

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

In the Matter of)	
)	
IKUSI-Angel Iglesias, S.A.)	File No. EB-03-SE-214
)	NAL/Acct. No.: 200432100014
)	FRN: 0011383791
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 13, 2004

Released: August 17, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find IKUSI-Angel Iglesias, S.A. (“IKUSI”) apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for importing and marketing in the United States non-compliant equipment in willful and repeated violation of Section 302(b)¹ of the Communications Act of 1934, as amended (“Act”), and Sections 2.803(a)(1)² and 15.231(a)³ of the Commission’s Rules (“Rules”).

II. BACKGROUND

2. The Office of Engineering and Technology referred to the Enforcement Bureau a complaint alleging that IKUSI’s Remote Crane Transmitter (“RCT Model TM60”),⁴ a radio frequency device designed for the remote control of cranes and hoists, fails to comply with Section 15.231(a) of the Rules, which requires a manually operated transmitter to employ a switch that will automatically cease transmission within five seconds or less.⁵ According to the complainant, the Model TM60 operates in a “maintained or continuous mode” rather than ceasing after five seconds when manually activated.

3. On January 22, 2004, the Office of Engineering and Technology Laboratory (“OET Lab”)

¹47 U.S.C. § 302a(b).

²47 C.F.R. § 2.803(a)(1).

³47 C.F.R. § 15.231(a).

⁴On October 3, 2001, the Commission staff issued a grant of certification to IKUSI for the RCT, and assigned the device FCC Identification Number PVT-TM60.

⁵See 47 C.F.R. § 15.231(a).

tested the RCT Model TM60, a manually operated transmitter, and confirmed that the unit failed to satisfy the timing requirement of Section 15.231(a). The OET Lab determined that the IKUSI transmitter not only failed to cease transmission before the five second requirement, but continued transmitting approximately 234 seconds beyond the required stop time. On March 29, 2004, the Spectrum Enforcement Division of the Enforcement Bureau issued a letter of inquiry (“LOI”) to IKUSI, seeking information and documents concerning the compliance of the RCT Model TM60 with the periodic operation limits set forth in Section 15.231 of the Rules.⁶

4. IKUSI submitted a response to the LOI on April 26, 2004.⁷ In its Response, IKUSI does not dispute that the RCT Model TM60 fails to comply with the Commission’s periodic operation timing requirement for the 5-second transmission limit set forth in Section 15.231(a).⁸ Indeed, IKUSI admits that the TM60 is programmed for a 240-second time-out duration, as stated in the TM60 manuals.⁹ Nevertheless, IKUSI contends that it “proceeded on the basis of its good faith belief” that the TM60 met all applicable Commission rules, based on representations from the National Certification Laboratory (“NCL”), an independent testing facility that prepared IKUSI’s equipment certification application.¹⁰ IKUSI asserts that, while it was preparing its Response to the LOI, it “became aware for the first time” that NCL made “apparently inaccurate statements” in documents it submitted to the American Telecommunications Certification Body, Inc. (“ATCB”), which processed the Model TM60 authorization application.¹¹ Nevertheless, IKUSI argues that it had “no reason to believe that it needed to review the equipment authorization file after grant of the certification in order to verify that NCL had provided it with all relevant documents.”¹²

5. IKUSI maintains that if it had been informed by NCL or ATCB that the Model TM60 needed to comply with the five-second transmission limitation, it would have modified the device, requested a waiver of the rule, or abandoned its certification application.¹³ IKUSI states that when it was notified that the Model TM60 “may not comply” with Commission Rules, it ceased the shipment of the

⁶Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Miguel Portillo, Director, TLC Division, IKUSI-Angel Iglesias, S.A. (March 29, 2004) (“LOI”).

⁷Letter from Mace J. Rosenstein, Esquire and David L. Martin, Esquire, Hogan & Hartson, L.L.P., to Yasin Ozer, Spectrum Enforcement Division, Enforcement Bureau (April 26, 2004) (“Response”). IKUSI’s Response included a Confidentiality Request in which IKUSI sought confidential treatment of its entire Response. On June 9, 2004, the Spectrum Enforcement Division issued an order (which has become final) denying in large part IKUSI’s request, finding that IKUSI’s request was overbroad. The Division, however, decided to accord confidential treatment to one specific item -- the number of devices that IKUSI had shipped for sale in the United States. *See IKUSI-Angel Iglesias, S.A., Order*, DA 04-1648 (Enf. Bur., Spectrum Enforcement Division, released June 9, 2004).

⁸Response at 1.

⁹*Id.* at 1-2.

¹⁰IKUSI states that it has been unable to contact the NCL, and that it believes the company went out of business. *See id.* at 3.

¹¹*Id.* at 3-4.

¹²*Id.* at 4 n.8.

¹³*Id.* at 5.

device into the United States.¹⁴ IKUSI also submits that it is currently in the process of preparing a new RCT model for equipment certification and sale in the United States. Finally, IKUSI contends that it is unaware of any reports of harmful interference caused by the TM60's "limited periods of continuous operation."¹⁵

III. DISCUSSION

6. Section 302(b) of the Act provides that no 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 Commission regulations. Section 2.803(a)(1) of the Rules prohibits the importation and marketing, including the offering for sale, displaying and advertising, of radio frequency devices that have not received Commission authorization.

7. Section 15.231 of the Rules establishes periodic operation limits for radio frequency devices, which operate "in the band 40.66 – 40.70 MHz and above 70 MHz." Section 15.231(a) specifically requires a manually operated transmitter to employ a switch that "will automatically deactivate the transmitter within not more than 5 seconds of being released."

8. In the instant case, IKUSI admits that the RCT Model TM60 fails to comply with the periodic operation limits set forth in Section 15.231 of the Rules.¹⁶ Accordingly, IKUSI apparently willfully¹⁷ and repeatedly¹⁸ violated Section 302(b) of the Act and Sections 2.803(a) and 15.231 of the Rules by importing and marketing the non-compliant Model TM60 device in the United States.

9. While IKUSI asserts that it relied in good faith on the work of the test facility that tested the Model TM60 and prepared its certification application, IKUSI is nevertheless responsible and accountable for the acts or omissions of its agents, contractors, and/or employees.¹⁹ Nor does the absence

¹⁴*Id.* at 2.

¹⁵*Id.* at 5-6.

¹⁶*Id.* at 1-2.

¹⁷Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁸As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹⁹See *Wagenvoort Broadcasting Co.*, 35 FCC 2d 361, 361--362, ¶ 3 (1972) (no mitigation of forfeiture amount because of reliance on consulting engineer's erroneous advice); *Roadrunner Electronics, Inc.*, 8 FCC Rcd 6398, 6398 ¶ 6 (FOB 1993) (finding vendor responsible for selling compliant radiofrequency devices, despite its claims that it was not aware of its inventory and that its employees failed to comply with Commission Rules). See also *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002) (no mitigation of forfeiture amount because actions were those of lessee/contractor), *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991) (no lessening of responsibility when contractors are used).

of reports of harmful interference caused by the Model TM60's non-compliance mitigate the failure of the device to comply with Commission Rules.²⁰ Further, while we commend IKUSI's commitment to comply with the Commission's rules in the future, such post-remedial measure does not lessen, mitigate, or excuse IKUSI's violations.²¹ Indeed, corrective action taken to come into compliance with Commission Rules is expected.²²

10. Section 1.80(b) of the Rules sets a base forfeiture amount of seven thousand dollars (\$7,000) for importing and marketing non-compliant equipment. The Commission's *Forfeiture Policy Statement* also specifies that the base forfeiture amounts shall be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(D) of the Act, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²³ In this case, IKUSI imported and marketed its RCT Model TM60, which does not comply with the timing requirements set forth in Section 15.231(a). We therefore find it appropriate and consistent with precedent to propose a base forfeiture of \$7,000 for importing and marketing non-compliant equipment.²⁴

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,²⁵ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁶ IKUSI, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a)(1) and 15.231(a) of the Rules.

12. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, IKUSI, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FCC Registration Number (FRN) referenced above. Payment by check or money order may be mailed to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O.Box 73482, Chicago, IL 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525

²⁰See, e.g., *AGM-Nevada, LLC*, 18 FCC Rcd 1476, 1478-79 ¶ 8 (Enf. Bur. 2003).

²¹See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 ¶ 14; *KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

²²See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

²³The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

²⁴See *New Image Electronics*, 17 FCC Rcd 3594, 3595 ¶¶ 4-5 (Enf. Bur. 2002) (imposing a \$7,000 forfeiture against a vendor for marketing non-compliant long-range cordless telephones).

²⁵47 U.S.C. § 503(b).

²⁶47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank “Bank One,” account number 1165259.

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁷

17. Under the Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of release of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Enforcement Bureau – Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (“OCBO”) set forth in Attachment A of this *NAL*. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested, to Mr. Miguel Portillo, Director, TLC Division, IKUSI-Angel Iglesias, S.A., Poligono Industrial 27, N 30 (Martutene), Apartado 1320, 20080 San Sebastian, Spain, and to counsel for IKUSI-Angel Iglesias, S.A., Mace J. Rosenstein, Esquire, and David L. Martin, Esquire, Hogan & Hartson, L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004-1109.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁷47 C.F.R. § 1.1914.

Attachment A

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	

Fixed Satellite Very Small Aperture Terminal Systems	\$12.5 Million in Annual Receipts or Less
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHZ Guard Band Licensees	
Private and Common Carrier Paging	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A

Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)