

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

In the Matter of	)	
	)	
Ayustar Corporation	)	File Number: EB-11-SJ-0003
	)	NAL/Acct. No.:201132680002
San Juan, PR	)	FRN:0008739229

**ORDER**

**Adopted: November 18, 2013**

**Released: November 18, 2013**

By the Regional Director, South Central Region, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau of the Federal Communications Commission (Bureau) and Ayustar Corporation (Ayustar). The Consent Decree terminates the investigation and Notice of Apparent Liability for Forfeiture issued by the Bureau of possible violations of Sections 301 and 302(b) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Section 15.1(b)–(c) of the Commission’s rules (Rules)<sup>2</sup> concerning the operation of an intentional radiator without a license and in a manner inconsistent with Part 15 of the Rules<sup>3</sup> and the device’s equipment authorization.

2. The Bureau and Ayustar have negotiated the terms of a Consent Decree that resolves 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, terminating the investigation.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) and 503(b) of the Communications Act of 1934, as amended,<sup>4</sup> and Sections 0.111 and 0.311 of the Commission’s rules,<sup>5</sup> the Consent Decree attached to the Order **IS ADOPTED**.

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

<sup>1</sup> 47 U.S.C. §§ 301, 302a(b); *see also* 47 C.F.R. § 15.407.

<sup>2</sup> 47 C.F.R. § 15.1(b)–(c).

<sup>3</sup> 47 C.F.R. §§ 15.1 *et seq.*

<sup>4</sup> 47 U.S.C. §§ 154(i), 503(b).

<sup>5</sup> 47 U.S.C. §§ 0.111, 0.311.

6. **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 Ayustar Corporation at POB 16892, San Juan, PR 00908-6892.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director  
South Central Region  
Enforcement Bureau

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**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission (Bureau) and Ayustar Corporation (Ayustar), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Ayustar violated Sections 301 and 302(b) of the Communications Act of 1934, as amended, and Section 15.1(b)–(c) of the Commission’s rules,<sup>1</sup> by operating an intentional radiator without a license and in a manner inconsistent with Part 15 of the Rules<sup>2</sup> and the device’s equipment authorization.

**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” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Ayustar” means Ayustar Corporation.
  - (d) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Ayustar is subject by virtue of its business activities, including but not limited to, the U-NII Rules.
  - (g) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraphs 11, 12, 13, and 14.
  - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
  - (i) “Investigation” means the investigation initiated by the Bureau on December 7, 2010 of possible violations of Section 301 and 302(b) of the Act and Section 15.1(b)–(c) of

<sup>1</sup> 47 U.S.C. §§ 301, 302a(b); 47 C.F.R. § 15.1(b)–(c).

<sup>2</sup> 47 C.F.R. §§ 15.1 *et seq.*

the Rules regarding Ayustar's operation of U-NII transmitters and culminating in a Notice of Apparent Liability and Order, DA 11-1313.

- (j) "Parties" means Ayustar and the Bureau, and each of which is a "Party."
- (k) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (l) "U-NII" means Unlicensed National Information Infrastructure devices and services.
- (m) "U-NII Rules" means collectively, Section 302(b) of the Act, 47 U.S.C. § 302a(b), the Rules contained in Part 15, Subparts A, C, and E, 47 C.F.R. § 15.1 *et seq.*, governing the use of unlicensed intentional radiators in U-NII frequency bands, and other related Communications Laws.

## II. BACKGROUND

3. Section 301 of the Act prohibits the use or operation of 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.<sup>3</sup> An exception to the license requirement under Section 301 is found in Part 15 of the Rules,<sup>4</sup> which sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to Section 15.1(b) of the Rules, however, "operation of an intentional . . . radiator that is *not* in accordance with the regulations in this part *must be licensed* . . . ."<sup>5</sup> Thus, if an intentional radiator fails to comply with the conditions set forth in its equipment authorization, the operation is no longer covered by the unlicensed provisions of Part 15 and must be licensed pursuant to Section 301 of the Act.

4. Section 15.201(b) of the Rules<sup>6</sup> provides that all intentional radiators operating under Part 15 shall be certificated by the Commission. Section 15.1(c) of the Rules<sup>7</sup> states that the operation of an intentional radiator that is not in compliance with the administrative and technical provisions in this part is prohibited. Section 302(b) of the Act provides that "[n]o person shall . . . use devices . . . which fail to comply with the regulations promulgated pursuant to this section."<sup>8</sup> Consequently, the operation of an intentional radiator in a manner inconsistent with the Part 15 Rules is a violation of Section 302(b) of the Act.

5. On December 7 and 8, 2010, agents from the Enforcement Bureau's San Juan Office observed Ayustar operate a Part 15 intentional radiator—a Motorola Canopy—on the center frequency of 5626 MHz from the roof of a building in Santurce, Puerto Rico. The Motorola Canopy used by Ayustar is not certified for use on that frequency and is incapable of operating with the required Dynamic Frequency Selection radar detection mechanism.

6. Ayustar cooperated with the agents from the Enforcement Bureau's San Juan Office and has submitted financial documentation of its inability to pay the proposed forfeiture.

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<sup>3</sup> 47 U.S.C. § 301.

<sup>4</sup> See 47 C.F.R. §§ 15.1 *et seq.*

<sup>5</sup> 47 C.F.R. § 15.1(b) (emphasis added).

<sup>6</sup> 47 C.F.R. § 15.201(b).

<sup>7</sup> 47 C.F.R. § 15.1(c).

<sup>8</sup> 47 U.S.C. § 302a(b).

### 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.

8. **Jurisdiction.** Ayustar 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.

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, Ayustar 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 of the Consent Decree, 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 Ayustar concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, 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 Ayustar with respect to Ayustar's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

11. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Ayustar shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Ayustar complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the U-NII Rules prior to assuming his/her duties.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, Ayustar agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the U-NII Rules, Ayustar shall implement the following procedures:

- (a) **Inventory Assessment.** Ayustar shall review the specifications for all of its U-NII devices in use to ensure that its U-NII devices are being operated consistent with those specifications prior to submission of the second and third Compliance Reports. This review shall include, but not be limited to, ensuring that only certified antennas are in use, that devices are operating only on certified frequencies, that any required dynamic frequency selection capabilities are in place, that devices are operating with the proper country code, and that the devices are deployed with current operating software releases. New devices deployed after the review shall be checked prior to deployment to ensure

compliance with the U-NII Rules. Ayustar shall include the results of its inventory assessment in its second and third Compliance Reports and certify that it is checking new devices for compliance prior to deployment.

- (b) **Compliance Training Program.** Ayustar shall establish and implement a Compliance Training Program on compliance with the U-NII Rules. As part of the Compliance Training Program, employees who perform, supervise, oversee or manage the performance of duties that relate to Ayustar's responsibilities under the U-NII Rules shall be advised of Ayustar's obligation to report any noncompliance with the U-NII Rules under paragraph 13 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All such employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who is assigned to a position with duties related to Ayustar's compliance with the U-NII Rules any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person's responsibilities relating to the U-NII Rules begin. Ayustar shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

13. **Reporting Noncompliance.** Ayustar shall report any noncompliance with the U-NII Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Ayustar has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Ayustar has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Regional Counsel, South Central Region, Enforcement Bureau, Federal Communications Commission, Atlanta Office, 3575 Koger Blvd. Suite 320, Duluth, GA 30096, with a copy submitted electronically to SCR-Response@fcc.gov. The obligations set forth in this paragraph 13 shall expire thirty-six (36) months after the Effective Date.

14. **Compliance Reports.** Ayustar shall file Compliance Reports with the Commission within ninety (90) days of the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Ayustar's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the U-NII Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Ayustar, stating that the Compliance Officer has personal knowledge that Ayustar (i) has established and implemented the Compliance Plan; and (ii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 13 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules, 47 C.F.R. § 1.16, and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Ayustar, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Ayustar has taken or will take to remedy such

noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Ayustar has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

- (d) All Compliance Reports shall be submitted to the Regional Counsel, South Central Region, Enforcement Bureau, Federal Communications Commission, Atlanta Office, 3575 Koger Blvd. Suite 320, Duluth, GA 30096, with a copy submitted electronically to SCR-Response@fcc.gov.

15. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 11-14 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

16. **Voluntary Contribution.** Ayustar agrees that it will make a voluntary contribution to the United States Treasury in the amount of six thousand dollars (\$6,000) (Voluntary Contribution), with such Voluntary Contribution to be made in installments (each an Installment Payment). The first Installment Payment in the amount of five hundred dollars (\$500) must be made within thirty (30) calendar days after the Effective Date. The balance of the Voluntary Contribution will be made in eleven consecutive monthly payments of five hundred dollars (\$500) payable on the first day of each month beginning January 1, 2014. The final payment is due on the first day of November 1, 2014 (Maturity Date). Ayustar acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1). Upon an Event of Default, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, Ayustar agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, payable in United States Dollars 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. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payments 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). Ayustar shall also send electronic notification to SCR-Response@fcc.gov on the date each Installment Payment is made.

17. **Event of Default.** Ayustar agrees that an Event of Default shall occur upon the failure by Ayustar to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

18. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Ayustar.

19. **Waivers.** Ayustar 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 as described herein. Ayustar 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 Ayustar nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Ayustar shall waive any statutory right to a trial *de novo*. Ayustar 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 in its entirety 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 Ayustar does not expressly consent) that provision will be superseded by such Rule or Commission order.

22. **Successors and Assigns.** Ayustar 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 Communications Laws.

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. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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.

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Dennis P. Carlton  
Regional Director  
South Central Region  
Enforcement Bureau

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Date

**Ayustar Corporation**

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Stefan Lechner  
Chief Executive Officer  
Ayustar Corporation

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Date