

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

In the Matter of:
Freewave Technologies, Inc.
Grantee of Equipment
Authorizations, FCC ID#s KNY-DGR-115,
KNY-205-108213, KNY-1931852313419
and KNY-21161341911919
File No. EB-02-TS-581

ORDER

Adopted: August 31, 2004

Released: September 2, 2004

By the Chief, Spectrum Enforcement Division:

I. Introduction

1. In this Order, we address an informal request for Commission action filed pursuant to Section 1.41 of the Commission’s Rules (“Rules”)1 by Microwave Data Systems, Inc. (“MDS”), which requests revocation of the above-captioned equipment authorizations for Part 15 spread spectrum transmitters held by Freewave Technologies, Inc. (“Freewave”). For the reasons discussed below, we dismiss in part and deny in part MDS’s request.

II. Background

2. On July 31, 1996, an equipment certification for a Part 15 spread spectrum transmitter with FCC ID# KNY-DGR-115 was granted to Freewave. On August 15, 1996, an equipment certification for a Part 15 spread spectrum transmitter with FCC ID# KNY-205-108213 was granted to Freewave. On January 9, 2001, an equipment certification for a Part 15 spread spectrum transmitter with FCC ID# KNY-1931852313419 was granted to FreeWave. On August 2, 2001, an equipment certification for a Part 15 spread spectrum transmitter with FCC ID# KNY21161341911919 was granted to FreeWave.

3. On May 31, 2002, MDS filed an informal request for Commission action pursuant to Section 1.41 of the Rules which requested revocation of these four equipment authorizations held by Freewave. In its request, MDS asserted that Freewave “has demonstrated a clear pattern of non-compliance with the FCC’s rules” by marketing equipment under FCC ID#s KNY-DGR-115, KNY-205-108213, KNY-1931852313419 and KNY21161341911919 that does not comply with the terms of these equipment authorizations. In support of this assertion, MDS made numerous specific allegations with respect to equipment marketed under each of the four FCC Identifiers. MDS also alleged that Freewave is marketing non-compliant and unauthorized bilateral amplifiers to the general public in violation of Section 15.204(a) of the Rules.2

1 47 C.F.R. § 1.41.

2 47 C.F.R. § 15.204(a). Section 15.204(a) of the Rules provides “[e]xcept as otherwise described in paragraph (b) of this section, no person shall use, manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing, any external radio frequency power

4. On June 20, 2002, Freewave filed a motion to dismiss MDS's request. In its motion, Freewave asserted that the allegations raised by MDS are without merit.

5. Subsequently, the FCC's Office of Engineering and Technology referred the matter to the Enforcement Bureau for investigation. On June 10, 2004, the Spectrum Enforcement Division of the Enforcement Bureau issued a letter of inquiry ("LOI") to Freewave.<sup>3</sup> Freewave submitted its response on June 24, 2004.<sup>4</sup>

### III. Discussion

#### **FCC ID#s KNY-205-108213, KNY-1931852313419 and KNY21161341911919**

6. In its response to our LOI, Freewave indicated that it has ceased manufacturing and selling equipment under three of the four FCC Identifiers at issue. Specifically, Freewave stated that it last manufactured or sold equipment under FCC ID# KNY-205-108213 on October 1, 1998, and under FCC ID#s KNY-1931852313419 and KNY21161341911919 on April 7, 2003. Given that Freewave is no longer manufacturing and selling equipment under these three FCC Identifiers and apparently has no plans to resume manufacturing and selling equipment under these FCC Identifiers, we find that MDS's request for revocation of these equipment authorizations is moot at this time. Accordingly, we dismiss without prejudice its informal request for Commission action seeking revocation of these three authorizations.<sup>5</sup>

#### **FCC ID # KNY-DGR-115**

7. MDS alleged in its request for revocation that the "Professional Radio Series" Model DGR-115H product marketed by Freewave under FCC ID# KNY-DGR-115 does not comply with the authorization. Specifically, MDS asserted that the Model DGR-115H has a straight SMA connector advertised to produce a 1 watt output, has an RS-232 interface through a standard DB-9 indicating no reference to shielding connected directly to a computer, does not include a power supply incorporating a ferrite core for filtering or provide documentation to the customer concerning the requirement to add a ferrite core, and does not have a permanently attached antenna.

8. In its motion to dismiss, Freewave stated that it has always sold the DGR-115H in the U.S. with the non-standard SMA connector. Freewave also noted that the DGR-115H pictured in an exhibit to MDS's request has the correct non-standard connector on it and that the data sheet provided by MDS in another exhibit explicitly states "Non-standard SMA connector." Freewave further stated that it satisfied the requirements for shielded data and power supply connectors in the DGR-115H by incorporating them internally within the metal enclosure, which was a Class I permissive change under Section 2.1043(b)(1) of the Rules.<sup>6</sup> Freewave asserted that because of this permissive change, no additional ferrite was needed by the customer. Moreover, Freewave asserted that it has always included the power supply with the DGR-115H. Finally, Freewave stated that it has always sold the DGR-115H with a unique connector in compliance with

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amplifier or amplifier kit intended for use with a Part 15 intentional radiator."

<sup>3</sup> Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Henry Goldberg, Esq. and Joseph A. Godles, Esq. (June 10, 2004).

<sup>4</sup> Letter from Henry Goldberg, Esq. and Joseph A. Godles, Esq., Counsel for Freewave Technologies, Inc., to Kathy Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau (June 24, 2004).

<sup>5</sup> Because we conclude that MDS's request for revocation is moot with respect to these three equipment authorizations, we find it unnecessary to detail or discuss herein the specific allegations made by MDS regarding the equipment marketed under these authorizations.

<sup>6</sup> 47 C.F.R. § 2.1043(b)(1).

Section 15.203 of the Rules,<sup>7</sup> which provides that intentional radiators must have either a permanently attached antenna or a unique coupling.

9. After reviewing the record, we find no basis for initiation of proceedings to revoke Freewave's equipment authorization, FCC ID# KNY-DGR-115. In this regard, we believe that Freewave has refuted each of MDS's allegations that Freewave is marketing non-compliant equipment under this authorization. Accordingly, we deny MDS's informal request for Commission action seeking revocation of FCC ID# KNY-DGR-115.

### **Bilateral Amplifiers**

10. MDS also alleged that Freewave sells bilateral amplifiers to the general public in violation of Section 15.204(a) of the Rules. MDS acknowledged that Freewave states that the amplifiers are for use only by the U.S. government or military, or for export, but asserted that the amplifiers may be ordered directly from Freewave's web page without verification of the intended use of the product. In addition, MDS asserted that Freewave sells a complete line of cables enabling the bilateral amplifier to adapt to any of the more frequently used non-standard connectors. MDS submitted that it would seem likely that the amplifiers have been placed in service in the U.S. by non-government, non-military end users.

11. In response, Freewave asserted that this allegation is false. Freewave stated that it has never sold any product, much less an amplifier, directly from its website. Freewave further stated that since Section 15.204 took effect in 1997, it has sold amplifiers only to either military or export customers and only after extensive vetting. Freewave also noted that the practice of selling adaptor cables is widely used in the industry and is not regulated.

12. Based on our review of the record and of Freewave's website, we find no evidence that Freewave has marketed or is marketing bilateral amplifiers to the general public in violation of Section 15.204 of the Rules. We accordingly conclude that MDS's unsubstantiated allegations do not warrant further action.

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Sections 0.111 and 0.311 of the Rules,<sup>8</sup> MDS's informal request for Commission action is dismissed to the extent indicated herein and is otherwise denied.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* be sent via first class mail and certified mail, return receipt requested, to counsel for MDS, Wayne V. Black, Esq., Keller and Heckman LLP, 1001 G Street, N.W., Suite 500 West, Washington, DC, 20001, and to counsel for Freewave, Henry Goldberg, Esq. and Joseph A. Godles, Esq., Goldberg, Godles, Wiener & Wright, 1229 Nineteenth Street, N.W., Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>7</sup> 47 C.F.R. § 15.203.

<sup>8</sup> 47 C.F.R. §§ 0.111 and 0.311.