

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

In the Matter of)	File Nos.: EB-10-SE-121
)	EB-09-SE-161
Smith Bagley, Inc.)	
dba Cellular One)	Acct. No.: 201232100037
)	
)	FRN: 0002154706
)	

ORDER

Adopted: August 14, 2012

Released: August 14, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Smith Bagley, Inc. dba Cellular One (Smith Bagley). The Consent Decree resolves and terminates the Bureau’s investigations into Smith Bagley’s compliance with Sections 20.19(c)(3) and 20.19(d)(3) of the Commission’s rules (Rules)¹ pertaining to the deployment of hearing aid-compatible digital wireless handsets.

2. The Bureau and Smith Bagley have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. 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 investigations.

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

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,² and Sections 0.111 and 0.311 of the Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. § 20.19(c)(3), (d)(3).

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigations **ARE TERMINATED**.

7. **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 Louise Finnegan, Chief Executive Officer, Smith Bagley, Inc. dba Cellular One, 500 South White Mountain Road, Suite 103, Show Low, AZ 85901 and to David LaFuria, Esq. and Todd Slamowitz, Esq., counsel for Smith Bagley, Inc. dba Cellular One, Lukas, Nace, Gutierrez & Sachs, LLP, 8300 Greensboro Drive, Suite 1200, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

Before the
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Smith Bagley, Inc. dba Cellular One, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigations into possible violations of Sections 20.19(c)(3) and 20.19(d)(3) of the Commission’s rules¹ pertaining to the deployment of digital wireless hearing aid-compatible handsets.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Smith Bagley is subject by virtue of its business activities, including but not limited to, the Hearing Aid Compatibility Rules.
 - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
 - (g) “Covered Employees” means all employees and agents of Smith Bagley who perform, or supervise, oversee, or manage the performance of, duties that relate to Smith Bagley’s responsibilities under the Hearing Aid Compatibility Rules.

¹ 47 C.F.R. § 20.19(c)(3), (d)(3).

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Hearing Aid Compatibility Rules” means Section 20.19 of the Rules and other Communications Laws governing digital wireless hearing aid compatibility, such as the Rules governing the design, selection, or acquisition of digital wireless handsets and the marketing or distribution of such handsets to consumers in the United States.
- (j) “Investigations” means collectively, the 2008 Reporting Period Investigation and the 2009 Reporting Period Investigation.
- (k) “NAL” means the Notice of Apparent Liability for Forfeiture issued by the Commission against Smith Bagley on November 25, 2009.²
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Smith Bagley to implement the Compliance Plan.
- (m) “Parties” means Smith Bagley and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code Federal Regulations.
- (o) “Smith Bagley” means Smith Bagley, Inc. dba Cellular One and its predecessors-in-interest and successors-in-interest.
- (p) “2008 Reporting Period Investigation” means the investigation initiated by the Bureau regarding Smith Bagley’s deployment of digital wireless hearing aid-compatible handset models during the July 1, 2008, to December 31, 2008, reporting period, which culminated in the issuance of the *NAL*.
- (q) “2009 Reporting Period Investigation” means the investigation commenced by the Bureau’s October 1, 2010, letter of inquiry³ regarding Smith Bagley’s deployment of digital wireless hearing aid-compatible handset models during the January 1, 2009, to December 31, 2009, reporting period.

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.⁴ The

² See *Smith Bagley, Inc. dba Cellular One of NE Arizona*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14113 (Enf. Bur. 2009).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Zechariah H. Crook, Handset Development Coordinator, Smith Bagley, Inc. (Oct. 1, 2010) (on file in EB-10-SE-121).

⁴ The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, Pub. L. No. 100-394, 102 Stat. 976 (codified at 47 U.S.C. §§ 609 note, 610, 610 note). See *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16787, para. 89 (2003); Erratum, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005).

Commission established technical standards for radio frequency interference (the M rating) and inductive coupling (the T rating)⁵ that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes, respectively. For each of these standards, the Commission further established deadlines by which manufacturers and service providers must offer specified numbers or percentages of digital wireless handsets per air interface⁶ that are compliant with the relevant standard.⁷ In February 2008, as part of a comprehensive reconsideration of the effectiveness of the Hearing Aid Compatibility Rules, the Commission released an order that, among other things, adopted new hearing aid-compatible handset deployment benchmarks beginning in 2008.⁸

3. Smith Bagley provides commercial mobile wireless service in Arizona, New Mexico, and Utah, and has extensive wireless coverage throughout Native American lands, including federally recognized tribal lands such as the Navajo Nation and the White Mountain Apache Indian Reservation. On January 15, 2009, Smith Bagley submitted its annual hearing aid compatibility status report for the July 1, 2008, to December 31, 2008, reporting period.⁹ On August 6, 2009, Smith Bagley filed an amendment to its January 15, 2009, annual hearing aid compatibility status report in response to an

⁵ As subsequently amended, Section 20.19(b)(1) provides that, for the period beginning June 6, 2008, and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it meets the M3 rating associated with the technical standard set forth in either the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2006 (June 12, 2006) or ANSI C63.19-2007 (June 8, 2007). Beginning January 1, 2010, a newly certified handset must meet at least an M3 rating under ANSI C63.19-2007 to be considered hearing aid-compatible for radio frequency interference. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning June 6, 2008, and ending December 31, 2009, a newly certified wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard as set forth in ANSI C63.19-2006 or ANSI C63.19-2007, and beginning January 1, 2010, it is deemed hearing aid-compatible for inductive coupling if it meets at least a T3 rating under ANSI C63.19-2007. *Id.* § 20.19(b)(2). Grants of certification issued before June 6, 2008, under previous versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. A recently adopted further amendment to Section 20.19(b) of the Rules will permit manufacturers to test handsets for hearing aid compatibility using the 2011 version of the ANSI standard (ANSI C63.19-2011) as an alternative to ANSI C63.19-2007. *See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732 (WTB/OET 2012).

⁶ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Digital Enhanced Network (iDEN), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁷ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780, para. 65; 47 C.F.R. § 20.19(c), (d).

⁸ *See Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406 (2008); Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). These handset deployment requirements do not apply to service providers and manufacturers that meet the *de minimis* exception. The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements, and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or mobile service providers that do not meet the definition of a “small entity” beginning two years after their initial offerings. *Id.* § 20.19(e)(1)(ii); *see also Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-89, paras. 35-59 (2010).

⁹ *See Smith Bagley, Inc., Hearing Aid Compatibility Status Report*, Docket No. 07-250 (Jan. 15, 2009), at <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520193537>.

inquiry from the Wireless Telecommunications Bureau (Wireless Bureau).¹⁰ On September 16, 2009, the Wireless Bureau referred Smith Bagley's apparent violations of the hearing aid-compatible digital wireless handset deployment requirements during the July 1, 2008, to December 31, 2008, reporting period to the Bureau for investigation and possible enforcement action. On November 25, 2009, the Bureau's Spectrum Enforcement Division (Division) released the *NAL* against Smith Bagley for its apparent willful and repeated violation of Section 20.19(c)(3) of the Rules by apparently failing to offer to consumers the requisite number or percentage of digital wireless handset models that met or exceeded the radio frequency interference standards for hearing aid compatibility set forth in Section 20.19(b)(1) of the Rules.¹¹

4. On January 21, 2010, Smith Bagley submitted its annual hearing aid compatibility status report for the January 1, 2009, to December 31, 2009, reporting period.¹² On August 12, 2010, the Wireless Bureau referred Smith Bagley's apparent violations of the hearing aid-compatible digital wireless handset deployment requirements during the 2009 reporting period to the Bureau for investigation and possible enforcement action. On October 1, 2010, the Division issued a letter of inquiry (LOI) to Smith Bagley.¹³ The LOI directed Smith Bagley to submit a sworn written response to a series of questions related to Smith Bagley's compliance with Sections 20.19(c)(3) and 20.19(d)(3) of the Rules. Smith Bagley responded to the LOI on October 21, 2010.¹⁴ In its LOI Response, Smith Bagley claimed that in 2009 the company had procedures in place to ensure compliance with the hearing aid-compatible handset deployment requirements.¹⁵ Smith Bagley also argued that as a Tier III rural GSM carrier, it relies on third-party vendors who do not always convey accurate hearing aid compatibility information.¹⁶ The Bureau and Smith Bagley entered into tolling agreements to toll the statute of limitations,¹⁷ and negotiated the terms of this Consent Decree.¹⁸

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

¹⁰ See Smith Bagley, Inc., Amendment to Hearing Aid Compatibility Status Report, Docket No. 07-250 (Aug. 6, 2009), at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7019934625>.

¹¹ See *NAL*, 24 FCC Rcd at 14118, paras. 12-13.

¹² See Smith Bagley, Inc., Hearing Aid Compatibility Report, Docket No. 07-250 (Jan. 21, 2010), at http://wireless.fcc.gov/hac_documents/100317/Smith%20Bagley%20INC_51.PDF.

¹³ See *supra* note 3.

¹⁴ See Letter from David A. LaFuria, Esq. and Todd Slamowitz, Esq., counsel for Smith Bagley, Inc., Lukas, Nace, Gutierrez & Sachs, LLP, to Marlene H. Dortch, FCC (Oct. 21, 2010) (on file in EB-10-SE-121) (LOI Response).

¹⁵ *Id.* at 2.

¹⁶ *Id.*

¹⁷ See, e.g., Tolling Agreement Extension, File No. EB-10-SE-121, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Gayle L. Gouker, Chief Financial Officer, Smith Bagley, Inc. (Apr. 16, 2012).

¹⁸ The Bureau analyzed Smith Bagley's possible violations of Sections 20.19(c)(3) and 20.19(d)(3) of the Rules consistent with the new base forfeiture calculation methodology set forth in the Commission's recent T-Mobile decision (see *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4405 (2012)) and applied the statutory factors set forth in Section 503(b)(2)(E) of the Act. We also took into consideration the fact that settlement negotiations over the terms of this Consent Decree were nearly complete prior to the release of the T-Mobile decision.

6. **Jurisdiction.** Smith Bagley agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **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 Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigations.** 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 Investigations. In consideration for the termination of the Investigations, Smith Bagley agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Smith Bagley concerning the matters that were the subject of the Investigations. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in these Investigations through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Smith Bagley with respect to Smith Bagley's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Smith Bagley 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 Smith Bagley 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/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Hearing Aid Compatibility Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Smith Bagley 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 Hearing Aid Compatibility Rules, Smith Bagley shall implement the following procedures:

- (a) **Operating Procedures on Hearing Aid Compatibility.** Within sixty (60) calendar days after the Effective Date, Smith Bagley shall establish Operating Procedures that all Covered Employees must follow to help ensure Smith Bagley's compliance with the Hearing Aid Compatibility Rules. Smith Bagley's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Smith Bagley offers the requisite number or percentage of hearing aid-compatible digital wireless handset models to consumers as required by the Hearing Aid Compatibility Rules. Smith Bagley also shall develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure that the inclusion of a new handset model, or discontinuance of an existing handset model offering, will not result in a violation of the

Commission's digital wireless hearing aid-compatible handset deployment requirements. At a minimum, the Compliance Checklist shall require Covered Employees to verify the hearing aid compatibility rating of each existing and proposed handset model offering using the Commission's equipment authorization database.

- (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 Hearing Aid Compatibility Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Smith Bagley's compliance with the Hearing Aid Compatibility Rules. Smith Bagley shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Smith Bagley shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Smith Bagley shall establish and implement a Compliance Training Program on compliance with the Hearing Aid Compatibility Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Smith Bagley's obligation to report any noncompliance with the Hearing Aid Compatibility Rules under paragraph 11 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 Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Smith Bagley shall repeat the 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.
- (d) **Outreach Program.** As more fully described in Smith Bagley's proposal and presentation to the Bureau on May 4, 2012 (which is incorporated herein by reference), within sixty (60) calendar days after the Effective Date, Smith Bagley shall implement a comprehensive hearing aid compatibility outreach program to residents of Navajo County and Apache County, Arizona, targeting consumers who are undergoing hearing diagnostics or other examinations for hearing problems and may need a hearing aid. The purpose of the outreach program will be to educate these consumers about the ratings and capabilities of hearing aid-compatible digital wireless handset models and to help ensure that these consumers have access to reliable information about the hearing aid-compatible handset model most suited to their hearing aid or other assistive device. Smith Bagley represents that it will partner with a local audiology services provider, White Mountain Hearing Services, L.L.C. (WMHS), which offers hearing care services in the target counties. As part of the outreach program, Smith Bagley shall make available at the WMHS clinic a full range of its hearing aid-compatible handset models which comply with the Commission's wireless hearing aid compatibility rules, provide assistance to WMHS staff concerning the demonstration and testing of the handset models, and provide a sizeable discount to the target consumers toward the purchase of any new hearing aid-compatible wireless handset. Smith Bagley shall implement the outreach program as

described herein and in its presentation to the Bureau and shall widely publicize the availability of the program to the residents of Navajo and Apache Counties and of nearby Native American tribal reservations via its website and other means as appropriate to reach the target population.

11. **Reporting Noncompliance.** Smith Bagley shall report any noncompliance with the Hearing Aid Compatibility 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 Smith Bagley 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 Smith Bagley has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

12. **Compliance Reports.** Smith Bagley shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of Smith Bagley's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Hearing Aid Compatibility Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Smith Bagley, stating that the Compliance Officer has personal knowledge that Smith Bagley (i) has established and implemented the Compliance Plan; (ii) has conducted the Outreach Program as set forth in paragraph 10(d); (iii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iv) 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 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules¹⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Smith Bagley, 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 Smith Bagley 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 Smith Bagley 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, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted

¹⁹ 47 C.F.R. § 1.16.

electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 9 through 12 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

14. **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 Act against Smith Bagley 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 complaints 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 Smith Bagley with the Communications Laws.

15. **Voluntary Contribution.** Smith Bagley agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixty-five thousand dollars (\$65,000) within thirty (30) calendar days after the Effective Date. Smith Bagley shall also send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov and to Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** Smith Bagley 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, provided the Bureau issues an Adopting Order as defined herein. Smith Bagley shall retain the right to challenge Commission interpretation of the Consent Decree

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Adopting Order, neither Smith Bagley nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Smith Bagley shall waive any statutory right to a trial *de novo*. Smith Bagley hereby agrees to waive any claims it may have under the Equal Access to Justice Act,²¹ relating to the matters addressed in this Consent Decree.

17. **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.

18. **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 Smith Bagley does not expressly consent), that provision will be superseded by such Rule or Commission order.

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

20. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigations. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

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

22. **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.

23. **Authorized Representative**. The individual signing this Consent Decree on behalf of Smith Bagley represents and warrants that he is authorized by Smith Bagley to execute this Consent Decree and to bind Smith Bagley to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

²¹ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

24. **Counterparts.** This Consent Decree may be signed in any number of 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.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Louise Finnegan
Chief Executive Officer
Smith Bagley, Inc. dba Cellular One

Date