

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
SOO LINE CORPORATION) File No.: EB-IHD-15-00019370
Parent Company of Various Subsidiary) Acct. No.: 201632080008
Companies d/b/a Canadian Pacific) FRN: 0021842406
Holding Various Authorizations in the Wireless
Radio Services)

ORDER

Adopted: August 15, 2016,

Released: August, 15, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has resolved its investigation into whether Soo Line Corporation (CP) acquired wireless radio licenses without Commission approval and constructed, operated, modified, and relocated wireless radio stations absent any Commission authorization. We take this action as part of our obligation to prevent unlicensed radio operations from potentially interfering with licensed radio communications in the United States, facilitate the efficient administration of wireless radio authorizations, and stop the unauthorized transfer of radio authorizations to a potentially unqualified party or in a manner that might otherwise be inconsistent with the public interest. For a number of years CP has operated more than a hundred unauthorized radio facilities to monitor and support its railroad operations. Some of these unauthorized operations date back a substantial period of time, and continued unabated until 2015. In addition, CP failed to obtain Commission consent before acquiring ownership and control of more than thirty radio authorizations. CP acknowledges that the scope and duration of its violations are substantial. To resolve the Bureau's investigation, the Company will pay a civil penalty of \$1,210,000, maintain internal compliance procedures the Company instituted prior to the investigation, and implement a three-year compliance plan with additional compliance reporting obligations.

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 terminating the referenced investigation regarding CP's compliance with Section 310(d) of the Communications Act of 1934, as amended,1 and Section 1.948 of the Commission's rules,2 pertaining to unauthorized transfers of control and assignments of licenses; and Section 301 of the Act3 and Section 1.903 of the Rules,4 pertaining to unauthorized operation of stations and station equipment.

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

1 47 U.S.C. § 310(d).

2 47 CFR § 1.948.

3 47 U.S.C. § 301.

4 47 CFR § 1.903.

5 See 47 CFR § 1.93(b).

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) 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** in accordance with the terms of the attached Consent Decree

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 William M. Tuttle, Vice President Corporate, Canadian Pacific, 7550 Ogden Dale Road S.E., Calgary, AB T2C 4X9 Canada, and to T.J. Litwiler, Esq., Fletcher & Sippel, LLC, 29 North Wacker Drive, Chicago, Illinois 60606-2832.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

⁶ 47 U.S.C. § 154(i).

⁷ 47 CFR §§ 0.111, 0.311.

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Soo Line Corporation (CP), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether the Company’s subsidiaries violated Section 310(d) of the Communications Act of 1934, as amended,¹ and Section 1.948 of the Commission’s rules,² pertaining to unauthorized transfers of control and assignments of licenses in connection with the acquisition of two American railroad lines that held authorizations for wireless radio services; and Section 301 of the Act³ and Section 1.903 of the Rules,⁴ pertaining to unauthorized operation of stations and station equipment.

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, 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 CP is subject by virtue of its business activities, including but not limited to the wireless radio service Rules.
 - (f) “CP” or “Company” means Soo Line Corporation, its U.S. subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest, and, where relevant, its indirect, intermediate parent Canadian Pacific Railway Company.
 - (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.

¹ 47 U.S.C. § 310(d).

² 47 CFR § 1.948.

³ 47 U.S.C. § 301.

⁴ 47 CFR § 1.903.

- (h) “Covered Employees” means all employees and agents of the Company who perform, supervise, oversee, or manage the performance of duties that relate to CP’s responsibilities under the Communications Laws, including Sections 310(d) and 301 of the Act, and Sections 1.948 and 1.903 of the Rules.
- (i) “Effective Date” means the date by which the Bureau and CP have signed the Consent Decree.
- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-15-00019370 regarding whether CP violated provisions of the Communication Laws relating to unauthorized transfer and operations of stations and station equipment.
- (k) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by CP to implement the Compliance Plan.
- (l) “Parties” means CP 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) “Unauthorized Transfer and Operations Rules” means Section 310(d) of the Communications Act of 1934, as amended,⁵ and Section 1.948 of the Commission’s rules,⁶ pertaining to unauthorized transfers of control and assignments of licenses; and Section 301 of the Act⁷ and Section 1.903 of the Rules,⁸ and other provisions of the Act, the Rules, and Commission orders related to the wireless radio services.

II. BACKGROUND

3. Section 310(d) of the Act states that “[n]o construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”⁹ Section 1.948 of the Rules similarly requires Commission consent prior to a transfer of control or assignment of license.¹⁰ In addition, Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any radio transmitting equipment within the United States, except under and in accordance with the Act and with a Commission-granted authorization.¹¹

4. Canadian Pacific Railway Company (CPR) is a major North American rail carrier, headquartered in Calgary, Alberta, which, with its U.S. subsidiaries, operates approximately 14,000 route miles of track across Canada and the upper Midwestern and northeastern United States. Originally built between 1881 and 1885, it was Canada’s first transcontinental railway.¹² The parent holding company, Canadian Pacific Railway Limited (CPRL), is a publicly-traded Canadian company whose stock is listed on the Toronto and New York stock exchanges. CPRL controls CPR, a Canadian company which

⁵ 47 U.S.C. § 310(d).

⁶ 47 CFR § 1.948.

⁷ 47 U.S.C. § 301.

⁸ 47 CFR § 1.903.

⁹ 47 U.S.C. § 310(d).

¹⁰ 47 CFR § 1.948.

¹¹ 47 U.S.C. § 301, 47 CFR § 1.903(a).

¹² See <http://www.cpr.ca/en/about-cp/our-history>.

conducts rail operations in Canada. CPRL also controls (through CPR and several wholly-owned intermediate holding companies) Soo Line Corporation, which is the holding company for CP's three U.S. rail operating subsidiaries: Soo Line Railroad Company (Soo), Dakota, Minnesota & Eastern Railroad Corporation (DM&E), and Delaware & Hudson Railway Company, Inc. (D&H).¹³ For railroad regulatory purposes, those three subsidiaries report to the U.S. Surface Transportation Board on a consolidated basis under the Soo Line Corporation name.¹⁴

5. On October 30, 2008, the Company acquired two American railroad lines: DM&E and Iowa, Chicago & Eastern Railroad Corporation (IC&E), a wholly owned indirect subsidiary of DM&E, both of which held FCC authorizations in the wireless radio services.¹⁵ Radio transmitting devices are widely used in the railroad industry for voice and data transmissions related to the safe operation of freight and passenger trains. In 2015, CP discovered that in the course of these transactions, it had acquired control of various wireless radio devices utilized by these smaller railroads in the wireless radio services without prior Commission consent.¹⁶ The Company commenced a comprehensive internal audit of all of its FCC authorizations, and voluntarily disclosed its violations to the Commission.¹⁷ The Bureau then commenced its Investigation of CP's compliance with applicable provisions of the Act and Rules related to the transfer and operation of wireless radio services authorized by the FCC.

6. The Investigation revealed that CP consummated two substantial and one *pro forma* transactions,¹⁸ involving more than thirty wireless radio licenses, without having obtained prior Commission consent.¹⁹ The substantial unauthorized transactions dated back to 2008, and a further *pro forma* transaction occurred two months after CP acquired control of the railroads.²⁰ Both DM&E and IC&E were FCC licensees, and no transfer of control authority was sought from the FCC at the time of the substantial October 30, 2008 transaction, or the subsequent *pro forma* transaction.²¹ The Investigation also revealed that CP had constructed, relocated, modified, and/or operated more than a hundred wireless facilities without approval from the FCC.²² The earliest of the unauthorized radio operations dated back

¹³ See Letter from Thomas J. Litwiler, counsel for CP, to Gary Oshinsky, Attorney Advisor, FCC Enforcement Bureau at 1 (Jan. 14, 2016) (on file in EB-IHD-15-00019370) (Letter); E-mail from Thomas J. Litwiler, counsel for CP, to Jeffrey Tobias, Attorney Advisor, FCC Wireless Telecommunications Bureau (June 8, 2015) (on file in EB-IHD-15-00019370) (June 8, 2015 E-mail).

¹⁴ FCC wireless radio authorizations for Soo are held by its licensee subsidiary Soo System Radio Communications Corporation. See Letter at 1; June 8, 2015 E-mail. DM&E and D&H each hold FCC wireless radio authorizations in their own names.

¹⁵ See Letter at 2.

¹⁶ Both the substantial and *pro forma* transactions also involved wireless radio transmitters that had never been licensed by the FCC. See *id.*

¹⁷ See June 8, 2015 E-mail. In the context of the Positive Train Control implementation by Congress, the Company previously entered a Memorandum of Understanding with the FCC involving the implementation of compliance procedures which required, *inter alia*, the appointment of an official compliance Officer, and creation of a compliance manual. *Id.*

¹⁸ Substantial transfers involve the transfer of license ownership, while *pro forma* transfers involve only the transfer of control of licenses. See 47 U.S.C. § 310(d); 47 CFR § 1.948.

¹⁹ See Letter at 1.

²⁰ See June 8, 2015 E-mail. On December 31, 2008, IC&E was merged into DM&E, with DM&E as the surviving corporation. *Id.*

²¹ See June 8, 2015 E-mail. DM&E held 16 FCC licenses at the time of the transaction (all "Industrial/Business Pool" licenses), of which seven remain in active use today. IC&E held 15 FCC licenses at the time of the transaction (14 Industrial/Business Pool licenses and one "Location Narrowband" license), of which all remain active today. *Id.*

²² See *id.*; see also Letter, Attachment at 1-12.

to 1979. All of the unauthorized operations continued unabated until 2015, when the Commission's Wireless Telecommunications Bureau granted CP's multiple applications for remedial authorization.²³

7. The Investigation did not reveal any evidence of complaints about interference from CP's unauthorized operations, and the Company indicates that the radio facilities it constructed, relocated, modified, and operated without Commission authorization were at all times intended to enhance the safety of its rail system.²⁴ CP reported its violations upon discovery, and the Company acknowledges that the scope and duration of its noncompliance was substantial. To resolve the Bureau's Investigation, the Parties now enter this Consent Decree to ensure CP's future compliance with all applicable Communications Laws.

III. TERMS OF AGREEMENT

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

9. **Jurisdiction.** The Company 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.

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 agrees to terminate the Investigation. In consideration for the termination of the Investigation, the Company 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 the Company concerning the matters that were the subject of the Investigation.²⁵ 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 proceeding, formal or informal, or to set for hearing the question of the Company's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.²⁶

12. **Admission of Liability.** CP admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 herein, that its actions described in paragraphs 4 through 7 of this Consent Decree violated Sections 310(d) and 301 of the Act, and Sections 1.948 and 1.903 of the Rules.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, to the extent it has not already done so under its current compliance procedures, the Company shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a

²³ See Letter at 2. A number of unauthorized devices controlled by CP's D&H subsidiary were ultimately licensed by Norfolk Southern Railway Company, as part of a previously scheduled transaction. *Id.*

²⁴ CP indicates that it uses its radio facilities to, among other things, support dispatch operations and intra-yard communications, detect defects on rail cars, monitor the location of rail cars, and detect and change the position of tracks. See June 8, 2015 E-mail.

²⁵ The Parties understand and agree, that future, isolated, instances of unauthorized operations, which pre-date this Consent Decree, but which are discovered after the Effective Date, will be considered covered by the terms herein including under paragraphs 17 and 18.

²⁶ See 47 CFR § 1.93(b).

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 the Company 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 Sections 310(d) and 301 of the Act, and Sections 1.948 and 1.903 of the Rules prior to assuming his/her duties.

14. **Compliance Plan.** The Bureau recognizes that on May 16, 2014, the Company implemented, and has since maintained, comprehensive compliance procedures, under which it has engaged in compliance reporting to the FCC.²⁷ For purposes of settling the matters set forth herein, the Company agrees that it shall continue to maintain its existing compliance procedures. In addition, within ninety (90) calendar days after the Effective Date, the Company shall develop and implement the measures described below, if not already in place, to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules, the Company will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, the Company shall establish Operating Procedures that all Covered Employees shall follow to help ensure the Company's compliance with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules. The Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules. The Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules.
- (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. The Compliance Manual shall explain the Communications Laws that apply to the Company, including Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure the Company's compliance with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules. The Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** The Company shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the Company's obligation to report any noncompliance with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the Rules under paragraph 15 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

²⁷ See June 8, 2015 E-mail; Letter, Certification. As an initial step in the implementation of its compliance effort, CP designated William M. Tuttle, CP's General Counsel U.S., to serve as the Company's Compliance Officer to review and oversee all of its FCC licensing matters. *Id.*

within one hundred twenty (120) 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. The Company 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.

15. **Reporting Noncompliance.** The Company shall report any noncompliance with Sections 310(d) and 301 of the Act and Sections 1.948 and 1.903 of the 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 the Company 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 the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov.

16. **Compliance Reports.** The Company shall file Compliance Reports with the Commission one hundred twenty (120) 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 the Company's efforts during the relevant period to comply with the terms and conditions of this Consent Decree, Sections 310(d) and 301 of the Act, and Sections 1.948 and 1.903 of the Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Company, stating that the Compliance Officer has personal knowledge that the Company: (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 15 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.²⁸
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of the Company, 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 the Company 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 the Company 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, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted

²⁸ 47 CFR § 1.16.

electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Civil Penalty.** The Company will pay a civil penalty to the United States Treasury in the amount of one million, two hundred and ten thousand dollars (\$1,210,000) within thirty (30) calendar days after the Effective Date. The Company shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, and Gary Oshinsky at Gary.Oshinsky@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.²⁹ 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 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.

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.

19. **Waivers.** As of the Effective Date, the Company 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. The Company 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 the Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Company shall waive any statutory right to a trial *de novo*. The Company hereby agrees to waive any claims they may otherwise have under the Equal Access to Justice Act³⁰ relating to the matters addressed in this Consent Decree.

20. **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

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

Parties shall be construed and enforced accordingly.

21. **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.

22. **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 the Company does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

26. **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.

27. **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.

28. **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

Steven Nettleton
Vice President Operations East
Soo Line Corporation

Date