

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

In the Matter of)
Atrium Hospitality LP) File No.: EB-IHD-20-00031519
Holding Various Licenses in the Wireless Radio) CD Acct. No.: 202232080003
Service) FRN: 0028770592

ORDER

Adopted: March 10, 2022

Released: March 10, 2022

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission and Atrium Hospitality LP (Atrium) have entered into a Consent Decree to resolve the Enforcement Bureau’s investigation into whether Atrium violated section 310(d) of the Communications Act of 1934, as amended (Act),1 and section 1.948 of the Commission’s rules.2 The violations pertain to Atrium’s failure to seek Commission approval prior to acquiring 25 wireless radio licenses from numerous entities controlled by John Q. Hammons in connection with their bankruptcy reorganization. To resolve this matter, Atrium agrees to implement a compliance plan and to pay a \$35,000 civil penalty. This action will reinforce the Commission’s commitment to ensuring that the transfer and assignment of wireless authorizations is limited to instances where the Commission has determined that such a transfer or assignment is in the public’s interest, convenience, and necessity.

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 investigation regarding Atrium’s compliance with the Act3 and the Commission’s rules4 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 Atrium’s basic qualifications to hold or obtain any Commission license or authorization.5

4. 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.

1 47 U.S.C. § 310(d).

2 47 CFR § 1.948.

3 47 U.S.C. § 310(d).

4 47 CFR § 1.948.

5 See 47 CFR § 1.93(b).

6 47 U.S.C. § 154(i).

7 47 CFR §§ 0.111, 0.311.

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

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be served via e-mail to Seth Ruzi, General Counsel, Atrium Hospitality LP, at sruzi@atriumhospitality.com, and to Peter Schwingler, counsel for Atrium Hospitality LP, at peter.schwingler@stinson.com.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Acting Chief
Enforcement Bureau

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Atrium Hospitality LP)	File No.: EB-IHD-20-00031519
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Holding Various Licenses in the Wireless Radio)	
Service)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Atrium Hospitality LP, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Atrium violated section 310(d) of the Communications Act of 1934, as amended,¹ and section 1.948 of the Commission’s rules.² The violations pertain to Atrium’s failure to seek Commission approval prior to acquiring 25 wireless radio licenses from numerous entities controlled by John Q. Hammons in connection with their bankruptcy reorganization. As set forth herein, to resolve this matter, Atrium agrees to implement a compliance plan and pay a \$35,000 civil penalty. This action will reinforce the Commission’s commitment to ensuring that the transfer and assignment of wireless authorizations is limited to instances where the Commission has determined that such a transfer or assignment is in the public’s interest, convenience, and necessity.

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.³
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Atrium” means Atrium Hospitality LP 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 202232080003, associated with payment obligations described in Paragraph 21 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 Atrium is subject by virtue of its business activities, including but not limited to the Unauthorized Transfer Laws.

¹ 47 U.S.C. § 310(d).

² 47 CFR § 1.948.

³ 47 U.S.C. § 151 *et seq.*

- (h) “Compliance Officer” means the individual designated at Paragraph 16 of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (i) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 17.
- (j) “Covered Employees” means all employees and agents of Atrium who perform, supervise, oversee, or manage the performance of, duties that relate to Atrium’s responsibilities under the Communications Laws, including the Unauthorized Transfer Laws.
- (k) “Effective Date” means the date by which both the Bureau and Atrium have signed the Consent Decree and the Bureau has released an Adopting Order.
- (l) “Investigation” means the investigation commenced by the Bureau in EB-IHD-20-00031519 regarding whether Atrium violated the Unauthorized Transfer Laws.
- (m) “JQH Entities” means John Q. Hammons Hotels, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (n) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Atrium to implement the Compliance Plan.
- (o) “Parties” means Atrium and the Bureau, each of which is a “Party.”
- (p) “Remedial Applications and Waiver Requests” means Applications for Transfer of Control, ULS File Nos. 0008829733; 0008829226; 0008830202; 0008830227; 0008830256; 0008830255; 0008830192; 0008829243; 0008829248; 0008829747; 0008830199; 0008830250; 0008829240; 0008828649; 0008829774; 0008829263; 0008822201; 0008829232; 0008822466; 0008829743; 0008830196; 0008829783; 0008830196.
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (r) “Unauthorized Transfer Laws” means section 310(d) of the Act⁴ and section 1.948 of the Rules,⁵ pertaining to the unauthorized transfers of control and assignments of licenses.

II. BACKGROUND

3. *Legal Framework.* 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:

No 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.⁶

⁴ 47 U.S.C. § 310(d).

⁵ 47 CFR § 1.948.

⁶ 47 U.S.C. § 310(d).

4. Section 1.948 of the Rules similarly requires that applicants seek and receive Commission consent prior to the transfer of a licensee's control or assignment of a Commission license.⁷ Section 1.948 of the Rules also provides that in the case of a transfer of control of a wireless license, the licensee must file FCC Form 603 when seeking prior approval of the transfer.⁸

5. *Factual Background.* Atrium is a hotel and asset management company headquartered at Deerfield Point in Alpharetta, GA, that oversees a portfolio of hotels licensed primarily through the Marriott, Hilton, and Intercontinental brand families.⁹ In addition, Atrium provides asset management and accounting services to a number of other hotel debt and equity investments held by their ownership groups.¹⁰

6. On June 26, 2016, several JQH Entities filed voluntary petitions for Chapter 11 bankruptcy.¹¹ Prior to their bankruptcy reorganization, the JQH Entities owned or leased certain hotel properties located in Alabama, Arizona, Arkansas, Colorado, Illinois, Kansas, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Virginia.¹² One or more of the JQH Entities held a total of 25 private land mobile licenses for internal operations.¹³

7. JD Holdings L.L.C. (JD Holdings), an affiliate of Atrium, filed claims in the jointly administered bankruptcy cases and was determined to be the largest creditor because of a substantial judgment it won in a contractual dispute with the JQH Entities.¹⁴ On May 11, 2018, the Bankruptcy Court approved JD Holdings' plan of reorganization and granted JD Holdings the right to acquire certain hotel assets from both debtor and non-debtor JQH Entities through a series of transactions.¹⁵ Upon acquisition of the hotel assets, Atrium assumed the management of the hotels and, consequently, control of the 25 wireless licenses.¹⁶

8. On October 10, 2019, Atrium filed several wireless license assignment applications notifying the Wireless Telecommunications Bureau that it had acquired wireless licenses without the necessary prior Commission approval for the transactions transferring ownership of the licenses from the

⁷ 47 CFR § 1.948.

⁸ *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).

⁹ Atrium Hospitality, *About Atrium Hospitality*, <https://atriumhospitality.com/our-story/> (last visited Feb. 8, 2022).

¹⁰ *Id.*

¹¹ Letter from Alan S. Tilles, Counsel for Atrium Hospitality, Shulman Rogers, to Christopher Sova, Esq., Enforcement Bureau, FCC, et al. (Dec. 21, 2020) (on file in EB-IHD-20-00031519).

¹² *See Remedial Applications and Waiver Requests.*

¹³ *See Remedial Applications and Waiver Requests; Response to Letter of Inquiry, from Peter Schwingler, Counsel to Atrium Hospitality LP, Stinson LLP, to Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 10, 2021) (on file in EB-IHD-20-00031519) (Atrium Cover Letter); Responses to Inquiries 1, 9, 10, 11 and 12, Attach. to Atrium Cover Letter (LOI Response).*

¹⁴ *See E-mail from Alan S. Tilles, Counsel for Atrium Hospitality, LP, Shulman Rogers, to Gary Oshinsky, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Oct. 7, 2020, 13:02 EDT) (on file in EB-IHD-20-00031519).*

¹⁵ *John Q. Hammons Fall 2006, LLC*, Corrected Order Confirming Modified Amended Joint and Consolidated Chapter 11 Plans of Reorganization For All Debtors Filed by Creditor JD Holdings, L.L.C., Case No. 16-21142 (Bankr. D. Kan. May 11, 2018) (on file in EB-IHD-20-00031519) (Confirmation Order); *see also Remedial Applications and Waiver Requests.*

¹⁶ *See Remedial Applications and Waiver Requests; LOI Response at 4.* The 25 licenses include call signs WPQB731; WPTA265; WPTF935; WPUY428; WPVB807; WPWX784; WPXR819; WPYS812; WQBG333; WQBG367; WQCF921; WQCS480; WQDJ365; WQFR705; WQGB768; WQIZ261; WQKS526; WQPV235; WQSF928; WQVK756; WQWE310; WQYK361; WQZU901; WQJP351; and WPMJ632.

JQH Entities.¹⁷ On November 13, 2019, the Wireless Telecommunications Bureau referred this matter to the Bureau for investigation.

9. The Investigation revealed that Atrium acquired control and/or ownership of 25 wireless licenses from various JQH Entities, without prior Commission approval, through a series of closings that occurred between May 2018 and June 2020.¹⁸

10. To resolve the Bureau's Investigation, the Parties now enter into this Consent Decree pursuant to which Atrium shall develop and implement a compliance plan to ensure its future compliance with the Unauthorized Transfer Laws, and shall pay a civil monetary penalty.

III. TERMS OF AGREEMENT

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

12. **Jurisdiction.** Atrium 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.

13. **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.

14. **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, Atrium 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 Atrium concerning the matters that were the subject of the Investigation, or to set for hearing the question of Atrium'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.¹⁹

15. **Admission of Liability.** Atrium admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of Paragraph 14 herein, that its actions described in Paragraphs 7 through 9 of this Consent Decree violated the Unauthorized Transfer Laws.

16. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Atrium 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 Atrium 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 prior to assuming his/her duties.

17. **Compliance Plan.** For purposes of settling the matters set forth herein, Atrium 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 Unauthorized Transfer Laws, Atrium will implement, at a minimum, the following procedures:

¹⁷ See Remedial Applications and Waiver Requests.

¹⁸ See generally LOI Response.

¹⁹ See 47 CFR § 1.93(b).

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Atrium shall establish Operating Procedures that all Covered Employees must follow to help ensure Atrium's compliance with the Unauthorized Transfer Laws. Atrium's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Atrium complies with the Unauthorized Transfer Laws. Atrium shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Unauthorized Transfer Laws.
- (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 Laws and set forth the Operating Procedures that Covered Employees shall follow to help ensure Atrium's compliance with the Unauthorized Transfer Laws. Atrium shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Atrium shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Atrium shall establish and implement a Compliance Training Program on compliance with the Unauthorized Transfer Laws and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Atrium's obligation to report any noncompliance with the Unauthorized Transfer Laws under Paragraph 18 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. Atrium 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.

18. **Reporting Noncompliance.** Atrium shall report any noncompliance with the Unauthorized Transfer 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 Atrium 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 Atrium 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, 45 L Street, NE, Washington, D.C. 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 Kathryn Hinton at Kathryn.Hinton@fcc.gov.

19. **Compliance Reports.** Atrium 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 Atrium's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Unauthorized Transfer Laws. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Atrium, stating that the Compliance Officer has personal knowledge that Atrium: (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 18 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.²⁰
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Atrium, 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 Atrium 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 Atrium 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, 45 L Street, NE, Washington, D.C. 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 Kathryn Hinton at Kathryn.Hinton@fcc.gov.

20. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 16 through 19 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

21. **Civil Penalty.** Atrium will pay a civil penalty to the United States Treasury in the amount of thirty-five thousand dollars (\$35,000) within thirty (30) calendar days of the Effective Date. Atrium 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).²¹ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Atrium 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 Kathryn Hinton at Kathryn.Hinton@fcc.gov on the date said payment is made.

22. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission's FRN Management and Financial system.²² 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:²³

- 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.²⁴ Failure to provide all required information in Form 159 may result in payment not being recognized

²⁰ 47 CFR § 1.16.

²¹ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²² Payments made using CORES do not require the submission of an FCC Form 159.

²³ 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.

²⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

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). 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find 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., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99-dollar limitation on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find 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., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, 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.** Atrium agrees that an Event of Default shall occur upon the failure by Atrium to pay the full amount of the Civil Penalty on or before 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 Atrium.

25. **Waivers.** As of the Effective Date, Atrium 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. Atrium 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 Atrium nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Atrium shall waive any statutory right to a trial *de novo*. Atrium hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁵ relating to the matters addressed in this Consent Decree.

²⁵ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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

29. **Successors and Assigns.** Atrium 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. 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.

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.

Loyaan A. Egal
Acting Chief
Enforcement Bureau

Date

Robert Mangiarelli
Chief Operating Officer
Atrium Hospitality LP

Date