

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-SED-13-00009134
)	
ARRI, Inc.)	Acct. No.: 201432100022
)	
)	FRN: 0023709512

ORDER

Adopted: June 17, 2014

Released: June 17, 2014

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to conclude its investigation into whether ARRI, Inc. (ARRI) unlawfully marketed certain digital cameras and wireless accessories in the United States prior to complying with the Commission’s equipment authorization requirements. These important equipment marketing and equipment authorization rules ensure that devices which emit radio frequency radiation do not interfere with authorized radio communications. In addition, these rules protect consumers by requiring manufacturers to label these devices properly and provide necessary information in user manuals so that consumers operate the devices in a compliant manner. For the purposes of settlement, ARRI admits that its marketing of the digital devices covered by the Bureau’s investigation violated the Commission’s rules. To resolve the investigation, ARRI will pay \$80,000 and implement a three-year plan to ensure future compliance with the Commission’s equipment marketing rules.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and ARRI. The Consent Decree resolves and terminates the Bureau’s investigation into ARRI’s compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Section 2.803 of the Commission’s rules (Rules)² pertaining to the marketing of digital radio frequency devices, such as cameras and wireless accessories.

3. The Bureau and ARRI have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. 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.

5. 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 ARRI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

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

8. **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 Glenn Kennel, President and CEO, ARRI, Inc., 600 N. Victory Blvd., Burbank, CA 91502, and to George Thompson, Esq., Neville Peterson LLP, Counsel for ARRI, Inc., 1400 16th Street, N.W., Suite 350, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Acting Chief, Enforcement Bureau

³ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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ARRI, Inc.)	Acct. No.: 201432100022
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and ARRI, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Section 2.803 of the Commission’s rules² pertaining to the marketing of digital radio frequency devices, such as cameras and wireless accessories.

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) “ARRI” means ARRI, Inc., and its divisions, subsidiaries, predecessors-in-interest and successors-in-interest.
 - (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 ARRI is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
 - (h) “Covered Employees” means all employees and agents of ARRI who perform, or supervise, oversee, or manage the performance of, duties that relate to ARRI’s responsibilities under the Equipment Marketing Rules.
 - (i) “Digital Device” means an unintentional radiator (device or system) as defined in Section 15.3(k) of the Rules.³
 - (j) “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.

³ *Id.* § 15.3(k).

- (k) “Equipment Marketing Rules” means Section 302(b) of the Act,⁴ Section 2.803 of the Rules,⁵ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (l) “Investigation” means the investigation commenced by the Bureau’s January 23, 2013, Letter of Inquiry regarding whether the marketing of certain Digital Devices by ARRI complied with the Equipment Marketing Rules.⁶
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ARRI to implement the Compliance Plan.
- (n) “Parties” means ARRI and the Bureau, each of which is a “Party.”
- (o) “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 Act⁷ and Sections 2.803, 15.19, and 15.105 of the Rules,⁸ certain Digital Devices may not be marketed in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. Section 2.803(a) 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.”⁹

3. ARRI markets Digital Devices, including cameras and wireless accessories, in the United States. These Digital Devices include unintentional radiators subject to authorization prior to marketing, via either the Commission’s equipment verification or declaration of conformity procedures.¹⁰

4. On January 23, 2013, the Bureau’s Spectrum Enforcement Division (Division) issued a Letter of Inquiry (LOI) to ARRI, directing ARRI to submit a sworn written response to a series of questions relating to ARRI’s manufacture, importation, and marketing of Digital Devices.¹¹ During the course of the investigation, the evidence revealed and the Bureau determined that ARRI had marketed unauthorized radio frequency devices in violation of Section 302(b) of the Act and Section 2.803 of the Rules, specifically that certain wireless accessories for its cameras were not properly tested prior to marketing.¹² For the purposes of settlement, ARRI admits that its marketing of the Digital Devices covered by the Bureau’s investigation violated the Commission’s rules. ARRI subsequently resolved its noncompliance with the Commission’s Equipment Marketing Rules that is the subject of this Consent Decree.

⁴ See 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803.

⁶ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Glenn Kennel, President and CEO, ARRI, Inc. (Jan. 23, 2013) (on file in EB-SED-13-00009134).

⁷ 47 U.S.C. § 302a(b).

⁸ 47 C.F.R. §§ 2.803, 15.19, 15.105.

⁹ *Id.* § 2.803(a).

¹⁰ See *id.* § 15.101.

¹¹ See *supra* note 6. The investigation began in response to a complaint alleging that ARRI had been marketing unauthorized equipment.

¹² 47 U.S.C. § 302a(b); 47 C.F.R. § 2.803.

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** ARRI 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.

7. **Admission of Liability.** ARRI admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 9 herein, that its actions with respect to the marketing in the United States of the radio frequency devices referenced herein violated the Commission's Equipment Marketing Rules.

8. **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.

9. **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, ARRI agrees to the terms, conditions, and procedures contained herein. The Bureau further 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 new proceeding, formal or informal, or take any action on its own motion against ARRI 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 ARRI with respect to ARRI's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, ARRI 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 ARRI complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to 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 Equipment Marketing Rules prior to assuming his/her duties.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, ARRI 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 Equipment Marketing Rules, ARRI shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, ARRI shall establish Operating Procedures that all Covered Employees must follow to help ensure ARRI's compliance with the Equipment Marketing Rules. ARRI's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) prior to the initiation of marketing (as such term is defined

in Section 2.803 of the Rules¹³), all Digital Devices and other radio frequency devices to be marketed by ARRI comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure; (ii) ARRI complies with the requirements of Sections 2.1203, 2.1204, and 2.1205 of the Rules relating to the importation and entry of Digital Devices into the United States, including the filing with the United States Customs and Border Protection of an FCC Form 740 (or the electronic equivalent thereof) that accurately identifies the importation condition(s) satisfied for each such importation;¹⁴ and (iii) ARRI immediately discontinues marketing of any Digital Device or other radio frequency device that it knows (or has reason to believe) does not comply with applicable technical standards and/or have not been properly authorized until it can verify that the device complies with the Equipment Marketing Rules.

- (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 Equipment Marketing Rules, including the obligations to secure an equipment authorization from the FCC prior to marketing a Digital Device and to comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure, and set forth the Operating Procedures that Covered Employees shall follow to help ensure ARRI's compliance with the Equipment Marketing Rules. ARRI shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. ARRI shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** ARRI shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of ARRI's obligation to immediately discontinue marketing any Digital Device or radio frequency device that it knows (or has reason to believe) does not comply with the Equipment Marketing Rules as well as ARRI's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 12 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. ARRI 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.

12. **Reporting Noncompliance.** ARRI shall report any noncompliance with the Equipment Marketing 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 ARRI 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 ARRI has taken or

¹³ See *supra* para. 2.

¹⁴ See 47 C.F.R. §§ 2.1203, 2.1204, 2.1205.

will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

13. **Compliance Reports.** ARRI shall 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 thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of ARRI's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of ARRI, stating that the Compliance Officer has personal knowledge that ARRI (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 12 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 and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of ARRI, 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 ARRI 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 ARRI 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 on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Penalties.** ARRI agrees that it will pay civil penalties to the United States Treasury in the amount of eighty thousand dollars (\$80,000) within thirty (30) calendar days after the Effective Date. ARRI shall send electronic notification of payment to Jason Koslofsky at Jason.Koslofsky@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When

¹⁵ See *id.* § 1.16.

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 ARRI should follow based on the form of payment it selects:

- 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 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 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 ARRI has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** ARRI 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. ARRI 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 ARRI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ARRI shall waive any statutory right to a trial *de novo*. ARRI hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁷ relating to the matters addressed in this Consent Decree.

17. **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.

18. **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 ARRI does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

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

¹⁷ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501–1.1530.

22. **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.

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

24. **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.

Travis LeBlanc
Acting Chief
Enforcement Bureau

Date

Glenn Kennel
President and CEO
ARRI, Inc.

Date