

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

In the Matter of	)	
	)	
<b>RIO TINTO AMERICA INC.</b>	)	File No. EB-09-IH-1665
	)	
<b>and</b>	)	Acct. No. 201232080009
	)	
<b>ALCAN CORPORATION</b>	)	FRN No. 0019120237
	)	
Parent Companies of Various Subsidiary	)	FRN No. 0019227933
Companies Holding Various Authorizations in	)	
the Wireless Radio Services	)	
	)	

**CONSENT DECREE**

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission, Rio Tinto America Inc. (“Rio Tinto”), and Alcan Corporation (“Alcan”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into whether Rio Tinto and Alcan violated Section 310(d) of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and Section 1.948 of the Commission’s Rules (“Rules”),<sup>2</sup> relating to the requirement that Commission approval be obtained prior to assignment or transfer of control of wireless radio station licenses; and Section 301 of the Act,<sup>3</sup> and Sections 1.903 and 1.949(a) of the Rules,<sup>4</sup> relating to the authorized operation of stations and equipment in the wireless radio services, and the timely filing of renewal applications.

**I. DEFINITIONS**

2. 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” or “Order” means an order of the Bureau adopting the terms of this Consent Decree.
  - (c) “Alcan” means Alcan Corporation, and includes its subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.
  - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.

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<sup>1</sup> 47 U.S.C. § 310(d).

<sup>2</sup> 47 C.F.R. § 1.948.

<sup>3</sup> 47 U.S.C. § 301.

<sup>4</sup> 47 C.F.R. §§ 1.903, 1.949(a).

- (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (f) “Companies” means Rio Tinto and Alcan.
- (g) “Compliance Officer” means the individual designated in paragraph 11 of this Consent Decree as the person responsible for administration of the Compliance Plan.
- (h) “Compliance Plan” means the program described in this Consent Decree at paragraph 11.
- (i) “Effective Date” means the date on which the Bureau, by delegated authority, releases the Adopting Order.
- (j) “Investigation” means the investigation initiated by the Bureau regarding whether the Companies: (1) engaged in substantial and *pro forma* assignments and transfers of control of certain licenses on multiple occasions without seeking or obtaining prior Commission consent, in violation of section 310(d) of the Act and section 1.948 of the Rules; and (2) failed to timely file a renewal application for operation of a station in the wireless radio services, operated certain stations without Commission authority, and operated radio transmitter equipment on unauthorized frequencies, in violation of section 301 of the Act and sections 1.903(a) and 1.949(a) of the Rules.
- (k) “Parties” means Rio Tinto, Alcan, and the Bureau, each of which is a “Party.”
- (l) “Rio Tinto” means Rio Tinto America Inc., and includes its subsidiaries, predecessors-in-interest, and successors-in-interest.
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

3. Pursuant to Section 310(d) of the Act,<sup>5</sup> Commission licensees generally are prohibited from transferring or assigning FCC licenses without prior Commission approval. Furthermore, the Rules require Commission wireless radio services licensees to apply for, and obtain, Commission approval before transferring or assigning FCC licenses.<sup>6</sup>

4. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.<sup>7</sup> Further, section 1.949(a) of the Rules requires that a licensee file a renewal application for a wireless radio station “no later than the expiration date of

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<sup>5</sup> 47 U.S.C. § 310(d).

<sup>6</sup> 47 C.F.R. §1.948.

<sup>7</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

the authorization for which renewal is sought, and no sooner than 90 days prior to expiration.”<sup>8</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>9</sup>

5. Rio Tinto Group is a large international business involved in all stages of metal and mineral production. It produces aluminum, copper, diamonds, coal, iron ore, uranium, gold and industrial minerals. With production mainly from North America and Australia, Rio Tinto Group operates in more than 50 countries and employs more than 100,000 people. It is structured as a dual-listed company, listed on the London Stock Exchange under the name Rio Tinto plc and on the Australian Securities Exchange under the name Rio Tinto Limited. Rio Tinto and Alcan (collectively, “Companies”) are subsidiaries of Rio Tinto plc and are incorporated in the United States. Direct and indirect subsidiaries of the Companies hold private radio licenses granted by the FCC for use in mining-related activities in the United States.

6. In August 2009 letters directed to the Commission’s Wireless Telecommunications Bureau (“WTB”), Rio Tinto Group voluntarily disclosed that it had recently discovered that direct and indirect subsidiaries and affiliates of the Companies holding FCC licenses had participated in corporate mergers, acquisitions, asset transfers, and other transactions involving assignments and transfers of control of these licenses for which prior Commission consent had not been obtained.<sup>10</sup> WTB referred the matter to the Enforcement Bureau (“Bureau”), which immediately commenced an investigation. Subsequently, the Companies each conducted a comprehensive audit of their FCC-licensed facilities, which also revealed the failure to renew a license for a wireless station, the unauthorized operation of two stations, and the operation of radio transmitter equipment on three unauthorized frequencies.<sup>11</sup> Between August 2009 and September 2011, the Companies filed with WTB requests for Special Temporary Authority (STA), as well as curative applications seeking Commission consent to the assignments and transfers of control of the subject licenses, and applications for permanent authorizations to operate in conformance with the Rules.<sup>12</sup> These filings were completed in September 2011<sup>13</sup> and WTB has since granted all such applications.

### III. TERMS OF AGREEMENT

7. **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.

8. **Jurisdiction.** The Companies agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

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<sup>8</sup> 47 C.F.R. § 1.949(a).

<sup>9</sup> 47 C.F.R. § 1.955(a)(1).

<sup>10</sup> Letters from John F. Clark, Counsel to Rio Tinto plc to Ruth Milkman, Chief, Kathy Harris, and Jeff Tobias, Wireless Telecommunications Bureau, FCC (Aug. 12 and 28, 2009).

<sup>11</sup> See Letter from Catherine C. Butcher, Counsel to Rio Tinto to Gary Schonman, Margaret Dailey, and Jeff Tobias, FCC (Sept. 13, 2011) (Sept. 13, 2011 Letter); Letter from Catherine C. Butcher, Counsel to Rio Tinto to Gary Schonman, Margaret Dailey, and Jeff Tobias, FCC (July 14, 2011); Letters from John F. Clark, Counsel to Rio Tinto Group to Rick Kaplan, Chief, Kathy Harris, and Jeff Tobias, Wireless Telecommunications Bureau, FCC (June 21, 2011) (June 21 Letters).

<sup>12</sup> See June 21 Letters.

<sup>13</sup> See Sept. 13, 2011 Letter.

9. **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.

10. **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 the Investigation. In consideration for the termination of the Investigation, the Companies agree 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 the Companies 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 the Companies with respect to their basic qualifications, including character qualifications, to be a Commission licensee or hold Commission authorizations.

11. **Compliance Plan.** Within thirty (30) calendar days of the Effective Date, the Companies each agree to implement a comprehensive Compliance Plan for purposes of ensuring their compliance with the Act, the Commission's Rules, and the Commission's orders. The Compliance Plan shall include, at a minimum, the following components:

- a. **Compliance Officers.** The Companies shall each designate a Compliance Officer, as defined in paragraph 2 of this Consent Decree, within thirty (30) calendar days of the Effective Date. The Compliance Officer shall administer the respective Company's Compliance Plan, supervise the Company's compliance with the Act and the Commission's Rules and orders, and serve as the point of contact on behalf of the Company for all FCC-related compliance matters.
- b. **Compliance Manuals.** Within sixty (60) calendar days of the Effective Date, the Compliance Officers shall each develop and distribute a Compliance Manual to the respective Company's employees and others who perform the Company's federal regulatory reporting and compliance-related tasks, all of whom shall follow the procedures detailed in the Compliance Manual. The Compliance Manuals shall include at a minimum: (i) an overview of the Commission's requirements applicable to the Companies' operations, including the need for prior approval for wireless license transfers of control and assignments; authorized operation of wireless stations and equipment, and timely filing of wireless station license renewal applications; (ii) a description of the regulatory requirements applicable to the accurate and timely reporting of information in FCC applications; and (iii) instructions regarding due diligence for FCC applications. The Compliance Manuals shall be updated from time to time, as needed.
- c. **Compliance Training Programs.** Within ninety (90) calendar days of the Effective Date and annually thereafter, the Companies shall each implement and conduct a training program for the respective Company's employees and others who perform duties for the Company that trigger or may trigger compliance-related responsibilities. The Companies shall ensure that training and compliance materials are provided to new and reassigned

employees who are responsible for fulfilling those obligations within the first thirty (30) calendar days of employment or reassignment.

- d. Review and Monitoring. The Companies shall each review their respective Compliance Manuals and Compliance Training Programs at least annually to ensure they are maintained in a proper manner and continue to address the respective Company's compliance with federal regulatory reporting obligations. The Companies shall update the Compliance Manual and Compliance Training Program in the event of changes and/or additions to the relevant Rules and related Commission orders.
- e. Compliance Reports. The Companies shall each 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 upon expiration of this Compliance Plan, *i.e.* three (3) years after the Effective Date. Each Compliance Report shall include a compliance certificate from the Compliance Officer, as an agent of and on behalf of Rio Tinto or Alcan, respectively, stating that he or she has personal knowledge that the Company: (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, sections 301 and 310(d) of the Act, and sections 1.903, 1.948 and 1.949(a) of the Commission's Rules,<sup>14</sup> together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since commencement of the Compliance Plan or the previous Compliance Report was submitted, as applicable; and (iii) is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Commission's Rules<sup>15</sup> 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, he or she, as an agent of and on behalf of Rio Tinto or Alcan, respectively, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree, sections 301 and 310(d) of the Act, and sections 1.903, 1.948 and 1.949(a) of the Commission's Rules<sup>16</sup>; and (ii) the steps that the Company 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, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Gary Schonman at Gary.Schonman@fcc.gov, and to Margaret Dailey at Margaret.Dailey@fcc.gov.
- f. Reporting Non-Compliance. The Companies shall each report any non-compliance with this Consent Decree, or section 301 or 310(d) of the Act, Subpart F of Part 1 of the Rules, or related Commission orders to the Bureau within 30 calendar days of the discovery of non-compliance.
- g. Termination Date of Compliance Plan. The requirements relating to the Compliance Plan shall expire three (3) years after the Effective Date, unless stated otherwise.

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<sup>14</sup> 47 U.S.C. §§ 301, 310(d); 47 C.F.R. §§ 1.903, 1.948, 1.949(a).

<sup>15</sup> See 47 C.F.R. § 1.16.

<sup>16</sup> 47 U.S.C. §§ 301, 310(d); 47 C.F.R. §§ 1.903, 1.948, 1.949(a).

12. **Voluntary Contribution.** Rio Tinto and Alcan jointly agree that they will make a voluntary contribution to the United States Treasury in the total amount of \$150,000 (one hundred and fifty thousand dollars) within thirty (30) days of the Effective Date. The payment shall be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment shall 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 Federal Reserve Bank of New York, and account number 27000001. The Companies will also send electronic mail notification to [Margaret.Dailey@fcc.gov](mailto:Margaret.Dailey@fcc.gov) on the date said payment is made.

13. **Waivers.** The Companies waive any and all rights they 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. The Companies shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither the Companies, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Companies shall waive any statutory right to a trial *de novo*. The Companies hereby agree to waive any claims they 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.

14. **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.

15. **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 the Companies do not expressly consent) that provision will be superseded by such Commission rule or order.

16. **Successors and Assigns.** The Companies agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

17. **Modifications.** This Consent Decree cannot be modified without the written consent of all Parties.

18. **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 and shall not be construed as (1) an adjudication on the merits, or (2) a factual or legal finding or determination, or an admission by the Companies, regarding any compliance, or noncompliance with the requirements of the Act or the Rules and/or the Commission's orders.

19. **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.

20. **Counterparts.** This Consent Decree may be signed in 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.

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

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P. Michele Ellison  
Chief  
Enforcement Bureau

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Date

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Craig Johnson  
Vice President  
Rio Tinto America Inc.

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Date

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Eileen Burns Lerum  
Vice President  
Alcan Corporation

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Date