

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

In the Matter of )

Hightech CB Shop )  
8391 U.S. 301 South, )  
Jacksonville, Florida 32234 )

File Number EB-05-TP-066  
NAL/Acct. No. 200532700009  
FRN 0013520705

**MEMORANDUM OPINION AND ORDER**

**Adopted:** November 30, 2005

**Released:** December 2, 2005

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by Hightech CB Shop (“Hightech”) of the *Forfeiture Order* issued July 27, 2005.<sup>1</sup> The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$7,000 to Hightech for the willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>3</sup> The noted violation involved Hightech’s offering for sale a non-certified Citizens Band (“CB”) transceiver.<sup>4</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>5</sup> and 2.815(b)<sup>6</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

<sup>1</sup>*Hightech CB Shop*, Forfeiture Order, 20 FCC Rcd 12514 (Enf. Bur. South Central Region, 2005) (“*Forfeiture Order*”).

<sup>2</sup>47 U.S.C. § 302a(b).

<sup>3</sup>47 C.F.R. § 2.803(a).

<sup>4</sup>CB radio operation is confined to forty specified channels from 26.965 MHz to 27.405 MHz (carrier frequency).

<sup>5</sup>47 C.F.R. § 2.803(a)(1).

<sup>6</sup>47 C.F.R. § 2.815(b).

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.

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>7</sup> On June 17, 2005, Hightech submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture. Hightech argued that it had not received a Citation for selling the particular Connex model transceivers listed in the *NAL* and that it was legal to sell the non-FCC certified Connex models, because they are Amateur Radios. On July 27, 2005, the Enforcement Bureau rejected Hightech's arguments and released the *Forfeiture Order*. The Enforcement Bureau received Hightech's petition for reconsideration on August 30, 2005, requesting cancellation of the forfeiture.

### III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>10</sup> In examining Hightech's petition, 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 any other such matters as justice may require.<sup>11</sup>

7. In the introduction to its petition for reconsideration, Hightech again claims that it believed the Commission had accepted its positions, because the Commission failed to provide certain enclosures to a letter dated June 11, 2001 and failed to respond to a letter it sent dated June 13, 2001. The assertions contained in the introduction were raised in Hightech's response to the *Notice of Apparent Liability* and addressed in the *Forfeiture Order*. "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."<sup>12</sup>

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<sup>7</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532700009 (Enf. Bur., Tampa Office, May 24, 2005) ("*NAL*").

<sup>8</sup>47 U.S.C. § 503(b).

<sup>9</sup>47 C.F.R. § 1.80.

<sup>10</sup>12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

<sup>11</sup>47 U.S.C. § 503(b)(2)(D).

<sup>12</sup>*Forfeiture Order* at 12516.

8. In its petition for reconsideration, Hightech alleges that it did not violate the Rules. Hightech states that the Connex transceiver in question, as manufactured, operates solely on Amateur Radio Service (“ARS”) bands and, therefore, does not require FCC certification. Hightech argues that the Rules only require certification of transmitters that operate or are intended to operate at a station authorized in the CB and that it did not intend to sell this model for operation on the CB bands. It claims that it posted a sign in the vicinity of the display case advising customers that an Amateur license is required to use Amateur equipment and that the equipment is intended for use as an Amateur transceiver. Moreover, it claims each transceiver comes packaged with a warning that it is illegal to transmit on the equipment without the appropriate Amateur license. It asserts that the CB Rules say nothing about the certification of Amateur transceivers that can be easily modified to operate on CB frequencies and that the Commission cannot add a requirement covering such transceivers, without first complying with the Administrative Procedures Act. It also argues that the Commission failed to define what “easily modifiable” means and that such language is unconstitutionally vague. Finally, it claims that almost all ARS radios may be modified to operate on CB frequencies and, thus, the Commission effectively subjected all ARS radios to certification.

9. We reject Hightech’s arguments and deny its petition for reconsideration. Section 95.603(c) of the Rules states that a CB transmitter is a “transmitter that operates or is intended to operate at a station authorized in the CB” and that such transmitters must be certificated.<sup>13</sup> The Office of General Counsel (“OGC”) subsequently clarified 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” are intended for use in the CB frequencies as well as the amateur service and fall within the definition of “CB transmitter.”<sup>14</sup> Thus, the Commission clarified an existing Rule that was adopted pursuant to a Notice and Comment Rulemaking and did not change its Rules merely by making a policy change, as Hightech alleges. This Rule and the Commission’s subsequent interpretation of the Rule make clear that a device manufactured to operate on ARS frequencies and labeled an ARS transmitter may nevertheless be a CB transmitter. The Commission also provided a clear example of what it meant by easily alterable, *i.e.*, moving or removing a jumper plug or cutting a single wire. Moreover, the *OGC Letter* was published in the FCC Record. Pursuant to Section 0.445(e) of the Rules, interpretations designed to have general applicability and legal effect that are published in the FCC Record “may be relied upon, used or cited as precedent by the Commission” in any manner.<sup>15</sup> Although the Commission has clarified that a transmitter intended to operate in the CB band includes ARS transmitters that can be easily modified to operate on CB frequencies, the Commission has never stated that intent to operate in the CB bands can be determined through the actions of a seller of an ARS transceiver. Moreover, our Rules prohibit the sale or lease or offering for sale or lease of non-certified CB transmitters and do not prohibit the purchase of such devices. Therefore, it is irrelevant whether Hightech posted a sign that the transmitters in question require an Amateur license, that similar inserts were placed in the transmitter packaging, or that other ARS transmitters might qualify as CB transmitters.<sup>16</sup> The Connex 3300 HP radio has been tested by the Office of Engineering and Technology and found to be a CB transmitter, because it has built-in capability to operate on CB frequencies and can

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<sup>13</sup>47 C.F.R. § 95.603(c).

<sup>14</sup>See 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*”). See also *Extended Coverage High Frequency Transceivers*, Public Notice 62882, 1996 WL 242469, available at <<[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) (clarifying 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>47 C.F.R. § 0.445(e).

<sup>16</sup>We note that the agents did not see this alleged sign in the CB Shop.

be easily altered to activate that capability. Accordingly, there is no basis for cancellation of the forfeiture imposed in the *Forfeiture Order*.

## V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,<sup>17</sup> and Section 1.106 of the Commission's Rules,<sup>18</sup> Hightech CB Shop's petition for reconsideration of the July 27, 2005 *Forfeiture Order* **IS** hereby **DENIED**.

11. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>19</sup> Hightech CB Shop **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

12. Payment of the \$7,000 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>20</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: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>21</sup>

13. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Hightech CB Shop at its address of record and its counsel, Michael C. Olson, 4400 MacArthur Boulevard, Suite 23C, Newport Beach, California 92660.

## FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>17</sup>47 U.S.C. § 405.

<sup>18</sup>47 C.F.R. § 1.106.

<sup>19</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>20</sup>47 U.S.C. § 504(a).

<sup>21</sup>See 47 C.F.R. § 1.1914.