

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

	)	
	)	File No. EB-09-SE-107
In the Matter of	)	
	)	Acct. No. 201132100009
Norlight, Inc.	)	
	)	FRN No. 0002704682
	)	

**ORDER**

**Adopted: November 15, 2010**

**Released: November 16, 2010**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Norlight, Inc. (“Norlight”). The Consent Decree terminates an investigation by the Bureau against Norlight, Inc. for possible violations of Part 4 of the Commission’s Rules (“Rules”)<sup>1</sup> regarding the reporting of network outages.

2. The Bureau and Norlight have negotiated the terms of the Consent Decree that resolve 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 that our investigation raises no substantial or material questions of fact as to whether Norlight 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 Communications Act of 1934, as amended,<sup>2</sup> and Sections 0.111 and 0.311 of the Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

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

<sup>1</sup> 47 C.F.R. § 4.1 *et seq.*

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 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 John Chuang, Corporate Counsel, Norlight, Inc., 8829 Bond Street, Overland Park, Kansas 66214, and to counsel for Norlight, Inc., John T. Nakahata, Esq., Wiltshire & Grannis LLP, 1200 18th Street, NW Suite 1200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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Norlight, Inc.	)	
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**CONSENT DECREE**

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission” or “FCC”) and Norlight, Inc. (“Norlight”), by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Norlight violated Section 4.9(f) of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to file timely network outage reports.

**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) “Compliance Plan” means the compliance obligations and compliance program described in this Consent Decree at Paragraph 8.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (g) “Investigation” means the investigation commenced by the Bureau’s November 18, 2009<sup>2</sup> and March 1, 2010<sup>3</sup> Letters of Inquiry (“LOIs”) to Norlight regarding possible violations of Section 4.9(f) of the Rules.

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<sup>1</sup> 47 C.F.R. § 4.9(f).

<sup>2</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to John Chuang, Corporate Counsel, Norlight, Inc. (November 18, 2009).

<sup>3</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to John Chuang, Corporate Counsel, Norlight, Inc. (March 1, 2010).

- (h) “Norlight” means Norlight, Inc., its subsidiaries, affiliates,<sup>4</sup> predecessors-in-interest and its successors-in-interest.
- (i) Parties means Norlight and the Bureau, each of which is a “Party.”
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. Under Section 4.9(f) of the Rules,<sup>5</sup> a wireline service provider, such as Norlight, must report to the Commission an outage of at least 30 minutes duration that: 1) potentially affects at least 900,000 user minutes<sup>6</sup> of either telephony or paging; 2) affects at least 1,350 DS3 minutes; 3) potentially affects any special offices or facilities;<sup>7</sup> or 4) potentially affects a 911 special facility, as defined by Section 4.5(e) of the Rules.<sup>8</sup> Upon discovery of such an outage, a wireline service provider is required to file an electronic Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Report within 30 days.<sup>9</sup>

3. On November 18, 2009, the Bureau issued an LOI to Norlight.<sup>10</sup> The November 18, 2009 LOI directed Norlight, among other things, to submit a sworn written response to a series of questions relating to Norlight’s compliance with the Commission’s network outage reporting rules. Norlight responded to the LOI on December 21, 2009.<sup>11</sup> On March 1, 2010, the Bureau issued a follow-up LOI to Norlight.<sup>12</sup> Norlight responded to the follow-up LOI on March 29, 2010.<sup>13</sup> The Bureau and Norlight executed a Tolling Agreement on December 10, 2009,<sup>14</sup> and executed Tolling Agreement Extensions on

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<sup>4</sup> For the purpose of this Consent Decree, the term “affiliates” includes those telecommunications carriers that are affiliates of Norlight, Inc. both before and after the consummation of the transaction pending with Windstream Corporation in WC Docket 10-169, *i.e.*, Kentucky Data Link, Inc. and Norlight Telecommunications, Inc. but excludes Cinergy MetroNet, Inc.

<sup>5</sup> 47 C.F.R. § 4.9(f).

<sup>6</sup> “User minutes” are defined as “assigned telephone number minutes ... for telephony and for those paging networks in which each individual user is assigned a telephone number” or “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage for all other forms of communication.” 47 C.F.R. § 4.7(e).

<sup>7</sup> “Special offices and facilities” include major military installations, key government facilities, nuclear power plants, and certain airports. 47 C.F.R. § 4.5(b)-(d).

<sup>8</sup> *See* 47 C.F.R. § 4.5(e).

<sup>9</sup> *See* 47 C.F.R. § 4.9(f).

<sup>10</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to John Chuang, Corporate Counsel, Norlight, Inc. (November 18, 2009).

<sup>11</sup> Letter from John Chuang, Corporate Counsel, Norlight, Inc., to Susan M. Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 21, 2009).

<sup>12</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to John Chuang, Corporate Counsel, Norlight, Inc. (March 1, 2010).

<sup>13</sup> Letter from John Chuang, Corporate Counsel, Norlight, Inc., to Nissa Laughner, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 29, 2010).

<sup>14</sup> Tolling Agreement, File No. EB-09-SE-107, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and John Chuang, Corporate Counsel, Norlight, Inc. (December 10, 2009).

March 19, 2010,<sup>15</sup> June 8, 2010,<sup>16</sup> and October 12, 2010.<sup>17</sup> These agreements, among other things, permitted the Parties to continue discussions of the law and facts relating to the matter under review in this Investigation.

### 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.** Norlight 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 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.

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. In consideration for the termination of said Investigation, Norlight 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 over the course of 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 Norlight 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 Norlight with respect to Norlight's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Norlight agrees to (i) create and implement, within thirty (30) calendar days from the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders, and (ii) establish operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 4.9(f) of the Rules. The Compliance Plan will include, at a minimum, the following components:

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<sup>15</sup> Tolling Agreement Extension, EB-09-SE-107, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and John Chuang, Corporate Counsel, Norlight, Inc. (March 19, 2010).

<sup>16</sup> Tolling Agreement Extension, EB-09-SE-107, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and John Chuang, Corporate Counsel, Norlight, Inc. (June 8, 2010).

<sup>17</sup> Tolling Agreement Extension, EB-09-SE-107, executed by and between Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, and John Chuang, Corporate Counsel, Norlight, Inc. (October 12, 2010).

- (a) **Compliance Officer.** Norlight will designate an officer of the company to serve as the Compliance Officer for FCC outage reporting, who will be responsible for administering the Compliance Plan.
- (b) **Training Program.** Norlight shall establish and maintain an FCC outage reporting training program addressing FCC network outage reporting requirements, as detailed below, for all employees who are responsible for analyzing technical information regarding Norlight's network outages, entering information into any Norlight database(s) and/or record(s) that form the basis of Norlight's reporting of network outages to the Commission, or compiling and/or submitting Norlight's outage reports to the Commission.<sup>18</sup>
- i. Norlight's Compliance Training Program shall address, at a minimum, the FCC's Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the FCC's Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the FCC. Norlight's Compliance Training Program shall also address the methods and procedures adopted by Norlight to identify and report those network outages that satisfy the FCC's reporting criteria in order to ensure compliance with the FCC's outage reporting Rules. The training program shall also include information on the potential internal and regulatory consequences of failing to comply with Norlight's methods and procedures and/or the FCC's outage reporting requirements.
  - ii. Norlight shall provide the foregoing outage reporting training within ninety (90) days of the Effective Date and will update the training at least annually for employees who are responsible for analyzing technical information regarding Norlight's network outages, entering information into any Norlight database(s) and/or record(s) that form the basis of Norlight's reporting of network outages to the Commission, and compiling and/or submitting Norlight's outage reports to the Commission. Norlight will also provide training to new employees responsible for these activities.
  - iii. Norlight shall update and enhance the foregoing training regarding the FCC's outage reporting requirements as appropriate and necessary, and in any event will distribute new training materials to employees within ninety (90) days of the release of any new or revised Rules governing network outage reporting.
- (c) **Compliance Reports.** Norlight will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Norlight, stating that the Compliance Officer has personal knowledge that (i) Norlight has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 4.9(f) of the Rules, together with an

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<sup>18</sup> Under this provision, Norlight will not be required to provide outage reporting compliance training to employees other than those whose responsibilities include one or more of the following: analyzing technical information regarding Norlight's network outages, entering information into Norlight's database(s) and/or record(s) that form the basis of Norlight's reporting of network outages to the Commission, and compiling and/or submitting Norlight's outage reports to the Commission.

accompanying statement explaining the basis for the Compliance Officer's certification; (ii) Norlight has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) the Compliance Officer is not aware of any instances of non-compliance with either the Consent Decree or Section 4.9 of the Rules. The certification 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. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Norlight, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that Norlight has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Ricardo Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission at Ricardo.Durham@fcc.gov and to Nissa Laughner, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission at Nissa.Laughner@fcc.gov.

- (d) **Termination Date.** Unless stated otherwise, the provisions of this paragraph shall remain in effect for twenty-four (24) months from the Effective Date.

9. **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 Norlight or its affiliates 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 complaint 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 Norlight with the Act, the Rules, or Commission Orders.

10. **Voluntary Contribution.** Norlight agrees that it will make a voluntary contribution to the United States Treasury, in the amount of sixty-seven thousand dollars (\$67,000). The contribution will be made within thirty (30) days after the Effective Date. 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 the 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). Norlight will also send electronic notification to Ricardo.Durham@fcc.gov and Nissa.Laughner@fcc.gov on the date said payment is made.

11. **Waivers.** Norlight 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 this Consent Decree without change, addition, modification, or deletion. Norlight 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 Norlight nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Norlight shall waive any statutory right to a trial *de novo*. Norlight 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.

12. **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.

13. **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 Norlight does not expressly consent), that provision will be superseded by such Commission Rule or Order.

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

15. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the matters set forth herein. 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.

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

17. **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.

18. **Authorized Representatives**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.



19. **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.

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P. Michele Ellison  
Chief, Enforcement Bureau

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Date

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Lohn Weber  
Chief Financial Officer  
Norlight, Inc.

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Date