

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

In the Matter of
NewCom International, Inc.
Licensee of Fixed Earth Stations
E040267 and E050018
Miami, FL
File No.: EB-11-MA-0052
Acct. No.: 201332600004
FRN: 0010802528

ORDER

Adopted: April 17, 2013

Released: April 17, 2013

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 (Commission) and NewCom International, Inc. (NewCom). The Consent Decree terminates the Bureau's investigation into whether NewCom violated Section 301 of the Communications Act of 1934, as amended (Act), and Section 25.102(a) of the Commission's rules (Rules) by operating a fixed earth station to communicate with a space station without Commission authority.

2. The Bureau and NewCom 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 and terminating the investigation.

4. Based solely on the record developed to date in this investigation and in the absence of material new evidence relating to this matter, we conclude that the investigation described in the Consent Decree 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, and Sections 0.111, 0.311 of the Commission's rules, the Consent Decree attached to this Order IS ADOPTED.

1 47 U.S.C. § 301.
2 47 C.F.R. § 25.102(a).
3 47 U.S.C. §§ 154(i), 503(b).

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

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 NewCom International, Inc., 15590 NW 15th Avenue, Miami, FL 33169, and to its attorney, Frank G. Lamancusa, Bingham McCutchen LLP, 2020 K Street NW, Washington, DC 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

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	)	

**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and NewCom International, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether NewCom International, Inc. violated Section 301 of the Communications Act of 1934, as amended, and Section 25.102(a) of the Commission's rules,<sup>1</sup> by communicating with a space station without Commission authority.

**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) "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 collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which NewCom is subject by virtue of its business activities, including but not limited to, the fixed earth station requirements contained in Part 25 of the Rules.
  - (f) "Compliance Plan" means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 9.
  - (g) "Covered Employees" means all employees and agents of NewCom who perform or supervise, oversee, or manage the performance of, duties that relate to NewCom's responsibilities under the Licensing Rules.

<sup>1</sup> 47 U.S.C. § 301; 47 C.F.R. §25.102(a).

- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the investigation initiated by the Bureau on March 23, 2010 into possible violations of Section 301 of the Act and Section 25.102(a) of the Rules regarding NewCom’s operation of a fixed earth station to communicate with the Russian Federation-licensed Intersputnik *Express AM44* space station without Commission authorization.
- (j) “Licensing Rules” means Section 301 of the Act and Section 25.102(a) of the Rules, and other Communications Laws that prohibit the use or operation of a space or earth station without a valid Commission authorization or in a manner inconsistent with such authorization.
- (k) “NewCom” means NewCom International, Inc. and its predecessors-in-interest and successors-in-interest.
- (l) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by NewCom to implement the Compliance Plan.
- (m) “Parties” means NewCom and the Bureau, and each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “STA” means the Special Temporary Authority granted by the Commission’s International Bureau to NewCom to operate a fixed earth station consistent with Part 25 of the Rules.

## II. BACKGROUND

3. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by space or earth stations except under and in accordance with an appropriate authorization granted by the Commission.<sup>2</sup> NewCom admits that it began communications with the *Express AM44* space station without Commission authorization on May 19, 2009, despite knowing at that time that *Express AM44* was not expressly permitted to serve the U.S. market.<sup>3</sup> NewCom did not notify Commission staff regarding its transmissions to the *Express AM44* space station until July 9, 2009, and did not file an initial STA application to transmit to the *Express AM44* space station until October 30, 2009. Moreover, NewCom continued to communicate with the *Express AM44* space station without authorization until its amended STA, filed on June 29, 2012, was granted on September 24, 2012.<sup>4</sup> Subsequently, Newcom and the Bureau entered into settlement discussions.

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<sup>2</sup> 47 U.S.C. § 301, 47 C.F.R. § 25.102(a).

<sup>3</sup> Letter from Frank G. Lamancusa, Attorney for NewCom International, Inc., to Steven DeSena, Resident Agent, Miami Office, South Central Region, Enforcement Bureau at 5 (July 1, 2011) (on file in EB-11-MA-0052).

<sup>4</sup> *Satellite Communications Services Information*, Report No. SES-01488, Public Notice, 2012 WL 4458775, at \*12 (IB Sept. 26, 2012).

### 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.

5. **Jurisdiction.** NewCom agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau 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. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission 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, NewCom 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 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 the 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 to hold Commission licenses or authorizations.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, NewCom 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 NewCom 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 Licensing Rules prior to assuming his/her duties.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, NewCom 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 Licensing Rules, NewCom shall implement the following procedures:

- (a) **Operating Procedures on Licensing Rules.** Within sixty (60) calendar days after the Effective Date, NewCom shall establish Operating Procedures that all Covered Employees must follow to help ensure NewCom's compliance with the Licensing Rules. NewCom's Operating Procedures shall include internal procedures and policies specifically designed to ensure that NewCom obtains any required

Commission authorizations prior to commencing operations on any frequencies and that NewCom's operations on such frequencies are consistent with such Commission authorizations.

- (b) **Compliance Manual**. Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure NewCom's compliance with the Licensing Rules. NewCom shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. NewCom shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program**. NewCom shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of NewCom's obligation to report any noncompliance with the Licensing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. NewCom 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.

10. **Reporting Noncompliance**. NewCom shall report any noncompliance with the Licensing 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 NewCom 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 NewCom 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](mailto:SCR-Response@fcc.gov). The obligations set forth in this paragraph 10 shall expire twenty-four (24) months after the Effective Date.

11. **Compliance Reports**. NewCom shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of NewCom's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensing Rules. In addition, 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 that NewCom (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) 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 10 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,<sup>5</sup> 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 NewCom, 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 NewCom 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 NewCom 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](mailto:SCR-Response@fcc.gov).

12. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 8 through 11 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

13. **Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints against NewCom 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 complaints 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 with the Communications Laws.

14. **Voluntary Contribution.** NewCom agrees that it will make a voluntary contribution to the United States Treasury in the amount of twenty five thousand dollars (\$25,000) (Voluntary Contribution), such Voluntary Contribution to be made in installments (each an Installment Payment). The first Installment Payment in the amount of three thousand dollars (\$3,000.00) is due within thirty (30) calendar days of the Effective Date. The balance of the Voluntary Contribution will be made in eleven consecutive monthly payments of two thousand dollars (\$2,000.00) payable on the first day of each month beginning with the second month following the Effective Date. The final payment is due on the first day of twelfth month following the Effective Date (Maturity Date). NewCom 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 (as defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. In addition, NewCom 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. NewCom shall also send electronic notification of each payment to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov) on the dates said payments are made. The payments must be made by check or similar instrument, wire

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<sup>5</sup> 47 C.F.R. § 1.16.



transfer, or credit card, and must include the Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>6</sup> 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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

16. **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 NewCom.

17. **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 as defined herein. 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 of 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

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<sup>6</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



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.

18. **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.

19. **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 Rule or Commission order.

20. **Admission of Liability.** Notwithstanding any of NewCom's prior submissions in this proceeding, NewCom admits, for Commission civil enforcement purposes and in express reliance on the provisions of Paragraph 7 herein, that its communications with the *Express AM44* space station prior to September 24, 2012 violated Section 301 of the Communications Act and Section 25.102(a) of the Rules.

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

22. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties.

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

24. **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.

25. **Authorized Representative.** The individual signing this Consent Decree on behalf of NewCom represents and warrants that he is fully authorized by NewCom to execute this Consent Decree and to bind NewCom to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

26. **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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P. Michele Ellison  
Chief, Enforcement Bureau

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Date

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

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Date