

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of  
  
Icom America, Inc.

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File No.: EB-SED-14-00017535  
Acct. No.: 201632100006  
FRN: 0005855366

**ORDER**

**Adopted: June 21, 2016**

**Released: June 21, 2016**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Icom America, Inc., (Icom) imported and sold marine radios in the United States that did not include all the public safety features required by the Commission’s rules. The rules mandate that these marine radios include the full range of features recommended by the Radiocommunication Sector of the International Telecommunication Union to enhance emergency and safety-of-life communications from and between maritime vessels. To settle this matter, Icom admits that, by failing to include these features, its radios did not comply with the Commission’s rules and agrees to pay a \$20,000 civil penalty and implement a compliance plan to prevent future violations.

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 Icom’s compliance with the requirements for marine radios in Section 302(b) of the Communications Act of 1934, as amended (Act)<sup>1</sup> and Sections 80.225(a)(4) and 80.1101(c)(2)(ii) of the Commission’s rules.<sup>2</sup>

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Icom’s basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act<sup>4</sup> and the authority delegated by Sections 0.111 and 0.311 of the Commission’s rules,<sup>5</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 CFR §§ 80.225(a)(4), 80.1101(c)(2)(ii).

<sup>3</sup> See 47 CFR § 1.93(b).

<sup>4</sup> 47 U.S.C. § 154(i).

<sup>5</sup> 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

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. Hiroshi Nakaoka, President, Icom America, Inc., 12421 Willows Road, N.E., Kirkland, WA 98034, and to Alan S. Tilles, Esq., Counsel for Icom America, Inc., Shulman Rogers Gandal Pordy & Ecker, 12505 Park Potomac Avenue, 6th Floor, Potomac, MD 20854.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc  
Chief  
Enforcement Bureau

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**CONSENT DECREE**

1. The Enforcement Bureau of the Federal Communications Commission and Icom America, Inc. (Icom), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Icom violated Section 302(b) of the Communications Act of 1934, as amended<sup>6</sup> and Sections 80.225(a)(4) and 80.1101(c)(2)(ii) of the Commission’s rules<sup>7</sup> in connection with importing and selling a noncompliant marine radio.

**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>8</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 Icom is subject by virtue of its business activities, including but not limited to the Maritime Services Rules.
  - (f) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
  - (g) “Covered Employees” means all employees and agents of Icom who perform, or supervise, oversee, or manage the performance of, duties that relate to Icom’s responsibilities under the Communications Laws, including the Maritime Services Rules.
  - (h) “Effective Date” means the date by which both the Bureau and Icom have signed the Consent Decree.
  - (i) “Icom” or “Company” means Icom America, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

<sup>6</sup> 47 U.S.C. § 302a(b).

<sup>7</sup> 47 CFR §§ 80.225(a)(4), 80.1101(c)(2)(ii).

<sup>8</sup> 47 U.S.C. § 151 *et seq.*

- (j) “Investigation” means the investigation commenced by the Bureau in EB-SED-14-00017535 regarding whether Icom violated the Maritime Services Rules.
- (k) “LOI” means the Letter of Inquiry issued by the Bureau to Icom on June 30, 2015 in connect with the Investigation.<sup>9</sup>
- (l) “Maritime Services Rules” means Section 302(b) of the Act<sup>10</sup> and Sections 80.225(a)(2), 80.225(a)(4) and 80.1101(c)(2)(ii) of the Commission’s rules<sup>11</sup> and other provisions of the Act, the Rules, and Commission orders related to the manufacture, importation, or sale of marine radios.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Icom to implement the Compliance Plan.
- (n) “Parties” means Icom 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

3. Section 302 of the Act authorizes the Commission to promulgate reasonable regulations to minimize harmful interference by equipment that emits radio frequency energy.<sup>12</sup> Specifically, Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”<sup>13</sup> With regard to marine radios, the Maritime Services Rules, among other things, prohibit, after January 1, 2013, the manufacture, importation, sale or installation of non-portable digital selective calling (DSC) equipment that does not include all the features specified in International Telecommunication Union Radiocommunication Sector (ITU-R) Recommendation M.493-13 (ITU-R M.493-13).<sup>14</sup>

4. The policy underlying the Maritime Services Rules is to require that marine radios incorporate the most current internationally-accepted features for providing emergency communications from and between maritime vessels. In this case, the Maritime Service Rules radios are required to provide the following features that were incorporated by reference to ITU-R M.493-13: (1) a timer indicating the time that has elapsed since a call was received; (2) if no acknowledgement is requested, the option to send a duplicate DSC message without the need to re-enter the message text; and (3) if an acknowledgement is requested, the option to re-send a duplicate DSC message without the need to re-enter the message text.

5. In October 2014, the Wireless Telecommunications Bureau referred a complaint to the Enforcement Bureau for investigation and possible enforcement action concerning Icom’s marketing,

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<sup>9</sup> See Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Icom America, Inc. (June 30, 2015) (on file in EB-SED-14-00017535).

<sup>10</sup> 47 U.S.C. § 302a(b).

<sup>11</sup> 47 CFR §§ 80.225(a)(2), 80.225(a)(4), 80.1101(c)(2)(ii).

<sup>12</sup> 47 U.S.C. § 302a.

<sup>13</sup> *Id.* § 302a(b).

<sup>14</sup> See 47 CFR § 80.225(a)(4). See *Wireless Telecommunications Bureau Clarifies and Temporarily Waives Requirements for Maritime Digital Selective Calling Equipment*, Public Notice, 26 FCC Rcd 16782 (WTB MD 2011) (granting a waiver until January 1, 2013 to allow the continued manufacture, importation, marketing and installation of existing non-portable DSC devices that do not comply with the new standard, provided that the devices comply with ITU-R M.493-11).

after January 1, 2013, of a marine radio, model IC-M412 (FCC ID: AFJ305400) that did not comply with the Maritime Services Rules and the revised standard. The Enforcement Bureau sent the LOI, and Icom responded on July 30, 2015.<sup>15</sup> In its LOI Response and subsequent correspondence, Icom argued that the wording of Section 80.225(a)(4) was vague, in that it appeared to Icom that manufacturers could comply with either ITU-R M.493-13 or IEC 62238, but admitted that the marine radio did not comply with various aspects of ITU-R M.493-13.<sup>16</sup> Icom also admitted that it continued manufacturing, importing and marketing the noncompliant marine radio until June 22, 2015.<sup>17</sup> Before receiving the LOI, however, Icom discontinued marketing the model.<sup>18</sup>

### III. TERMS OF AGREEMENT

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

7. **Jurisdiction.** Icom 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.

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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

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, Icom 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 Icom 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 Icom's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.<sup>19</sup>

10. **Admission of Liability.** Icom admits 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 its actions in paragraph 4 violated the Maritime Services Rules.

11. **Compliance Officer.** Within sixty (60) calendar days after the Effective Date, Icom 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 Icom 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 Maritime Services Rules prior to assuming his/her duties.

<sup>15</sup> See Letter from Alan S. Tilles, Esq., Shulman Rogers, Counsel for Icom America, Inc., to Bruce D. Jacobs, Chief, Spectrum enforcement Division, Spectrum Enforcement Division, FCC Enforcement Bureau (Jul. 30, 2015) (on file in EB-SED-14-00017535) (LOI Response).

<sup>16</sup> See LOI Response at 5-7.

<sup>17</sup> See LOI Response at 3.

<sup>18</sup> See LOI Response at 3.

<sup>19</sup> See 47 § CFR 1.93(b).

12. **Compliance Plan.** For purposes of settling the matters set forth herein, Icom agrees that it shall, within ninety (90) 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 Maritime Services Rules, Icom will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, Icom shall establish Operating Procedures that all Covered Employees must follow to help ensure Icom's compliance with the Maritime Services Rules. Icom's Operating Procedures shall include internal procedures and policies specifically designed to ensure that its marine radios comply with the applicable international standard required by the Maritime Services Rules. Icom shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Maritime Services Rules.
- (b) **Compliance Manual.** Within ninety (90) 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 Maritime Services Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Icom's compliance with the Maritime Services Rules. Icom shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Icom shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Icom shall establish and implement a Compliance Training Program on compliance with the Maritime Services Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Icom's obligation to report any noncompliance with the Maritime Services 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 ninety (90) 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. Icom 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.

13. **Reporting Noncompliance.** Icom shall report any noncompliance with the Maritime Services Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery by the Compliance Officer or Covered Employee of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Icom 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 the Icom has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jennifer Burton at [jennifer.burton@fcc.gov](mailto:jennifer.burton@fcc.gov), Gabriel Collazo at [gabriel.collazo@fcc.gov](mailto:gabriel.collazo@fcc.gov), and Neal McNeil at [neal.mcneil@fcc.gov](mailto:neal.mcneil@fcc.gov).

14. **Compliance Reports.** Icom shall file compliance reports with the Commission one hundred twenty (120) 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 Icom's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Maritime Services Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Icom, stating that the Compliance Officer has personal knowledge that Icom: (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 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>20</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Icom, 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 Icom 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 Icom 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 Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Jennifer Burton at [jennifer.burton@fcc.gov](mailto:jennifer.burton@fcc.gov), Gabriel Collazo at [gabriel.collazo@fcc.gov](mailto:gabriel.collazo@fcc.gov), and Neal McNeal at [neal.mcneil@fcc.gov](mailto:neal.mcneil@fcc.gov).

15. **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.

16. **Civil Penalty.** Icom will pay a civil penalty to the United States Treasury in the amount of twenty thousand dollars (\$20,000) within thirty (30) calendar days of the Effective Date. Icom shall send electronic notification of payment to Jennifer Burton at [jennifer.burton@fcc.gov](mailto:jennifer.burton@fcc.gov), Gabriel Collazo at [gabriel.collazo@fcc.gov](mailto:gabriel.collazo@fcc.gov), Neal McNeil at [neal.mcneil@fcc.gov](mailto:neal.mcneil@fcc.gov), and Samantha Peoples at [Sam.Peoples@fcc.gov](mailto: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>21</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

<sup>20</sup> 47 CFR § 1.16.

<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.



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](mailto:ARINQUIRIES@fcc.gov).

17. **Waivers.** As of the Effective Date, Icom 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. Icom 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 Icom nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Icom shall waive any statutory right to a trial *de novo*. Icom hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>22</sup> relating to the matters addressed in this Consent Decree.

18. **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.

19. **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.

20. **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 Icom does not expressly consent) that provision will be superseded by such Rule or Order.

21. **Successors and Assigns.** Icom 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 with respect to the Investigation.

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

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<sup>22</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.



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.** 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.

26. **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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Hiroshi Nakaoka,  
President  
Icom America, Inc.

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Date