

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

In the Matter of)	File No.: EB-09-NY-0301
)	
Luna Park Housing Corporation)	NAL/Acct. No.: 201032380004
)	
Brooklyn, New York)	FRN: 0009 1764 96
)	

ORDER

Adopted: December 21, 2010

Released: December 22, 2010

By the Regional Director, Northeast Region, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) and Luna Park Housing Corporation (“Luna Park”). The Consent Decree terminates an investigation by the Bureau against Luna Park related to the operation of an unlicensed broadcast station on 99.9 MHz in Brooklyn, New York, in violation of section 301 of the Communications Act of 1934, as amended (“Act”).¹

2. The Bureau and Luna Park 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 without imposing a forfeiture.

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 Luna Park 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 sections 4(i) and 503(b) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 301.

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the proposed forfeiture in the *Notice of Apparent Liability for Forfeiture* issued on January 8, 2010 against Luna Park **WILL NOT BE IMPOSED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class and certified mail, return receipt requested, to counsel for Luna Park, Adam Leitman Bailey and Leonard H. Ritz, Adam Leitman Bailey, P.C., 120 Broadway, 17th Floor, New York, New York 10271.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) and Luna Park Housing Corporation (“Luna Park”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into Luna Park’s apparent violation of section 301 of the Communications Act of 1934, as amended (“Act”),¹ relating to the operation of an unlicensed radio station on the frequency 99.9 MHz at 2814 West 8th Street in Brooklyn, New York.

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) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (c) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (d) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (e) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (f) “Investigation” means the investigation initiated on October 12, 2009, and continued on October 13, 2009, regarding Luna Park’s apparent violation of section 301 of the Act relating to the operation of an unlicensed radio station on the frequency 99.9 MHz at 2814 West 8th Street in Brooklyn, New York.
 - (g) “Luna Park” means Luna Park Housing Corporation and its predecessors-in-interest and successors-in-interest.
 - (h) “NAL” means the Notice of Apparent Liability for Forfeiture issued against Luna Park on January 8, 2010.²

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032380004 (Enf. Bur., New York Office, January 8, 2010).

- (i) “Order” or “Adopting Order” means an Order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (j) “Parties” means Luna Park and the Bureau, and each a “Party.”
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

II. BACKGROUND

2. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act.³ Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission.”⁴

3. On January 8, 2010, the New York Office of the Bureau’s Northeast Region issued a NAL proposing that Luna Park be held liable for a forfeiture of \$10,000 under section 503(b)(1)(B) of the Act for apparent violations arising from the operation of an unlicensed radio station on the frequency 99.9 MHz at 2814 West 8th Street in Brooklyn, New York.

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.** Luna Park agrees that the Commission 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 Effective Date. 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 without imposing the forfeiture proposed in the *NAL*. In consideration for the termination of said investigation, Luna Park 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 Luna Park 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

³ 47 U.S.C. § 301.

⁴ 47 U.S.C. § 153(33).

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 Luna Park with respect to Luna Park's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Luna Park agrees to create and implement within thirty (30) calendar days (unless stated otherwise) after the Effective Date a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders, and to establish operating procedures in compliance with the terms and conditions of this Consent Decree. The Compliance Plan will consist of the following components:

- a. **Compliance Officer.** Luna Park will designate a Compliance Officer with central responsibility for overseeing Luna Park's compliance with the Compliance Plan and with the Act, the Commission's Rules, and the Commission's Orders.
- b. **Compliance Letter.** Luna Park will send a letter to all tenant-shareholders of Luna Park warning them that operation of unlicensed radio stations is illegal and will not be permitted within any Luna Park building.
- c. **Compliance Notification.** Effective immediately, Luna Park will not permit unlicensed radio stations to operate from any location within any portion of a building or on a rooftop that is under the express control of Luna Park. In the event that Luna Park becomes aware of any unlicensed radio stations operating from its buildings, Luna Park will notify the FCC within twenty-four (24) hours of becoming aware of such unlicensed operation and will provide all known information about the operator.⁵ The foregoing shall not be deemed to impose any obligation whatsoever on Luna Park to conduct any investigations or inspections to discover unlicensed radio station operations.
- d. **Compliance Reports.** Luna Park will file a Compliance Report with the Commission twelve (12) months and twenty-four (24) months after the Effective Date. The Compliance Report shall include a certification by the Compliance Officer as an agent of and on behalf of Luna Park, stating that the Compliance Officer has personal knowledge that Luna Park (i) established operating procedures in compliance with the terms and conditions of this Consent Decree and with section 301 of the Act, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures during the term of the agreement; and (iii) is not aware of any instances of non-compliance. 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 Luna Park, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree, the Act, or the Rules, and (ii) the steps that Luna Park 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 Sharon Webber, Regional Counsel, Northeast Region, Enforcement Bureau, Federal Communications Commission, Philadelphia Office, One Oxford Valley Office Building, Room 404, 2300 East Lincoln Highway,

⁵ This notification will be made by electronic mail and by facsimile to the following person: Sharon Webber, Regional Counsel, Northeast Region, Enforcement Bureau, Federal Communications Commission, (215) 741-3016; NER-Response@fcc.gov.

Langhorne, PA 19047. All Compliance Reports shall also be submitted electronically to NER-Response@fcc.gov.

9. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twenty-four (24) months after the Effective Date.

10. **Voluntary Contribution.** Luna Park agrees that it will make a voluntary contribution to the United States Treasury in the amount of four hundred dollars (\$400). The payment will be made within thirty (30) calendars days after the Effective Date. The payment must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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[s] 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 NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Luna Park will also send electronic notification on the date said payment is made to NER-Response@fcc.gov.

11. **Waivers.** Luna Park 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 Order adopting this Consent Decree, provided the Commission issues an Order adopting the Consent Decree without change, addition, modification, or deletion. Luna Park 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 Luna Park nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Luna Park shall waive any statutory right to a trial *de novo*. Luna Park 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. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. 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 Luna Park does not expressly consent) that provision will be superseded by such Commission rule or Order.

14. **Successors and Assigns.** Luna Park 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. 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 Representative.** 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.

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

Date

Keith Murphy
President
Luna Park Housing Corporation

Date