

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

In the Matter of  TravelCenters of America Troutdale, Oregon	) ) ) ) ) ) )	File Number EB-05-PO-029  NAL/Acct. No. 200532920002 FRN # 0013411665
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**FORFEITURE ORDER**

**Adopted: June 27, 2006**

**Released: June 29, 2006**

By the Regional Director, Western 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 TravelCenters of America (“TravelCenters”) in Troutdale, Oregon, for willfully and repeatedly violating Section 302(b) of the Commissions Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> On July 27, 2005, the Enforcement Bureau’s Portland Resident Agent Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) after determining that TravelCenters offered for sale a non-certified Citizens Band (“CB”) transceiver. In this *Order*, we consider TravelCenters’ argument that the type of transceivers it offered for sale are not covered by the Commission’s definition of CB transmitter.

**II. BACKGROUND**

2. On October 25, 2001, an agent from the Enforcement Bureau’s Portland Resident Agent Office (“Portland Office”) visited TravelCenters’ retail store in Troutdale, Oregon. The agent observed that the store displayed and offered for sale six models of CB transceivers, specifically, one Delta Force transceiver and five Galaxy transceivers models DX33HML, DX44V, DX66V, DX88HL and DX99V. A review of the Commission’s records revealed that these devices had not received an equipment authorization from the Commission.

3. On November 19, 2001, the Portland Office issued a Citation to TravelCenters’ retail store in Troutdale, Oregon for violation of Section 302(b) of the Act, and Section 2.803(a)(1) of the Commission’s Rules by selling non-certified CB transceivers.<sup>3</sup> The Citation warned TravelCenters that future violations may subject TravelCenters to civil monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,<sup>4</sup> seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> Citation to TravelCenters of America, Inc., released November 19, 2001 (“Citation”).

<sup>4</sup> See 47 C.F.R. § 1.80(b)(3).

<sup>5</sup> See 47 C.F.R. § 501, 503(b), 510.

4. In a response dated December 3, 2001, counsel for TravelCenters disputed the Citation, stating that the transceivers listed in the Citation were legal to sell. Counsel for TravelCenters further requested that the Portland Office withdraw the Citation within 30 days from December 3, 2001. In a letter to the Portland Office, dated January 18, 2002, counsel for TravelCenters indicated that he would advise his client to resume selling the referenced non-certified CB transceivers. In a response to TravelCenters, dated February 6, 2002, the Portland Office reaffirmed the violation and warned that the marketing of the non-certified CB transceivers should cease immediately.<sup>6</sup>

5. On February 9, 2005, an agent from the Portland Office went to TravelCenters' retail store in Troutdale, Oregon. The agent observed and took photographs of non-certified Galaxy CB transceivers that were displayed at the store.<sup>7</sup> The agent asked a salesperson at the store if he could purchase one of the transceivers and the salesperson responded that she would sell the transceiver to the agent. The agent also interviewed the store manager. The store manager acknowledged that his store once received a Citation from the FCC but that he believed the above Galaxy CB transceivers were legal to sell. After talking with the agent, the store manager indicated that he would pull the transceivers off the shelves.<sup>8</sup>

6. On July 27, 2005, the Enforcement Bureau's Portland Resident Agent Office issued a *NAL* in the amount of \$7,000 to Travel Centers.<sup>9</sup> In the *NAL*, the Portland Office found that TravelCenters apparently willfully and repeatedly violated Section 302(b) of the Act,<sup>10</sup> and Section 2.803(a)(1) of the Rules<sup>11</sup> by offering for sale a non-certified CB transceiver. TravelCenters filed a response on August 31, 2005 ("*Response*"). In its *Response*, TravelCenters argues that the Galaxy transceivers are not CB transceivers. Specifically, TravelCenters argues that the Galaxy transceivers are not covered by the Commission's definition of CB transmitter, and that the Commission's effort to clarify this definition was a violation of the Administrative Procedures Act ("*APA*").<sup>12</sup>

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>13</sup> Section 1.80 of the Rules,<sup>14</sup> and *The Commission's Forfeiture Policy Statement and*

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<sup>6</sup> In a response letter to the Portland Office, dated February 13, 2002, Counsel for TravelCenters again disputed the Citation and requested that the Citation to be withdrawn by the Portland Office within 30 days.

<sup>7</sup> The models available for sale included the Galaxy Model DX66V and the Galaxy Model DX99V.

<sup>8</sup> On January 20, 2005, the Commission's Detroit District Office issued a Citation for selling non-certified CB transceivers to a TravelCenters retail store in Dexter, Michigan. In a response dated February 4, 2005, TravelCenters stated that they disagreed with the legal and factual contentions in the Citation, but that they would remove the transceivers from the Dexter, Michigan retail store. On April 5, 2005, the Commission's New York District Office issued a Citation for selling non-certified CB transceivers to a TravelCenters retail store in Bloomsbury, New Jersey. In a response dated April 14, 2005, TravelCenters again stated that they disagreed with the legal and factual contentions contained in the Citation but that they would remove the transceivers from the Bloomsbury, New Jersey retail store.

<sup>9</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532920002 (Enf. Bur., Western Region, Portland Resident Agent Office, released July 27, 2005). We note that in the *NAL*, the Portland Office inadvertently listed an incorrect NAL Account Number. The correct NAL Account Number is listed above and in the caption of this *Order*.

<sup>10</sup> 47 U.S.C. § 302a(b).

<sup>11</sup> 47 C.F.R. § 2.803(a)(1).

<sup>12</sup> 5 U.S.C. § 553(b).

<sup>13</sup> 47 U.S.C. § 503(b).

*Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*<sup>15</sup> In examining the *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>16</sup>

8. 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>17</sup> Section 2.803(a)(1) of the Rules provides that “[e]xcept 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 in the case of a device subject to certification such device has been authorized by the Commission . . . .”<sup>18</sup>

9. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.<sup>19</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) 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. To address these radios, the Commission adopted changes to 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>20</sup> Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).<sup>21</sup> Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.<sup>22</sup> Additionally, the Commission’s Office of Engineering and Technology (“OET”) evaluated the Galaxy models at issue here and determined that these devices could easily be altered for use as CB transceivers.<sup>23</sup>

10. TravelCenters argues that the Galaxy transceivers that it offered for sale are ARS

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<sup>14</sup> 47 C.F.R. § 1.80.

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

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>17</sup> 47 U.S.C. § 302a(b).

<sup>18</sup> 47 C.F.R. § 2.803(a)(1).

<sup>19</sup> *See* 47 C.F.R. §§ 2.907, 2.927(a).

<sup>20</sup> 47 C.F.R. § 95.603(c). *See Pilot Travel Centers*, 19 FCC Rcd 23113, 23114 (2004).

<sup>21</sup> 47 C.F.R. § 95.655(a).

<sup>22</sup> Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC 1999) (“OGC Letter”).

<sup>23</sup> *Pilot Travel Centers*, 19 FCC Rcd at 23119.

transmitters, which do not require certification, and not CB transceivers. TravelCenters states that the Galaxy transceivers do not come under the definition of CB transmitters, pursuant to Section 95.603 of the Rules, because these Galaxy transceivers do not operate on CB frequencies and are not intended for use as CB transceivers. These transceivers, argues TravelCenters, transmit exclusively on the ARS 10 meter band as manufactured. In addition, TravelCenters argues that it does not intend for the Galaxy transceivers to be used as CB transceivers, as evidenced by the fact that when TravelCenters markets these transceivers, it posts a notice near its display case stating that the Galaxy transceivers are not CB transceivers, that they are intended for use as ARS transceivers, and that a license is required for use of ARS equipment. TravelCenters, however, fails to consider the *OGC Letter*, also discussed above and in the *NAL*, which clarified that ARS transmitters that can easily be altered to operate on CB transmitter channel frequencies fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules.<sup>24</sup> Consistent with Sections 95.603(c) and the *OGC Letter*, and as stated in the *NAL*, OET evaluated the Galaxy transceiver models at issue here, and determined they were non-certified CB transceivers.<sup>25</sup> TravelCenters provides no evidence to show that the Galaxy models it offered for sale were not easily modified. Therefore, we find that the subject Galaxy models were CB transmitters pursuant to Section 95.603(c), regardless of the signs TravelCenters placed near the point of purchase. Consequently, we find this argument to be without merit.

11. TravelCenters also argues that over ten years ago, OET issued a public notice, “trying to expand the definition of a CitizenBand transmitter to transceiver capable of being “easily modified” to work on the Citizen Band service.”<sup>26</sup> TravelCenters contends, however, that this was an amendment to the CB Rules, that the Commission cannot amend the Rules by merely putting out a public notice, and that its attempt to do so violates the APA and due process. In assessing TravelCenters’ liability in the *NAL*, the Portland Office relied on the *OGC Letter* and its interpretation of Section 95.603(c), as well as OET’s specific determination concerning the Galaxy models at issue, and did not rely on the public notice cited to by TravelCenters. We note that TravelCenters does not argue that the enactment of Section 95.603(c) violated the APA nor does TravelCenters object to the clarification offered by the *OGC Letter*.<sup>27</sup> Therefore, we find no merit to this argument either.

12. TravelCenters further states that whether a transceiver can be “easily modified” is one of degree and cites to an email from a Commission staffer. We disagree. First, the Commission has consistently held that regulatees are responsible for compliance with the Commission’s Rules and that they should not rely on informal opinions from Commission staff.<sup>28</sup> Second, the *OGC Letter* explains the concept of “easily modified” as including moving or removing a jumper plug or cutting a single wire.<sup>29</sup> Third, TravelCenters was on notice that the Galaxy transceivers it was offering for sale were considered to be “easily modified,” and therefore, non-certified CB transceivers for years prior to the issuance of the *NAL*. It received a Citation on November 19, 2001, explaining that if it continued to offer these transceivers for sale, it would be subject to civil monetary forfeitures. After its attorney questioned the Citation, it received a follow-up notice from the Portland Office, on February 6, 2002, warning that it

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<sup>24</sup> 14 FCC Rcd 7797.

<sup>25</sup> *NAL* at para. 8, and para 9, n.18.

<sup>26</sup> *Response* at 4.

<sup>27</sup> The *OGC Letter* was published in the FCC Record, and therefore “may be relied upon, used or cited as precedent by the Commission or private parties in any manner.” 47 C.F.R. § 0.445(e). See *HighTech CB Shop*, Memorandum Opinion and Order, DA 05-3125, 2005 WL 3274371 (rel. December 2, 2005).

<sup>28</sup> *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990) *aff’d sub nom Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

<sup>29</sup> 14 FCC Rcd 7797.

should no longer offer for sale the Galaxy transceivers at issue.<sup>30</sup> Despite these notices and warnings, TravelCenters continued to sell the non-certified CB transceivers.

13. We have examined the *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 conclude that TravelCenters willfully and repeatedly violated Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$7,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, TravelCenters of America **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$7,000 for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.<sup>31</sup>

15. 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>32</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, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>33</sup>

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<sup>30</sup> TravelCenters states in its *Response* that after the follow-up notice from the Portland Office, it again questioned the illegality of the transceivers in letters dated February 13, 2002 and April 1, 2002, and, hearing no reply from the Portland Office, it assumed that “the FCC agreed with TravelCenter’s position that the transceivers were legal.” We find TravelCenter’s logic to be simply irrational. *See HighTech CB Shop*, Forfeiture Order, DA 05-2069, 2005 WL 1773762 (rel. July 27, 2005), *recon. denied*, *HighTech CB Shop*, Memorandum Opinion and Order, DA 05-3125, 2005 WL 3274371 (rel. December 2, 2005). We also find that TravelCenters received more than adequate notice, pursuant to Section 503(b)(5) of the Act, 47 U.S.C. § 503(b)(5), prior to the issuance of the *NAL*.

<sup>31</sup> 47 U.S.C. §§ 302a(b), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 2.803(a)(1).

<sup>32</sup> 47 U.S.C. § 504(a).

<sup>33</sup> *See* 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Travel Centers of America at its address of record, and its counsel of record, Michael C. Olson, Esquire.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau