

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
NorthWestern Corporation
File No.: 0009225398
Acct. No.: 2022WTB0103
FRN: 0012478665

ORDER

Adopted: July 15, 2022

Released: July 15, 2022

By the Chief, Office of Economics and Analytics and Acting Chief, Wireless Telecommunications Bureau:

1. The Wireless Telecommunications Bureau and the Office of Economics and Analytics of the Federal Communications Commission (Commission) have entered into the attached Consent Decree. This Consent Decree resolves their Investigation into whether NorthWestern Corporation (NorthWestern or Company) applied for certain licenses that, if granted, would violate the Commission’s rules. Specifically, NorthWestern failed to maintain its eligibility pursuant to certifications made by NorthWestern under section 1.2105(a)(2)(v) and (vii),¹ and grant of certain licenses on which NorthWestern bid would not comply with the Priority Access License (PAL) aggregation limit under section 96.31 of the Commission’s Rules (four-PAL aggregation limit).² The potential violation of such aggregation limit under section 96.31 would arise from attribution of PAL holdings in the same license area for both controlling interests and non-controlling interests of 10% or more in the spectrum.³

2. A primary objective of the bright-line four-PAL aggregation limit is to promote a minimum degree of ownership diversity by preventing one party from obtaining all seven available PALs in each license area, thereby “facilitat[ing] competition, innovation, and the efficient use of the 3.5 GHz band.”⁴ To avoid a possible violation of the four-PAL aggregation limit, NorthWestern will abide by the terms of the attached Consent Decree, including implementing a Compliance Plan and either (i) amending its long-form application to remove all licenses that, if granted, would cause it to exceed the four-PAL aggregation limit in an identified market, or (ii) amending its long-form application to remove enough PALs in each identified market to avoid exceeding the four-PAL aggregation limit and/or pay a civil penalty in the amount of Four Thousand Eight Hundred Forty Dollars (\$4,840.00). Frequencies that would have been authorized for use with a PAL had NorthWestern or other similarly situated applicants not agreed to the actions pursuant to the Consent Decree may be authorized for use by another eligible licensee with another PAL at a later date and, in the interim, remain immediately available for use pursuant to the applicable General Authorized Access (GAA) rules.⁵

¹ 47 CFR § 1.2105(a)(2)(v), (vii).

² 47 CFR § 96.31.

³ See 47 CFR §§ 1.2104, 96.31, 20.22(b).

⁴ For example, in the case where both winners use the licenses to provide substitute services (e.g., mobile service) in the same geographic area, a minimum of two independent winners will promote competition. Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258, Report and Order, 33 FCC Rcd 10598, 10653, para. 105 (2018) (2018 Report and Order).

⁵ See 47 CFR § 96.35(a).

3. The amendment of a long-form application to remove a license for which the applicant was the winning bidder constitutes a default pursuant to section 1.2109(c) of the Commission's rules.⁶ Under that rule, a winning bidder who defaults or is disqualified for any reason is subject to the default payments established by section 1.2104(g).⁷ Pursuant to section 1.925(a), the Commission may, however, waive specific requirements of its rules on its own motion.⁸ We find that, in view of the unique factual circumstances of this case, application of section 1.2104(g)(2) would be unduly burdensome or contrary to the public interest.⁹

4. The purpose of the default payment is to discourage a winning bidder from adopting a strategy of waiting until the actual license grant before deciding whether or not to accept the license, to the detriment of other bidders and the efficient and fair functioning of the auction process. A high bidder that does not fulfill its winning bid will delay the licensing of spectrum to others to use in the public interest. We find that applying the default payment rule to NorthWestern in these unique circumstances would not serve that purpose. In the instant case, not only can the spectrum be put to immediate use, but NorthWestern's default is based neither on a failure to pay timely its full bid amount, nor a failure to apply timely for the subject licenses. Rather, the default here is the product of the agreement reached between the Commission and NorthWestern in the Consent Decree for the purpose of enforcing the PAL aggregation limit—a resolution that includes a compliance plan, reporting obligations, savings to Commission resources that might be spent on additional enforcement efforts, and other benefits that we deem to be in the public interest. For this reason, and after reviewing the terms of the Consent Decree and evaluating the facts before us, we find that it would not serve the public interest to apply section 1.2104(g)(2) to establish a default payment for defaults on its winning bids for the Implicated Licenses under the terms of the Consent Decree.

5. Accordingly, given the unique circumstances here, we grant a waiver of section 1.2104(g)(2) to the extent that application of the rule would otherwise establish a default payment owed for defaulting with respect to winning bids for the Implicated Licenses. We note that because no default payment obligation will be established for these licenses, NorthWestern will not be a “former defaulter” for purposes of section 1.2106(a), which requires former defaulters to submit upfront payments equal to 50% more than the amount otherwise required for future auctions. That section would apply to an auction applicant that has been delinquent on a non-tax debt to a Federal agency; here, no debt has been established in this circumstance.

6. 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 NorthWestern's compliance with sections 1.2105(a)(2)(v), (vii), 96.31, and 20.22(b) of the Commission's Rules in connection with Auction 105.

7. In the absence of material new evidence relating to this matter, we conclude that our Investigation raises no substantial or material questions of fact as to whether NorthWestern possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

8. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended (Act), 47 U.S.C. §§ 154(i), 309, and sections 1.2104(g)(2), 1.2109(c), 20.22(b) and 96.31 of the Commission's Rules, 47 CFR §§ 1.2104(g)(2), 1.2109(c), 20.22(b), 96.31, and the authority delegated by sections 0.11, 0.21, 0.131, 0.231, 0.271, and 0.331 of the Commission's Rules, 47 CFR §§ 0.11, 0.21, 0.131, 0.231, 0.271, 0.331, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

⁶ 47 CFR § 1.2109(c).

⁷ 47 CFR § 1.2104(g)(2)(i)-(ii).

⁸ 47 CFR § 1.925(a).

⁹ 47 CFR § 1.925(b)(3)(ii).

9. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i) and 309 of the Act, 47 U.S.C. §§ 154(i), 309, and sections 1.925, 1.2104(g)(2), and 1.2109(c) of the Commission's Rules, 47 CFR §§ 1.925, 1.2104(g)(2), 1.2109(c), relief is granted to NorthWestern to the extent described herein. In light of this Adopting Order and the Consent Decree, no default payment obligation will be established for NorthWestern and therefore NorthWestern will not be a "former defaulter" for purposes of section 1.2106(a).

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

11. **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 Ms. Shannon M. Heim, NorthWestern Corporation, 11 East Park Street, Butte, MT 59701.

FEDERAL COMMUNICATIONS COMMISSION

Giulia McHenry
Chief
Office of Economics and Analytics

Joel Taubenblatt
Acting Chief
Wireless Telecommunications Bureau

Before the
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Washington, D.C. 20554

In the Matter of)	
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NorthWestern Corporation)	File No.: 0009225398
)	Acct. No.: 2022WTB0103
)	FRN: 0012478665
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)	

CONSENT DECREE

1. The Wireless Telecommunications Bureau and the Office of Economics and Analytics of the Federal Communications Commission, and NorthWestern Corporation (NorthWestern or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Investigation into whether NorthWestern violated sections 1.2105(a)(2)(v), (vii), 96.31, and 20.22(b) of the Rules in connection with 3.5 GHz Priority Access Licenses (PALs) won in Auction 105.¹

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.
 - (b) “Adopting Order” means an Order of the Bureau and Office adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “NorthWestern” or “Company” means NorthWestern and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (d) “Bureau” means the Wireless Telecommunications Bureau of the Federal Communications Commission.
 - (e) “Bureau and Office” means collectively the Wireless Telecommunications Bureau and the Office of Economics and Analytics of the Federal Communications Commission.
 - (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 NorthWestern is subject by virtue of its business activities.
 - (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraphs 15-18.
 - (i) “Covered Employees” means all employees and agents of NorthWestern who perform, supervise, oversee, or manage the performance of, duties that relate to NorthWestern’s responsibility to comply with section 96.31 of the Rules.

¹ 47 CFR §§ 1.2105(a)(2)(v), (vii), 96.31, 20.22(b).

- (j) “Default Penalties” means the consequences that result pursuant to the Rules when a bidder defaults on a winning bid.
- (k) “Effective Date” means the date by which the Parties have signed the Consent Decree and the Bureau and the Office have issued the Adopting Order.
- (l) “Implicated Licenses” means licenses that, if granted to NorthWestern as well as to other applicants that won PALs in the same license area, would cause NorthWestern to exceed the four-PAL aggregation limit in a given market. See the Appendix for a list of the Implicated Licenses.
- (m) “Investigation” means the Investigation commenced by the Bureau and Office during review of NorthWestern’s long-form application, Universal Licensing System (ULS) File Number 0009225398, to determine whether it violated sections 1.2105(a)(2)(v), (vii), 96.31, and 20.22(b) of the Rules with respect to the identified licenses in the attached Appendix.
- (n) “Office” means the Office of Economics and Analytics of the Federal Communications Commission.
- (o) “Operating Procedures” means the standard internal Operating Procedures and compliance policies established by NorthWestern to implement the Compliance Plan.
- (p) “Parties” means NorthWestern, the Bureau, and the Office, each of which is a “Party.”
- (q) “Rules” means the Commission’s regulations, found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 96.31(a) of the Rules limits the aggregation of PAL channels in any license area to only four at any given time.² Section 96.31(b) explains that the criteria in section 20.22(b) “will apply in order to attribute partial ownership and other interests for the purpose of applying the aggregation limit”³ The attribution Rules in section 20.22(b), in relevant part, provide that controlling interests and non-controlling interests of 10% or more in spectrum shall be attributable.⁴ Additionally, under section 1.2109(c), a “winning bidder who is found unqualified to be a licensee . . . or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in section 1.2104(g)(2) or 1.2104(g)(3) of the Rules, whichever is applicable.”⁵ Under the Rules, a former defaulter is subject to increased upfront payment requirements in future spectrum license auctions.⁶

4. On August 25, 2020, bidding concluded in Auction 105,⁷ and in September 2020, the Bureau began its review of Auction 105 long-form applications. The Bureau accepted applications for

² See 47 CFR § 96.31(a).

³ See 47 CFR § 96.31(b).

⁴ See 47 CFR § 20.22(b)(2)-(3).

⁵ See 47 CFR § 1.2109(c).

⁶ See 47 CFR § 1.2106(a), (d)-(e).

⁷ See *Auction of Priority Access Licenses in the 3550-3650 MHz Band Closes*, AU Docket No. 19-244, Public Notice, 35 FCC Rcd 9287 (OEA & WTB 2020).

filing on December 3, 2020,⁸ January 19, 2021,⁹ March 26, 2021,¹⁰ and June 23, 2021.¹¹ The Bureau granted applications on March 12, 2021,¹² April 30, 2021,¹³ July 12, 2021,¹⁴ and December 9, 2021.¹⁵

5. As part of the long-form application review process, staff compared each applicant with other applicants that won PALs in the same license area to determine whether the applicants had attributable interests pursuant to section 20.22(b) and, if so, whether the applicants would exceed the four-PAL aggregation limit upon license grant. BlackRock, Inc. (BlackRock), a private equity firm, holds a 10% or greater interest in five Auction 105 applicants.¹⁶ These five applicants were the winning bidders in overlapping license areas, and because common, non-controlling interests of 10% or more are attributable, the applied-for PALs of each of these five applicants would be attributable to each other. In total, the five applicants implicate a total of 462 PALs in 80 license areas in which the four-PAL aggregation limit would be violated if their applications were granted.

6. The Bureau and Office find good cause to reach this agreement. Granting the PALs designated for grant in the Appendix furthers the public interest by, to the extent possible, placing them in the hands of those entities that most highly value them while preserving the aggregation limit. Granting applicants relief from the application of the Rules that establish Default Penalties owed for PALs listed in the Appendix of this agreement will facilitate the use of the spectrum by enabling the grant of other PALs in the Implicated License areas or by enabling use of the spectrum for GAA. Therefore, the Bureau and Office find it is in the public interest to grant the PALs listed in the Appendix according to the terms established herein, and thus, the Parties enter into this Consent Decree.

7. The Parties negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

III. TERMS OF AGREEMENT

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

⁸ *Wireless Telecommunications Bureau Announces that Applications for Auction 105 Licenses Are Accepted for Filing*, Public Notice, 35 FCC Rcd 14080 (WTB 2020).

⁹ *Wireless Telecommunications Bureau Announces Additional Applications for Auction 105 Licenses Are Accepted for Filing*, Public Notice, 36 FCC Rcd 798 (WTB 2021).

¹⁰ *Wireless Telecommunications Bureau Announces Additional Applications for Auction 105 Licenses Are Accepted for Filing*, Public Notice, 36 FCC Rcd 5744 (WTB 2021).

¹¹ *Wireless Telecommunications Bureau Announces an Additional Application for Auction 105 Licenses Are Accepted for Filing*, Public Notice, 36 FCC Rcd 9963 (WTB 2021).

¹² *Wireless Telecommunications Bureau Grants Auction 105 Priority Access Licenses*, Public Notice, 36 FCC Rcd 4926 (WTB 2021).

¹³ *Wireless Telecommunications Bureau Grants Additional Auction 105 Priority Access Licenses*, Public Notice, 36 FCC Rcd 7633 (WTB 2021).

¹⁴ *Wireless Telecommunications Bureau Grants Additional Auction 105 Priority Access Licenses*, Public Notice, DA 21-824 (WTB July 12, 2021).

¹⁵ *Wireless Telecommunications Bureau Grants Additional Auction 105 Priority Access Licenses*, Public Notice, DA 21-1529 (WTB Dec. 9, 2021).

¹⁶ According to the five applicants' most recent Ownership Reports (FCC Form 602) on file in ULS, the percentage of BlackRock's interest in each applicant is as follows (in alphabetical order): Cable One (12.20%, *see* FCC File No. 0010091779); NorthWestern (14.70%, *see* FCC File No. 0009225384); SAL (11.65%, *see* FCC File No. 0010037270); Shenandoah (13.75%, *see* FCC File No. 0009224371); and US Cellular (16.70%, *see* FCC File No. 0010041382).

9. **Jurisdiction.** NorthWestern agrees that the Bureau and the Office have jurisdiction over NorthWestern and the matters contained in this Consent Decree and have the authority to enter into and adopt this Consent Decree.

10. **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.

11. **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 and Office agree to terminate their Investigation into matters described in paragraphs 1-7. In consideration for the termination of the Investigation, NorthWestern agrees to the terms, conditions, and procedures contained herein. In the absence of new material evidence, the Bureau and the Office agree that the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, will not be used to institute any new proceeding on its own motion against NorthWestern concerning the matters that were the subject of the Investigation, or to set for hearing the question of NorthWestern'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.

12. **Admissions.** NorthWestern acknowledges that grant of the Implicated Licenses in its Auction 105 long-form application, without taking the actions set forth in this Consent Decree, would have otherwise created a violation of section 96.31, rendering the application defective under section 1.2109(c) with respect to those Implicated Licenses. NorthWestern further acknowledges that, absent it taking the actions set forth in this Consent Decree, it would have defaulted on such licenses and would have been subject to the Default Penalties.

13. **Settlement Negotiation.**

- (a) **Action on long-forms.** The Bureau and Office agree to grant the licenses for markets that, after the Investigation, have not been identified as violating section 96.31(a) once granted. These licenses are identified in the Appendix.¹⁷
- (b) **Withdrawal of pending actions.** NorthWestern agrees to withdraw any pending Auction 105-related requests for relief, including but not limited to waiver requests.
- (c) **Default Penalties.** The Bureau and Office agree to relieve NorthWestern from the application of the Rules that would otherwise impose the Default Penalties on NorthWestern associated with defaulting on the Implicated Licenses identified in the Appendix.¹⁸
- (d) **Certification.** NorthWestern certifies that it has not had any communications with other Auction 105 applicants that have Auction 105 long-form applications pending or BlackRock since January 25, 2022, regarding any aspect of the potential four-PAL aggregation limit violation, any settlement discussions with the Commission, and/or allocation of markets or licenses. NorthWestern also certifies that, to the best of its knowledge and understanding, BlackRock has not communicated with any Auction 105 applicant that has an Auction 105 long-form application pending regarding these topics since January 25, 2022.

¹⁷ The application also includes other licenses not covered by the Investigation and hence not covered by this Consent Decree. The Commission plans to grant those other licenses on the same day as the licenses identified in the Appendix.

¹⁸ See 47 CFR §§ 1.2104(g)(2); 1.2106(d)-(e). In light of this Consent Decree, no default payment will be assessed against NorthWestern and therefore NorthWestern will not be a "former defaulter" for purposes of 47 CFR § 1.2106(a).

14. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, NorthWestern 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 NorthWestern 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 section 96.31 and the procedures necessary to implement the Compliance Plan detailed herein before assuming their duties.

15. **Compliance Plan.** For purposes of settling the matters set forth herein, NorthWestern agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with section 96.31 and with the terms and conditions of this Consent Decree. NorthWestern will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, NorthWestern shall establish Operating Procedures that all Covered Employees must follow to ensure NorthWestern's compliance with section 96.31 and this Consent Decree, and the Compliance Officer shall certify that such Operating Procedures have been established. NorthWestern's Operating Procedures shall include internal procedures and policies specifically designed to ensure that NorthWestern complies with section 96.31 and this Consent Decree.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees and certify that such distribution has been completed.
 - i. The Compliance Manual shall explain the requirements of section 96.31 and this Consent Decree, and set forth the Operating Procedures that Covered Employees shall follow to ensure NorthWestern's compliance with section 96.31 and this Consent Decree. NorthWestern shall distribute any revisions to the Compliance Manual to all Covered Employees within thirty (30) calendar days of making such revisions.
- (c) **Compliance Training Program.** NorthWestern shall establish and implement a Compliance Training Program on compliance with section 96.31 and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of NorthWestern's reporting obligations under paragraphs 16-18 of this Consent Decree and shall be instructed on how to disclose noncompliance with section 96.31 and/or the Operating Procedures to the Compliance Officer or his designees. All Covered Employees shall be trained pursuant to the Compliance Training program within six (6) months after the Effective Date, and, 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. NorthWestern 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. Six (6) months after the Effective Date, the Compliance Officer shall certify that such a training program has been established.
- (d) **Investor Notification.** NorthWestern shall send a copy of this Order and Consent Decree to each of NorthWestern's existing investors, in addition to those entities and individuals that become investors after the Effective Date, that have attributable interests in NorthWestern, as defined by the Rules.

16. **Reporting Noncompliance.** NorthWestern shall report any violations of section 96.31 and noncompliance 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 known instance of noncompliance; (ii) the steps that NorthWestern has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) steps that NorthWestern has taken or will take to prevent the recurrence of any such noncompliance.

17. **Compliance Reports.** NorthWestern shall file compliance reports with the Commission 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 NorthWestern's efforts during the relevant period to comply with the terms and conditions of this Consent Decree. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of NorthWestern, stating that the Compliance Officer has personal knowledge that NorthWestern: (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 paragraphs 16-18 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.¹⁹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of NorthWestern, 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 NorthWestern 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 NorthWestern 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 by July 17, 2023, July 16, 2024, and July 16, 2025.

18. **Filings.** All certifications pursuant to paragraph 15, reports of noncompliance pursuant to paragraph 16, and all Compliance Reports pursuant to paragraph 17 shall be filed with the Bureau by choosing a lead, active license call sign and uploading the Report as a "Pleading" to that license via the Bureau's Universal Licensing System at <https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp>. At that link, NorthWestern must select Pleading Type = "Status Report" and may select Attachment Type = "Confidential Pleading" if making a request under section 0.459 of the Rules that materials be withheld from public inspection.

19. **Termination Date.** The requirements set forth in paragraphs 14 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Civil Penalties.** A civil penalty will apply to each Implicated Market identified in the Appendix in which only a single Implicated License was won by NorthWestern.

¹⁹ See 47 CFR § 1.16.

21. NorthWestern will pay a civil penalty to the United States Treasury in the amount of Four Thousand Eight Hundred Forty Dollars (\$4,840.00) within thirty (30) calendar days after the Effective Date. NorthWestern shall send electronic notification of payment to Nina Shafran, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission at Nina.Shafran@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, or by wire transfer using the Commission's Registration System (the Commission's FRN Management and Financial system).²⁰ 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:²¹

- 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).²² 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) website at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, 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" 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 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) website at <https://apps.fcc.gov/cores/userLogin.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.

22. **Waivers.** As of the Effective Date, NorthWestern 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, Adopting Order, or any action the Bureau and/or the Office

²⁰ Payments made using CORES do not require the submission of an FCC Form 159.

²¹ 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.

²² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

take on NorthWestern's Auction 105 long-form application pursuant to this Consent Decree. NorthWestern 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 NorthWestern nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NorthWestern shall waive any statutory right to a trial *de novo*. NorthWestern hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²³ relating to the matters addressed in this Consent Decree.

23. **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.

24. **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.

25. **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 NorthWestern does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

29. **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.

30. **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.

²³ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

31. **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.

For the Commission:

Giulia McHenry, Chief
Office of Economics and Analytics

Date:

Joel Taubenblatt, Acting Chief
Wireless Telecommunications Bureau

Date:

For NorthWestern Corporation:

Shannon M. Heim
Director, Regulatory Corporate Counsel
NorthWestern Corporation

Date:

Appendix

**PRIORITY ACCESS LICENSES
TO BE GRANTED BY MARKET
AUCTION ID: 105
NORTHWESTERN CORPORATION – FCC FILE NO. 0009225398
DATE OF REPORT: February 23, 2022**

Legal Entity Name	Market Number	Market Description
NorthWestern Corporation	D30007	BROADWATER, MT
NorthWestern Corporation	D30023	DEER LODGE, MT
NorthWestern Corporation	D30039	GRANITE, MT
NorthWestern Corporation	D30043	JEFFERSON, MT
NorthWestern Corporation	D30047	LAKE, MT
NorthWestern Corporation	D30073	PONDERA, MT
NorthWestern Corporation	D30077	POWELL, MT
NorthWestern Corporation	D30093	SILVER BOW, MT