

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Essex Telcom, Inc.

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File No.: EB-SED-16-00022830
Acct. No.: 201732100002
FRN: 0008317661

ORDER

Adopted: December 30, 2016

Released: December 30, 2016

By the Chief Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Essex Telcom, Inc. (Essex) operated station WQJA669 on unauthorized frequencies in the 3.5 GHz Band. These laws ensure that devices that emit radio frequency radiation comply with the Commission's technical requirements and do not interfere with authorized communications. To settle this matter, Essex admits that it operated station WQJA669 on unauthorized frequencies from April 14, 2016 until August 17, 2016, will implement a compliance plan, and will pay a \$28,800 civil penalty.

2. 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 referenced investigation regarding Essex's compliance with Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission's rules (Rules).

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Essex's basic qualifications to hold or obtain any Commission license or authorization.

4. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Act and the authority delegated by Sections 0.111 and 0.311 of the Rules, the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

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

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 Mr. Jeff Kohler, Executive Vice

1 The investigation began under File No. EB-SED-16-00022736 and was subsequently assigned File No. EB-SED-16-00022830.

2 47 U.S.C. § 301.

3 47 CFR § 1.903(a).

4 See 47 CFR § 1.93(b).

5 47 U.S.C. § 154(i).

6 47 CFR §§ 0.111, 0.311.

President and Chief Development Officer, Essex Telcom, Inc., 61 Inverness Drive East, Suite 250, Englewood, Colorado, 80112, and to Stephen E. Coran, Esq., Lerman Senter, PLLC, 2001, L Street, N.W., Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

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**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and Essex Telcom, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Essex Telcom, Inc. violated Section 301 of the Communications Act of 1934, as amended,<sup>1</sup> and Section 1.903(a) of the Commission’s rules<sup>2</sup> in connection with its operation of Station WQJA669 on unauthorized frequencies.

**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.<sup>3</sup>
  - (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 Essex is subject by virtue of its business activities, including but not limited to the Licensing Rules.
  - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
  - (g) “Covered Employees” means all employees and agents of Essex who perform, or supervise, oversee, or manage the performance of, duties that relate to Essex’s responsibilities under the Communications Laws, including the Licensing Rules.
  - (h) “Effective Date” means the date by which both the Bureau and Essex have signed the Consent Decree.
  - (i) “Essex” means Essex Telcom, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 CFR § 1.903(a).

<sup>3</sup> 47 U.S.C. § 151 *et seq.*

- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-16-00022736<sup>4</sup> regarding whether Essex violated the Licensing Rules.
- (k) “Licensing Rules” means Section 301 of the Act, and Section 1.903(a) of the Rules and other provisions of the Act, the Rules, and Commission orders that prohibit the use or operation of a wireless radio station in a manner inconsistent with its licensed parameters.
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Essex to implement the Compliance Plan.
- (m) “Parties” means Essex 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.
- (o) “Station” means Station WQJA669.

## II. BACKGROUND

3. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.<sup>5</sup>

4. In July 2016, the Enforcement Bureau’s Spectrum Enforcement Division (Division) received information from the Wireless Telecommunications Bureau that Essex was operating on frequencies in the 3550-3650 MHz band, a band not yet available for commercial use.<sup>6</sup> The Division reviewed Commission records and found that Essex had recently acquired and held a license for the Station, which was authorized to operate in the 3650-3700 MHz band.<sup>7</sup> On July 25, 2016, Division staff contacted Essex, requesting Essex to cease operations on unauthorized frequencies immediately. On July 28, 2016, Jeff Kohler of JAB Wireless, Inc. (JAB Wireless), the parent company of Essex, submitted a Declaration stating that immediately upon speaking with Commission staff, Essex began to migrate some customers and disconnect others and in less than 24 hours had ceased transmitting on the 3550-3650 MHz frequencies.<sup>8</sup>

5. The Kohler Declaration further explained that, in May 2016, JAB Wireless realized that “certain customers were receiving fixed broadband service” from unauthorized frequencies.<sup>9</sup> JAB Wireless stated that when it “understood the gravity of the situation,” Essex “took immediate steps” to cease operations on the unauthorized frequencies, and had stopped such operations on July 26, 2016.<sup>10</sup>

6. An Enforcement Bureau Field Office Agent (Field Agent) conducted an inspection during the period August 15-17, 2016, and determined that one transmitter was still operating on

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<sup>4</sup> The investigation began under File No. EB-SED-16-00022736 and was subsequently assigned File No. EB-SED-16-00022830.

<sup>5</sup> 47 U.S.C. § 301; 47 CFR § 1.903(a).

<sup>6</sup> See *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959 (2015).

<sup>7</sup> See ULS File No. 0007207276.

<sup>8</sup> See Declaration of Jeff Kohler, Co-Founder and Chief Development Officer for JAB Wireless, Inc., (July 28, 2016) (on file in EB-SED-16-00022830) (Kohler Declaration).

<sup>9</sup> Kohler Declaration at 2.

<sup>10</sup> See Declaration of Martin Garrity, Vice President of Network Planning, Engineering and Construction for JAB Wireless, Inc. (July 28, 2016) (on file in EB-SED-16-00022830).

unauthorized frequencies. On August 17, 2016, the Field Agent informed Essex of this transmission and Essex stopped operations on the unauthorized frequencies on the same date.<sup>11</sup> In response to an inquiry from the Enforcement Bureau,<sup>12</sup> Essex indicated that it had operated on unauthorized frequencies at nine locations.<sup>13</sup> Subsequently, Essex and the Bureau engaged in settlement negotiations. The Bureau and Essex agree to the following terms and conditions of settlement and hereby enter into this Consent Decree as provided herein.

### III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Essex 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 as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

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, Essex 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 the 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 Essex 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 to set for hearing the question of Essex's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.<sup>14</sup>

11. **Admission of Liability.** Essex admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its operation on unauthorized frequencies violated the Licensing Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Essex shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a 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 Essex 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 or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

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<sup>11</sup> See Supplemental Declaration of Martin Garrity, Vice President of Deployment and Network Operations for JAB Wireless, Inc. (Aug. 18, 2016) (on file in EB-SED-16-00022830).

<sup>12</sup> See E-mail from Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Doug VanCura, Vice President Network Operations, Essex Telcom, Inc. (Oct. 11, 2016) (on file in EB-SED-16-00022830).

<sup>13</sup> See Declaration of Martin Garrity, Vice President of Network Deployment and Field Operations for JAB Wireless, Inc. (Oct. 20, 2016) (on file in EB-SED-16-00022830).

<sup>14</sup> See 47 CFR § 1.93(b).

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Essex 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.<sup>15</sup> With respect to the Licensing Rules, Essex will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Essex shall establish Operating Procedures that all Covered Employees must follow to help ensure Essex's compliance with the Licensing Rules. Essex's Operating Procedures shall include internal procedures and policies specifically designed to ensure that it operates its stations in accordance with their authorized parameters. Essex shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Licensing 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 Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Essex's compliance with the Licensing Rules. Essex shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Essex shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Essex 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 Essex's obligation to report any noncompliance with the Licensing Rules under paragraph 14 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. Essex shall repeat 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.

14. **Reporting Noncompliance.** Essex 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 Essex 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 Essex 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, 445 12<sup>th</sup> Street, SW, Rm. 4-C224, Washington, DC 20554, with copies submitted electronically to Kathy Harvey at [Kathy.Harvey@fcc.gov](mailto:Kathy.Harvey@fcc.gov) and JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov).

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<sup>15</sup> Essex represents that it has comprehensive organizational structures, plans, and procedures in place that are intended to ensure compliance with the Communications Laws. This Consent Decree does not require new organizational structures, plans, or procedures except as necessary to implement paragraphs 12-15 of this Consent Decree, nor does it require application of the Compliance Plan to Covered Employees with no responsibilities for compliance with the Licensing Rules.

15. **Compliance Reports.** Essex 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 Essex'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 Essex, stating that the Compliance Officer has personal knowledge that Essex: (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 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall 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.<sup>16</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Essex, 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 Essex 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 Essex 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 Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Rm. 4-C224, Washington, DC 20554, with copies submitted electronically to Kathy Harvey at [Kathy.Harvey@fcc.gov](mailto:Kathy.Harvey@fcc.gov) and JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov).

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act<sup>17</sup> against Essex or its affiliates 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 complaint 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 Essex with the Communications Laws.

18. **Civil Penalty.** Essex will pay a civil penalty to the United States Treasury in the amount Twenty-Eight Thousand and Eight Hundred Dollars (\$28,800) within thirty (30) calendar days after the Effective Date. Essex shall send electronic notification of payment to Kathy Harvey at [Kathy.Harvey@fcc.gov](mailto:Kathy.Harvey@fcc.gov), JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and Samantha Peoples at

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<sup>16</sup> 47 CFR § 1.16.

<sup>17</sup> 47 U.S.C. § 208.

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 Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>18</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 should be followed based on the form of payment selected:

- 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

19. **Waivers.** As of the Effective Date, Essex 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. Essex 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 Consent Decree or the Adopting Order, neither Essex nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Essex shall waive any statutory right to a trial *de novo*. Essex hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>19</sup> relating to the matters addressed in this Consent Decree.

20. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

21. **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.

22. **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

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<sup>18</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>19</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.



specifically intended to revise the terms of this Consent Decree to which Essex does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

26. **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.

27. **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.

28. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Travis LeBlanc  
Chief  
Enforcement Bureau

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Date

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Jeff Kohler  
Executive Vice President and Chief Development Officer  
Essex Telcom, Inc.

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Date