

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

In the Matter of

Broadband VI, LLC

)
)
)
)
)
)
)

File No.: EB-IHD-21-00032308
NAL/CD Acct. No.: 202132080028
FRN: 0016966806

ORDER

Adopted: June 2, 2021

Released: June 3, 2021

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Broadband VI, LLC (Broadband VI) have entered into a Consent Decree to resolve its review of whether Broadband VI violated the Commission's rules pertaining to unauthorized transfers of control and assignments of licenses in the wireless radio service. Broadband VI entered into an agreement with Surge Communications, LLC (Surge) by which Surge sold certain of its assets to Broadband VI, including its interests in seven wireless radio licenses, without prior Commission consent. To resolve this matter, Broadband VI agrees to implement a compliance plan and pay a \$28,000 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 terminating the referenced review regarding Broadband VI's compliance with section 310(d) of the Communications Act of 1934, as amended (Act)¹, and section 1.948 of the Commission's rules² pertaining to unauthorized transfers of control and assignments of licenses.

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

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act⁴ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

¹ 47 U.S.C. § 310(d).

² 47 CFR § 1.948.

³ See *id.* § 1.93(b).

⁴ 47 U.S.C. § 154(i).

⁵ 47 CFR §§ 0.111, 0.311.

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 Stephen E. Coran, Esq., Lerman Center PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

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

In the Matter of)	
)	
BROADBAND VI, LLC)	File No.: EB-IHD-21-00032308
)	CD Acct. No.: 202132080028
)	FRN: 0016966806
)	
)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Broadband VI, LLC (Broadband VI), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s review of allegations of non-compliance with certain requirements of the Communications Act of 1934, as amended, and the Commission’s rules applicable to Broadband VI. To resolve this matter, Broadband VI agrees to implement a compliance plan and pay a \$28,000 civil penalty.

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.¹
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Broadband VI” or “Company” means Broadband VI, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “CD Acct No.” means account number 202132080028, associated with payment obligations described in paragraph 18 of this Consent Decree.
 - (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 Broadband VI is subject by virtue of its business activities, including but not limited to the Unauthorized Transfer Rules.
 - (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (i) “Covered Employees” means all employees and agents of Broadband VI who perform, supervise, oversee, or manage the performance of, duties that relate to Broadband VI’s responsibilities under the Communications Laws, including the Unauthorized Transfer Rules.
 - (j) “Effective Date” means the date by which both the Bureau and Broadband VI have signed the Consent Decree and the Bureau has released an Adopting Order.

¹ 47 U.S.C. § 151 *et seq.*

- (k) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Broadband VI to implement the Compliance Plan.
- (l) “Parties” means Broadband VI and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Unauthorized Transfer Rules” means Section 310(d) of the Act² and Section 1.948 of the Rules,³ pertaining to unauthorized transfers of control and assignments of licenses.

II. BACKGROUND

3. Broadband VI is a fixed wireless internet service provider that serves the U.S. Virgin Islands. Based upon information received by the Commission, the Bureau reviewed issues related to Broadband VI’s compliance with the Communications Laws, including the Unauthorized Transfer Rules and the requirements that eligible telecommunications carriers must fulfill in order to claim and receive federal Lifeline support.

4. In the course of its review of Broadband VI’s compliance with the Communications Laws, the Bureau learned that Broadband VI and Surge Communications, LLC (“Surge”) entered into and consummated an agreement on February 20, 2019, by which Surge sold certain of its assets to Broadband VI, including its interests in seven wireless radio licenses. The parties did not obtain the required prior FCC approval for this transfer, but subsequently, in a February 28, 2020 filing, sought Commission consent *nunc pro tunc* to the assignment of the licenses, which was granted.⁴

5. 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.”⁵ Section 1.948 of the Rules similarly requires Commission consent prior to the transfer of control or assignment of a wireless radio license.⁶

6. To resolve this matter, the Parties now enter into this Consent Decree pursuant to which Broadband VI will develop and implement a compliance plan to ensure its future compliance with the Unauthorized Transfer Rules and agrees to pay a civil penalty.

III. TERMS OF AGREEMENT

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

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

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that the

² 47 U.S.C. § 310(d).

³ 47 CFR § 1.948.

⁴ See Surge Communications, LLC Assignment Application to Broadband VI, LLC, FCC ULS File No. 0008988646, Exhibit 1, Waiver Request (filed Feb. 28, 2020).

⁵ 47 U.S.C. § 310(d).

⁶ 47 CFR § 1.948.

Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Review.** 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 its review of Broadband VI's regulatory compliance. In consideration for the termination of the Bureau's review, Broadband VI agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new evidence, it will not use the facts developed in its review through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Broadband VI concerning the matters that were the subject of the Bureau's review, or to set for hearing the question of Broadband VI's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the review.⁷

11. **Admission of Liability.** Broadband VI admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its actions described in paragraph 4 of this Consent Decree violated the Unauthorized Transfer Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Broadband VI shall designate a senior corporate 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 Broadband VI 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 Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Broadband VI 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 Unauthorized Transfer Rules and with the terms and conditions of this Consent Decree. With respect to the Unauthorized Transfer Rules, Broadband VI will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Broadband VI shall establish Operating Procedures that all Covered Employees must follow to help ensure Broadband VI's compliance with the Unauthorized Transfer Rules. Broadband VI's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Unauthorized Transfer Rules. Broadband VI shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Unauthorized Transfer 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 Unauthorized Transfer Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Broadband VI's compliance with the Unauthorized Transfer Rules. Broadband VI shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Broadband VI shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Within sixty (60) calendar days, Broadband VI shall establish and implement a Compliance Training Program on compliance with

⁷ See 47 CFR § 1.93(b).

the Unauthorized Transfer Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Broadband VI's obligation to report any noncompliance with the Unauthorized Transfer Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (90) 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. Broadband VI shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Broadband VI shall report any noncompliance with the Unauthorized Transfer 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 Broadband VI 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 Broadband VI has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Victoria Randazzo at Victoria.Randazzo@fcc.gov.

15. **Compliance Reports.** Broadband VI 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 Broadband VI's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Unauthorized Transfer Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Broadband VI, stating that the Compliance Officer has personal knowledge that Broadband VI: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Broadband VI, 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 Broadband VI 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 Broadband VI has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

⁸ 47 CFR § 1.16.

- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Victoria Randazzo at Victoria.Randazzo@fcc.gov.

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

17. **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 Act⁹ against Broadband VI 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 Broadband VI with the Unauthorized Transfer Rules.

18. **Civil Penalty.** Broadband VI will pay a civil penalty to the United States Treasury in the amount of Twenty-Eight Thousand dollars (\$28,000) within thirty (30) calendar days of the Effective Date. Broadband VI 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).¹⁰ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Broadband VI shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and Victoria Randazzo at Victoria.Randazzo@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),¹¹ 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:¹²

- 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).¹³ 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.

⁹ 47 U.S.C. § 208.

¹⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹¹ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹² 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.

¹³ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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 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.

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

20. **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 Broadband VI.

21. **Waivers.** As of the Effective Date, Broadband VI 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. Broadband VI 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 Broadband VI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Broadband VI shall waive any statutory right to a trial *de novo*. Broadband VI hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁴ relating to the matters addressed in this Consent Decree.

22. **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.

23. **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.

24. **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 Broadband VI does not expressly consent) that provision will be superseded by such Rule or order.

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

26. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Bureau's review.

¹⁴ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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

28. **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.

29. **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. **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

David Zumwalt
Chief Operating Officer
Broadband VI, LLC

Date