

Consent Decree

I. Introduction

1. This Consent Decree is entered into by the Enforcement Bureau of the Federal Communications Commission (“Bureau”) and Enron Corp. (“Enron”).¹

II. Background

2. Enron is a large diversified corporation that markets electricity and natural gas; delivers physical commodities and financial and risk management services to customers around the world; and has developed an intelligent network platform to facilitate online business. Its revenues in 2000 were \$101 billion.

3. Enron has hundreds of affiliates and subsidiaries, and among these companies, Enron holds hundreds of FCC licenses. These licenses are primarily for private land mobile radio and fixed non-commercial microwave facilities used in connection with the operation of Enron’s gas pipelines and other industrial facilities. Only one subsidiary, Enron Broadband Services, Inc., holds FCC licenses and authorizations used in the provision of communications services. In the normal course of business, Enron also frequently engages in corporate transactions regarding its energy operations, including the acquisition and disposition of companies that hold FCC radio licenses used for intracorporate communications. Until the date of this Consent Decree, oversight of FCC approvals required in connection with any such transactions was decentralized among Enron’s various affiliates and subsidiaries. In some cases, the prior approvals required under Section 310(d) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 310(d), for transfers of control or assignments of FCC licenses were not timely obtained. These failures were first discovered by Enron in connection with the transfer of control of licenses held by Portland General Electric Company (“PGE”) as a result of the 1977 merger of PGE’s parent company, Portland General Corporation (“PGC”) with Enron. On its own, Enron filed an initial set of applications in August 1998 and a second set in November 2000 for *nunc pro tunc* approval of the 1997 transaction involving wireless facilities in the land mobile, microwave, marine coastal, ship, and aircraft services.² These applications were granted by the staff of the Commission’s Wireless Telecommunications Bureau. However, the circumstances prompted the Commission’s Enforcement Bureau to require that Enron enter into this Consent Decree.

4. In preparation for entry into this Consent Decree, Enron has voluntarily undertaken a comprehensive internal review of all transactions involving the acquisition of FCC licenses by Enron subsidiaries and affiliate companies by either transfer of control or assignment, and has taken all necessary remedial action to ensure that all approvals for such transfers of control and assignments have been obtained. The following is a list of the transactions identified by Enron in its internal review and now incorporated by reference into this Consent Decree:

¹ Enron filed for Chapter 11 bankruptcy protection on December 2, 2001, and is currently operating as a Debtor-in-Possession.

² Licenses in the ship and aircraft services are not transferable, pursuant to Section 1.948(b)(5) of the Commission’s rules, 47 C.F.R. § 1.948(b)(5).

a. **Licensee: Portland General Electric (Transfer of control from Portland General Corporation; Aircraft and Ship Licenses).** As described above, control of several licenses held by PGE were transferred to Enron in 1997 without prior FCC approval through the merger of PGE's parent company, PGC, with Enron Corp. In September 1998, on its own initiative, Enron submitted applications to the FCC for approval, *nunc pro tunc*, of the transfer of control of 27 of the licenses. These applications were approved on January 25, 1999. In November 2000, Enron filed applications again on its own motion to transfer control of an additional 69 licenses.³ All of these applications also have been approved. The audit conducted in connection with this Consent Decree identified one additional license for which an application previously had been filed but, according to the FCC's ULS database, had not been effectively transferred. Therefore, another application for *nunc pro tunc* approval of the transfer of control of that license was submitted on December 19, 2001. Additionally, the licensee holds ship and aircraft licenses, which may not be transferred. Applications for new ship and aircraft licenses were filed on December 19, 2001.⁴

b. **Licensee: Enron Corp. d/b/a Zond Maintenance Corp (Transfer of control from Zond Corporation, Name Change to Enron Wind Maintenance and Aircraft Licenses).** In January 1997, Zond Corporation ("Zond"), the parent company of Zond Maintenance Corporation ("Zond Maintenance") was acquired by Enron Renewable Energy Corp., which at the time was 78% owned by Enron Corp. Subsequently, the corporate name of Zond was changed to Enron Wind Corp. and the corporate name of the licensee was changed to Enron Wind Maintenance Corp. One call sign, originally held by Zond Maintenance, was not effectively transferred to Enron, and appeared in the FCC's database under the licensee name "Enron Corp d/b/a/ Zond Maintenance Corp." An application for *nunc pro tunc* approval of the transfer of control of that license was submitted on December 19, 2001. Simultaneously, an administrative change was requested to correct the name of the licensee. Additionally, the licensee holds two aircraft call signs, which may not be transferred. New applications for aircraft licenses were submitted on December 19, 2001.

c. **Licensee: Limbach Company (Transfer of Control from Anjou International Company).** On March 3, 1998, Artemis Associates, LLC, indirectly 100% owned by Enron, took control from Anjou International Company of the latter's subsidiary, Limbach Holdings, Inc., the ultimate parent of licensee Limbach Company ("Limbach"). Limbach holds licenses for private land mobile radio facilities. Prior approval for the transfer of control of four licenses was not obtained. Applications for *nunc pro tunc* approval of the transfers of control were submitted on December 19, 2001.

d. **Licensee: Bridgeline Holdings, L.P. (Assignment of Authorizations from Louisiana Resources Company).** On February 3, 2000, the assets of Louisiana Resources Company ("Louisiana Resources"), indirectly 100% owned by Enron, along with licenses for microwave and private radio facilities, were contributed to a new partnership, Bridgeline Holdings, L.P., ("Bridgeline"). Bridgeline is 40% owned and 50% controlled by Enron and 60% owned and 50%

³ In fact, some of the applications in this second round covered licenses that PGE had acquired subsequent to the 1997 transaction.

⁴ Additionally, in connection with an agreement to sell PGE, applications were filed on December 4, 2000 for approval of the transfer of control of PGE licenses to Sierra Pacific Resources. At that time, the Commission was also informed that applications for new ship and aircraft licenses would be filed once the transaction had been consummated. Requests for Special Temporary Authority ("STA") to operate the ship and aircraft licenses under PGE as owned by Enron ("PGE/Enron") were filed on December 5, 2000 and granted on December 7, 2000. However, the Sierra Pacific Resources transaction did not occur, and the associated applications were withdrawn on or around May 22, 2001. In fact Enron now intends to sell PGE to Northwest Natural Gas.

controlled by Texaco Exploration and Production, Inc. Prior approval for the assignment of four licenses was not obtained. An application for *nunc pro tunc* approval of the assignment of the Louisiana Resources licenses to Bridgeline was submitted on December 19, 2001.

e. **Licensee: Midwestern Gas Transmission Company (Assignment of Authorizations from EPEC Communications Corporation).** On April 30, 2001, Midwestern Gas Transmission Company, a subsidiary of El Paso Corporation (“El Paso”), was acquired by Border Midwestern Company, a subsidiary of Northern Border Partners, L.P., a partnership indirectly controlled by Enron. As part of this transaction, Midwestern Gas took assignment of private radio licenses from EPEC Communications Corporation, another El Paso subsidiary. Upon their realization that the Commission’s consent to the assignment of 14 licenses inadvertently had not been timely obtained, the parties on their own motion submitted an application for FCC approval *nunc pro tunc* on May 30, 2001. The application was granted on June 8, 2001.

f. **Licensee: InterEnergy Sheffield Processing Company (Transfer of Control and Name Change to Bear Paw Energy, LLC (“Bear Paw”))** Bear Paw, holder of seven private radio license, is the successor in interest to InterEnergy Sheffield Processing Company. On March 30, 2001, ultimate control of Bear Paw was transferred to Enron by the acquisition of the company by Northern Border Partners, L.P. Prior FCC approval for the transfer of control of the licenses was not obtained. An application for approval *nunc pro tunc* of the transfer of the licenses, and a change in the licensee name for one call sign, was filed on December 19, 2001.

g. **Licensees: Black Mesa Pipeline, Inc. (“BMP”) (Aircraft License and Transfer of Control from Prudential Insurance Company of America (“Prudential”))** On August 29, 1996, majority control of Black Mesa Holdings, Inc. (“BMHI”), the parent company of BMP (together “Black Mesa”), was obtained by Northern Border Intermediate Limited Partnership (NBILP), which was then 50% ultimately controlled by Enron. When NBILP acquired 100% of Black Mesa in 1997, negative control passed to Enron. Enron gained ultimate positive control in 1998. A new application for an aircraft license was submitted by BMHI on December 19, 2001, and applications for approval *nunc pro tunc* of the transfer of 6 private land mobile and 14 non-commercial microwave licenses were filed by BMP on December 20, 2001.

5. As part of its commitment to comply with the Act and Commission’s rules, Enron has already designated a Telecommunications Compliance Attorney (“TCA”), under whose direction the company has committed to ensure that it has all necessary licenses for its current operations and that every license is valid and in good standing.⁵

III. Definitions

6. For the purposes of this Consent Decree, the following definitions shall apply:

(a) “Commission” means the Federal Communications Commission;

(b) “Bureau” means the Enforcement Bureau of the Federal Communications Commission;

(c) “Enron” means Enron Corp. together with all of its corporate affiliates (defined as any entity ultimately majority owned by Enron Corp.) and all of their successors and assigns.

⁵ The applications referred to in this Consent Decree remedy omissions in obtaining FCC approval for assignments or transfers of control to Enron Corp. prior to the bankruptcy filing. Applications will be filed subsequently for FCC consent to the involuntary control of all licenses ultimately controlled by Enron to Enron as Debtor-in-Possession.

- d) "Adopting Order" means the order of the Enforcement Bureau adopting this Consent Decree.
- (e) "Parties" means Enron Corp. and the Bureau;
- (f) "Act" means the Communications Act of 1934, as amended, Title 47 of the United States Code.
- (g) "TCA" means Telecommunications Compliance Attorney
- (h) "new material evidence" means information discovered after the execution of this Consent Decree that directly relates to the events described in paragraphs 3-4 of this Consent Decree and indicates fraudulent or deceptive behavior on the part of Enron with regard to violations of Sections 301 or 310 of the Act in connection with such events.

IV. Agreement

- 7. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provision by reference in an Adopting Order of the Bureau.
- 8. Enron admits the jurisdiction of the Bureau over the matters contained in this Consent Decree and the Adopting Order.
- 9. The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Enron agrees that any violation of the Adopting Order shall constitute a violation of a Commission Order.
- 10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Enron and the Bureau of the matters described in paragraphs 3-4, above. In consideration for the termination by the Bureau of its investigation into whether Enron has violated Section 310(d) of the Act and Section 101.53 of the Commission's rules, Enron agrees to the terms set forth herein.
- 11. Enron agrees that it shall make a voluntary contribution to the United States Treasury in the total amount of \$7,500 (seven thousand five hundred dollars). This amount shall be paid within ten (10) calendar days of the date on which the Adopting Order is released. Such contribution shall be made, without further protest or recourse, by certified check, cashiers check, or money order drawn to the order of the Commission, and shall be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Reference should be made on the check or money order to the account number referenced in the Order adopting this Consent Decree as well as to Enron's FCC Registration Number.
- 12. Enron agrees to implement, within 30 calendar days after the Bureau releases the Adopting Order, a comprehensive internal program, a summary of which is attached hereto, to ensure Enron's future compliance with the Act, the Commission's rules, and the Commission's policies.
- 13. In express reliance upon the covenants and representations contained in this Consent Decree, the Bureau agrees to terminate its investigation into the matters discussed in paragraphs 3-4, above, without any finding of liability on the part of Enron.

14. The Bureau agrees not to institute any new proceeding, formal or informal, of any kind against Enron for apparent violations of Section 310(d) of the Act arising from the matters discussed in paragraphs 3-4, above.

15. In the absence of new material evidence, the Bureau agrees that it will not use the facts developed in its investigation through the date of this Consent Decree, 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 Enron concerning the matters described in paragraphs 3-4, above, or with respect to Enron's basic qualifications, including Enron's character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

16. In the event that Enron is found by the Commission or its delegated authority to have engaged in a violation of Section 310(d) of the Act and/or Section 301 of the Act subsequent to the release of the Order adopting this Consent Decree, Enron agrees that the conduct described in paragraphs 3-4, above, may be considered by the Commission or its delegated authority in determining an appropriate sanction. The Commission agrees that, if such conduct is considered by the Commission in determining an appropriate sanction, Enron will not be estopped from litigating issues concerning the severity, degree, or impact on the public interest of Enron's conduct.

17. Enron 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 Order adopting this Consent Decree, provided the Order is limited to adopting the Consent Decree without change, addition, or modification.

18. Enron and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition, or modification.

19. Enron and the Bureau agree that in the event that this Consent Decree 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.

20. Enron and the Bureau agree that if Enron, the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Enron nor the Commission shall contest the validity of the Consent Decree or Order, and Enron and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and shall consent to a judgment incorporating the terms of this Consent Decree.

21. Enron agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504, and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in paragraphs 3-4, above.

22. The Bureau and Enron agree that this Consent Decree does not constitute an adjudication on the merits or any finding on the facts or law regarding any violations of the Act, including Section 310 thereof, or the Commission's rules, including 47 C.F.R. § 101.53. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Enron does not admit any liability for violating the Act or Commission rules in connection with the matters that are the subject of this Consent Decree. Indeed, Enron expressly denies any such noncompliance, violation, or liability.

23. Enron and the Bureau agree to be bound by the terms and conditions stated herein.

24. Enron and the Bureau agree that this Consent Decree may be signed in counterparts.

**ENFORCEMENT BUREAU
FEDERAL COMMUNICATIONS COMMISSION**

By: _____
David H. Solomon
Chief

Date

ENRON CORP.

By: _____
James V. Derrick, Jr.
Executive Vice-President and General Counsel

Date

**SUMMARY OF COMPLIANCE PROGRAM
OF
ENRON CORP.**

Enron Corp. ("Enron") will establish a Telecommunications Regulatory Compliance Program to ensure compliance with relevant provisions of the Communications Act of 1934 and Federal Communications Commission regulations. The program will be administered by the legal department and will be described in a compliance manual addressing the following areas: (1) designation of a Telecommunications Compliance Attorney; (2) establishment of a compliance training program; (3) creation of an electronic FCC license database; (4) FCC license renewals; and (5) FCC license assignments and transfers of control.

Designation of Telecommunications Compliance Attorney. Enron will designate a member of its legal department to serve as the Telecommunications Compliance Attorney ("TCA"). The TCA will have responsibility for overseeing Enron's Telecommunications Compliance Program. Enron personnel with questions regarding FCC compliance will be directed to the TCA for assistance.

Compliance Training Program. The TCA will conduct an education program for company lawyers, managers, and other parties responsible for the establishment, purchase, sale, and use of Enron's telecommunications assets.

Database. The TCA will assemble and maintain information about Enron's telecommunications licenses. The database will be accessible by all employees who deal with FCC regulatory compliance or telecommunications systems. The TCA will ensure that the database is updated regularly.

License Renewals. The database will contain a tickler system that will alert the TCA whenever one of Enron's licenses must be renewed. The TCA will then have responsibility for ensuring that the proper renewal application is filed and that FCC approvals are obtained.

License Assignments and Transfers. The compliance manual will contain information for Enron personnel regarding the need to obtain prior FCC approval for all assignments and transfers of control of FCC licenses.