

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

In the Matter of
DWireless & More Inc.
Bayamón, Puerto Rico
File No.: EB-FIELDSCR-20-00030473
NAL/CD Acct. No.: 202032020005
FRN: 0029486008

ORDER

Adopted: April 15, 2021

Released: April 15, 2021

By the Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether DWireless & More Inc. (DWireless) violated the Communications Act of 1934, as amended (Act) and the Commission's Unlicensed National Information Infrastructure (U-NII) device rules. These laws ensure that devices that emit radio frequency radiation comply with the Commission's technical requirements and do not interfere with authorized communications. On May 7, 2020, the Bureau issued a Notice of Apparent Liability for Forfeiture (NAL) to DWireless proposing a \$25,000 forfeiture for apparent violations of the U-NII Rules. DWireless admitted to the violations but demonstrated that it could not pay the full amount of the proposed fine. To settle this matter, DWireless admits that it operated on unauthorized frequencies, will implement a compliance plan, and will pay an \$11,000 civil penalty.

2. 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 resolving the Notice of Apparent Liability for Forfeiture regarding DWireless's compliance with the section 301 of the Act, and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.

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

1 DWireless & More Inc., Bayamón, Puerto Rico, Notice of Apparent Liability, 35 FCC Rcd 4627, 4631, para.13 (EB 2020).

2 DWireless & More Inc., Response to Notice of Apparent Liability for Forfeiture (May 27, 2020) (on file in EB-FIELDSCR-20-00030473).

3 DWireless & More Inc., Supplemental Response to Notice of Apparent Liability for Forfeiture (September 1, 2020) (on file in EB-FIELDSCR-20-00030473).

4 47 U.S.C. § 301.

5 47 CFR §§ 15.1(b), 15.407(h)(2).

6 See 47 CFR § 1.93(b).

4. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), and 503(b) of the Act⁷ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁸ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

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 Mr. Julio Joel Batista, President, DWireless & More Inc., Urb. Santa Rosa, 20-36 Ave. Aguas Buenas, Bayamón, Puerto Rico 00959-6621 and to Luis Manuel Pavia-Vidal, Esq., USDC-PR NO. 227205, P.O. Box 363325, San Juan, P.R. 00936-3325.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Deputy Chief
Enforcement Bureau

⁷ 47 U.S.C. §§ 154(i), 503(b).

⁸ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and DWireless & More Inc. (DWireless), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether DWireless violated section 301 of the Communications Act of 1934, as amended (Act),⁹ and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules¹⁰ in connection with operating Unlicensed National Information Infrastructure (U-NII) devices in an unauthorized manner causing interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico. To resolve this matter, DWireless (a) admits to violating section 301 of the Communications Act of 1934, as amended (Act),¹¹ and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules;¹² (b) agrees to pay a civil penalty of \$11,000; and (c) agrees to enter into a compliance plan.

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.¹³
 - (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 DWireless is subject by virtue of its business activities, including but not limited to the U-NII Rules.
 - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 12.

⁹ 47 U.S.C. § 301.
¹⁰ 47 CFR §§ 15.1(b), 15.407(h)(2).
¹¹ 47 U.S.C. § 301.
¹² 47 CFR §§ 15.1(b), 15.407(h)(2).
¹³ 47 U.S.C. § 151 *et seq.*

- (g) “Covered Employees” means all employees and agents of DWireless who perform, supervise, oversee, or manage the performance of, duties that relate to DWireless’s responsibilities under the Communications Laws, including the U-NII Rules.
- (h) “DWireless” means DWireless & More Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (i) “Effective Date” means the date by which both the Bureau and DWireless have signed the Consent Decree and the Bureau has released an Adopting Order.
- (j) “Investigation” means the investigation commenced by the Bureau in EB-FIELDSCR-20-00030473 regarding whether DWireless violated the U-NII Rules.
- (k) “NAL” means the Notice of Apparent Liability for Forfeiture issued to DWireless on May 07, 2020 proposing a \$25,000 forfeiture for apparent violations of the U-NII Rules.¹⁴
- (l) “NAL Acct No.” means account number 202032020005, associated with payment obligations described in paragraph 16 of this Consent Decree.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by DWireless to implement the Compliance Plan.
- (n) “Parties” means DWireless and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “U-NII Rules” means section 301 of the Communications Act of 1934, as amended, and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.

II. BACKGROUND

3. Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States or its territories without a license granted by the Commission.¹⁵ Part 15 of the Commission’s rules provides an exception to this general section 301 license requirement and sets forth conditions under which devices (intentional radiators) may operate without an individual license.¹⁶ Pursuant to section 15.1(b) of the Commission’s rules, however, “operation of an intentional . . . radiator that is not in accordance with the regulations in this part must be licensed.”¹⁷ U-NII device operators are authorized to operate radio transmitters in specific portions of the 5 GHz band on an unlicensed basis, but they must comply with technical rules specific to U-NII devices to prevent harmful interference to radar stations (including the FAA’s terminal doppler weather radar system) operating in the same portions of the 5 GHz band in which U-NII devices are permitted to operate.¹⁸ To enable this spectrum sharing while avoiding harmful interference to government radar stations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that U-NII devices operating in the 5.25 – 5.35 GHz (U-NII-2A) and 5.47 – 5.725 GHz (U-NII-2C) bands have Dynamic Frequency Selection radar detection functionality, which allows them to detect the presence of radar systems and automatically avoid operating on the same channel as those nearby radar systems.¹⁹

¹⁴ DWireless & More Inc., Bayamón, Puerto Rico, Notice of Apparent Liability, 35 FCC Rcd 4627 (EB 2020).

¹⁵ 47 U.S.C. § 301.

¹⁶ 47 CFR §§ 15.1, *et seq.*

¹⁷ *See* 47 CFR § 15.1(b) (emphasis added).

¹⁸ *See* 47 CFR § 15.407.

¹⁹ *See* 47 CFR § 15.407(h)(2).

4. On June 6, 2019, Bureau personnel began investigating interference to the terminal doppler weather radar station serving the San Juan International Airport. Their investigation led them to DWireless's corporate offices where an agent observed two U-NII devices configured to operate without Dynamic Frequency Selection enabled. Both U-NII devices were configured to operate on a 40 MHz channel centered on 5.585 GHz. After making these observations, the Bureau's agent instructed DWireless to alter the configuration of the U-NII devices to operate on a different frequency. DWireless complied, whereupon the Bureau personnel reported an immediate cessation of interference. On May 7, 2020, the Bureau issued a Notice of Apparent Liability for Forfeiture to DWireless proposing a \$25,000 forfeiture for apparent violations of the U-NII Rules.²⁰

5. In its response to the NAL, DWireless admits that on June 6, 2019, it was operating U-NII devices in violation of the U-NII Rules.²¹ It also states that upon notification of the violation, it immediately corrected the error and has implemented a policy to verify monthly that all of its devices are operating on the correct frequency.²² DWireless further has shown it is financially unable to pay the full penalty proposed in the NAL.²³ The Parties subsequently entered into settlement discussions and agree to the terms and conditions of this Consent Decree.

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.** DWireless 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, DWireless 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 DWireless concerning the matters that were the subject of the Investigation, or to set for hearing the question of DWireless'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.²⁴

10. **Admission of Liability.** DWireless 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 described in paragraph 4 violated the U-NII Rules.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, DWireless shall designate a senior corporate manager with the requisite corporate and organizational

²⁰ DWireless & More Inc., Bayamón, Puerto Rico, Notice of Apparent Liability, 35 FCC Rcd 4627, 4631, para.13 (EB 2020).

²¹ DWireless & More Inc., Response to Notice of Apparent Liability for Forfeiture (May 27, 2020) at 3 (on file in EB-FIELDSCR-20-00030473).

²² *Id.* at 4.

²³ DWireless & More Inc., Supplemental Response to Notice of Apparent Liability for Forfeiture (September 1, 2020) (on file in EB-FIELDSCR-20-00030473).

²⁴ See 47 CFR § 1.93(b).

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 DWireless 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 U-NII Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, DWireless 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 U-NII Rules, DWireless will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, DWireless shall establish Operating Procedures that all Covered Employees must follow to help ensure DWireless's compliance with the U-NII Rules. DWireless's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it complies with the U-NII Rules. DWireless shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the U-NII 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 U-NII Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure DWireless's compliance with the U-NII Rules. DWireless shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. DWireless shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** DWireless shall establish and implement a Compliance Training Program on compliance with the U-NII Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of DWireless's obligation to report any noncompliance with the U-NII 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 the date such person becomes a Covered Employee. DWireless 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.

13. **Reporting Noncompliance.** DWireless shall report any noncompliance with the U-NII 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 DWireless 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 DWireless has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance with the shall be submitted to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to field@fcc.gov and David Marks at david.marks@fcc.gov.

14. **Compliance Reports.** DWireless 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 DWireless's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the U-NII Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of DWireless, stating that the Compliance Officer has personal knowledge that DWireless: (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 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.²⁵
 - (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of DWireless, 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 DWireless 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 DWireless 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 shall be submitted to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to field@fcc.gov and David Marks at david.marks@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. **Civil Penalty.** DWireless will pay a civil penalty to the United States Treasury in the amount of Eleven Thousand Dollars (\$11,000). Such payment shall be made in one (1) initial installment payment of in the amount of Three-Hundred and Twenty-Five Dollars (\$325) and thirty-five (35) equal installments in the amount of Three-Hundred and Five Dollars (\$305). The Initial Installment Payment in the amount of Three-Hundred and Twenty-Five Dollars (\$325) is due within thirty (30) days of the Effective Date. Thereafter, subsequent Installment Payments of Three-Hundred and Five Dollars (\$305) will be due on be due and payable monthly on or before the 20th of each month for thirty-five (35) months. DWireless acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).²⁶ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. DWireless shall send electronic notification of payment to field@fcc.gov, David Marks at david.marks@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

²⁵ 47 CFR § 1.16.

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

using the Commission's Fee Filer (the Commission's online payment system),²⁷ 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:²⁸

- 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 type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ 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 NAL Acct. No. – the bill number is the NAL 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 with the NAL Acct. No. – the bill number is the NAL 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.

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

18. **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 or any Installment Payment 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 or any Installment Payment, 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 DWireless.

²⁷ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

²⁸ 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.

²⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

19. **Waivers.** As of the Effective Date, DWireless 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. DWireless 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 DWireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and DWireless shall waive any statutory right to a trial *de novo*. DWireless hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁰ relating to the matters addressed in this Consent Decree.

20. **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.

21. **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.

22. **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 DWireless does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

26. **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.

27. **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.

³⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

28. **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
Deputy Chief
Enforcement Bureau

Date

Julio Joel Batista
President
DWireless & More Inc.

Date