

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

In the Matter of	)	
	)	File No.: EB-SED-14-00013339 <sup>1</sup>
	)	Acct. No.: 201432100023
IPS Group, Inc.	)	FRN: 0022525059
	)	
	)	

**ORDER**

**Adopted: July 3, 2014**

**Released: July 3, 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 IPS Group, Inc. (IPS) complied with certain rules governing the marketing of certain “smart” parking meters that contain wireless technologies. IPS manufactures and markets wireless parking meters to certain local municipalities. IPS admitted that it marketed some of these devices without proper authorization. Indeed, the Bureau’s investigation revealed that some of these devices apparently were modified without proper authorization. The Commission’s rules impose restrictions and conditions on the marketing of modified devices to ensure that the altered devices continue to comply with the Commission’s technical requirements in all respects. These devices could cause harmful interference to other electronics and radio communications devices if they are not in full compliance with the Commission’s technical requirements. To resolve the investigation, IPS will pay \$14,000 and implement a three-year compliance plan to ensure future compliance with these important requirements.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and IPS. The Consent Decree resolves and terminates the Bureau’s investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended (Act),<sup>2</sup> and Section 2.803 of the Commission’s rules (Rules)<sup>3</sup> pertaining to the marketing of certain radio frequency devices prior to equipment authorization.

3. The Bureau and IPS 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 IPS possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

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<sup>1</sup> The investigation initiated under File No. EB-SED-13-00009360 was subsequently assigned File No. EB-SED-14-00013339. Any future correspondence with the FCC concerning this matter should reflect the new case number.

<sup>2</sup> 47 U.S.C. § 302a(b).

<sup>3</sup> 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,<sup>4</sup> and Sections 0.111 and 0.311 of the Rules,<sup>5</sup> 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 David W. King, President & CEO, IPS Group, Inc., 5601 Oberlin Dr., Suite 100, San Diego, CA 92121, and to Donna Balaguer, Esq., Fish & Richardson P.C., Counsel for IPS Group, Inc., 1425 K Street, N.W., 11th Floor, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Acting Chief  
Enforcement Bureau

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

<sup>5</sup> 47 C.F.R. §§ 0.111, 0.311.

Before the
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) File No.: EB-SED-14-00013339^1
) Acct. No.: 201432100023
IPS Group, Inc. )
) FRN: 0022525059
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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and IPS Group, 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,^2 and Section 2.803 of the Commission’s rules,^3 pertaining to the marketing of certain “smart” parking meters that contain wireless technologies.

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, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which IPS is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
(f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
(g) “Covered Employees” means all employees and agents of IPS who perform, or supervise, oversee, or manage the performance of, duties that relate to IPS’s responsibilities under the Equipment Marketing Rules, but excludes those employees or agents of IPS who solely perform factory labor associated with the manufacture and assembly of radio frequency devices, those solely involved in the sales marketing of radio frequency devices for distribution outside the United States and its territories, and those agents of IPS who perform independent testing and

^1 The investigation initiated under File No. EB-SED-13-00009360 was subsequently assigned File No. EB-SED-14-00013339. Any future correspondence with the FCC concerning this matter should reflect the new case number.

^2 47 U.S.C. § 302a(b).

^3 47 C.F.R. § 2.803.

certification of IPS's radio frequency devices.

- (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (i) "Equipment Marketing Rules" means Section 302(b) of the Act;<sup>4</sup> Section 2.803 of the Rules;<sup>5</sup> and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (j) "Investigation" means the investigation commenced by the Bureau regarding whether the marketing of wireless parking meters with radio frequency components by IPS complied with the Equipment Marketing Rules.
- (k) "IPS" means IPS Group, Inc. and its subsidiaries, predecessors-in-interest, and successors-in-interest.
- (l) "Operating Procedures" means the standard, internal operating procedures and compliance policies established by IPS to implement the Compliance Plan.
- (m) "Parties" means IPS and the Bureau, each of which is a "Party."
- (n) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

2. IPS manufactures and assembles "smart" parking meters, including credit-card enabled, solar powered parking meters, and meter web-based management systems. Pursuant to Section 302(b) of the Act<sup>6</sup> and Section 2.803 of the Rules,<sup>7</sup> radio frequency 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.<sup>8</sup> Radio frequency devices that incorporate an intentional radiator, such as the "smart" parking meters at issue here, are subject to authorization prior to marketing via the Commission's equipment certification procedures described in Sections 2.1031–2.1060 of the Rules.<sup>9</sup> In addition, such devices must be properly labeled pursuant to Section 15.19 of the Rules,<sup>10</sup> and their user manuals must contain the consumer disclosure information set forth in Section 15.21 of the Rules.<sup>11</sup>

3. In April 2013, IPS's counsel advised staff of the Bureau's Spectrum Enforcement Division (Division) that a competitor of IPS intended to file a complaint with the Commission concerning IPS's marketing of certain wireless parking meters without authorization. The referenced complaint was subsequently filed with the Commission's Office of Engineering and Technology on June 14, 2013. In response to Division inquiries, on April 11, 2014, IPS submitted information relating to the parking meters that were the subject of the complaint.<sup>12</sup> According to IPS, the subject parking meters were

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<sup>4</sup> 47 U.S.C. § 302a(b).

<sup>5</sup> 47 C.F.R. § 2.803.

<sup>6</sup> 47 U.S.C. § 302a(b).

<sup>7</sup> 47 C.F.R. § 2.803.

<sup>8</sup> 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." *Id.* § 2.803.

<sup>9</sup> *See id.* §§ 2.1031–2.1060, 15.201.

<sup>10</sup> *See id.* § 15.19.

<sup>11</sup> *See id.* § 15.21.

<sup>12</sup> *See* IPS Group, Inc. Confidential Summary (Apr. 11, 2014).

subsequently certified without modification, and the devices at all times complied with the technical requirements of the Rules. During the course of the Investigation, the evidence revealed and the Bureau determined that IPS had marketed certain wireless parking meters prior to equipment authorization in violation of Section 302(b) of the Act and Section 2.803 of the Rules.

### 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.** IPS 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. **Admission of Liability.** IPS admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that the circumstances described in paragraph 3 of this Consent Decree constitute violations of the Commission's Equipment Marketing Rules. The Bureau and IPS intend that this admission does not constitute an indictment, charge, conviction, or civil judgment for the violation of any Federal law or regulation within the meaning of Section 52.209-5 of the Federal Acquisition Regulations (FAR), or for analogous state and local procurement laws and regulations.

7. **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.

8. **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, IPS 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 IPS 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 IPS with respect to IPS's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, IPS 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 IPS 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.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, IPS 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, IPS shall implement the

following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, IPS shall establish Operating Procedures that all Covered Employees must follow to help ensure IPS's compliance with the Equipment Marketing Rules. IPS's Operating Procedures shall include internal procedures and policies specifically designed to ensure that prior to the initiation of marketing (as such term is defined in Section 2.803 of the Rules<sup>13</sup>), all wireless parking meters and other radio frequency devices to be marketed by IPS 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.
- (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 wireless parking meter or other radio frequency device and to comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure, and shall set forth the Operating Procedures that Covered Employees shall follow to help ensure IPS's compliance with the Equipment Marketing Rules. IPS shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. IPS shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** IPS 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 IPS's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 11 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 initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. IPS 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.

11. **Reporting Noncompliance.** IPS 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 IPS 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 IPS has taken or 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 Linda Nagel at [Linda.Nagel@fcc.gov](mailto:Linda.Nagel@fcc.gov) and to Ricardo Durham at

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<sup>13</sup> See *supra* para. 2.

Ricardo.Durham@fcc.gov.

12. **Compliance Reports.** IPS 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 IPS's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules.
- (b) In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of IPS, stating that the Compliance Officer has personal knowledge that IPS (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 11 hereof.
- (c) 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>14</sup> and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
- (d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of IPS, 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 IPS 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 IPS has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (e) 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 Linda Nagel at Linda.Nagel@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 9 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Civil Fine.** IPS agrees that it will pay a civil fine to the United States Treasury in the amount of fourteen thousand dollars (\$14,000) within thirty (30) calendar days after the Effective Date. IPS shall send electronic notification of payment to Linda Nagel at Linda.Nagel@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.<sup>15</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 that IPS should follow based on the form of payment it selects:

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<sup>14</sup> 47 C.F.R. § 1.16.

<sup>15</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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 IPS 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](mailto:ARINQUIRIES@fcc.gov).

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

16. **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.

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

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

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

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

21. **Third Party Beneficiaries.** Nothing in this Consent Decree, express or implied, is intended to confer upon or create for any person other than the Parties any rights or remedies.

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

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<sup>16</sup> 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.



Decree.

23. **Authorized Representative.** The individual signing this Consent Decree on behalf of IPS represents and warrants that he is authorized by IPS to execute this Consent Decree and to bind IPS 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.

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John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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Date

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David W. King  
President & CEO  
IPS Group, Inc.

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Date