

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
RADWIN Ltd.)	File No.: EB-SED-17-00023629
RADWIN, Inc.)	Acct. No.: 201832100001
)	FRN: 0008787137

ORDER

Adopted: November 14, 2017

Released: November 14, 2017

By the Deputy 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 RADWIN Ltd. and RADWIN, Inc. (collectively Radwin) marketed Unlicensed National Information Infrastructure (U-NII) devices in violation of the Commission’s equipment authorization and marketing requirements. The noncompliant U-NII devices allowed users to modify device settings in a way that could cause harmful interference to Terminal Doppler Weather Radar (TDWR) systems used by Federal Aviation Administration air traffic controllers to detect potentially hazardous weather conditions for aircraft. The Commission’s requirements ensure that devices that emit radio frequency radiation comply with the Commission’s technical requirements and do not cause harmful interference to Federal agency public safety systems, such as TDWR, or to other authorized Federal and non-Federal communications systems, once the devices are marketed to the public. To settle this matter, Radwin admits that it violated the Commission’s equipment authorization and marketing rules with respect to these noncompliant U-NII devices, will implement a compliance plan, and will pay a \$95,000 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 Radwin’s marketing of its U-NII devices, and compliance with the Commission’s equipment authorization and marketing rules pursuant to Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803(b)(2) and 15.407 of the Commission’s rules.²

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

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act⁴ and the authority delegated by Sections 0.111 and 0.311 of the Commission’s rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

¹ 47 U.S.C. § 302a(b).

² 47 CFR §§ 2.803, 15.407.

³ See 47 CFR § 1.93(b).

⁴ 47 U.S.C. § 154(i).

⁵ 47 CFR §§ 0.111, 0.311.

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 Sharon Sher, President & CEO, RADWIN Ltd. and RADWIN, Inc., 900 Corporate Drive, Mahwah, NJ 07430, and to Russell Fox, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Ave., NW, Suite 900, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Deputy Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, RADWIN Ltd., and RADWIN, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether Radwin violated Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803(b)(2) and 15.407 of the Commission’s rules² in connection with the Company’s marketing of radio frequency devices.

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.³
 - (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 Radwin is subject by virtue of its business activities, including but not limited to the Equipment Authorization and Marketing 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 Radwin who perform, or supervise, oversee, or manage the performance of, duties that relate to Radwin’s responsibilities under the Communications Laws, including the Equipment Authorization and Marketing Rules.
 - (h) “Effective Date” means the date by which both the Bureau and Radwin have signed the Consent Decree.
 - (i) “Equipment Authorization and Marketing Rules” means Section 302(b) the Act,⁴ Sections 2.803 and 15.407 of the Commission’s rules;⁵ and other provisions of the

¹ 47 U.S.C. § 302a(b).

² 47 CFR §§ 2.803(b)(2), 15.407.

³ 47 U.S.C. § 151 *et seq.*

⁴ 47 U.S.C. § 302a(b).

⁵ 47 CFR §§ 2.803, 15.407.

Act, the Rules, and Commission orders related to the authorization of radio frequency devices and the marketing of such devices.

- (j) “Investigation” means the investigation commenced by the Bureau’s April 25, 2017 Letter of Inquiry regarding whether the marketing of certain radio frequency devices by Radwin complied with the Equipment Authorization and Marketing Rules.⁶
- (k) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Radwin to implement the Compliance Plan.
- (l) “Parties” means Radwin and the Bureau, each of which is a “Party.”
- (m) “Radwin” or “Company” means RADWIN Ltd. and its affiliates; subsidiaries, including RADWIN, Inc.; predecessors-in-interest; and successors-in-interest.
- (n) “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.⁷ 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.”⁸ The purpose of Section 302 of the Act is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market.

4. The Commission carries out its responsibilities under Section 302 of the Act in two ways. First, the Commission establishes technical requirements for transmitters and other equipment to minimize their potential for causing interference to authorized radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market in the United States complies with the technical and administrative requirements set forth in the Commission’s rules. The equipment authorization program requires, among other things, that radio frequency devices must be tested for compliance with the applicable technical requirements prior to marketing.⁹ In that regard, Section 2.803(b) of the Rules prohibits the marketing of radio frequency devices unless the device has first been properly authorized, identified, and labeled in accordance with the Rules, with limited exceptions.¹⁰

5. Radwin is a privately-held corporation that manufactures and distributes broadband wireless systems, specifically point-to-point, point-to-multipoint, and non-line-of-sight equipment operating in the 5 GHz band that provide backhaul, broadband access, private network connectivity, and other similar applications. All of the products involved in the Investigation support Unlicensed National Information Infrastructure (U-NII) 1, U-NII-2, and U-NII-3 bands. The Bureau’s Spectrum Enforcement Division, issued a Letter of Inquiry to Radwin, on April 25, 2017, directing it to submit a sworn written

⁶ See Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Sharon Sher, President and CEO, Radwin, Ltd. (Apr. 25, 2017) (on file in EB-SED-17-00023629).

⁷ 47 U.S.C. § 302a.

⁸ *Id.* § 302a(b).

⁹ The term “marketing” is defined in the Commission’s rules and includes 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.” 47 CFR § 2.803(a).

¹⁰ See *id.* §§ 2.803(b), (c).

response to a series of questions relating to Radwin's marketing of its U-NII devices in the United States with respect to dynamic frequency selection (DFS) mitigation and sensitivity pursuant to Section 15.407.¹¹ The Investigation revealed that, for some period of time prior to the commencement of the Investigation, Radwin marketed devices that did not meet the Commission's Equipment Authorization and Marketing Rules as the devices allowed users to disable the DFS mitigation and sensitivity features contained in each device sold. As a result of Radwin's full cooperation with the Bureau's Investigation, Radwin has taken remedial action so that current and deployed products comply with the Commission's rules. Radwin's current products no longer contain the ability to disable DFS mitigation and sensitivity features. Additionally, during routine software updates for deployed Radwin products, the disabling features are permanently removed and cannot be re-installed. Radwin's actions have addressed all matters relating to the Investigation.¹²

6. The Bureau and Radwin negotiated 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.** Radwin 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, Radwin 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 Radwin 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 Radwin's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹³

11. **Admission of Liability.** Radwin 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 actions set forth in paragraph 5, herein, violated the Equipment Authorization and Marketing Rules.

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

¹¹ See *supra* note 6. The investigation was initiated in response to a referral from the Commission's Office of Engineering and Technology (OET). Pursuant to Section 2.945 of the Commission's rules, OET requested a U-NII device to determine the extent to which the equipment complied with the data filed by the applicant. 47 CFR § 2.945.

¹² 47 CFR § 2.803.

¹³ See 47 CFR § 1.93(b).

Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Radwin 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 Equipment Authorization and Marketing Rules prior to assuming his or her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Radwin 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 Authorization and Marketing Rules, Radwin will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Radwin shall establish Operating Procedures that all Covered Employees must follow to help ensure Radwin's compliance with the Equipment Authorization and Marketing Rules. Radwin's Operating Procedures shall include internal procedures and policies specifically designed to ensure compliance with Section 2.803 of the Commission's rules,¹⁴ and with applicable technical standards.
- (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 set forth the Equipment Authorization and Marketing Rules and the Operating Procedures that Covered Employees shall follow to help ensure Radwin's compliance with those Rules. Radwin shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Radwin shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Radwin shall establish and implement a Compliance Training Program to ensure compliance with the Equipment Authorization and Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Radwin's obligation to report any noncompliance with the Equipment Authorization and Marketing 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. Radwin 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.** Radwin shall report any noncompliance with the Equipment Authorization and 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 an explanation of: (i) each instance of noncompliance; (ii) the steps that Radwin 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 Radwin has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division,

¹⁴ See *supra* note 9 and accompanying text.

Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 3-C366, Washington, DC 20554, with copies submitted electronically to Salomon Satche at Salomon.Satche@fcc.gov, Kathy Harvey at Kathy.Harvey@fcc.gov, and Ricardo Durham at Ricardo.Durham@fcc.gov.

15. **Compliance Reports.** Radwin 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 Radwin's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Authorization and Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Radwin, stating that the Compliance Officer has personal knowledge that Radwin: (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 that his/her personal knowledge is 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.¹⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Radwin, shall provide the Commission with an explanation of the reason(s) why and describe: (i) each instance of noncompliance; (ii) the steps that Radwin 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 Radwin 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 Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 3-C366, Washington, DC 20554, with copies submitted electronically to Salomon Satche at Salomon.Satche@fcc.gov, Kathy Harvey at Kathy.Harvey@fcc.gov, and Ricardo Durham at Ricardo.Durham@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. **Civil Penalty.** Radwin will pay a civil penalty to the United States Treasury in the amount of ninety-five thousand dollars (\$95,000) within thirty (30) calendar days of the Effective Date. Radwin shall send electronic notification of payment to Salomon Satche at Salomon.Satche@fcc.gov, Kathy Harvey at Kathy.Harvey@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 Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice)

¹⁵ 47 CFR § 1.16.

must be submitted.¹⁶ 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 Federal Communications Commission. Such payments (along with the completed FCC 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 FCC 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 to authorize the credit card payment. The completed FCC 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.

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

19. **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.

20. **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.

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

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

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

¹⁷ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

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

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

25. **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.

26. **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.

27. **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.

Christopher L. Killion
Deputy Chief
Enforcement Bureau

Date

Sharon Sher
President and CEO
RADWIN Ltd.

Date

Sharon Sher
President
RADWIN, Inc.

Date