

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

In the Matter of)	File No. EB-08-SE-1307
)	
Arkion Systems, LLC)	Acct. No. 200932100021
)	
)	FRN No. 0017026220

ORDER

Adopted: January 13, 2009

Released: January 15, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Arkion Systems, LLC (“Arkion”). The Consent Decree is for the purpose of terminating the Bureau’s investigation into whether Arkion violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a), 2.925 and 15.19 of the Commission’s rules (“Rules”)² regarding the marketing and use of four models of utility meter transmitters.

2. The Bureau and Arkion have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated 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 there are no substantial or material questions of fact as to whether Arkion possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925, 15.19.

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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 Seyamak Keyghobad, Chief Executive Officer, Arkion Systems, LLC, 230 Union Street, New Bedford, MA 02740, and Terry G. Mahn, Esq., Fish & Richardson P.C., 1425 K Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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Arkion Systems, LLC)	Acct. No. 200932100021
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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Arkion Systems, LLC (“Arkion”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Arkion violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a), 2.925, and 15.19 of the Commission’s rules (“Rules”),² regarding the marketing and use of four models of utility meter transmitters.

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) “Arkion” means Arkion Systems, LLC and its subsidiaries and their predecessors-in-interest and successors-in-interest.
 - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph eight (8).
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the matter disclosed to the Bureau by Arkion on December 16, 2008, regarding possible violations of Section 302(b) of the Act and Sections 2.803(a), 2.925 and 15.19 of the Rules.
 - (i) “Parties” means Arkion and the Bureau.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925 and 15.19.

- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act³ and Section 2.803(a)⁴ of the Rules, radio frequency devices subject to certification may not be marketed unless authorized by the Commission in accordance with the applicable technical and administrative provisions of the Rules. Under Section 2.925 of the Rules, equipment that is required to be certified must be labeled with a permanently affixed nameplate or label that lists the FCC identifier, and Section 15.19 of the Rules imposes additional labeling requirements.⁵

3. On December 16, 2008, Arkion voluntarily disclosed to the Bureau that four models of utility meter transmitters marketed by Arkion and deployed in three communities had not been certificated.

III. TERMS OF AGREEMENT

4. **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 without change, addition, modification, or deletion.

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

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **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 its Investigation of Arkion. In consideration for the termination of said Investigation, Arkion 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 of the Consent Decree, 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 Arkion concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, 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 Arkion with respect to Arkion's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

³ 47 U.S.C. § 302(b).

⁴ 47 C.F.R. § 2.803(a).

⁵ 47 C.F.R. § 2.925.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Arkion agrees to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

(a) **Authorization of Devices.** Arkion will ensure that all models of its radio frequency devices marketed and deployed after the Effective Date comply with the Commission's technical standards and have been certificated.

(b) **Replacement of Devices.** Within fifteen (15) months after the Effective Date, Arkion will replace all utility meters containing non-certificated radio frequency devices that were deployed prior to the Effective Date with utility meters containing certificated radio frequency devices.

(c) **Labeling.** Within fifteen (15) months after the Effective Date, Arkion will affix the required FCC labels to all utility meters deployed as of the Effective Date.

(d) **Operations.** During the fifteen (15) month period following the Effective Date, Arkion, or its agents, will be permitted to continue to operate all utility meters deployed prior to the Effective Date in the normal management of the utility systems in the communities in which the meters are located, subject to the requirements of Section 15.5 of the Rules.⁶

(e) **Compliance Report.** Arkion will file compliance reports with the Commission six (6) months after the Effective Date and fifteen (15) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Arkion, stating that the officer has personal knowledge that Arkion has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554. All compliance reports shall also be submitted electronically to Neal McNeil at Neal.McNeil@fcc.gov and Kathryn Berthot at Kathy.Berthot@fcc.gov.

(f) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire fifteen (15) months after the Effective Date.

9. **Voluntary Contribution.** Arkion agrees that it will make a voluntary contribution to the United States Treasury in the amount of eighteen thousand dollars (\$18,000). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. 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). Arkion will also send electronic notification on the date said payment is made to Neil.McNeil@fcc.gov and Kathy.Berthot@fcc.gov.

⁶ 47 C.F.R. § 15.5.

10. **Waivers.** Arkion 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 adopting the Consent Decree without change, addition, modification, or deletion. Arkion 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 Arkion nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Arkion shall waive any statutory right to a trial *de novo*. Arkion hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **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.

12. **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 Arkion does not expressly consent) that provision will be superseded by such Commission rule or Order.

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

14. **Final Settlement.** The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Arkion does not admit or deny noncompliance, violation or liability for violating the Act, Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. 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 requirements of the Act or the Commission's rules and Orders.

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

16. **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.

17. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **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.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Seyamak Keyghobad
Chief Executive Officer
Arkion Systems, LLC

Date