

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:

Scott Communications, Inc.
61574 Hillside Road
St. Ignatius, MT 59865

Mission Communications, LLC
61574 Hillside Road
St. Ignatius, MT 59865

Kenneth Peter Scott
61574 Hillside Road
St. Ignatius, MT 59865

Respondents

Case No. 22-BIS-0007

**ORDER RELATING TO KENNETH SCOTT, SCOTT COMMUNICATIONS,
INC., AND MISSION COMMUNICATIONS, LLC**

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Scott Communications, Inc. and Kenneth Scott (collectively “Scott”), as well as Mission Communications, LLC (“Mission”) of St. Ignatius, Montana (“Respondents”), that it has initiated an administrative proceeding against them pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ through the issuance of a

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

Charging Letter alleging that Respondents committed five violations of the Regulations.

Specifically:

General Allegations

1. In or about March 2017, a Federal Bureau of Investigations (“FBI”) Special Agent working in an undercover capacity (the “UC”) contacted Kenneth Scott via email. The UC used an email address identified from a trade magazine advertisement in which Scott Communications advertised various communications equipment for sale. During the course of the sales negotiations with the UC, Scott was acting on behalf of Scott Communications, Inc. For example, the advertisement also included a telephone and fax number for “Ken Scott.” A 2017 Better Business Bureau business profile further identified Kenneth Scott as the president of Scott Communications, Inc. In addition, in his email communications with the UC, as well in his social media profiles, Kenneth Scott identified himself as the President of Scott Communications.
2. On or about March 16, 2017, the UC sent Scott an email titled “Motorola Radio Quote Request.” In the email, the UC requested a price quote for two Motorola XTS 2500, 800 or 900 Mhz radios. The UC also told Scott that, after the initial order of two radios, he intended to follow up with a larger order. The UC also asked Scott about shipping to Iran and later informed Scott that he intended to transship the radios from Jordan to Iran. Scott ultimately agreed to ship the radios to Jordan with knowledge that they would then be transshipped to Iran.
3. Specifically, on or about March 21, 2017, the UC emailed Scott asking him to: *Please provide me with your competitive shipping price to Jordan. My customer will test the units there. For the second order, it would be very valuable to me if you can ship directly to my customer in Iran. I want to continue business with you and this would be very helpful because as you know my customer cannot purchase directly from the United States. If you are able to get the units to Iran we will negotiate your fees in addition to the price for radios and your shipping rates. If you can only get the radios close, we can determine an appropriate fee.*
4. In response, Scott stated:
I have never shipped to IRAN, and the way the politics here are concerned, I would guess not. Where else could we ship them to, [p]rior to them going to IRAN. Do you have a broker here in the US?”
5. The following day, the UC responded with:
Unfortunately, I do not have a US based broker. I understand that due to the sanctions the US has against Iran one cannot ship goods from the US directly to

that country. If you can ship the radios to Jordan I can transship them to my customer in Iran. Please provide me with a quote for shipping the two radios to Jordan.

6. The UC also discussed possible shipments to Singapore. Scott ultimately advised that shipping via DHL to Jordan would cost \$250 and indicated that the price would remain the same if the UC preferred Singapore. On or about March 22, 2017, Scott emailed an invoice to the UC, listing two Motorola XTS 2500 radios valued at \$850 each, for a total product cost of \$1700, with shipping valued at \$250. On or about March 28, 2017, the UC advised Scott via email that he was ready to proceed with the order and reiterated again that the ultimate consignee was located in Iran.
7. On or about April 15, 2017, the UC reached out to Scott and informed him that, after speaking to his customer in Iran, the customer expected the radios to be loaded with 256-Bit AES Encryption. Scott indicated that he did not provide encryption but advised that the customer could program the radios himself if he had the software. The UC agreed to proceed with the sale but asked Scott about the availability of other models that could be loaded with 256-bit AES encryption and stated that encrypted radios were more difficult to procure. The UC then proceeded to share emails from his purported customer in Iran with Scott, again reiterating that the ultimate end-user was located in Iran. On or about April 17, 2017, Scott emailed the UC with suggestions on how to procure the necessary equipment to load the radios with 256-bit AES encryption.
8. Following additional emails in which the UC again advised Scott that the ultimate end-user was located in Iran and that the radios would be transshipped from Jordan to Iran, Scott proceeded with the sales transaction. On or about June 7, 2017, Scott provided the UC with the U.S. Postal Service (“USPS”) tracking number for the shipment of the two radios, which were ultimately detained with the assistance of the USPS in St. Ignatius, Montana prior to export. Scott completed the United States Postal Form 2976-R and signed the customs declaration form, verifying that he had complied with all applicable export laws and regulations.
9. In December 2018, Special Agents from the FBI and BIS contacted Scott to conduct an interview and outreach. During the interview, Scott stated that he was familiar with BIS regulations and that he regularly checks the BIS website for updates. When asked about conducting business with sanctioned countries, Scott stated that he had never done business with North Korea, Cuba, Syria or Sudan. When asked specifically about Iran, he acknowledged that he had received an inquiry about a Motorola portable radio destined for a customer in Iran and that he

completed the sale. He indicated, however, that the export was made through an individual in Florida. At the conclusion of the interview, the BIS Special Agent explained the BIS voluntary self-disclosure program, provided Scott with additional information related to export controls, and served Scott with an administrative subpoena. Despite receiving this information, Scott never filed a voluntary self-disclosure related to the shipment of the two Motorola radios.

10. Later that same day, Scott forwarded the BIS Special Agent several emails related to his sales transaction with the UC. Scott failed to include any of the emails with the UC referencing Iran or discussing possible transshipment through Jordan or Singapore. He also claimed that he had “misspoke[n] about the route this package took” when he stated that the export mentioned during the interview had gone through Florida.
11. After the BIS Special Agent contacted Scott with additional questions, Scott responded:
Call me on Monday so I can explain, I never sold anything to Iran. My customer had someone in Iran who wanted to buy these radios. I refused after he called me a [sic] tried to convince me to sell and ship to that location. I refused. I actually was thinking he was trying to set me up. Then he hounded me about Encryption, which I flat told him no way....
12. In answering the BIS Special Agent’s questions via email and responding to the BIS administrative subpoena, Scott made several false statements about the sales transaction with the UC. Notably, he falsely stated that he communicated with the UC by phone, denied having had additional email communications with the UC, and falsely stated that the UC told him that the radios’ end-use was for oil exploration.
13. When the emails Scott provided to the BIS Special Agent were compared with emails obtained by the UC during the investigation, it appeared that Scott edited one of the emails to support his claim that he did not export anything to Iran. Specifically, in an April 15, 2017 email to the UC, which made no reference to Iran, Scott inserted the following sentence into the document he provided to the BIS Special Agent: “I won’t sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me.”
14. Scott also failed to comply with reporting requirements by failing to file an Electronic Export Information (“EEI”) for the export of the two radios and failed to maintain appropriate records. Specifically, the BIS Special Agent asked Scott to respond to OEE’s subpoena requesting “[a]ny and all records, from 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities subject to the Export Administration Regulations. . . .” In response, Scott stated that he has never “kept

a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.”

15. Since at least March 2018, Scott has also exported under the business name Mission Communications, LLC (“Mission”), which shares the same address as Scott Communications, Inc. Specifically, beginning in March 2018 and continuing until at least May 2019, Scott began exporting under an export identification number associated with Mission. In addition, at times material to the violations, including in his December 2018 communications with the BIS Special Agent, Scott identified himself via email as the president of Mission.

16. BIS incorporates and alleges paragraphs 1-15 of the General Allegations into the below:

Charge 1 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation Related to the Sale of Two Digital Portable Radios

17. Beginning in or about March 2017 and continuing through on or about June 7, 2017, Scott sold, transferred, or conducted negotiations with respect to items subject to the EAR and the Iranian Transactions and Sanctions Regulations (“ITSR”),² specifically two Motorola Astro XTS 2500 Digital Portable Radios, a commodity classified as Export Control Classification Number (ECCN) 5A991.g. and controlled for Anti-Terrorism reasons, with knowledge that a violation of the Regulations had or was about or intended to occur in connection with the items. In particular, Scott sold, transferred, or conducted negotiations with respect to the items with knowledge that they were destined for Iran without the required U.S. Government authorization. At all times pertinent hereto, Section 742.8 of the Regulations imposed a BIS license requirement for the export or reexport of the items to Iran. Additionally, Section 746.7 of the Regulations prohibits the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is prohibited by the ITSR and has not been authorized by the Treasury Department’s Office of Foreign Assets Control (“OFAC”). At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized export or reexport, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.204-205.

18. Specifically, as set forth above, in or about March 2017, Scott began negotiating the sale of two Motorola Astro XTS 2500 Digital Portable Radios through emails with an undercover Special Agent, whose true identity was unknown to Scott. The UC requested that the radios be sent to Iran and later stated that they would be transshipped from Jordan to Iran. Although the UC reiterated on multiple occasions that the ultimate end-user was located in Iran, Scott agreed to complete

² 31 C.F.R. Part 560 (2017).

the sales transaction. On or about June 7, 2017, Scott provided the undercover Special Agent with a USPS tracking number for the shipment of the two radios.

19. No U.S. Government authorization had been sought or obtained in connection with this transaction. In engaging in such conduct with knowledge that a violation of the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur, Scott violated Section 764.2(e) of the Regulations.

Charges 2-3 15 C.F.R. § 764.2(g) – Misrepresenting and Concealing Facts to an Official of a United States Agency

20. On at least two occasions between December 2018 and January 2019, Scott and Mission made a false or misleading representation, statement, certification, or falsified or concealed a material fact, to a U.S. government official.
21. Following the above-described efforts by Scott to ship the two radios, FBI and BIS Special Agents interviewed Scott on or about December 5, 2018. During the interview with these U.S. government officials, Scott stated that he received an inquiry for a Motorola portable radio destined for a customer in Iran and that he had completed the sale. Thereafter, on or about December 7, 2018, in a follow-up email to the BIS Special Agent, Scott indicated that he had never shipped anything to Iran and that, when the buyer telephoned him to purchase for a customer in Iran, he refused.
22. On or about December 7, 2018, Scott made additional materially false statements or omissions to the BIS Special Agent about his communications related to the sale of the radios. Specifically, Scott falsely represented that he communicated with the UC by phone and that there were no email communications indicating that the radios were destined for Iran. He also falsely stated that the UC advised him that the radios would be used for oil exploration.
23. Additionally, on or about December 11, 2018, Scott produced an email in response to the BIS subpoena that had been materially altered and falsified. Although the original April 15, 2017, email communication between Scott and the UC made no reference to Iran, the document provided by Scott to the Special Agent had been altered and falsified by inserting the following statement into the email: "I won't sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me." (Capitalization as shown in email).
24. By making a false or misleading representation, statement, or certification, or falsifying or concealing any material fact to BIS and/or FBI Special Agents in the

course of an investigation or other action subject to the EAR, Scott and Mission violated Section 764.2(g) of the Regulations on at least two occasions.

Charge 4 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct Related to the Failure to File Electronic Export Information

25. On or about June 7, 2017, Scott engaged in conduct prohibited by the Regulations by failing to comply with reporting requirements, namely by failing to file Electronic Export Information (“EEI”) for the shipment of two Motorola Astro XTS 2500 Digital Portable Radios as described above. EEI includes export information about a transaction such as the names and addresses of the parties to a transaction; the ECCN (when required); the description, quantity and value of the items exported; and the license authority for the export.
26. Section 758.1(b) of the EAR required that EEI be filed in certain situations, including for all exports of items subject to the EAR that were destined for Iran, a Country Group E:1 destination,³ regardless of value, and “for all exports subject to the EAR that require submission of a license application, regardless of value or destination” Records checks reflect that Scott failed to file EEI related to the June 7, 2017 shipment of the two Motorola Astro XTS 2500 Digital Portable Radios.
27. By failing to file the EEI for the shipment of the two Motorola Astro XTS 2500 Digital Portable Radios as required pursuant to Section 758.1(b), Scott committed one violation of Section 764.2(a) of the Regulations, by engaging in any transaction or taking any other action prohibited by or contrary to, or refraining from engaging in any transaction or taking any other action required by ECRA, the EAR, or any order, license or authorization issued thereunder.

Charge 5 15 C.F.R. § 764.2(i) – Failure to Comply with Reporting, Recordkeeping Requirements

28. Between on or about March 16, 2017 and January 14, 2019, Scott and Mission failed to comply with the recordkeeping requirements set forth in Part 762 of the EAR. Scott and Mission at all relevant times were (and remain) subject to the jurisdiction of the United States and participated in transactions involving the export from the United States of items subject to the Regulations, including the transaction described in Charge 1, *supra*, and were required to keep and maintain

³ See Supplement No. 1 to 15 C.F.R. Part 740.

all records described in Section 762.2 of the Regulations made or obtained. *See* 15 C.F.R. §§ 762.1(a)(2), (a)(4), and (b).

29. The records required to be retained include, *inter alia*, bills of lading and other “export control documents” (as defined in Part 772 of the Regulations), correspondence, and any other records Scott or Mission made or obtained pertaining to such transactions. *See* 15 C.F.R. §§ 762.2 and 772.1 (at definition of “export control document”). All such records must be retained for a period of five years from the date of the export of the item involved in the transaction. *See* 15 C.F.R. § 762.6(a). In addition, any such records formally or informally requested by BIS (or any other U.S. Government agency) may not be destroyed or disposed of without written authorization from BIS (or other agency concerned), even if such records have been retained for more than the required retention period. *See* 15 C.F.R. § 762.6(b).
30. Scott and Mission failed to maintain records as required pursuant to Section 762 of the EAR. On or about December 5, 2018, the BIS Special Agent served Scott with a BIS administrative subpoena requesting “[a]ny and all records, from December 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities” subject to the EAR. The requested records included, but were not limited to, requests for quotes, waybills, bills of lading, Shipper’s Export Declarations, payment records, emails, and other correspondence.
31. On or about December 10, 2018, in responding to the BIS administrative subpoena, Scott advised the BIS Special Agent that he has never “kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.” On January 14, 2019, after the BIS Special Agent granted Scott additional time to respond to the subpoena, he provided some records, including a list of freight forwarders/brokers and invoices related to exports to approximately 15 countries. For almost all of these exports, however, he failed to produce any of the other requested records, including quotes, requests for quotes, waybills, bills of lading, payment records, or emails and other correspondence. Scott also acknowledged that the records were incomplete, claiming that “[w]e lost our main HD computer during a storm in April of 2015. A lot of information was lost.”
32. As a result of these failures, Scott and Mission committed a violation of Section 764.2(i) of the Regulations, by failing or refusing to comply with any reporting or recordkeeping requirement of ECRA, the EAR, or of any order, license, or authorization issued thereunder.

WHEREAS, I have taken into consideration the Respondents' limited ability to pay a monetary penalty;

WHEREAS, BIS and Respondents have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

WHEREAS, Respondents admit committing the alleged conduct described in the Charging Letter; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, for a period of twenty (20) years from the date of the Order, Kenneth Scott, Scott Communications, Inc., and Mission Communications, LLC, with a last known address of 61574 Hillside Road, St. Ignatius, MT, 59865, and when acting for or on their behalf, their successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as the "Denied Person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported to or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject

to the Regulations, or engaging in any other activity subject to the Regulations; or

- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

SECOND, no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States, or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied

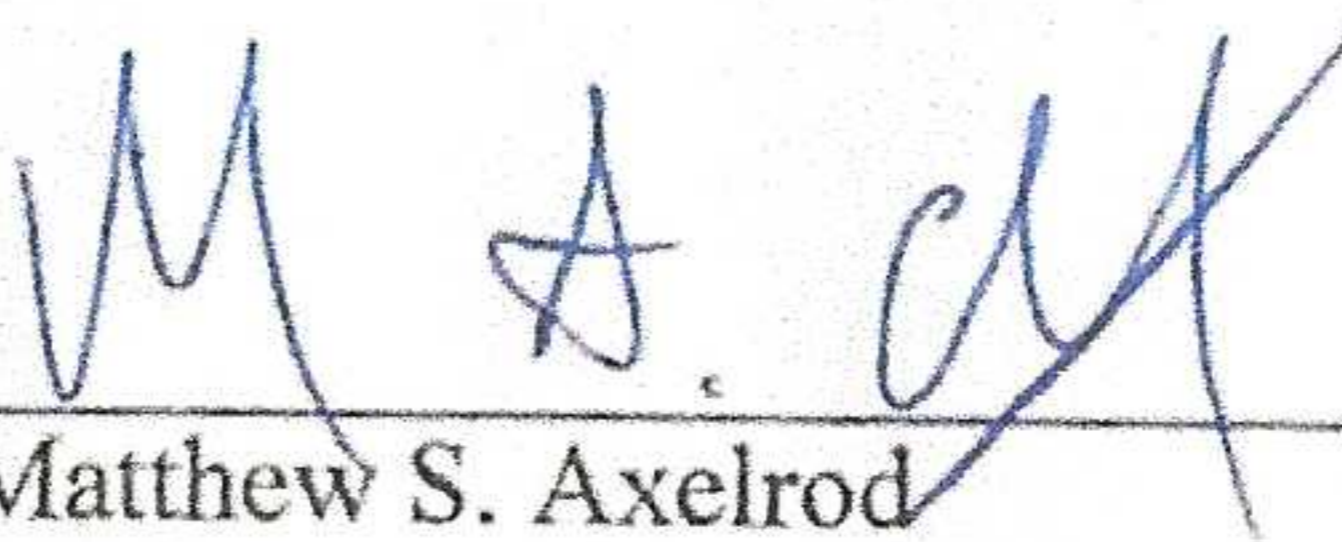
Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, any licenses issued under the Regulations in which Respondents have an interest as of the date of this Order shall be revoked by BIS.

FOURTH, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

FIFTH, the Settlement Agreement and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Issued this 29th day of March, 2023.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
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Kenneth Peter Scott
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Respondents

Case No. 22-BIS-0007

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Scott Communications, Inc. and Kenneth Scott (collectively “Scott”), as well as Mission Communications, LLC (“Mission”) of St. Ignatius, Montana (“Respondents”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(b) of the Export Administration Regulations (the “Regulations”).¹

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall

WHEREAS, BIS has initiated administrative proceedings against Respondents, pursuant to Section 766.3 of the Regulations, through the issuance of a Charging Letter alleging that Respondents committed five violations of the Regulations, specifically:²

General Allegations

1. In or about March 2017, a Federal Bureau of Investigations (“FBI”) Special Agent working in an undercover capacity (the “UC”) contacted Kenneth Scott via email. The UC used an email address identified from a trade magazine advertisement in which Scott Communications advertised various communications equipment for sale. During the course of the sales negotiations with the UC, Scott was acting on behalf of Scott Communications, Inc. For example, the advertisement also included a telephone and fax number for “Ken Scott.” A 2017 Better Business Bureau business profile further identified Kenneth Scott as the president of Scott Communications, Inc. In addition, in his email communications with the UC, as well in his social media profiles, Kenneth Scott identified himself as the President of Scott Communications.
2. On or about March 16, 2017, the UC sent Scott an email titled “Motorola Radio Quote Request.” In the email, the UC requested a price quote for two Motorola XTS 2500, 800 or 900 Mhz radios. The UC also told Scott that, after the initial order of two radios, he intended to follow up with a larger order. The UC also asked Scott about shipping to Iran and later informed Scott that he intended to transship the radios from Jordan to Iran. Scott ultimately agreed to ship the radios to Jordan with knowledge that they would then be transshipped to Iran.
3. Specifically, on or about March 21, 2017, the UC emailed Scott asking him to: *Please provide me with your competitive shipping price to Jordan. My customer will test the units there. For the second order, it would be very valuable to me if you can ship directly to my customer in Iran. I want to continue business with you and this would be very helpful because as you know my customer cannot purchase directly from the United States. If you are able to get the units to Iran we will negotiate your fees in addition to the price for radios and your shipping rates. If you can only get the radios close, we can determine an appropriate fee.*

4. In response, Scott stated:

continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

² The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2022). The violations occurred in 2017-2019. The Regulations governing the violations at issue are found in the 2017-2019 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774. The 2022 Regulations govern the procedural aspects of this case.

I have never shipped to IRAN, and the way the politics here are concerned, I would guess not. Where else could we ship them to, [p]rior to them going to IRAN. Do you have a broker here in the US?"

5. The following day, the UC responded with:
Unfortunately, I do not have a US based broker. I understand that due to the sanctions the US has against Iran one cannot ship goods from the US directly to that country. If you can ship the radios to Jordan I can transship them to my customer in Iran. Please provide me with a quote for shipping the two radios to Jordan.
6. The UC also discussed possible shipment to Singapore. Scott ultimately advised that shipping via DHL to Jordan would cost \$250 and indicated that the price would remain the same if the UC preferred Singapore. On or about March 22, 2017, Scott emailed an invoice to the UC, listing two Motorola XTS 2500 radios valued at \$850 each, for a total product cost of \$1700, with shipping valued at \$250. On or about March 28, 2017, the UC advised Scott via email that he was ready to proceed with the order and reiterated again that the ultimate consignee was located in Iran.
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familiar with BIS regulations and that he regularly checks the BIS website for updates. When asked about conducting business with sanctioned countries, Scott stated that he had never done business with North Korea, Cuba, Syria or Sudan. When asked specifically about Iran, he acknowledged that he had received an inquiry about a Motorola portable radio destined for a customer in Iran and that he completed the sale. He indicated, however, that the export was made through an individual in Florida. At the conclusion of the interview, the BIS Special Agent explained the BIS voluntary self-disclosure program, provided Scott with additional information related to export controls, and served Scott with an administrative subpoena. Despite receiving this information, Scott never filed a voluntary self-disclosure related to the shipment of the two Motorola radios.

10. Later that same day, Scott forwarded the BIS Special Agent several emails related to his sales transaction with the UC. Scott failed to include any of the emails with the UC referencing Iran or discussing possible transshipment through Jordan or Singapore. He also claimed that he had “misspoke[n] about the route this package took” when he stated that the export mentioned during the interview had gone through Florida.
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Call me on Monday so I can explain, I never sold anything to Iran. My customer had someone in Iran who wanted to buy these radios. I refused after he called me a [sic] tried to convince me to sell and ship to that location. I refused. I actually was thinking he was trying to set me up. Then he hounded me about Encryption, which I flat told him no way....
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14. Scott also failed to comply with reporting requirements by failing to file an Electronic Export Information (“EEI”) for the export of the two radios and failed to maintain appropriate records. Specifically, the BIS Special Agent asked Scott

to respond to OEE's subpoena requesting "[a]ny and all records, from 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities subject to the Export Administration Regulations. . . ." In response, Scott stated that he has never "kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago."

15. Since at least March 2018, Scott has also exported under the business name Mission Communications, LLC ("Mission"), which shares the same address as Scott Communications, Inc. Specifically, beginning in March 2018 and continuing until at least May 2019, Scott began exporting under an export identification number associated with Mission. In addition, at times material to the violations, including in his December 2018 communications with the BIS Special Agent, Scott identified himself via email as the president of Mission.

16. BIS incorporates and alleges paragraphs 1-15 of the General Allegations into the below:

Charge 1 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation Related to the Sale of Two Digital Portable Radios

17. Beginning in or about March 2017 and continuing through on or about June 7, 2017, Scott sold, transferred, or conducted negotiations with respect to items subject to the EAR and the Iranian Transactions and Sanctions Regulations ("ITSR"),³ specifically two Motorola Astro XTS 2500 Digital Portable Radios, a commodity classified as Export Control Classification Number (ECCN) 5A991.g. and controlled for Anti-Terrorism reasons, with knowledge that a violation of the Regulations had or was about or intended to occur in connection with the items. In particular, Scott sold, transferred, or conducted negotiations with respect to the items with knowledge that they were destined for Iran without the required U.S. Government authorization. At all times pertinent hereto, Section 742.8 of the Regulations imposed a BIS license requirement for the export or reexport of the items to Iran. Additionally, Section 746.7 of the Regulations prohibits the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is prohibited by the ITSR and has not been authorized by the Treasury Department's Office of Foreign Assets Control ("OFAC"). At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized export or reexport, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.204-205.

18. Specifically, as set forth above, in or about March 2017, Scott began negotiating the sale of two Motorola Astro XTS 2500 Digital Portable Radios through emails with an undercover Special Agent, whose true identity was unknown to Scott. The UC requested that the radios be sent to Iran and later stated that they would

³ 31 C.F.R. Part 560 (2017).

be transshipped from Jordan to Iran. Although the UC reiterated on multiple occasions that the ultimate end-user was located in Iran, Scott agreed to complete the sales transaction. On or about June 7, 2017, Scott provided the undercover Special Agent with a USPS tracking number for the shipment of the two radios.

19. No U.S. Government authorization had been sought or obtained in connection with this transaction. In engaging in such conduct with knowledge that a violation of the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur, Scott violated Section 764.2(e) of the Regulations.

Charges 2-3 15 C.F.R. § 764.2(g) – Misrepresenting and Concealing Facts to an Official of a United States Agency

20. On at least two occasions between December 2018 and January 2019, Scott and Mission made a false or misleading representation, statement, certification, or falsified or concealed a material fact, to a U.S. government official.
21. Following the above-described efforts by Scott to ship the two radios, FBI and BIS Special Agents interviewed Scott on or about December 5, 2018. During the interview with these U.S. government officials, Scott stated that he received an inquiry for a Motorola portable radio destined for a customer in Iran and that he had completed the sale. Thereafter, on or about December 7, 2018, in a follow-up email to the BIS Special Agent, Scott indicated that he had never shipped anything to Iran and that, when the buyer telephoned him to purchase for a customer in Iran, he refused.
22. On or about December 7, 2018, Scott made additional materially false statements or omissions to the BIS Special Agent about his communications related to the sale of the radios. Specifically, Scott falsely represented that he communicated with the UC by phone and that there were no email communications indicating that the radios were destined for Iran. He also falsely stated that the UC advised him that the radios would be used for oil exploration.
23. Additionally, on or about December 11, 2018, Scott produced an email in response to the BIS subpoena that had been materially altered and falsified. Although the original April 15, 2017, email communication between Scott and the UC made no reference to Iran, the document provided by Scott to the Special Agent had been altered and falsified by inserting the following statement into the email: "I won't sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me." (Capitalization as shown in email).
24. By making a false or misleading representation, statement or certification, or falsifying or concealing any material fact to BIS and/or FBI Special Agents in the

course of an investigation or other action subject to the EAR, Scott and Mission violated Section 764.2(g) of the Regulations on at least two occasions.

Charge 4 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct Related to the Failure to File Electronic Export Information

25. On or about June 7, 2017, Scott engaged in conduct prohibited by the Regulations by failing to comply with reporting requirements, namely by failing to file Electronic Export Information (“EEI”) for the shipment of two Motorola Astro XTS 2500 Digital Portable Radios as described above. EEI includes export information about a transaction such as the names and addresses of the parties to a transaction; the ECCN (when required); the description, quantity and value of the items exported; and the license authority for the export.
26. Section 758.1(b) of the EAR required that EEI be filed in certain situations, including for all exports of items subject to the EAR that were destined for Iran, a Country Group E:1 destination,⁴ regardless of value, and “for all exports subject to the EAR that require submission of a license application, regardless of value or destination” Records checks reflect that Scott failed to file EEI related to the June 7, 2017 shipment of the two Motorola Astro XTS 2500 Digital Portable Radios.
27. By failing to file the EEI for the shipment of the two Motorola Astro XTS 2500 Digital Portable Radios as required pursuant to Section 758.1(b), Scott committed one violation of Section 764.2(a) of the Regulations, by engaging in any transaction or taking any other action prohibited by or contrary to, or refraining from engaging in any transaction or taking any other action required by ECRA, the EAR, or any order, license or authorization issued thereunder.

Charge 5 15 C.F.R. § 764.2(i) – Failure to Comply with Reporting, Recordkeeping Requirements

28. Between on or about March 16, 2017 and January 14, 2019, Scott and Mission failed to comply with the recordkeeping requirements set forth in Part 762 of the EAR. Scott and Mission at all relevant times were (and remain) subject to the jurisdiction of the United States and participated in transactions involving the export from the United States of items subject to the Regulations, including the transaction described in Charge 1, *supra*, and were required to keep and maintain all records described in Section 762.2 of the Regulations made or obtained. *See* 15 C.F.R. §§ 762.1(a)(2), (a)(4), and (b).

⁴ *See* Supplement No. 1 to 15 C.F.R. Part 740.

29. The records required to be retained include, *inter alia*, bills of lading and other “export control documents” (as defined in Part 772 of the Regulations), correspondence, and any other records Scott or Mission made or obtained pertaining to such transactions. *See* 15 C.F.R. §§ 762.2 and 772.1 (at definition of “export control document”). All such records must be retained for a period of five years from the date of the export of the item involved in the transaction. *See* 15 C.F.R. § 762.6(a). In addition, any such records formally or informally requested by BIS (or any other U.S. Government agency) may not be destroyed or disposed of without written authorization from BIS (or other agency concerned), even if such records have been retained for more than the required retention period. *See* 15 C.F.R. § 762.6(b).
30. Scott and Mission failed to maintain records as required pursuant to Section 762 of the EAR. On or about December 5, 2018, the BIS Special Agent served Scott with a BIS administrative subpoena requesting “[a]ny and all records, from December 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities” subject to the EAR. The requested records included, but were not limited to, requests for quotes, waybills, bills of lading, Shipper’s Export Declarations, payment records, emails and other correspondence.
31. On or about December 10, 2018, in responding to the BIS administrative subpoena, Scott advised the BIS Special Agent that he has never “kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.” On January 14, 2019, after the BIS Special Agent granted Scott additional time to respond to the subpoena, he provided some records, including a list of freight forwarders/brokers and invoices related to exports to approximately 15 countries. For almost all of these exports, however, he failed to produce any of the other requested records, including quotes, requests for quotes, waybills, bills of lading, payment records, or emails and other correspondence. Scott also acknowledged that the records were incomplete, claiming that “[w]e lost our main HD computer during a storm in April of 2015. A lot of information was lost.”
32. As a result of these failures, Scott and Mission committed a violation of Section 764.2(i) of the Regulations, by failing or refusing to comply with any reporting or recordkeeping requirement of ECRA, the EAR, or of any order, license, or authorization issued thereunder.

WHEREAS, Respondents have reviewed, with the assistance of counsel, the terms of this Agreement and the Order that the Assistant Secretary of Commerce for

Export Enforcement will issue if he approves this Agreement as the final resolution of this matter (the “Order”), and understand the terms of these documents;

WHEREAS, Respondents enter into this Agreement voluntarily and with full knowledge of their rights, after having consulted with counsel;

WHEREAS, Respondents have demonstrated a limited ability to pay a monetary penalty;

WHEREAS, Respondents state that no promises or representations have been made to them other than the agreements and considerations herein expressed;

WHEREAS, Respondents admit committing the alleged conduct described in the Charging Letter; and

WHEREAS, Respondents agree to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Agreement, as follows:

1. BIS has jurisdiction over Respondents, under the Regulations, in connection with the matters alleged in the Charging Letter.
2. The following sanction shall be imposed against Respondents:
 - a. For a period of twenty (20) years from the date of the Order, Kenneth Scott, Scott Communications, Inc., and Mission Communications, LLC, with a last known address of 61574 Hillside Road, St. Ignatius, MT, 59865, and when acting for or on their behalf, their successors, assigns, directors, officers, employees, representatives, or agents (hereinafter collectively referred to as “Denied Person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United

States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- i. Applying for, obtaining, or using any license, license exception, or export control document;
 - ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or
 - iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.
- b. Any licenses issued under the Regulations in which Respondents have an interest as of the date of the Order shall be revoked by BIS.
3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof,

Respondents hereby waive all rights to further procedural steps in this matter including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; and (b) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Respondents also waive and will not assert any Statute of Limitations defense; and the Statute of Limitations will be tolled, in connection with any violation of the Regulations arising out of the transactions identified in the Charging Letter or in connection with the enforcement of this Agreement and Order, if

issued, from the date of the Order, if issued, until Respondents complete the period of denial agreed to in Paragraph 2.a of this Agreement.

4. BIS agrees that upon successful compliance in full with the terms of this Agreement and the Order, if issued, BIS will not initiate any further administrative proceeding against Respondents in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Charging Letter.

5. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(b) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

6. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

7. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

8. If the Order issues, this Agreement and the Order shall be made available to the public.

9. Each signatory affirms that he/she has authority to enter into this Agreement and to bind his/her respective party to the terms and conditions set forth herein.

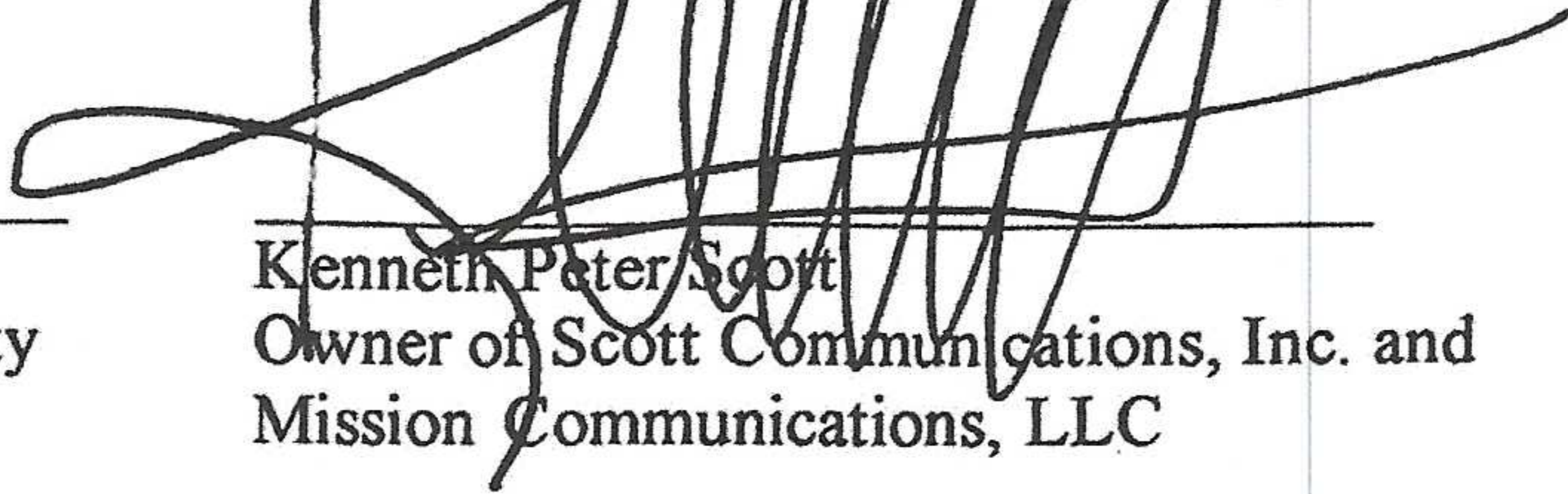
BUREAU OF INDUSTRY AND
SECURITY
U.S. DEPARTMENT OF COMMERCE

Opher Shweiki Digitally signed by Opher Shweiki
Date: 2023.03.28 08:38:31 -04'00'

Opher Shweiki
Chief Counsel for Industry and Security

Date: _____

KENNETH PETER SCOTT
SCOTT COMMUNICATIONS, INC.
MISSION COMMUNICATIONS, LLC.



Kenneth Peter Scott
Owner of Scott Communications, Inc. and
Mission Communications, LLC

Date: 03.21.23

Reviewed and approved by:



Dr. Nick Oberheiden, Esq., Oberheiden P.C.
Counsel for Kenneth Scott, Scott
Communications, Inc. and Mission
Communications, LLC

Date: 03.21.23



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Office of Export Enforcement
1401 Constitution Avenue, Suite 4508
Washington, DC 20230

CHARGING LETTER

VIA EXPRESS COURIER

Kenneth Peter Scott
61574 Hillside Road
St. Ignatius, MT 59865

June 7, 2022

Scott Communications, Inc.
61574 Hillside Road
St. Ignatius, MT 59865

Mission Communications, LLC
61574 Hillside Road
St. Ignatius, MT 59865

Attention: Kenneth Peter Scott, Scott Communications, Inc. and Mission Communications, LLC

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Kenneth Scott and Scott Communications, Inc. (collectively “Scott”), as well as Mission Communications, LLC (“Mission”) of St. Ignatius, Montana have violated the Export Administration Regulations (“the Regulations” or “the EAR”).¹ Specifically, BIS charges that Scott and Mission committed the following violations:

General Allegations

1. In or about March 2017, a Federal Bureau of Investigations (“FBI”) Special Agent working in an undercover capacity (the “UC”) contacted Kenneth Scott via email. The UC used an

¹ The Regulations were originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violations alleged occurred in 2017-2019. The Regulations governing the violations at issue are found in the 2017-2019 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774. The 2021 Regulations govern the procedural aspects of this case.



email address identified from a trade magazine advertisement in which Scott Communications advertised various communications equipment for sale. During the course of the sales negotiations with the UC, Scott was acting on behalf of Scott Communications, Inc. For example, the advertisement also included a telephone and fax number for "Ken Scott." A 2017 Better Business Bureau business profile further identified Kenneth Scott as the president of Scott Communications, Inc. In addition, in his email communications with the UC, as well in his social media profiles, Kenneth Scott identified himself as the President of Scott Communications.

2. On or about March 16, 2017, the UC sent Scott an email titled "Motorola Radio Quote Request." In the email, the UC requested a price quote for two Motorola XTS 2500, 800 or 900 Mhz radios. The UC also told Scott that, after the initial order of two radios, he intended to follow up with a larger order. The UC also asked Scott about shipping to Iran and later informed Scott that he intended to transship the radios from Jordan to Iran. Scott ultimately agreed to ship the radios to Jordan with knowledge that they would then be transshipped to Iran.

3. Specifically, on or about March 21, 2017, the UC emailed Scott asking him to:

Please provide me with your competitive shipping price to Jordan. My customer will test the units there. For the second order, it would be very valuable to me if you can ship directly to my customer in Iran. I want to continue business with you and this would be very helpful because as you know my customer cannot purchase directly from the United States. If you are able to get the units to Iran we will negotiate your fees in addition to the price for radios and your shipping rates. If you can only get the radios close, we can determine an appropriate fee.

4. In response, Scott stated:

I have never shipped to IRAN, and the way the politics here are concerned, I would guess not. Where else could we ship them to, [p]rior to them going to IRAN. Do you have a broker here in the US?"

5. The following day, the UC responded with:

Unfortunately, I do not have a US based broker. I understand that due to the sanctions the US has against Iran one cannot ship goods from the US directly to that country. If you can ship the radios to Jordan I can transship them to my customer in Iran. Please provide me with a quote for shipping the two radios to Jordan.

6. The UC also discussed possible shipment to Singapore. Scott ultimately advised that shipping via DHL to Jordan would cost \$250 and indicated that the price would remain the same if the UC preferred Singapore. On or about March 22, 2017, Scott emailed an invoice to the UC, listing two Motorola XTS 2500 radios valued at \$850 each, for a total product

cost of \$1700, with shipping valued at \$250. On or about March 28, 2017, the UC advised Scott via email that he was ready to proceed with the order and reiterated again that the ultimate consignee was located in Iran.

7. On or about April 15, 2017, the UC reached out to Scott and informed him that, after speaking to his customer in Iran, the customer expected the radios to be loaded with 256-Bit AES Encryption. Scott indicated that he did not provide encryption but advised that the customer could program the radios himself if he had the software. The UC agreed to proceed with the sale but asked Scott about the availability of other models that could be loaded with 256-bit AES encryption and stated that encrypted radios were more difficult to procure. The UC then proceeded to share emails from his purported customer in Iran with Scott, again reiterating that the ultimate end-user was located in Iran. On or about April 17, 2017, Scott emailed the UC with suggestions on how to procure the necessary equipment to load the radios with 256-bit AES encryption.
8. Following additional emails in which the UC again advised Scott that the ultimate end-user was located in Iran and that the radios would be transshipped from Jordan to Iran, Scott proceeded with the sales transaction. On or about June 7, 2017, Scott provided the UC with the U.S. Postal Service ("USPS") tracking number for the shipment of the two radios, which were ultimately detained with the assistance of the USPS in St. Ignatius, Montana prior to export. Scott completed the United States Postal Form 2976-R and signed the customs declaration form, verifying that he had complied with all applicable export laws and regulations.
9. In December 2018, Special Agents from the FBI and BIS contacted Scott to conduct an interview and outreach. During the interview, Scott stated that he was familiar with BIS regulations and that he regularly checks the BIS website for updates. When asked about conducting business with sanctioned countries, Scott stated that he had never done business with North Korea, Cuba, Syria or Sudan. When asked specifically about Iran, he acknowledged that he had received an inquiry about a Motorola portable radio destined for a customer in Iran and that he completed the sale. He indicated, however, that the export was made through an individual in Florida. At the conclusion of the interview, the BIS Special Agent explained the BIS voluntary self-disclosure program, provided Scott with additional information related to export controls, and served Scott with an administrative subpoena. Despite receiving this information, Scott never filed a voluntary self-disclosure related to the shipment of the two Motorola radios.
10. Later that same day, Scott forwarded the BIS Special Agent several emails related to his sales transaction with the UC. Scott failed to include any of the emails with the UC referencing Iran or discussing possible transshipment through Jordan or Singapore. He

also claimed that he had “misspoke[n] about the route this package took” when he stated that the export mentioned during the interview had gone through Florida.

11. After the BIS Special Agent contacted Scott with additional questions, Scott responded:
Call me on Monday so I can explain, I never sold anything to Iran. My customer had someone in Iran who wanted to buy these radios. I refused after he called me a [sic] tried to convince me to sell and ship to that location. I refused. I actually was thinking he was trying to set me up. Then he hounded me about Encryption, which I flat told him no way....
12. In answering the BIS Special Agent’s questions via email and responding to the BIS administrative subpoena, Scott made several false statements about the sales transaction with the UC. Notably, he falsely stated that he communicated with the UC by phone, denied having had additional email communications with the UC, and falsely stated that the UC told him that the radios’ end-use was for oil exploration.
13. When the emails Scott provided to the BIS Special Agent were compared with emails obtained by the UC during the investigation, it appeared that Scott edited one of the emails to support his claim that he did not export anything to Iran. Specifically, in an April 15, 2017 email to the UC, which made no reference to Iran, Scott inserted the following sentence into the document he provided to the BIS Special Agent: “I won’t sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me.”
14. Scott also failed to comply with reporting requirements by failing to file an Electronic Export Information (“EEI”) for the export of the two radios and failed to maintain appropriate records. Specially, the BIS Special Agent asked Scott to respond to OEE’s subpoena requesting “[a]ny and all records, from 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities subject to the Export Administration Regulations. . . .” In response, Scott stated that he has never “kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.”
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18. Specifically, as set forth above, in or about March 2017, Scott began negotiating the sale of two Motorola Astro XTS 2500 Digital Portable Radios through emails with an undercover Special Agent, whose true identity was unknown to Scott. The UC requested that the radios be sent to Iran and later stated that they would be transhipped from Jordan to Iran. Although the UC reiterated on multiple occasions that the ultimate end-user was located in Iran, Scott agreed to complete the sales transaction. On or about June 7, 2017, Scott provided the undercover Special Agent with a USPS tracking number for the shipment of the two radios.
19. No U.S. Government authorization had been sought or obtained in connection with this transaction. In engaging in such conduct with knowledge that a violation of the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur, Scott violated Section 764.2(e) of the Regulations.

² 31 C.F.R. Part 560 (2017).

Charges 2-3 15 C.F.R. § 764.2(g) – Misrepresenting and Concealing Facts to an Official of a United States Agency

20. On at least two occasions between December 2018 and January 2019, Scott and Mission made a false or misleading representation, statement, certification, or falsified or concealed a material fact, to a U.S. government official.
21. Following the above-described efforts by Scott to ship the two radios, FBI and BIS Special Agents interviewed Scott on or about December 5, 2018. During the interview with these U.S. government officials, Scott stated that he received an inquiry for a Motorola portable radio destined for a customer in Iran and that he had completed the sale. Thereafter, on or about December 7, 2018, in a follow-up email to the BIS Special Agent, Scott indicated that he had never shipped anything to Iran and that, when the buyer telephoned him to purchase for a customer in Iran, he refused.
22. On or about December 7, 2018, Scott made additional material false statements or omissions to the BIS Special Agent about his communications related to the sale of the radios. Specifically, Scott falsely represented that he communicated with the UC by phone and that there were no email communications indicating that the radios were destined for Iran. He also falsely stated that the UC advised him that the radios would be used for oil exploration.
23. Additionally, on or about December 11, 2018, Scott produced an email in response to the BIS subpoena that had been materially altered and falsified. Although the original April 15, 2017, email communication between Scott and the UC made no reference to Iran, the document provided by Scott to the Special Agent had been altered and falsified by inserting the following statement into the email: “I won’t sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me.” (Capitalization as shown in email).
24. By making a false or misleading representation, statement or certification, or falsifying or concealing any material fact to BIS and/or FBI Special Agents in the course of an investigation or other action subject to the EAR, Scott and Mission violated Section 764.2(g) of the Regulations on at least two occasions.

Charge 4 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct Related to the Failure to File Electronic Export Information

25. On or about June 7, 2017, Scott engaged in conduct prohibited by the Regulations by failing to comply with reporting requirements, namely by failing to file Electronic Export Information (“EEI”) for the shipment of two Motorola Astro XTS 2500 Digital Portable Radios as described above. EEI includes export information about a transaction such as

the names and addresses of the parties to a transaction; the ECCN (when required); the description, quantity and value of the items exported; and the license authority for the export.

26. Section 758.1(b) of the EAR required that EEI be filed in certain situations, including for all exports of items subject to the EAR that were destined for Iran, a Country Group E:1 destination,³ regardless of value, and “for all exports subject to the EAR that require submission of a license application, regardless of value or destination” Records checks reflect that Scott failed to file EEI related to the June 7, 2017 shipment of the two Motorola Astro XTS 2500 Digital Portable Radios.
27. By failing to file the EEI for the shipment of the two Motorola Astro XTS 2500 Digital Portable Radios as required pursuant to Section 758.1(b), Scott committed one violation of Section 764.2(a) of the Regulations, by engaging in any transaction or taking any other action prohibited by or contrary to, or refraining from engaging in any transaction or taking any other action required by ECRA, the EAR, or any order, license or authorization issued thereunder.

Charge 5 15 C.F.R. § 764.2(i) – Failure to Comply with Reporting, Recordkeeping Requirements

28. Between on or about March 16, 2017 and January 14, 2019, Scott and Mission failed to comply with the recordkeeping requirements set forth in Part 762 of the EAR. Scott and Mission at all relevant times were (and remain) subject to the jurisdiction of the United States and participated in transactions involving the export from the United States of items subject to the Regulations, including the transaction described in Charge 1, *supra*, and were required to keep and maintain all records described in Section 762.2 of the Regulations made or obtained. *See* 15 C.F.R. §§ 762.1(a)(2), (a)(4), and (b).
29. The records required to be retained include, *inter alia*, bills of lading and other “export control documents” (as defined in Part 772 of the Regulations), correspondence, and any other records Scott or Mission made or obtained pertaining to such transactions. *See* 15 C.F.R. §§ 762.2 and 772.1 (at definition of “export control document”). All such records must be retained for a period of five years from the date of the export of the item involved in the transaction. *See* 15 C.F.R. § 762.6(a). In addition, any such records formally or informally requested by BIS (or any other U.S. Government agency) may not be destroyed or disposed of without written authorization from BIS (or other agency concerned), even if such records have been retained for more than the required retention period. *See* 15 C.F.R. § 762.6(b).

³ *See* Supplement No. 1 to 15 C.F.R. Part 740.

30. Scott and Mission failed to maintain records as required pursuant to Section 762 of the EAR. On or about December 5, 2018, the BIS Special Agent served Scott with a BIS administrative subpoena requesting “[a]ny and all records, from December 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities” subject to the EAR. The requested records included, but were not limited to, requests for quotes, waybills, bills of lading, Shipper’s Export Declarations, payment records, emails and other correspondence.
31. On or about December 10, 2018, in responding to the BIS administrative subpoena, Scott advised the BIS Special Agent that he has never “kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.” On January 14, 2019, after the BIS Special Agent granted Scott additional time to respond to the subpoena, he provided some records, including a list of freight forwarders/brokers and invoices related to exports to approximately 15 countries. For almost all of these exports, however, he failed to produce any of the other requested records, including quotes, requests for quotes, waybills, bills of lading, payment records, or emails and other correspondence. Scott also acknowledged that the records were incomplete, claiming that “[w]e lost our main HD computer during a storm in April of 2015. A lot of information was lost.”
32. As a result of these failures, Scott and Mission committed a violation of Section 764.2(i) of the Regulations, by failing or refusing to comply with any reporting or recordkeeping requirement of ECRA, the EAR, or of any order, license, or authorization issued thereunder.

* * * * *

Accordingly, Kenneth Scott, Scott Communications, Inc. and Mission Communications, LLC are hereby notified that an administrative proceeding is instituted against them pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$330,947 per violation,⁴ or twice the value of the transaction that is the basis of the violation;

⁴ See 15 C.F.R. §§ 6.3(c)(4), 6.3(c)(6), 6.4. This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015. See 87 Fed. Reg. 157 (Jan. 4, 2022) (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$311,562 to \$330,947, effective Jan. 15, 2022); note 1, *supra*. For violations occurring on or after the enactment of ECRA on August 13, 2018, the maximum civil penalty is \$328,121. See 50 U.S.C. § 4819 (prescribing civil monetary penalty amount for ECRA violation); 15 C.F.R. §§ 6.3(c)(4), 6.4 (adjusting civil monetary penalty amount for inflation).

- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.⁵

If Kenneth Scott, Scott Communications, Inc. and/or Mission Communications, LLC, Inc. fail to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Kenneth Scott, Scott Communications, Inc. and/or Mission Communications, LLC default, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Kenneth Scott, Scott Communications, Inc. and Mission Communications, LLC are further notified that they are entitled to an agency hearing on the record if they file a written demand for one with his answer. *See* 15 C.F.R. § 766.6. Kenneth Scott, Scott Communications, Inc. and Mission Communications, LLC are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent them. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Kenneth Scott, Scott Communications, Inc. and/or Mission Communications, LLC have a proposal to settle this case, they should transmit it to the attorney representing BIS named below.

Kenneth Scott, Scott Communications, Inc. and Mission Communications, LLC are further notified that under the Small Business Regulatory Enforcement Flexibility Act, they may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, any answer filed by Kenneth Scott, Scott Communications, Inc. and/or Mission Communications, LLC must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

⁵ For alleged violations that occurred prior to August 13, 2018, the date of enactment of ECRA, the applicable potential sanctions are provided for under IIEPA, rather than ECRA. *See* note 1, *supra*. For violations that occurred on or after the effective date of ECRA, the applicable potential sanctions are provided for under ECRA. *See id.*

Kenneth Scott
Scott Communications, Inc.
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In addition, a copy of Kenneth Scott's, Scott Communications, Inc.'s and/or Mission Communications, LLC's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Andrea Duvall
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Andrea Duvall is the attorney representing BIS in this case; any communications that Kenneth Scott, Scott Communications, Inc. and/or Mission Communications, LLC may wish to have concerning this matter should occur through her. Ms. Duvall may be contacted by email at aduvall@doc.gov.

Sincerely,

JOHN

SONDERMAN

Digitally signed by JOHN
SONDERMAN
Date: 2022.06.07 14:47:50
-04'00'

John Sonderman

Director

Office of Export Enforcement