

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

In the Matter of)	
)	File No.: EB-SED-13-00009167 ¹
)	
Wal-Mart.com USA, LLC, a wholly-owned subsidiary of)	NAL/Acct. No.: 201432100014
)	
Wal-Mart Stores, Inc.)	FRN: 0023472772
)	

ORDER

Adopted: March 31, 2014

Released: March 31, 2014

By the Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has settled its investigation into whether Wal-Mart.com USA, LLC (Wal-Mart.com USA) complied with the Commission's rules pertaining to the marketing of certain wireless microphones. Under these rules, retailers must ensure that wireless microphones are properly authorized and include at the point of sale a consumer alert notifying consumers of specific conditions and restrictions applicable to the operation of such devices. In response to the Commission's investigation, Wal-Mart.com USA acknowledged that it had not previously included on its website the required consumer alert and that a supplier had not obtained an equipment authorization for one wireless microphone model until after it was offered for sale. The company agreed to implement a robust three-year plan to ensure future compliance with these requirements.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and Wal-Mart.com USA. The Consent Decree resolves and terminates the Bureau's investigation into Wal-Mart.com USA's compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),² and Sections 2.803, 15.201(b), and 15.216 of the Commission's rules (Rules)³ pertaining to the marketing of certain wireless microphone models.

3. The Bureau and Wal-Mart.com USA have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. 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.

5. 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 Wal-Mart.com USA

¹ The investigation initiated under File No. EB-10-SE-078 was subsequently assigned File No. EB-SED-13-00009167. Any future correspondence with the FCC concerning this matter should reflect the new case number, File No. EB-SED-13-00009167.

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. §§ 2.803, 15.201, 15.216.

possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

6. 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**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **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 Kelly A. Thompson, Senior Vice President, Wal-Mart.com USA, LLC, 850 Cherry Ave., San Bruno, CA 94066, and to Gregory E. Kunkle, Esq., Keller and Heckman LLP, Counsel to Wal-Mart.com USA, LLC, 1001 G Street, N.W., Suite 500 West, Washington, DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

David B. Kolker
Deputy Bureau 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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Wal-Mart.com USA, LLC, a wholly-owned subsidiary of)	NAL/Acct. No.: 201432100014
Wal-Mart Stores, Inc.)	FRN: 0023472772
)	

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Wal-Mart.com USA, LLC,² by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,³ and Sections 2.803, 15.201(b), and 15.216 of the Commission's rules⁴ pertaining to the marketing of certain wireless microphone models.

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) "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 Wal-Mart.com USA is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.

¹ This investigation initiated under File No. EB-10-SE-078 was subsequently assigned File No. EB-SED-13-00009167. Any future correspondence with the FCC concerning this matter should reflect the new case number, File No. EB-SED-13-00009167.

² Wal-Mart.com USA, LLC, a wholly-owned subsidiary of Wal-Mart Stores, Inc. (Wal-Mart Stores), is an online retailer that operates an online retail website, www.walmart.com.

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. §§ 2.803, 15.201(b), 15.216.

- (g) “Covered Employees” means all employees and agents of Wal-Mart.com USA who perform, or supervise, oversee, or manage the performance of duties that relate to Wal-Mart.com USA’s responsibilities under the Equipment Marketing Rules.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Equipment Marketing Rules” means Section 302(b) of the Act;⁵ Sections 2.803, 15.201(b), and 15.216 of the Rules;⁶ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (j) “Investigation” means the investigation commenced by the Bureau’s November 5, 2010, letter of inquiry⁷ regarding whether Wal-Mart.com USA’s marketing of certain wireless microphones on Wal-Mart Store’s online retail website, walmart.com, complies with the Equipment Marketing Rules.
- (k) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Wal-Mart.com USA to implement the Compliance Plan.
- (l) “Parties” means Wal-Mart.com USA 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) “Wal-Mart.com USA” means Wal-Mart.com USA, LLC, a wholly-owned subsidiary of Wal-Mart Stores, Inc., its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁸ and Section 2.803(b) of the Rules,⁹ radio frequency devices may not be marketed in the United States unless such devices comply with the applicable technical and administrative provisions of the Rules. Section 2.803(a) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”¹⁰ Pursuant to Section 15.201 of the Rules,¹¹ intentional radiators,¹² such as wireless microphones, must be

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. §§ 2.803, 15.201(b), 15.216.

⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jeffrey J. Gearhart, Executive Vice President, General Counsel and Corporate Secretary, Wal-Mart Stores, Inc. (Nov. 5, 2010) (on file in EB-SED-13-00009167).

⁸ 47 U.S.C. § 302a(b).

⁹ 47 C.F.R. § 2.803(b).

¹⁰ *Id.* § 2.803(a).

¹¹ See *id.* § 15.201(b).

¹² An intentional radiator is a “device that intentionally generates and emits radio frequency energy by radiation or induction.” *Id.* § 15.3(o).

authorized in accordance with the Commission's certification procedures described in Sections 2.1031–2.1060 of the Rules prior to the initiation of marketing in the United States.¹³

3. As part of the Commission's efforts to clear the 700 MHz band for use by public safety and commercial licensees, the Commission prohibited the manufacture, importation, sale, lease, offer for sale or lease, or shipment of wireless microphones and other low power auxiliary stations¹⁴ intended for use in the 700 MHz band in the United States.¹⁵ In light of this prohibition, the Commission required that a consumer alert be displayed at the point of sale or lease of low power auxiliary stations, including wireless microphones, capable of operating in the core TV bands to ensure that users operate those devices in compliance with the Commission's rules and policies.¹⁶ Specifically, Section 15.216(a)(1) of the Rules states that any person who manufactures, sells, or offers for sale or lease wireless microphones and other low power auxiliary stations capable of operating in the core TV bands must display "in a clear, conspicuous, and readily legible manner" the following consumer alert (Consumer Alert) at the point of sale or lease of each such device.¹⁷

Consumer Alert

Most users do not need a license to operate this wireless microphone system. Nevertheless, operating this microphone system without a license is subject to certain restrictions: The system may not cause harmful interference; it must operate at a low power level (not in excess of 50 milliwatts); and it has no protection from interference received from any other device. Purchasers should also be aware that the FCC is currently evaluating use of wireless microphone systems, and these rules are subject to change. For more information, call the FCC at 1-888-CALL-FCC (TTY: 1-888-TELL-FCC) or visit the FCC's wireless microphone Web site at <http://www.fcc.gov/cgb/wirelessmicrophones>.¹⁸

For wireless microphones that are offered for sale or lease online or via direct mail or catalog, the Consumer Alert "must be prominently displayed in close proximity to the images and descriptions of each wireless microphone."¹⁹

¹³ See *id.* §§ 2.1031–2.1060.

¹⁴ Low power auxiliary stations are intended to transmit over distances of approximately 100 meters for uses such as wireless microphones, cue and control communications, and synchronization of TV camera signals. See *id.* § 74.801.

¹⁵ See *Revisions to Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band*, Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 643, 672, para. 59 (2010) (*Wireless Microphone Report and Order*); see also 47 C.F.R. § 74.851. The Commission also required that all low power auxiliary stations, including wireless microphones, cease operations in the 700 MHz band no later than June 12, 2010. See *Wireless Microphone Report and Order*, 25 FCC Rcd at 662–63, para. 36. See also *Wireless Microphones Are Not Permitted to Operate on Certain Frequencies after June 12, 2010; Users are Urged to Check Their Equipment and Take Necessary Steps to Ensure Compliance*, Enforcement Advisory, 25 FCC Rcd 7409 (Enf. Bur. 2010).

¹⁶ See *Wireless Microphone Report and Order*, 25 FCC Rcd at 688, para. 95. The Commission defined "point of sale or lease" as "the place where wireless microphones and other low power auxiliary stations are displayed or offered for consumers to purchase or lease." *Id.* at 689, n.280.

¹⁷ 47 C.F.R. § 15.216(a)(1).

¹⁸ *Id.* (Appendix to § 15.216—Consumer Alert).

¹⁹ *Wireless Microphone Report and Order*, 25 FCC Rcd at 689, para. 100; see also 47 C.F.R. § 15.216(a)(2), (3).

4. On November 5, 2010, the Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI) to Wal-Mart Stores, directing Wal-Mart Stores to submit a sworn written response to a series of questions relating to its marketing of wireless microphones.²⁰ Wal-Mart Stores responded to the LOI on December 20, 2010.²¹ In the LOI Response, Wal-Mart Stores stated that it does not market wireless microphones in its retail stores and that such devices are marketed exclusively on Wal-Mart.com USA's online website, www.walmart.com.²² The LOI Response further indicated that Wal-Mart.com USA requires wholesalers and distributors that supply wireless microphones that are marketed on www.walmart.com to comply with all applicable FCC requirements.²³ According to the LOI Response, Wal-Mart.com USA did not post the Consumer Alert on www.walmart.com in connection with the marketing of wireless microphones until November 17, 2010,²⁴ after its receipt of the LOI. In response to a subsequent inquiry from the Division, Wal-Mart.com USA reported that the supplier of one of the wireless microphone models offered on www.walmart.com had not secured an equipment authorization for the device until after the device was offered for sale.²⁵ The Bureau and Wal-Mart.com USA executed tolling agreements to toll the statute of limitations,²⁶ and subsequently agreed to negotiate a settlement.

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** Wal-Mart.com USA 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.

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 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.

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

²⁰ See *supra* note 7.

²¹ See Letter from Wesley Wright, Counsel for Wal-Mart Stores, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 20, 2010) (on file in EB-SED-13-00009167) (LOI Response).

²² See *id.*, Attachment at 2, 6. According to the LOI Response, none of the wireless microphone models marketed on www.walmart.com on or after the effective date of Section 74.851 of the Rules operated in the 700 MHz band. See *id.*, Attachment at 3.

²³ See *id.*, Attachment at 6.

²⁴ See *id.*

²⁵ See Letter from C. Douglas Jarrett, Keller and Heckman LLP, Counsel for Wal-Mart.com USA, LLC, to Katherine Power, Attorney Advisor, FCC Enforcement Bureau (July 27, 2012) at 2 (on file in EB-SED-13-00009167).

²⁶ See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and C. Douglas Jarrett, Keller and Heckman LLP, Counsel for Wal-Mart.com USA LLC (Jan. 10, 2014) (on file in EB-SED-13-00009167).

terminate the Investigation. In consideration for the termination of the Investigation, Wal-Mart.com USA agrees 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 this 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 Wal-Mart.com USA 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 this 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 Wal-Mart.com USA with respect to Wal-Mart.com USA's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Wal-Mart.com USA shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as 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 Wal-Mart.com USA complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to 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 Equipment Marketing Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Wal-Mart.com USA agrees that it shall develop and implement, as set forth in this paragraph, 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 Equipment Marketing Rules, Wal-Mart.com USA shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, Wal-Mart.com USA shall establish Operating Procedures that all Covered Employees must follow to help ensure Wal-Mart.com USA's compliance with the Equipment Marketing Rules. Wal-Mart.com USA's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) prior to the initiation of marketing (as such term is defined in Section 2.803(a) of the Rules²⁷), all wireless microphones and other radio frequency devices to be marketed by Wal-Mart.com USA comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure; and (ii) Wal-Mart.com USA displays at the point of sale of all low power auxiliary stations capable of operating in the core TV bands, including wireless microphones, the Consumer Alert required by Section 15.216 of the Rules.²⁸
- (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 Equipment Marketing Rules, including the obligations to secure an equipment authorization from the FCC prior to marketing wireless microphones and other radio frequency

²⁷ See *supra* note 10 and accompanying text.

²⁸ See 47 C.F.R. § 15.216.

devices in the United States, and to display at the point of sale of all low power auxiliary stations capable of operating in the core TV bands, including wireless microphones, the Consumer Alert required by Section 15.216 of the Rules,²⁹ and shall set forth the Operating Procedures that Covered Employees shall follow to help ensure Wal-Mart.com USA's compliance with the Equipment Marketing Rules. Wal-Mart.com USA shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Wal-Mart.com USA shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** Within sixty (60) calendar days after the Effective Date, Wal-Mart.com USA will begin administering a Compliance Training Program for Covered Employees regarding compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Wal-Mart.com USA's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 11 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 ninety (90) 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 forty-five (45) calendar days after the date such person becomes a Covered Employee. Wal-Mart.com USA shall repeat the 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.

11. **Reporting Noncompliance.** Wal-Mart.com USA shall report any noncompliance with the Equipment Marketing 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 Wal-Mart.com USA 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 Wal-Mart.com USA has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted in paper form to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and Pamera Hairston at Pamera.Hairston@fcc.gov.

12. **Compliance Reports.** Wal-Mart.com USA 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 Wal-Mart.com USA's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Wal-Mart.com USA, stating that the Compliance Officer has personal knowledge that Wal-Mart.com USA (i) has established and

²⁹ See *id.*

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 11 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 Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³⁰
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Wal-Mart.com USA, 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 Wal-Mart.com USA 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 Wal-Mart.com USA 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 Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and Pamera Hairston at Pamera.Hairston@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 9 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Voluntary Contribution.** Wal-Mart.com USA agrees that it will make a voluntary contribution to the United States Treasury in the amount of one hundred twenty thousand dollars (\$120,000) within thirty (30) calendar days after the Effective Date. Wal-Mart.com USA shall also send electronic notification of payment to Josh Zeldis at Josh.Zeldis@fcc.gov, Pamera Hairston at Pamera.Hairston@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 Advice) must be submitted.³¹ 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 Wal-Mart.com USA should follow based on the form of payment it selects:

- Payment by check or money order must be made payable in United States Dollars 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

³⁰ See *id.* § 1.16.

³¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 Wal-Mart.com USA has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Waivers.** Wal-Mart.com USA 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, provided the Bureau issues an Adopting Order as defined herein. Wal-Mart.com USA 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 Adopting Order, neither Wal-Mart.com USA nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Wal-Mart.com USA shall waive any statutory right to a trial *de novo*. Wal-Mart.com USA hereby agrees to waive any claims it may have under the Equal Access to Justice Act³² relating to the matters addressed in this Consent Decree.

16. **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.

17. **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 Wal-Mart.com USA does not expressly consent) that provision will be superseded by such Rule or Commission order.

18. **Successors and Assigns.** Wal-Mart.com USA agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties 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.

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

21. **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.

³² 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.

22. **Authorized Representative.** The individual signing this Consent Decree on behalf of Wal-Mart.com USA represents and warrants that she is authorized by Wal-Mart.com USA to execute this Consent Decree and to bind Wal-Mart.com USA 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.

23. **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

Kelly A. Thompson
Senior Vice President
Wal-Mart.com USA, LLC &
Wal-Mart Stores, Inc.

Date