

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

In the Matter of)	
)	
Spectrum IVDS, LLC)	
)	File No. 0002010282
Request for Reconsideration of License Renewal)	
and Reinstatement of the 218-19 MHz Service B)	
Block License for Market IVM005, Detroit/Ann)	
Arbor, Michigan, Call Sign KIVD0019)	
)	

ORDER

Adopted: July 21, 2011

Released: July 22, 2011

By the Commission: Commissioner Copps issuing a statement.

1. This Order adopts and ratifies the attached Settlement Agreement between the Federal Communications Commission and Spectrum IVDS, LLC. The Settlement Agreement resolves the dispute currently pending before the United States Court of Appeals for the District of Columbia Circuit in *Spectrum IVDS, LLC v. FCC*, No. 10-1264 (D.C. Cir. filed Aug. 26, 2010).

2. After reviewing the terms of the Settlement Agreement, and evaluating the facts before us, we find that the public interest would be served by adopting the Settlement Agreement.

3. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), (j), that the attached Settlement Agreement **IS ADOPTED** and shall become effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT

Settlement Agreement

I. INTRODUCTION

1. The Federal Communications Commission and Spectrum IVDS, LLC, by their authorized representatives, hereby enter into this Settlement Agreement for the purpose of resolving the dispute pending before the United States Court of Appeals for the District of Columbia Circuit in *Spectrum IVDS, LLC v. FCC*, No. 10-1264 (D.C. Cir. filed Aug. 26, 2010). By entering into this Settlement Agreement, the Parties seek to avoid the costs and uncertainties entailed by further litigation of that case.

II. DEFINITIONS

2. For the purpose of this Settlement Agreement, the following definitions shall apply:

- (a) “Act” means the Communications Act of 1934, *as amended*, 47 U.S.C. § 151 *et seq.*;
- (b) “Approval Order” means an order by the FCC approving the terms of this Settlement Agreement;
- (c) “Commission” or “FCC” means the Federal Communications Commission;
- (d) “Construction NT” means construction notification;
- (e) “Final Order” means an FCC order that is no longer subject to administrative review by the Commission or review by any court;
- (f) “License” means the wireless license for station KIVD 0019, the subject of File No. 0002010282;
- (g) “Parties” means the FCC and Spectrum IVDS, LLC;
- (h) “Spectrum IVDS” means Spectrum IVDS, LLC;
- (i) “*Spectrum IVDS Appeal*” means *Spectrum IVDS, LLC v. FCC*, No. 10-1264 (D.C. Cir. filed Aug. 26, 2010).

III. BACKGROUND

3. In the *Spectrum IVDS Appeal*, Spectrum IVDS challenges the FCC’s order affirming the Wireless Telecommunications Bureau’s decision that Spectrum IVDS had defaulted under an installment debt payment plan, thereby causing its license for station KIVD 0019 to cancel automatically and become ineligible for renewal. *See Spectrum IVDS, LLC Request for Reconsideration of License Renewal and Reinstatement of the 218-219 MHz Service B Block License for Market IVM005, Detroit/Ann Arbor, Michigan, Call Sign KIVD0019*, Memorandum Opinion and Order, 25 FCC Rcd 10457 (2010), *appeal docketed sub nom. Spectrum IVDS LLC v. FCC*, No. 10-1264 (D.C. Cir. filed Aug. 26, 2010). After initial briefs were filed in the *Spectrum IVDS Appeal*, the Parties by joint motion informed the Court of Appeals that they had reached a tentative settlement that may moot the appeal and asked the Court to suspend the remainder of the briefing schedule and oral argument pending further discussions. On February 14, 2011, the Court granted that joint motion and ordered the case be held in abeyance pending

its further order. The Parties now memorialize in this Settlement Agreement the terms and conditions of their settlement.

IV. TERMS OF AGREEMENT

4. The Parties agree that the provisions of this Settlement Agreement shall not take effect unless and until the FCC releases an Approval Order by a majority vote of a quorum of the Commissioners.

5. No later than 45 days after the Approval Order becomes a Final Order, Spectrum IVDS shall tender a payment to the FCC, according to the attached instructions on making payment by wire transfer, in the amount of the sum equivalent to Spectrum IVDS's October 2004 license installment payment plus applicable late fees specified in Section 1.2110(g)(4)(i) and (ii) of the Commission's Rules, which the Parties agree is a total amount of \$81,014.47.

6. In addition to the payment described in paragraph 5, no later than 135 days after the Approval Order becomes a Final Order, Spectrum IVDS shall tender an additional payment to the FCC, according to the attached instructions on making payment by wire transfer, in the amount of the sum equivalent to Spectrum IVDS's January 2005 license installment payment plus applicable late fees specified in Section 1.2110(g)(4)(i) and (ii) of the Commission's Rules, which the Parties agree is a total amount of \$80,827.29.

7. The deadline for the payments specified in paragraphs 5 and 6 herein will not be enlarged by any grace period or other computational method, except that if the payment due date falls on a Saturday, Sunday or officially recognized Federal legal holiday, the payment shall be made no later than the next business day.

8. Spectrum IVDS's failure to pay either or both of the payments specified in paragraphs 5 and 6 herein in full and in a timely manner will render this Settlement Agreement null and void, and vitiate any obligation by the FCC to take the steps specified in Paragraph 9 herein.

9. Upon timely receipt of both payments identified in paragraphs 5 and 6: (1) the cancellation of the License shall be immediately nullified by the FCC; and (2) Spectrum IVDS's application for a ten-year license renewal¹ and its Construction NT² shall be immediately returned to pending status *nunc pro tunc*. The FCC shall thereafter process Spectrum IVDS's renewal application and Construction NT in the normal course of business, applying the agency's policies and rules governing those filings. Approval of Spectrum IVDS's renewal application will be contingent upon a showing by Spectrum IVDS that it currently satisfies relevant FCC renewal policies and rules. As part of this showing, Spectrum IVDS must, no later than 90 days after the nullification of the license cancellation and the reinstatement of the renewal application and Construction NT, supplement these filings with information affirmatively demonstrating that it currently is in compliance with the renewal and construction requirements, including the requirement that it currently provides "substantial service" within the service area consistent with 47 C.F.R. §§ 95.831, 95.833. *See also Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497, 1537-38 ¶ 70 (1999) (setting forth "safe harbor" examples that would demonstrate compliance with the substantial service requirement). Upon receipt of the supplement, the FCC will place the renewal application and supplement on public notice as accepted for filing. Failure by Spectrum IVDS to timely supplement the renewal and construction filings will result in dismissal of Spectrum IVDS's renewal application and Construction NT.

¹ ULS File No. 0002010282

² ULS File No. 0002010428

10. After the Approval Order becomes a Final Order and Spectrum IVDS thereafter makes both payments specified in paragraphs 5 and 6 herein, upon the FCC's nullification of the cancellation of Spectrum IVDS's license and the FCC's reinstatement of Spectrum IVDS's renewal application and Construction NT to pending status, Spectrum IVDS shall within two business days file in the United States Court of Appeals for the District of Columbia Circuit a motion for voluntary dismissal, with prejudice, of the *Spectrum IVDS* case.

11. The Parties agree and acknowledge that, once implemented, this Settlement Agreement will constitute a final settlement of the issues the Parties raised, or could have raised, in the *Spectrum IVDS Appeal*. The Parties agree that this Settlement Agreement does not constitute either an adjudication on the merits of, or a factual or legal finding or determination regarding, any compliance or noncompliance with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Settlement Agreement is for settlement purposes only, and that by agreeing to this Settlement Agreement, the Parties do not admit or deny any noncompliance, violation or liability associated with or arising from their actions or omissions involving the Act or the Commission's rules that are the subject of this Settlement Agreement.

12. Upon implementation of this Settlement Agreement, Spectrum IVDS agrees to release all claims against the FCC in connection with the subject matter of the *Spectrum IVDS* case, including claims for attorneys' fees.

13. This Settlement Agreement cannot be modified without the advance written consent of both parties.

14. This Settlement Agreement may be signed in counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

15. Each party represents and warrants to the other that it has full power and authority to enter into this Settlement Agreement.

For: Spectrum IVDS, LLC

For: Federal Communications Commission

Craig Siebert
Managing Member
Spectrum IVDS, LLC

Austin C. Schlick
General Counsel
Federal Communications Commission

Date

Date

WIRE TRANSFER INSTRUCTIONS

**FEDERAL COMMUNICATIONS COMMISSION
445 12TH STREET, SW
WASHINGTON, D.C. 20554**

MAKING PAYMENTS BY WIRE TRANSFER:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item)

APPLICANT NAME: (same as FCC Form 159, block 13)

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "**AMSC**")

PAYOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: **#979088**

FCC Form 159 – U.S. Bank

All payments must be in US Dollars and by Wire Transfer. Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis Missouri at (314) 418-4232 **at least one hour before initiating the wire transfer** (but on the same business day).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

In the Matter of Spectrum IVDS, LLC: Request for Reconsideration of License Renewal and Reinstatement of the 218-19 MHz Service B Block License for Market IVM005, Detroit/Ann Arbor, Michigan, Call Sign KIVD0019, Order, File No. 0002010282

Sometimes all is well that ends well. Today we approve a settlement with Spectrum IVDS that will allow it to keep its license if it pays its remaining balance and can show that it will meet the Commission's requirements for license renewal. Those are important caveats, but it puts the company in a better position than it was last year when the Commission voted – over my dissent – to affirm that the company had defaulted on its payment plan. I pointed out then that the Commission played a role in confusing the company on the critical question of when its installment payments were due. Today's action will save both parties time in court and remove uncertainty over the license. That's good news for all of us.