

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

In the Matter of	)	
	)	
Hightech CB Shop	)	File Number EB-05-TP-066
8391 U.S. 301 South,	)	NAL/Acct. No. 200532700009
Jacksonville, Florida 32234	)	FRN 0013520705
	)	

**FORFEITURE ORDER**

**Adopted:** July 25, 2005

**Released:** July 27, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Hightech CB Shop (“Hightech”) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violation involves Hightech’s offering for sale a non-certified Citizens Band (“CB”) transceiver.<sup>3</sup>

**II. BACKGROUND**

2. On May 9, 2001, the Commission’s Tampa Office of the Enforcement Bureau (“Tampa Office”) issued a Citation to Hightech for violation of Section 302(b) of the Act and Sections 2.803(a)(1)<sup>4</sup> and 2.815(b)<sup>5</sup> of the Rules by offering for sale RF linear amplifiers and non-certified CB transceivers at its CB shop located at 8391 U.S. 301 S., Jacksonville, Florida.

3. In response to a complaint about the marketing of illegal, non FCC certified devices, on February 4, 2005, agents from the Tampa Office visited Hightech and observed several radio transceivers offered for sale. One of the agents examined one of the radios, a Connex 3300 HP, and observed that the device did not have any markings or labels that identified the radio as an FCC certified device. The agent told a shop employee that he was interested in making a purchase and requested more information about the radio. The shop employee identified the Connex 3300 HP transceiver as a 10-Meter Amateur Radio and offered to sell the device to the agent for \$239.00. The shop employee stated that the Connex models could be easily modified to operate on CB frequencies, that the store accepted credit card payments, and that the radio could be delivered by mail.

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<sup>1</sup>47 U.S.C. § 302a(b).

<sup>2</sup>47 C.F.R. § 2.803(a).

<sup>3</sup>CB radio operation is confined to forty specified channels from 26.965 MHz to 27.405 MHz (carrier frequency).

<sup>4</sup>47 C.F.R. § 2.803(a)(1).

<sup>5</sup>47 C.F.R. § 2.815(b).

4. On February 7, 2005, an agent from the Tampa Office again visited the Hightech CB Shop and requested information about the Connex 3300 HP transceiver. Shop employees offered to sell the Connex 3300 HP to the agent for \$239.00.

5. On May 24, 2005, the Tampa Office issued a *Notice of Apparent Liability for Forfeiture* to Hightech in the amount of seven thousand dollars (\$7,000) for the apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.<sup>6</sup> On June 17, 2005, Hightech submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Hightech's response, Section 503(b) of the Act requires that the Commission take into account 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 other such matters as justice may require.<sup>9</sup>

7. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section."<sup>10</sup> Section 2.803(a) of the Rules provides that: "Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device ... unless such device has been authorized by the Commission."<sup>11</sup>

8. CB radio transceivers are subject to the equipment authorization procedure known as Certification and must be certified and properly labeled prior to being marketed or sold in the United States.<sup>12</sup> Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service ("ARS") frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz), just above the CB band (26.965 to 27.405 MHz), are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. In an order, the Commission adopted changes to its Rules regarding the CB type acceptance requirements by defining a "CB Transmitter" as "a transmitter that operates or is intended to operate at a station authorized in the CB."<sup>13</sup> Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB

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<sup>6</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700009 (Enf. Bur., Tampa Office, May 24, 2005) ("*NAL*").

<sup>7</sup>47 U.S.C. § 503(b).

<sup>8</sup>47 C.F.R. § 1.80.

<sup>9</sup>47 U.S.C. § 503(b)(2)(D).

<sup>10</sup>47 U.S.C. § 302a(b).

<sup>11</sup>47 C.F.R. § 2.803(a).

<sup>12</sup>*See* 47 C.F.R. §§ 2.907, 2.927(a).

<sup>13</sup>47 C.F.R. § 95.603(c) [FCC 88-256], amended changing "type acceptance" to "certification" [FCC 98-58]. *See also Extended Coverage High Frequency Transceivers*, Public Notice 62882, 1996 WL 242469, available at

service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).<sup>14</sup> The Office of Engineering and Technology of the Commission (“OET”) has clarified that ARS transceivers designed “such that they can easily be modified by the users to extend the operating frequency range into the frequency bands” of the CB are CB transmitters, because they are intended to operate on the CB bands.<sup>15</sup>

9. On May 9, 2001, the Tampa Office issued a Citation to Hightech for violation of Section 302(b) of the Communications Act, and Section 2.803(a)(1) of Commission’s Rules by, among other things, offering for sale a 10-Meter ARS radio that could be easily modified to operate on CB frequencies, *i.e.*, a non-certified CB transmitter. Hightech claims that this Citation was insufficient to provide the notice required pursuant to Section 503(b)(5) of the Act, because the Citation involved a Galaxy model radio, not a Connex one. According to Section 503(b)(5), however, a “person shall not be entitled to receive any additional citation of the violation charged, with respect to any conduct of the type described in the citation sent under this paragraph.”<sup>16</sup> The Citation charged Hightech with offering for sale a 10-Meter ARS radio that could be easily modified to operate on CB frequencies, the very same violation described in the *NAL*. Accordingly, the Commission was not required to provide Hightech with another Citation specifically listing the Connex 3300 HP before issuing the *NAL*.

10. In its response to the Citation dated May 23, 2001, Hightech disputed that it violated the Rules and claimed that it was legal to sell ARS radios that were not FCC certified. The Tampa Office responded on June 11, 2001, stating that it was illegal to sell ARS radios that can be easily modified to operate on CB frequencies. The Tampa Office sent a copy of an “Illegal CB Transceiver List” and the *OGC Letter* with its response. Hightech sent a letter dated June 13, 2001 to the Tampa Office that stated it did not receive the enclosures with the June 11, 2001 letter. In its response to the *NAL*, Hightech claims that, because the Tampa Office failed to send the enclosures, it assumed the Tampa Office agreed with its response to the Citation dated May 23, 2001. The Tampa Office states that it sent the enclosures with its June 11, 2001 letter because, following its normal practice, a copy of the letter and the enclosures as sent to Hightech were in Hightech’s file. Assuming *arguendo* that the Tampa Office did not send the enclosures, we find it unreasonable for Hightech to have concluded that the Tampa Office agreed with its positions. The Tampa Office at no time stated orally or in writing that it agreed with Hightech’s positions. To the contrary, the only written correspondence from the Tampa Office - the Citation and letter dated June 11, 2001 - unambiguously stated that Hightech violated Section 302(b) of the Act and 2.803(a) of the Rules. Hightech’s conclusion that the Tampa Office agreed with it seems irrational.

11. Hightech admits that it offered for sale the Connex 3300 HP on February 4 and 7, 2005 and also admits that the Connex 3300 HP is not FCC certified. Hightech asserts, however, that it is legal to sell such radios and claims the Commission cannot change its rules through changes in policy. Hightech states that, because the Connex 3300 HP is an ARS transceiver, it does not require certification prior to marketing. Hightech claims that the Commission has not explained what an easily modifiable ARS radio is, that almost all ARS radios can be modified to operate on CB frequencies, and that it violates due process to fine it for this violation. Hightech also asserts that Commission staff told it in an

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<<[http://www.fcc.gov/Bureaus/Engineering\\_Technology/Public\\_Notices/1996/pnet6023.txt](http://www.fcc.gov/Bureaus/Engineering_Technology/Public_Notices/1996/pnet6023.txt)>> (OET, rel. May 13, 1996) (“*Public Notice*”).

<sup>14</sup>47 C.F.R. § 95.655(a).

<sup>15</sup>*See Public Notice*. *See also* Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999) (“*OGC Letter*”)(noting that ARS transmitters that “have a built-in capability to operate on CB frequencies and can easily be altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter”).

<sup>16</sup>47 U.S.C. § 503(b)(5).

email that it was legal to sell Connex 3300 transceivers. Hightech claims it would be unfair to receive a forfeiture for following staff directions. Finally, Hightech states that it posted a sign in its shop that stated Amateur equipment requires a license and that it is illegal to modify the radios to operate on CB frequencies.

12. As described in detail above, the Commission adopted Rules determining that the definition of “CB transmitter” in Section 95.603(c) of the Rules includes radios “intended to operate at a station authorized in the CB.” OET and the Office of General Counsel for the Commission (“OGC”) have clarified that this definition includes ARS radios that can be easily modified to operate on CB frequencies. OGC has stated that transmitters that “have a built-in capability to operate on CB frequencies and can easily be altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter.”<sup>17</sup> Section 95.603 of the Rules states that all CB transmitters must be certificated.<sup>18</sup> Thus, the Commission did not change its Rules merely by “making a policy change” as Hightech alleges, and it does not violate due process to enforce these Rules. In addition, we note that the email from a Commission staff person that Hightech included in its response to the *NAL* was dated June 5, 1997. Hightech knew or should have known that this email did not contain current information after it received the Citation and follow up letter from the Tampa Office in 2001, and it cannot use this email as justification for violating the rules. Moreover, “parties who rely on staff advice or interpretations do so at their own risk.”<sup>19</sup> It is also irrelevant whether Hightech posted a sign in its shop as it claims, although we note that the agents did not see this alleged sign. Hightech is prohibited from selling non-certified CB transmitters, and it cannot attempt to relieve its liability by posting a warning sign for its customers. Moreover, it is irrelevant whether it might be legal or illegal to sell other models of non-certified ARS radios. On February 4 and 7, 2005, Hightech offered for sale a non-certified Connex 3300 HP radio. This model has been tested by OET and found to be a CB transmitter, because it has built-in capability to operate on CB frequencies and can be easily altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire. Hightech was aware that this model was not certified and could be easily modified to operate on CB frequencies.

13. Based on the evidence before us, we find that Hightech apparently willfully<sup>20</sup> and repeatedly<sup>21</sup> violated Section 302(b) of the Act and Section 2.803(a) of the Rules by offering for sale non-certified CB transmitters on February 4 and 7, 2005.

14. We have examined Hightech’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we find no basis for cancellation or reduction of the \$7,000 forfeiture proposed for this violation.

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<sup>17</sup>*OGC Letter*.

<sup>18</sup>47 C.F.R. § 95.603.

<sup>19</sup>*Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637 (1995); see also *Texas Media Group, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852 (1990) *aff’d sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991) (“It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff.”).

<sup>20</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>21</sup>The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

#### IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Hightech CB Shop **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and 2.803(a) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>22</sup> 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 FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>23</sup>

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Hightech CB Shop at its record of address and to its attorney, Michael C. Olson, 4400 MacArthur Boulevard, Suite 23C, Newport Beach, California 92660.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton  
Regional Director, South Central Region  
Enforcement Bureau

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<sup>22</sup>47 U.S.C. § 504(a).

<sup>23</sup>See 47 C.F.R. § 1.1914.