

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Tesla Exploration, Inc.)	File No.: EB-FIELDNER-12-00004489 ¹
)	NAL/Acct. No.: 201232400008
Licensee of Station KD29596)	FRN: 0021136999
Greenwood Village, Colorado)	

ORDER

Adopted: December 28, 2015

Released: February 10, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Tesla Exploration, Inc. (Tesla) violated the Commission's rules by operating radio transmitting equipment on eleven unauthorized frequencies. The Commission's station authorization rules ensure that licensees operate their stations within authorized parameters to avoid interference with public safety and other licensed operations and support the security and available of the nation's wireless networks. In response to a complaint of interference to a police dispatch center, FCC agents determined that the interference was caused by a multi-site, multi-frequency geo-surveying project conducted by Tesla. During the investigation, the agents determined that Tesla operated on eleven unauthorized frequencies. To settle this matter, Tesla admits that its unauthorized operations violated the Commission's rules, will implement a comprehensive compliance plan, and will pay a \$50,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture² against Tesla regarding its compliance with its station operation obligations under Section 301 of the Communications Act, as amended (Act)³ and Section 1.903(a) of the Commission's rules (Rules).⁴

3. In the absence of material new evidence relating to this matter, we do not set for haring the question of Tesla's qualifications to hold or obtain any Commission license or authorization.⁵

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act⁶ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁷ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

¹ The investigation initiated under EB-11-PA-0153 was subsequently assigned File No. EB-FIELDNER-12-00004489. All further correspondence related to this matter should reflect the new case number.

² *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808 (2012).

³ 47 U.S.C. § 301.

⁴ 47 C.F.R. § 1.903(a).

⁵ 47 C.F.R. § 1.93(b).

⁶ 47 U.S.C. § 154(i), 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311.

6. **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 Tesla Exploration, Inc. at 6430 South Fiddlers Green Circle, Suite 100, Attn: Quinten Bailey, Greenwood Village, Colorado 80111, and to Andrew C. Iverson, Counsel for Tesla Exploration, Inc., at Hamilton Faatz and Waller, PC, 5105 DTC Parkway, Suite 475, Greenwood Village, Colorado 80111.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Tesla Exploration, Inc. (Tesla), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Tesla violated Section 301 of the Communications Act of 1934, as amended,² and Section 1.903(a) of the Commission's rules³ by operating radio transmitting equipment on eleven unauthorized frequencies.

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.⁴
 - (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 Tesla is subject by virtue of its business activities, including but not limited to the Station Authorization Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
 - (g) "Covered Employees" means all employees and agents of Tesla who perform, or supervise, oversee, or manage the performance of, duties that relate to Tesla's responsibilities under the Communications Laws, including the Station Authorization Rules.
 - (h) "Effective Date" means the date by which both the Bureau and Tesla have signed the Consent Decree.

¹ The investigation initiated under EB-11-PA-0153 was subsequently assigned File No. EB-FIELDNER-12-00004489. All further correspondence related to this matter should reflect the new case number.

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a).

⁴ 47 U.S.C. § 151 *et seq.*

- (i) “Investigation” means the investigation commenced by the Bureau in File No. EB-11-PA-0153 regarding whether Tesla violated the Station Authorization Rules by operating radio transmitting equipment on eleven unauthorized frequencies, which culminated in the issuance of the NAL.
- (j) “NAL” means the Notice of Apparent Liability for Forfeiture issued to Tesla on August 3, 2012, proposing a \$66,000 forfeiture for apparent violations of the Station Authorization Rules.⁵
- (k) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Tesla to implement the Compliance Plan.
- (l) “Parties” means Tesla and the Bureau, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (n) “Station Authorization Rules” mean Section 301 of the Act, Section 1.903(a) of the Rules, and other provisions of the Act, the Rules, and Commission orders related to the operation of stations in the Wireless Radio Services with a valid Commission authorization and on an authorized frequency.
- (o) “Tesla” means Tesla Exploration, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. The Commission’s station authorization rules ensure that licensees operate their stations within authorized parameters to avoid interference with public safety and other licensed operations and support the security and availability of the nation’s wireless networks. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license issued by the Commission.⁶ Similarly, Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁷ Section 1.903(b) further provides that the “holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.”⁸

4. Tesla is the licensee of Station KD29596 in Greenwood Village, Colorado. On August 3, 2012, the Commission issued the NAL against Tesla for apparently violating the Station Authorization Rules by operating radio transmitting equipment on eleven unauthorized frequencies.⁹ The unauthorized operations caused harmful interference to licensed communications, including public safety operations.¹⁰

⁵ *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808 (2012) (NAL).

⁶ 47 U.S.C. § 301.

⁷ 47 C.F.R. § 1.903(a).

⁸ 47 C.F.R. § 1.903(b).

⁹ NAL, 27 FCC Rcd at 9808–09, paras. 2–5. The NAL includes a more complete recitation of the facts and history of this case and is incorporated herein by reference.

¹⁰ *Id.* at 9808, para. 2.

Upon notification of its apparent violations, Tesla ceased operations on the unauthorized frequencies and dismantled its radio transmitting equipment.¹¹

III. TERMS OF AGREEMENT

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

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

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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

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

9. **Admission of Liability.** Tesla admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions referenced in paragraph 4 herein and the NAL violated the Station Authorization Rules.

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Tesla 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 Tesla complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Station Authorization Rules prior to assuming his/her duties.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, Tesla 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 Station Authorization Rules, Tesla will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Tesla shall establish Operating Procedures that all Covered Employees must follow to help ensure Tesla's compliance with the Station Authorization Rules. Tesla's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it operates its radio stations in accordance with its

¹¹ NAL, 27 FCC Rcd at 9809, para. 5. See Letter from Andrew Iverson, Esq., Hamilton Faatz and Waller, PC, Counsel for Tesla Exploration, Inc., to Philadelphia Office, Northeast Region, Enforcement Bureau at 1-2 (received Aug. 31, 2012) (on file in EB-FIELDNER-12-00004489).

Commission authorization and on authorized frequencies. Tesla shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Station Authorization Rules.

- (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 Station Authorization Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Tesla's compliance with the Station Authorization Rules. Tesla shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Tesla shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program**. Tesla shall establish and implement a Compliance Training Program on compliance with the Station Authorization Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Tesla's obligation to report any noncompliance with the Station Authorization Rules under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Tesla 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.

12. **Reporting Noncompliance**. Tesla shall report any noncompliance with the Station Authorization 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 Tesla 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 Tesla has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, with a copy submitted electronically to NER-Response@fcc.gov.

13. **Compliance Reports**. Tesla shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Tesla's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Station Authorization Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Tesla, stating that the Compliance Officer has personal knowledge that Tesla: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 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.¹²
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Tesla, 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 Tesla 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 Tesla 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 Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, with a copy submitted electronically to NER-Response@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Civil Penalty.** Tesla will pay a civil penalty to the United States Treasury in the amount of fifty thousand dollars (\$50,000) within thirty (30) calendar days of the Effective Date (the Civil Penalty). Tesla shall send electronic notification of the Civil Penalty payment to NER-Response@fcc.gov on the date 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.¹³ When completing the FCC Form 159, enter the NAL/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 that should be followed based on the form of payment selected:

- 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.

¹² 47 C.F.R. § 1.16.

¹³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** As of the Effective Date, Tesla 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. Tesla 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 Tesla nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Tesla shall waive any statutory right to a trial *de novo*. Tesla hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁴ relating to the matters addressed in this Consent Decree.

17. **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.

18. **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.

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

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

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

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

23. **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.

24. **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.

¹⁴ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

25. **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.

Travis LeBlanc
Chief
Enforcement Bureau

Date

David Buttle
President
Tesla Exploration, Inc.

Date