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Consent Decree

I. Introduction

1. This Consent Decree is entered into by the Enforcement Bureau, Federal Communications Commission ("Bureau") and FirstEnergy Corp. ("FirstEnergy"), The Cleveland Electric Illuminating Company ("Cleveland Electric"), Ohio Edison Company ("Ohio Edison"), Pennsylvania Power Company ("Pennsylvania Power"), The Toledo Edison Company ("Toledo Edison"), MB Operating Company, Inc. ("MB"), Colonial Mechanical Corporation ("Colonial"), Spectrum Control Systems, Inc. ("Spectrum"), (collectively, "Licensees").

II. Background

2. There are six separate transactions that are the subject of this Consent Decree. The first transaction involved the merger of Ohio Edison Company and its subsidiary Pennsylvania Power Company with Centerior Corporation, the former holding company for Cleveland Electric and Toledo Edison. FirstEnergy was formed as a result of that merger. That transaction closed on November 8, 1997. Three transactions involved FirstEnergy's acquisition of control of Spectrum, MB and Colonial. The fifth transaction involved the transfer of MB's assets to Great Lakes Energy Partners, LLC ("Great Lakes"), a joint venture with Ranger Resources Corporation. The sixth transaction involved the merger of Morrison Mechanical and Building Services, a corporation controlled by Colonial, into Colonial. All of the Licensees, except for FirstEnergy, hold licenses issued by the Federal Communications Commission for microwave, private land mobile, and/or maritime stations.
3. The Licensees did not file applications for Commission consent to the transfers of control of the subject stations that took place when these transactions were effectuated. FirstEnergy represents that "[n]o filing was made with the Commission prior to the consummation of

the merger.' ' It also represented on June 10, 1999 that ``FirstEnergy personnel only recently learned of the necessity for Commission approval of such a transfer of control. The omission of filings seeking Commission approval of the transfer of control was thus based simply on unawareness of the scope of the statutory provision and was not made with any intent to avoid the requirements of the statute or the Commission's rules.' '

4. In the spring of 1999, after reading an article in a trade publication, Licensees became aware of the requirement to obtain prior Commission approval before undertaking a transfer of control. The Licensees met with the Commission's Wireless Telecommunications Bureau in early June 1999 to bring the matter to the Commission's attention. On June 10, 1999, FirstEnergy filed requests for special temporary authorization to operate the stations that were subject to the first four transactions described above. The Licensees then filed applications for Commission approval of the transfers of control with respect to those transactions. Those applications were granted in August 1999.
5. In July 2000, while completing a due diligence review of its licenses, FirstEnergy discovered potential problems with respect to the transfer of MB's assets to Great Lakes and the merger of Morrison Mechanical into Colonial. FirstEnergy brought those problems to the Commission's attention, and is in the process of obtaining the necessary authorizations from the Commission.

### 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 Commission's Enforcement Bureau.
  - (c) "Licensees" means all of non-government parties to this consent decree and all of their subsidiaries and affiliates.
  - (d) ``FirstEnergy transaction'' means the merger of Ohio Edison Company, Pennsylvania Power Company, and Centerior Corporation (partially a substantial transaction, partially a pro forma transaction) on November 8, 1997.
  - (e) ``Spectrum transaction'' means the substantial transaction under which FirstEnergy acquired control of Spectrum.
  - (f) ``Colonial transaction'' means the substantial transaction under which FirstEnergy acquired control of Colonial.
  - (g) ``MB transaction'' means the substantial transaction under which FirstEnergy acquired control of MB.
  - (h) ``Morrison transaction'' means the pro forma transaction in 2000 under which Morrison Mechanical and Building Services, a corporation controlled by Colonial, was merged into Colonial.
  - (i) ``Great Lakes transaction'' means the September 1999 transaction in which MB's assets were transferred to Great Lakes Energy Partners, LLC, a joint venture with Range

Resources Corporation. With respect to this transaction, this consent decree only covers those licenses formerly held by MB.

- (j) "Order" means an order of the Enforcement Bureau adopting this Consent Decree.
- (k) "Final Order" means an Order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.

#### IV. Agreement

7. Without admitting to any violation of the Commission's rules, Licensees agree not to contest findings that Licensees apparently violated Section 310(d) of the Communications Act of 1934, as amended, and Sections 90.113 and/or 101.53 of the Commission's rules with respect to the FirstEnergy, Spectrum, Colonial, MB, Morrison, and Great Lakes transactions, provided that these findings shall not be used by the Bureau against Licensees in any other current or future proceedings before the Bureau, except as set forth in paragraph 13 of this Consent Decree.
8. Licensees and the Bureau agree that this Consent Decree does not constitute an adjudication of the merits, or any finding on the facts or law regarding any violations committed by Licensees arising out of the FirstEnergy, Spectrum, Colonial, MB, Morrison, and Great Lakes transactions.
9. FirstEnergy shall make a voluntary contribution to the United States Treasury in the amount of thirty-five thousand dollars (\$35,000) within 10 calendar days after the Bureau releases an Order adopting this Consent Decree.
10. Licensees agree to implement a comprehensive Compliance Program to ensure compliance with the Communications Act and the Commission's rules and policies. The Compliance Program is described in a letter from Steven F. Lux, Director, Telecommunications Engineering, FirstEnergy, to John J. Schauble, Special Counsel, Investigations and Hearings Division, Enforcement Bureau dated June 15, 2000, which is incorporated herein by reference.
11. Licensees agree to cause to be filed with the Commission, within sixty days of the adoption of this Consent Decree, all applications that are necessary to obtain the Commission's authorization to assign all licenses that they hold to a corporation that will be directly owned by FirstEnergy.
12. In express reliance upon the covenants and representations contained herein, the Bureau agrees to terminate the investigation into the FirstEnergy, Spectrum, Colonial, MB, Morrison, and Great Lakes transactions upon the Order adopting this Consent Decree becoming a Final Order.
13. In consideration for the termination of these proceedings in accordance with the terms of this Consent Decree, Licensees agree to the terms, conditions and procedures contained herein.
14. The Bureau agrees not to institute any new proceeding, formal or informal, of any kind against Licensees for violations of Section 310(d) of the Communications Act or Sections 90.113 and 101.53 of the Commission's rules regarding the FirstEnergy, Spectrum, Colonial, MB, Morrison, and Great Lakes transactions that are the subject of this Consent Decree.

15. In the event that Licensees are found by the Commission or its delegated authority to have engaged in conduct the same or similar to that described in paragraph 6 of this Consent Decree, subsequent to its adoption, Licensees and the Bureau agree that the findings described in paragraph 6 may be used by the Bureau only to fashion an appropriate sanction, provided that Licensees shall not be precluded or estopped from litigating de novo any and all of the issues arising from the facts and allegations related to the events described herein as necessary to defend, in any forum, their interests from challenge by any person or entity not a party to this Consent Decree.
16. Licensees admit the jurisdiction of the Bureau to adopt this Consent Decree.
17. Licensees waive 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 adopts the Consent Decree without change, addition, or modification.
18. Licensees 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. Licensees and the Bureau recognize that if any court of competent jurisdiction renders this Consent Decree invalid, it shall become null and void and may not be used in any manner in any legal proceeding.
20. Licensees and the Bureau agree that if Licensees, 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 Licensees nor the Commission shall contest the validity of the Consent Decree or Order, and Licensees and the Commission shall waive any statutory right to a trial de novo with respect to any matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.
21. Licensees agree 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.
22. Licensees agree that any violation of the Order adopting 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.

23. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION, ENFORCEMENT BUREAU

By: \_\_\_\_\_

\_\_\_\_\_  
David H. Solomon  
Bureau Chief

Date

FIRSTENERGY CORP.

By: \_\_\_\_\_

\_\_\_\_\_  
Leila L. Vespoli  
Vice President and General Counsel

Date

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: \_\_\_\_\_

\_\_\_\_\_  
Leila L. Vespoli  
Vice President and General Counsel

Date

OHIO EDISON COMPANY

By: \_\_\_\_\_

\_\_\_\_\_  
Leila L. Vespoli  
Vice President and General Counsel

Date

PENNSYLVANIA POWER COMPANY

By: \_\_\_\_\_

\_\_\_\_\_  
Leila L. Vespoli  
Vice President and General Counsel

Date

THE TOLEDO EDISON COMPANY

By: \_\_\_\_\_

\_\_\_\_\_  
Leila L. Vespoli  
Vice President and General Counsel

Date

