

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

In the Matter of)	
)	File No.: EB-10-MA-0012
NewCom International, Inc.)	Acct. No.: 201132600001
)	FRN: 0010802528

ORDER

Adopted: January 21, 2011

Released: January 21, 2011

By the Chief, 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 NewCom International, Inc. (“NewCom” or “Company”). The Consent Decree terminates an investigation by the Bureau against NewCom for possible violations of Sections 25.271, 25.272, and 25.273 of the Commission’s rules (“Rules”)¹ regarding NewCom’s apparent interference with a licensed satellite communications system.
2. The Bureau and NewCom have negotiated the terms of the 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 that our investigation raises no substantial or material questions of fact as to whether NewCom 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 Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 C.F.R. §§ 25.271, 25.272, 25.273.

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by both first class and certified mail, return receipt requested, to NewCom International, Inc. at 15590 NW 15th Ave., Miami, FL 33169 and to its counsel, Frank G. Lamancusa, Bingham McCutchen LLP, 2020 K Street NW, Washington, DC 20006-1806.

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

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

8. The Enforcement Bureau and NewCom International, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation against NewCom International, Inc. for possible violations of sections 25.271, 25.272, and 25.273 of the Commission’s rules regarding NewCom’s apparent interference with a licensed satellite communications system.

DEFINITIONS

9. 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 program described in this Consent Decree at paragraph 9.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s inspection on January 23, 2010 and followed by the Bureau’s May 11, 2010 letter of inquiry⁴ requesting detailed information regarding transmissions emanating from NewCom’s earth station facility in Miami, Florida and the resulting interference.
 - (h) “NewCom” or the “Company” means NewCom International, Inc. and its subsidiaries, affiliates, predecessors-in-interest, and successors-in-interest.
 - (i) “Parties” means NewCom and the Bureau, each of which is a “Party.”

⁴ See Letter from Steven DeSena, Resident Agent, Miami Office, South Central Region, Enforcement Bureau, to NewCom International, Inc. (May 11, 2010)(“LOP”).

- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

BACKGROUND

10. Under Subpart D of Part 25 of the Rules, earth station licensees are required to operate their facilities under certain technical operational parameters.⁵ These rules include the control of a transmitting station,⁶ general inter-system coordination procedures,⁷ and particular duties regarding space communications transmissions.⁸

11. On January 23, 2010, while investigating a complaint of interference, the Bureau’s Miami Office inspected NewCom’s facility in Miami, Florida. On May 11, 2010, the Bureau’s Miami Office issued the *LOI* to NewCom.⁹ The *LOI* directed NewCom, among other things, to answer questions relating to transmissions emanating from NewCom’s Miami, Florida facility. NewCom responded to the *LOI* on June 21, 2010,¹⁰ and later provided a revised response on June 28, 2010.¹¹ NewCom and the Bureau subsequently entered into settlement discussions.

TERMS OF AGREEMENT

12. **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.

13. **Jurisdiction.** NewCom 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.

14. **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.

15. **Termination of Investigation.** In express reliance on the covenants and representations contained herein, and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, NewCom agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new

⁵ 47 C.F.R. § 25.271 – 25.284.

⁶ 47 C.F.R. § 25.271.

⁷ 47 C.F.R. § 25.272.

⁸ 47 C.F.R. § 25.273.

⁹ See *LOI*, *supra* n.1.

¹⁰ Letter from Troy F. Tanner, Counsel to NewCom International, to the attention of Steven DeSena, the Miami Resident Agent Office, South Central Region, Enforcement Bureau, Federal Communications Commission (June 21, 2010).

¹¹ Letter from Troy F. Tanner, Counsel to NewCom International, to the attention of Steven DeSena, the Miami Resident Agent Office, South Central Region, Enforcement Bureau, Federal Communications Commission (June 28, 2010).

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 NewCom 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 NewCom with respect to NewCom's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier or hold Commission authorizations.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, NewCom agrees to implement a Compliance Plan within sixty (60) calendar days of the Effective Date to ensure NewCom's future compliance with the Act, the Rules, and the Commission's orders. The Compliance Plan shall include, at a minimum, the following components:

- (a) **Technical Operations Compliance Manual.** NewCom shall establish and maintain a Technical Operations Compliance Manual within sixty (60) calendar days of the Effective Date addressing an earth station licensee's responsibilities for general inter-system coordination procedures and duties regarding space communications transmissions, as detailed below, for use by and distribution to all employees who are responsible for such activities.
 - i. NewCom's Technical Operations Compliance Manual shall address, at a minimum, the Rules governing the general inter-system coordination procedures and duties regarding space communications transmissions found under Part 25, Subpart D of the Rules. The Technical Operations Compliance Manual shall also include information on the potential internal and regulatory consequences of failing to comply with NewCom's methods and procedures and/or the Rules.
 - ii. NewCom shall update and enhance the foregoing Technical Operations Compliance Manual regarding the requirements found in subparagraph (i) above, as appropriate and necessary.
- (b) **Technical Operations Training Program.** Within ninety (90) calendar days of the Effective Date, NewCom shall establish and maintain a Technical Operations Training Program addressing an earth station licensee's responsibilities for general inter-system coordination procedures and duties regarding space communications transmissions, as detailed below, for all employees who are responsible for such activities. NewCom's Technical Operations Training Program shall cover the topics outlined in the Technical Operations Compliance Manual set forth in subparagraph (a) above.
 - i. NewCom shall provide the foregoing Technical Operations Training Program within ninety (90) calendar days of the Effective Date and will update the training at least annually for employees who are responsible for such activities. NewCom will also provide training to new employees responsible for these activities during those employees' initial training period.
 - ii. NewCom shall update and enhance the foregoing training regarding an earth station licensee's responsibilities for general inter-system coordination procedures and duties regarding space communications transmissions found under Part 25, Subpart D of the Rules, based on changes to the relevant portions of the Act, Rules, and the Commission's orders, and as otherwise appropriate.

- (c) **Compliance Officer.** Within thirty (30) calendar days of the Effective Date, NewCom shall designate an individual of the Company to serve as the Compliance Officer for complying with Part 25, Subpart D of the Rules, overseeing the Technical Operations Compliance Manual and Technical Operations Compliance Training, and ensuring compliance with the Subpart D requirements in the Rules.
- (d) **Transmitter Control Operator.** Within ninety (90) calendar days of the Effective Date, and consistent with section 25.271(b) of the Rules, NewCom shall ensure that a trained Transmitter Control Operator is present on the earth station site, or at a designated remote control point, at all times (including weekends) that transmissions are being conducted.
- (e) **Compliance Reports.** NewCom will file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months, 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 NewCom, stating that the Compliance Officer has personal knowledge (i) that NewCom has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Subpart D of Part 25 of the Rules, together with an accompanying statement explaining the basis for the officer's compliance certification (ii) that NewCom has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) that NewCom 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 NewCom, 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 NewCom 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 Diane Law-Hsu, South Central Region, Enforcement Bureau, Federal Communications Commission, 3575 Koger Center Blvd Suite 320, Duluth, GA 30096. All reports shall also be submitted electronically to SCR-Response@fcc.gov.
- (f) **Termination Date.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

17. **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 NewCom 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 NewCom of the Act, the rules, or the order. Furthermore, this Consent Decree shall not limit or foreclose any argument that may be raised by NewCom to respond to or defend against any subsequent investigation.

18. **Voluntary Contribution.** NewCom agrees that it will make a voluntary contribution to the United States Treasury in the amount of thirty thousand six hundred dollars (\$30,600) in ten equal installments. The first contribution of three thousand sixty dollars (\$3,060) will be made within thirty (30) calendar days after the Effective Date. Each successive contribution of three thousand sixty dollars (\$3,060) shall be due on the first day of the next nine (9) months following the initial contribution. Payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payments must include the Account Number and FRN 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). NewCom will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

19. **Waivers.** NewCom 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. NewCom 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 NewCom nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NewCom shall waive any statutory right to a trial *de novo*. NewCom 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.

20. **Invalidity.** In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **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 NewCom does not expressly consent) that provision will be superseded by such Commission rule or order.

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

23. **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 Rules and the Commission’s orders.

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

25. **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.

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

27. **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.

P. Michele Ellison
Bureau Chief
Enforcement Bureau

Date

Jaime Dickinson
President and Chief Operating Officer
NewCom International, Inc.

Date