

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

In the Matter of)	File No.: EB-09-SE-210
)	
Luxul Wireless, Inc.)	Acct. No.: 201132100029
)	
)	FRN: 0018526590

ORDER

Adopted: May 19, 2011

Released: May 20, 2011

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Luxul Wireless, Inc. (“Luxul”). The Consent Decree terminates an investigation initiated by the Bureau regarding Luxul’s compliance with section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Commission’s rules (“Rules”)² pertaining to the marketing of external radio frequency power amplifiers.

2. The Bureau and Luxul have negotiated the terms of the Consent Decree that would resolve this matter. A copy of the Consent Decree is attached hereto and incorporated herein 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 Luxul 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, 15.204(d)(1), (2).

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 Jeffrey Curtis, President & Chief Executive Officer, Luxul Wireless, Inc., 357 South 670 West, Suite 160, Lindon, UT 84042.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau and Luxul Wireless, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Luxul Wireless, Inc. violated section 302(b) of the Communications Act of 1934, as amended,¹ and sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Commission's rules,² regarding the marketing of external radio frequency power amplifiers for individual sale.

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) "Communications Laws" means the Act, the Rules, and the published and promulgated orders and decisions of the Commission.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925, 15.204(d)(1), (2).

- (h) “Investigation” means the investigation commenced by the Bureau’s January 27, 2010 letter of inquiry³ regarding Luxul’s marketing of external radio frequency power amplifiers.
- (i) “Luxul” means Luxul Wireless, Inc., its predecessors-in-interest and successors-in-interest.
- (j) “Parties” means Luxul and the Bureau, each of which is a “Party”.
- (k) “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 Act⁴ and section 2.803(a) of the Rules,⁵ radio frequency devices may not be marketed⁶ in the United States unless the devices comply with the applicable technical and administrative provisions of the Rules. As a general rule, an amplifier can only be marketed with the system with which it has been approved, and not as a separate product.⁷ An exception to this rule provides that an amplifier may be marketed for individual sale if the amplifier is intended for use with certain Part 15 intentional radiators.⁸ Under the exception, an amplifier marketed for individual sale must be designed so that it can only be connected to a system with which it has been previously authorized.⁹ Moreover, when an amplifier is marketed for individual sale (for connection with a previously authorized system), the Rules require that the outside packaging and user manual include a notice that (i) states that the amplifier can be used only with a previously authorized system, and (ii) identifies the previously authorized system by FCC Identifier.¹⁰

3. On January 27, 2010, the Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”) to Luxul.¹¹ The LOI directed Luxul to submit a sworn written response to a series of questions relating to whether Luxul was marketing unauthorized and non-compliant external radio

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jeffrey Curtis, President, Luxul Wireless (January 27, 2010).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803(a).

⁶ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁷ 47 C.F.R. § 15.204(d).

⁸ 47 C.F.R. § 15.204(d)(1).

⁹ *Id.*

¹⁰ 47 C.F.R. § 15.204(d)(2). Of course, amplifiers must also comply with all applicable identification and labeling requirements prior to marketing. 47 C.F.R. § 2.925.

¹¹ *See supra* n. 3.

frequency power amplifiers – including for individual sale – in contravention of the Rules. Luxul responded to the LOI on March 10, 2010.¹²

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.** Luxul 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 Effective Date as defined herein. 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 the Investigation. In consideration for the termination of the Investigation, Luxul 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 Luxul 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 Luxul with respect to Luxul's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** In response to the Bureau's Investigation, Luxul has taken affirmative steps to facilitate the withdrawal of its non-compliant external radio frequency power amplifiers from both distributors and end-users in the market and, for purposes of settling the matters herein, agrees to continue those efforts at least through the term of this Consent Decree. Luxul further agrees that it shall within sixty (60) calendar days after the Effective Date (i) develop and implement a Compliance Plan related to future compliance with the Communications Laws, including section 302(b) of the Act, sections 2.803(a), 2.925 and 15.204(d)(1), (2) of the Rules and other Rules, Commission orders or statutory requirements governing the marketing of external radio frequency power amplifiers for individual sale; and (ii) establish and maintain standard, internal operating procedures and policies that Luxul shall follow to ensure compliance with section 302(b) of the Act, sections 2.803(a), 2.925 and 15.204(d)(1), (2) of the Rules and other Commission requirements related to equipment marketing ("Operating Procedures"). The Compliance Plan shall include, at a minimum, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Luxul shall designate a senior corporate manager to serve as a Compliance

¹² See Letter from Mr. Jeffrey Curtis, President and CEO, Luxul Wireless, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (March 10, 2010).

Officer. The Compliance Officer shall be responsible for administering the Compliance Plan, and shall be familiar with the FCC's equipment marketing, authorization, and labeling requirements and other relevant Rules.

- (b) **Compliance Training.** Within sixty (60) calendar days after the Effective Date, Luxul shall establish and implement a training program on compliance with the Rules and requirements relating to equipment authorization, marketing and labeling ("Training Program"). The Training Program shall be provided to all employees of Luxul who are involved directly or indirectly in, or responsible for, the design, development, sourcing, procurement and marketing of radio frequency devices in the United States (each a "Covered Employee"). Luxul also shall prepare and distribute to all Covered Employees a compliance checklist that Covered Employees will use to facilitate compliance with the Commission's equipment marketing, authorization, and labeling requirements. Any person who becomes a Covered Employee at any time after the initial Training Program session shall be provided such training, including instruction on the use of the compliance checklist, within thirty (30) calendar days after the date such person becomes a Covered Employee. Luxul shall repeat the Training Program annually, and shall periodically review and, to the extent necessary, revise the Training Program to ensure that it remains current and complete, and to enhance its effectiveness.
- (c) **Trade-in Program.** Luxul shall continue to offer a web-based program that allows any end user to trade in their non-compliant external radio frequency power amplifier for a compliant amplifier product kit. Luxul shall offer the end user a trade-in credit towards a certified system sufficient to provide the end user a meaningful incentive to surrender any unauthorized device(s).
- (d) **Reporting Non-Compliance.** Luxul shall report any non-compliance with section 302(b) of the Act, or sections 2.803(a), 2.925 or 15.204(d)(1), (2) of the Rules within fifteen (15) calendar days after the discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Luxul has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Luxul has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (e) **Compliance Reports.** Luxul shall 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.
- (i) Each compliance report shall describe the status of Luxul's trade-in program and identify the number of unauthorized devices that then remain outstanding, and provide a detailed description of Luxul's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's requirements relating to equipment authorization, marketing, and labeling. In addition, each

Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Luxul, stating that the Compliance Officer has personal knowledge that Luxul (A) has established and implemented the Compliance Plan; (B) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (C) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 8(d) hereof.

- (ii) The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and 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.
- (iii) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Luxul, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that Luxul has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that Luxul has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (iv) 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, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

- (f) **Termination Date.** Unless stated otherwise, the requirements of paragraph 8 of this Consent Decree will expire twenty-four (24) months after the Effective Date.

9. **Voluntary Contribution.** Luxul agrees that it will make a voluntary contribution to the United States Treasury in the amount of eighteen thousand two hundred dollars (\$18,200). The payment shall be made within thirty (30) calendar 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 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 02130004, 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). Luxul must also send electronic notification to Jennifer Burton, at Jennifer.Burton@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

10. **Waivers.** Luxul 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. Luxul 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 Luxul nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Luxul shall waive any statutory right to a trial *de novo*. Luxul hereby agrees to waive any claims it may 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 Luxul does not expressly consent) that provision will be superseded by such Commission Rule or order.

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

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with regard to the Investigation. 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, the Rules or the Commission's 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.

P. Michele Ellison
Chief,
Enforcement Bureau

Date

Jeffrey T. Curtis, President and CEO
Luxul Wireless, Inc.

Date