

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

In the Matter of)	File No.: EB-11-SE-110
)	
Wave Runner, LLC, a wholly-owned)	NAL/Acct. No.: 201332100012
Subsidiary of Choice Holdings LLC)	
)	FRN: 0010000651
)	

ORDER

Adopted: April 25, 2013

Released: April 26, 2013

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), Wave Runner, LLC (Wave Runner), and Choice Phone, LLC (Choice Phone). The Consent Decree resolves and terminates the Bureau’s investigation into possible violations by Wave Runner of Section 301 of the Communications Act of 1934, as amended (Act),¹ Sections 1.903(a) and 1.949(a) of the Commission’s rules (Rules),² and associated Commission orders requiring licensees to seek authority for any continued operations after license expiration,³ as such rules and orders pertain to the operation of Personal Communications Service wireless radio stations.

2. The Bureau, Wave Runner, and Choice Phone 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 investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Wave Runner and Choice Phone possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 1.949(a).

³ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027, 21071, para. 96 (1998) (*Universal Licensing System Report and Order*) (adopting inter alia Section 1.949 of the Rules); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485–86, para. 22 (1999) (*Universal Licensing System MO&O*) (collectively, *Universal Licensing System Orders*).

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

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS 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 Mr. Richard C. Yu, Managing Member, Wave Runner, LLC and Choice Phone, LLC, P.O. Box 12398, 543A Top Plaza Building, North Marine Drive, Tamuning, GU 96913, and to Gregory E. Kunkle, Esq., Counsel for Wave Runner, LLC and Choice Phone, LLC, 1001 G Street N.W., Suite 500 West, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

⁴ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

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Wave Runner, LLC, a wholly-owned subsidiary of Choice Holdings LLC)	Acct. No.: 201332100012
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission, Wave Runner, LLC, and Choice Phone, LLC, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into possible violations by Wave Runner, LLC of Section 301 of the Communications Act of 1934, as amended,¹ Sections 1.903(a) and 1.949(a) of the Commission’s rules,² and associated Commission orders requiring licensees to seek authority for any continued operations after license expiration,³ as such rules and orders pertain to the operation of Personal Communications Service wireless radio stations.

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) “Choice Phone” means Choice Phone, LLC, a company under common control with Wave Runner.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Communications Laws” means collectively, the Act, the Rules, and the

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 1.949(a).

³ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027, 21071, para. 96 (1998) (*Universal Licensing System Report and Order*) (adopting inter alia Section 1.949 of the Rules); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485–86, para. 22 (1999) (*Universal Licensing System MO&O*) (collectively, *Universal Licensing System Orders*).

published and promulgated orders and decisions of the Commission to which the Companies are subject by virtue of their business activities, including but not limited to, the Licensing Rules.

- (g) “Companies” means Wave Runner and Choice Phone, each of which is a “Company.”
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.
- (i) “Covered Employees” means all employees and agents of the Companies who perform duties, or supervise, oversee, or manage the performance of duties, that relate to the Companies’ responsibilities under the Licensing Rules.
- (j) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (k) “Investigation” means the investigation commenced by the Bureau upon receipt of a referral from the Commission’s Wireless Telecommunications Bureau regarding Wave Runner’s apparent violation of the Licensing Rules.
- (l) “Licensing Rules” means Section 301 of the Act, Sections 1.903(a) and 1.949(a) of the Rules, the *Universal Licensing System Orders*, and other Communications Laws that prohibit the use or operation of a wireless radio station without a valid Commission authorization or in a manner inconsistent with such authorization.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by the Companies to implement the Compliance Plan.
- (n) “Parties” means Wave Runner, Choice Phone, and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (p) “Wave Runner” means Wave Runner, LLC, a wholly-owned subsidiary of Choice Holdings LLC, its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Section 301 of the Act⁴ and Section 1.903(a) of the Rules⁵ prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by wireless radio stations

⁴ 47 U.S.C. § 301.

⁵ 47 C.F.R. § 1.903(a).

except under and in accordance with an authorization granted by the Commission. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations “no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”⁶ Absent a timely filed renewal application, a wireless radio station license automatically terminates.⁷

3. Wave Runner holds two Personal Communications Service (PCS) licenses to provide GSM-based mobile phone service to customers in Guam and the Commonwealth of the Northern Mariana Islands with the following call signs: WPSJ967 (BTA490 – Guam); and WPSJ968 (BTA493 – Northern Mariana Islands). The licenses for stations WPSJ967 and WPSJ968 automatically expired on May 29, 2011, the expiration date of the stations’ licenses, because Wave Runner did not timely file applications for the renewal of those licenses.⁸ The licenses were subsequently cancelled on July 16, 2011.⁹

4. On September 8, 2011, Wave Runner filed with the Commission applications for renewal of the licenses of stations WPSJ967 and WPSJ968, together with a “Request for Waiver—Expedited Action Requested” (Waiver Request).¹⁰ In the Waiver Request, Wave Runner reported that it had inadvertently failed to file license renewal applications for stations WPSJ967 and WPSJ968, and requested a waiver of Section 1.949(a) to permit the acceptance of the renewal applications and the grant of those applications *nunc pro tunc*.¹¹

5. On September 14, 2011, Wave Runner voluntarily disclosed to the Wireless Bureau that Wave Runner had continued to operate stations WPSJ967 and WPSJ968 after the expiration of the station licenses, and requested emergency Special Temporary Authority (STA) to continue such operations. The Wireless Bureau granted Wave Runner a verbal emergency STA on September 15, 2011 for a period of 60 days, until November 14, 2012. Also on September 15, 2011, Wave Runner filed formal, written STA

⁶ *Id.* § 1.949(a). If a licensee intending continued operations fails to file a timely renewal application, the Commission nevertheless requires such licensee to seek operating authority. See *Universal Licensing System Report and Order*, 13 FCC Rcd at 21071, para. 98 (directing licensees that fail to file timely renewal applications to submit a new application or, if necessary, a request for special temporary operating authority); *Universal Licensing System MO&O*, 14 FCC Rcd at 11485–86, para. 22 (permitting, in the alternative, the acceptance and processing of late filed renewal applications under certain circumstances). In the *Universal Licensing System MO&O*, the Commission expressly held that it could “initiate enforcement action against the licensee both for untimely filing and unauthorized operation between the expiration of the license and the late renewal filing, including, if appropriate, the imposition of fines or forfeitures for these rule violations.” *Id.*

⁷ 47 C.F.R. § 1.955(a)(1).

⁸ On March 7, 2011, the Commission’s Wireless Telecommunications Bureau (Wireless Bureau) sent Wave Runner courtesy “renewal reminder” notices for stations WPSJ967 and WPSJ968, alerting Wave Runner that it was required to file renewal applications for the stations prior to the expiration of the stations’ licenses if it planned to continue operation. See Automated Renewal Reminder Letters from the FCC Wireless Telecommunications Bureau to Wave Runner, LLC, Reference Nos. 5119666 (WPSJ967), 5119667 (WPSJ968) (Mar. 7, 2011).

⁹ See Universal Licensing System – Archive System, (License WPSJ967, Wave Runner, LLC cancellation date, July 16, 2011), <http://wireless2.fcc.gov/UlsApp/LicArchive/license.jsp?archive=Y&licKey=8879228>; Universal Licensing System – Archive System, (License WPSJ968, Wave Runner, LLC cancellation date, July 16, 2011), <http://wireless2.fcc.gov/UlsApp/LicArchive/license.jsp?archive=Y&licKey=8879229>.

¹⁰ FCC File Nos. 0004868550 (WPSJ967) and 0004868551 (WPSJ968), “Request for Waiver – Expedited Action Requested,” filed by Wave Runner, LLC (Sept. 8, 2011).

¹¹ See *id.* at 1–2. In the Waiver Request, Wave Runner stated that the renewal applications were not timely filed “[d]ue to a ‘perfect storm’ of unique, unfortunate and unforeseen circumstances[.]”

requests for stations WPSJ967 and WPSJ968.¹² The formal STA requests were granted on September 29, 2011 under call signs WQOH735 and WQOH736 for a period of six months, until March 27, 2012.

6. On December 14, 2011, the Wireless Bureau granted Wave Runner's Waiver Request and ordered that the renewal applications for WPSJ967 and WPSJ968 be processed without prejudice to any enforcement action the Commission may take.¹³ The Wireless Bureau also simultaneously granted the renewal applications for stations WPSJ967 and WPSJ968.¹⁴

7. The Bureau's Spectrum Enforcement Division issued a letter of inquiry (LOI) to Wave Runner on April 11, 2012.¹⁵ The LOI directed Wave Runner to submit a sworn written response to a series of questions relating to Wave Runner's failure to file license renewal applications for stations WPSJ967 and WPSJ968 and its continued operation of those stations after the expiration date of the station licenses. Wave Runner responded to the LOI on May 10, 2012.¹⁶ In its LOI Response, Wave Runner stated that it first became aware that its licenses for PCS Stations WPSJ967 and WPSJ968 had expired on August 26, 2011.¹⁷

8. In addition, Wave Runner reiterated its intention to implement certain compliance measures designed to help ensure future compliance with FCC requirements,¹⁸ including the timely filing of license renewal applications, such as enlisting an outside law firm or other entity to supplement its license expiration deadline monitoring.¹⁹ The Bureau and Wave Runner executed a tolling agreement to toll the statute of limitations.²⁰

¹² FCC File No. 0004879090, filed by Wave Runner, LLC (Sept. 15, 2011) (BTA490 – Guam); FCC File No. 0004879091, filed by Wave Runner, LLC (Sept. 15, 2011) (BTA493 – Northern Mariana Islands).

¹³ Letter from Cyndi Thomas, Assistant Chief, Mobility Division, FCC Wireless Telecommunications Bureau, to Cheng-Yi Liu, Esq., Law Offices of Thomas K. Crowe, P.C., Counsel for Wave Runner, LLC (Dec. 14, 2011).

¹⁴ See FCC File Nos. 0004868550 (WPSJ967) and 0004868551 (WPSJ968).

¹⁵ Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Cheng-Yi Liu, Esq., Law Offices of Thomas K. Crowe, P.C., Counsel for Wave Runner, LLC (Apr. 11, 2012) (on file in EB-11-SE-110).

¹⁶ Letter from Cheng-Yi Liu, Esq., Law Offices of Thomas K. Crowe, P.C., Counsel for Wave Runner, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 10, 2012) (on file in EB-11-SE-110) (LOI Response).

¹⁷ See *id.* at 2.

¹⁸ See *id.* at 3. Wave Runner initially proposed to implement these compliance measures in its Waiver Supplement. See Wave Runner, LLC, Supplement to Waiver Request, FCC File Nos. 0004868550 (WPSJ967) and 0004868551 (WPSJ968) (filed Nov. 28, 2011) (Waiver Supplement) at 9.

¹⁹ See LOI Response at 5; Waiver Supplement at 9.

²⁰ See Tolling Agreement, File No. EB-11-SE-110, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Cheng-yi Liu, Esq., Law Offices of Thomas K. Crowe, P.C., Counsel to Wave Runner, LLC (July 31, 2012) (on file in EB-11-SE-110).

III. TERMS OF AGREEMENT

9. **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. **Jurisdiction.** Each 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.

11. **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.

12. **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 Companies agree 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 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 Wave Runner 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 proceeding, formal or informal, or take any action on its own motion against Wave Runner with respect to Wave Runner's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, the Companies shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as the Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Companies comply 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 Licensing Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, the Companies agree that they 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 Licensing Rules, the Companies shall implement the following procedures:

- (a) **Operating Procedures on Licensing Rules.** Within sixty (60) calendar days after the Effective Date, the Companies shall establish Operating Procedures that all Covered Employees must follow to help ensure the Companies' compliance with the Licensing Rules. As part of the Operating Procedures, the Compliance Officer shall

designate a Covered Employee to be responsible for developing and maintaining a database of all FCC licenses held by the Companies and the expiration date of each such license, and shall designate a second Covered Employee to periodically monitor and audit such database on at least a semi-annual basis. In addition, the Companies shall verify all license renewal deadlines via an independent, third party monitor, who will notify the Compliance Officer of any upcoming license renewal deadlines in sufficient time to permit timely renewal filings with the Commission. The Compliance Officer shall help ensure that the Companies timely file applications for renewal for all FCC licenses that the Companies intend to operate after the license's expiration date.

- (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 Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure compliance with the Licensing Rules. The Companies shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. The Companies shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program**. The Companies shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of the obligation to report any noncompliance with the Licensing 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 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. The Companies shall repeat the compliance training at least annually, 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 Companies shall report any noncompliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that the Companies have 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 Companies have taken or will take to prevent the recurrence of any such noncompliance. All such reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

16. **Compliance Reports**. The Companies shall file a Compliance Report 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 the efforts during the relevant period to comply with the terms and conditions of this Consent

Decree and the Licensing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of the Companies, stating that the Compliance Officer has personal knowledge that (i) the Companies have established and implemented the Compliance Plan; (ii) the Companies have utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) the Companies are 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 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 Rules²¹ 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 the Companies, 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 Companies have 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 Companies have taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) The Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 13 through 16 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

18. **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 the Companies 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 the Companies with the Communications Laws.

19. **Voluntary Contribution.** Wave Runner agrees that it will make a voluntary contribution to the United States Treasury in the amount of eleven thousand dollars (\$11,000) within thirty (30) calendar days after the Effective Date. Wave Runner shall also send electronic notification of payment to Jennifer Burton at Jennifer.Burton@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and 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

²¹ 47 C.F.R. § 1.16.

Advice) must be submitted.²² 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.

20. **Waivers.** The Companies waive any and all rights they 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. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they may have under the Equal Access to Justice Act²³ relating to the matters addressed in this Consent Decree.

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 Companies do not expressly consent), that provision will be superseded by such Rule or Commission order.

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

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ 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. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between them with respect to the Investigation. 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.

25. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all 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.** The individual signing this Consent Decree on behalf of Wave Runner represents and warrants that he is authorized by Wave Runner to execute this Consent Decree and to bind Wave Runner to the obligations set forth herein. The individual signing this Consent Decree on behalf of Choice Phone represents and warrants that he is authorized by Choice Phone to execute this Consent Decree and to bind Choice Phone to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

28. **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.

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Richard C. Yu
Managing Member
Wave Runner, LLC

Date

Richard C. Yu
Managing Member
Choice Phone, LLC

Date