclose its felony convictions, is particularly troubling, because in so doing it prevented the Commission from performing its statutory duty to review ADM’s qualifications prior to the completion of the transfers. Nevertheless, we believe that a Consent Decree is appropriate based on the totality of the circumstances, including ADM’s corrections of the applicable wireless application submissions on its own initiative, and ADM’s full cooperation with the Bureau’s investigation after making those corrections.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating the referenced

1 47 U.S.C. §§ 308(b), 310(d).

2 47 CFR §§ 1.17, 1.948.

investigation regarding ADM's failure to provide accurate licensee qualification information in wireless license applications and its unauthorized transfers of control and assignments of FCC licenses, in violation of sections 308(b) and 310(d) of the Act,³ and sections 1.17 and 1.948 of the Commission's rules.⁴

4. In the absence of material new evidence relating to this matter, we do not set for hearing the question of the Company's basic qualifications to hold or obtain any Commission license or authorization.⁵

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁶ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be served via e-mail to Brendan Gardiner, Chief Litigation and Regulatory Counsel and Director of Insurance, Archer Daniels Midland Company, at Brendan.Gardiner@adm.com, and to its counsel, Elizabeth Sachs, Esq., Lukas, Nace, Gutierrez & Sachs, LLP, at lsachs@fcclaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

³ 47 U.S.C. §§ 308(b), 310(d).

⁴ 47 CFR §§ 1.17, 1.948.

⁵ See 47 CFR § 1.93(b).

⁶ 47 U.S.C. § 154(i).

⁷ 47 CFR §§ 0.111, 0.311.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Archer Daniels Midland Company) File No.: EB-IHD-19-00030265
Holding Various Licenses in the Wireless Radio) Acct. No.: 202032080018
Services) FRN: 0004781712

CONSENT DECREE

1. A primary responsibility of the Federal Communications Commission (Commission or FCC) is determining whether transfers of wireless licenses are in the public interest, convenience, and necessity before such transfers occur. The unauthorized transfer of wireless licenses and the failure of applicants to provide accurate licensee qualification information in wireless license applications thwart this key FCC responsibility and are prohibited. The Enforcement Bureau and Archer Daniels Midland Company (ADM or the Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether the Company violated section 310(d) of the Communications Act of 1934, as amended (Act),1 and section 1.948 of the Commission’s rules. Section 310(d) of the Act and section 1.948 of the Commission’s rules pertain to unauthorized transfers of control and assignments of a wireless license.2 The violations that are the subject of this settlement occurred in connection with the Company’s transfer of a number of business entities that hold FCC licenses.3 This settlement also resolves questions regarding the Company’s failure to include accurate licensee qualification information in applications for wireless radio licenses in violation of section 308 (b) of the Act and section 1.17 of the Commission’s rules.4 As set forth herein, to resolve this matter, ADM agrees to implement a compliance plan and pay a \$240,000 civil penalty. This action will help the Commission fulfill its statutorily prescribed duty to restrict the operation of wireless authorizations to those licensees whose qualifications and use of wireless spectrum have been previously authorized and approved.5

I. DEFINITIONS

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “ADM” means Archer Daniels Midland Company, its U.S. subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.

1 47 U.S.C. § 310(d).

2 47 CFR § 1.948.

3 The authorizations involved include the facilities controlling the licenses for stations transferred between ADM and Cargill on August 23, 2019 (Transactions).

4 47 U.S.C. § 308(b); 47 CFR § 1.17.

5 ADM’s failure to provide accurate licensee qualification information implicated the following 15 Land Mobile licenses identified by Call Signs: WQOP488; WQOP489; KNGN610; WQIA526; WQIA869; WPEV798; WQNT625; WQAT642; WRCT509; WQML299; KD49097; KIZ522; KLG323; WQBA523; and WQBM725 (collectively, the Licenses).

- (b) “Act” means the Communications Act of 1934, as amended.⁶
- (c) “Adopting Order” means an Order of the Enforcement Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (d) “Cargill” means Cargill, Incorporated, its U.S. subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.
- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which ADM is subject by virtue of its business activities, including but not limited to, the Wireless Radio Service Rules, Unauthorized Transfer Laws, and the Wireless License Application Laws.
- (g) “Company” means ADM, as defined herein.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 18.
- (i) “Covered Employees” means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of duties that relate to ADM’s responsibilities under the Communications Laws, including sections 308(b), and 310(d) of the Act, and sections 1.17 and 1.948 of the Rules.
- (j) “Effective Date” means the date on which the Enforcement Bureau and ADM have signed the Consent Decree.
- (k) “Enforcement Bureau” means the Enforcement Bureau of the Federal Communications Commission.
- (l) “Event of Default” means the Company’s failure to pay the full amount of the agreed-upon civil penalty by the due date specified herein.
- (m) “Investigation” means the investigation commenced by the Enforcement Bureau in File No. EB-IHD-19-00030265 into ADM’s compliance with provisions of the Communications Laws relating to provision of truthful statements in wireless applications submitted to the Commission and its transfer of station licenses.
- (n) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ADM to implement the Compliance Plan.
- (o) “Parties” means ADM and the Enforcement Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (q) “Transactions” means the completed negotiations whereby ADM transferred all of its issued and outstanding interest in the licenses for stations KLG323, WQBA523, and WQBM725, and through which the various wireless licensees referenced herein became indirect, wholly owned subsidiaries of Cargill, and the negotiations whereby Cargill transferred all of its issued and outstanding interest in the licenses for

⁶ 47 U.S.C. § 151 *et seq.*

stations KD49097 and KIZ522, and through which the various wireless licensees referenced herein became indirect, wholly owned subsidiaries of ADM.⁷

- (r) “Unauthorized Transfer Laws” means section 310(d) of the Act and section 1.948 of the Rules, pertaining to unauthorized transfers of control and assignments of licenses.⁸
- (s) “Wireless Bureau” means the Wireless Telecommunications Bureau of the Commission.
- (t) “Wireless License Applications” means FCC Forms 601 and 603.
- (u) “Wireless License Application Laws” means provisions of the Act, the Rules, and Commission orders related to Wireless License Applications, including, but not limited to, section 308(b) of the Act and section 1.17 of the Rules.⁹
- (v) “Wireless Radio Service Rules” means those rules set forth in section 1.907 of the Rules, pertaining to radio services authorized in Parts 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101 of the Rules.¹⁰
- (w) “Wireless Radio Services” means those radio services as defined in section 1.907 of the Rules.¹¹

II. BACKGROUND

3. Section 308(b) of the Act and section 1.17 of the Rules require that all statements contained in wireless license applications submitted to the Commission must be both truthful and accurate regarding the qualifications of prospective licensees.¹² Specifically, section 308(b) of the Act provides, in pertinent part, that “[a]ll applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station”¹³ Section 1.17(a)(2) of the Rules provides that no person subject to Commission jurisdiction shall provide in writing any “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.”¹⁴

4. Certain FCC license application forms, including FCC Forms 601 and 603, ask whether the applicant has ever been convicted of a felony. In FCC Form 601, applicants are required to answer Question 50, which asks whether “the Applicant or any party to this application, or any party directly or

⁷ See, e.g., Cargill, Inc., FCC Application for Assignments of Authorization and Transfers of Control, ULS File No. 0008781890, Attach., Explanation of Question 7a (filed Sept. 5, 2019), http://appsint.fcc.gov/ULsApp/ApplicationSearch/applM_ain.jsp?applID=11691476 (Explanatory Statement).

⁸ 47 U.S.C. § 310(d); 47 CFR § 1.948.

⁹ 47 U.S.C. § 308(b); 47 CFR § 1.17.

¹⁰ 47 CFR § 1.907 *et seq.*

¹¹ *Id.*; 47 CFR pts. 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97, and 101.

¹² 47 U.S.C. § 308; 47 CFR § 1.17.

¹³ 47 U.S.C. § 308(b).

¹⁴ 47 CFR § 1.17(a)(2)

indirectly controlling the Applicant [has] ever been convicted of a felony by any state or federal court?"¹⁵ Similarly, Question 101 in FCC Form 603 asks whether "the Assignee/Transferee or any party to this application, or any party directly or indirectly controlling the Assignee/Transferee [has] ever been convicted of a felony by any state or federal court?"¹⁶

5. The consent of the Commission is required prior to any transfer of control of a Commission permit or license. In this regard, section 310(d) of the Act provides that:

[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.¹⁷

6. Section 1.948 of the Rules similarly requires that applicants seek and receive Commission consent prior to conducting a transfer of control or making an assignment of a Commission license.¹⁸

7. ADM is a multinational business principally engaged in procuring, transporting, storing, processing, and merchandising agricultural commodities, products, and ingredients.¹⁹ ADM employs approximately 40,000 employees, serving customers in nearly 200 countries.²⁰

8. On July 26, 2019, Cargill, on its and ADM's behalf, filed an application for assignment of licenses KD49097 and KIZ522 to ADM,²¹ which grant was subsequently rescinded by the Wireless Bureau for failure to include information reporting ADM's 1996 felony conviction for price fixing,²²

¹⁵ *FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau*, FCC Form 601 (2016) (Form 601).

¹⁶ *FCC Application for Assignments of Authorization or Transfer of Control: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau*, FCC Form 603 (2016) (Form 603).

¹⁷ 47 U.S.C. § 310(d).

¹⁸ 47 CFR § 1.948.

¹⁹ See Letter from Brendan Gardiner, Chief Litigation and Regulatory Counsel, Archer Daniels Midland Company, to Gary Oshinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau at unnumbered page 1 (Dec. 2, 2019) (on file in EB-IHD-19-00028365) (December 2nd Letter).

²⁰ *Id.* at 2-4.

²¹ See Cargill, Inc., FCC Application for Assignments of Authorization and Transfers of Control, ULS File No. 0008732312 (filed July 26, 2019), <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applLicenses.jsp?applID=11623420>.

²² See *United States v. Archer Daniels Midland Company*, Plea Agreement, Criminal No.: 96-CR-00640 (E.D. Ill. Oct. 15, 1996); Press Release, U.S. Dep't of Justice, Archer Daniels Midland Co. To Plead Guilty And Pay 100 Million for Role in Two International Price Fixing Conspiracies (Oct. 15, 1996) (1996 ADM Conviction), https://www.justice.gov/archive/atr/public/press_releases/1996/0988.htm; see also Sharon Walsh, *ADM To Pay \$100 Million To Settle Price-Fixing Case*, The Washington Post (Oct. 15, 1996), <https://www.washingtonpost.com/archive/politics/1996/10/15/adm-to-pay-100-million-to-settle-price-fixing-case/95671342-94e0-492f-a439-4e8c19a74398/>.

which is required by FCC Forms 603 and 601.²³ Thereafter, on September 5, 2019, Cargill filed a second wireless license application with the Wireless Bureau, seeking transfer of control of the licenses for stations KLG323, WQBA523, and WQBM725, from ADM to Cargill, which also failed to contain such information,²⁴ and was returned.²⁵ This application also included an explanation acknowledging that the underlying transaction giving rise to the license transfers for stations KLG323, WQBA523, and WQBM725, had consummated a month earlier on August 23, 2019.²⁶ Subsequently, on September 25, 2019, Cargill filed a remedial application for transfer of these same three licenses, revised to contain the required information concerning ADM's felony conviction.²⁷ The Wireless Bureau subsequently referred the matter to the Enforcement Bureau for investigation.

9. The Enforcement Bureau's Investigation revealed that ADM had filed a series of wireless transfer applications which did not contain information reporting ADM's conviction for price fixing in 1996. In addition, the Investigation revealed that since 2001, it had filed 200 separate applications with the Commission for wireless licenses which failed to report such required felony conviction information.²⁸ The Enforcement Bureau's Investigation also confirmed that, in the course of the Transactions, ADM and Cargill completed two separate substantial transfers of control concerning five wireless radio licenses without first obtaining prior Commission consent.²⁹ The five wireless radio licenses included three Industrial/Business Pool Conventional licenses³⁰ and two Marine Coastal licenses.³¹

10. Finally, the Enforcement Bureau's Investigation revealed that, on October 15, 1996, ADM pled guilty to two counts of violating provisions of the Sherman Antitrust Act³² concerning

²³ See FCC Forms 603 and 601.

²⁴ See Explanatory Statement.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Cargill, Inc., FCC Application for Assignments of Authorization and Transfers of Control, ULS File No. 0008781890 (filed Sept. 25, 2019), <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11718210> (amending the original assignment application filed on September 5, 2019. The Wireless Bureau returned this application on March 26, 2020, requesting that ADM correct information in the signature block. ADM withdrew the application on April 24, 2020, requesting cancellation of the ADM licenses involved as ADM and Cargill have abandoned their proposed mutual assignment of licenses).

²⁸ See, e.g., ADM Alliance Nutrition, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, ULS File No. 0001128005 (filed Dec. 18, 2002), <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=1609155>; ADM Alliance Nutrition Kansas City, KS - D6R, FCC Application for Radio Service Authorization, ULS File No. 0008418114 (filed Oct. 29, 2018), <http://appsint.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11198713>. Subsequently, ADM filed a modification application that failed to disclose the felony conviction: ADM Alliance Nutrition, Inc., FCC Application for Radio Service Authorization, ULS File No. 0009043809 (filed Apr. 15, 2020), <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=12055641>. That application was amended on April 23, 2020 to include the required disclosure.

²⁹ See Explanatory Statement.

³⁰ See 47 CFR § 90.35; Explanatory Statement.

³¹ See 47 CFR § 80; Explanatory Statement.

³² 15 U.S.C. § 1 *et seq.*

felonious price fixing of certain food additives,³³ and that it incurred monetary penalties of \$100,000,000 as a result.³⁴ The investigation also revealed that on August 23, 2019, ADM and Cargill concluded a transaction involving the transfer of wireless radio licenses that required, but for which they had neither sought nor received, prior Commission consent.³⁵

11. To resolve the Enforcement Bureau's Investigation, the Parties enter into this Consent Decree in order to conserve resources and to ensure ADM's future compliance with all applicable Communications Laws.

III. TERMS OF AGREEMENT

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

13. **Jurisdiction.** The Company agrees that the Enforcement Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Enforcement Bureau has the authority to enter into and adopt this Consent Decree.

14. **Effective Date.** 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.

15. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Enforcement Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company agrees to the terms, conditions, and procedures contained herein. The Enforcement 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 the Company concerning the matters that were the subject of the Investigation. The Enforcement 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 the Company with respect to the Company's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.³⁶

16. **Admission of Liability.** ADM admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 15 herein, that its actions described in Paragraphs 7 through 10 of this Consent Decree violated the Unauthorized Transfer Laws and the Wireless License Application Laws.

17. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, to the

³³ 1996 ADM Conviction.

³⁴ See *id.*

³⁵ A substantial transfer of control is, *inter alia*, a transaction whereby controlling interest in the licensee shifts to a party whose qualifications have not yet been ascertained by the Commission. See *Questions and Answers Regarding Private Wireless Licensees' Obligations Under Section 310(d) of the Communications Act of 1934*, Fact Sheet (Sept. 19, 2000), 2000 WL 1340584, at *2. Here, a substantial transfer of control took place when, as the Explanatory Statement makes clear, ownership of the licensee passed to Cargill on August 23, 2019, the date of the transaction.

³⁶ See 47 CFR § 1.93(b).

extent it has not already done so under its current compliance procedures, the Company 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 the Company 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 Unauthorized Transfer Laws and the Wireless License Application Laws prior to assuming his or her duties.

18. **Compliance Plan.** For purposes of settling the matters set forth herein, the Company, within sixty (60) calendar days after the Effective Date, shall develop and implement the measures described below, if not already in place, to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Unauthorized Transfer Laws and the Wireless License Application Laws, including with regard to transfers of control and assignments of wireless licenses as the result of corporate acquisitions or asset transfers, the Company will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** (1) Within sixty (60) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees shall follow to help ensure the Company's compliance with the Unauthorized Transfer Laws and the Wireless License Application Laws. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Unauthorized Transfer Laws and the Wireless License Application Laws, when filing applications in the future. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Unauthorized Transfer Laws and the Wireless License Application Laws; and (2) No application for assignment or transfer of control of a Commission permit, license, or authorization or amendment thereto shall be submitted to or filed with the Commission by any Covered Employee unless it is (a) first reviewed and approved by the Company's legal counsel; and (b) accompanied by a certification from the Compliance Officer that duly notes such review and approval and affirms that the application or amendment is accurate and complete and otherwise in compliance with the Communications Laws. Such certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (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 Communications Laws that apply to the Company, including the Unauthorized Transfer Laws and the Wireless License Application Laws, and shall set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with the Unauthorized Transfer Laws and the Wireless License Application Laws, including procedures required as a result of corporate acquisitions or asset transfers. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** Within sixty (60) calendar days after the Effective Date, the Company shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including the Unauthorized Transfer Laws, the Wireless License Application Laws, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with the Communications Laws, including the Unauthorized Transfer Laws and the Wireless License Application Laws, under Paragraph 19 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 one hundred twenty (120) 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. 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.

19. **Reporting Noncompliance.** The Company shall report any noncompliance with the Communications Laws, the Unauthorized Transfer Laws, the Wireless License Application Laws, 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 address 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 submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov.

20. **Compliance Reports.** The Company shall file Compliance Reports with the Commission one hundred twenty (120) 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, the Communications Laws, the Unauthorized Transfer Laws and the Wireless License Application Laws, including with regard to transfers of control and assignments of wireless licenses as the result of corporate acquisitions or asset transfers. 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 19 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.³⁷

- (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 address 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 submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov.

21. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 17 through 20 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

22. **Civil Penalty.** The Company shall pay a total civil penalty to the United States Treasury in the amount of two hundred forty thousand dollars (\$240,000) within thirty (30) calendar days after the Effective Date. The Company 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).³⁸ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. The Company shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Christopher J. Sova at Christopher.Sova@fcc.gov, Kenneth M. Scheibel, Jr., at Kenneth.Scheibel@fcc.gov, and Gary.Oshinsky@fcc.gov on the date said payment is made. The payment 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),³⁹ 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:⁴⁰

- 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 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

³⁷ 47 CFR § 1.16.

³⁸ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁹ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

⁴⁰ 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.

type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁴¹ 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 Account – the bill number is the Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. There is a \$24,999.99-dollar limitation 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 Account – the bill number is the Account number with the first two digits excluded – 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.

23. **Event of Default.** The Company agrees that an Event of Default shall occur upon its failure to pay the full amount as described in Paragraph 22 by the due date specified in this Consent Decree.

24. **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 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 the Company.

25. **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 they may otherwise have under the Equal Access to Justice Act⁴² relating to the matters addressed in this Consent Decree.

26. **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

⁴¹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁴² See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

27. **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.

28. **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.

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

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

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

32. **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.

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

34. **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.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Paul Nielander
Vice President Infrastructure and Operations
Archer Daniels Midland Company

Date