

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

In the Matter of)	
)	File No. EB-05-SE-334
AboCom Systems, Inc.)	NAL/Acct. No. 200632100017
Hsinchu City, Taiwan)	FRN # 0007031842

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 13, 2006

Released: July 17, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find AboCom Systems, Inc. (“AboCom”) apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The apparent violations involve marketing wireless access points that do not comply with the terms of its equipment authorization and the requirements of Section 15.247(d) of the Rules.³

II. BACKGROUND

2. The equipment involved in this proceeding is the Hawking Technology, Inc. (“Hawking”) Model HWRG54 wireless access point⁴ (“HWRG54”) and the identical Phoebe Micro, Inc. (“Phoebe”) AR315W wireless access point (“AR315W”). Both Hawking and Phoebe are United States corporations whose operations are located in the United States. AboCom, a Taiwan corporation, manufactured this device and holds an equipment authorization, FCC ID MQ4ARM94, for it.

3. The Enforcement Bureau (“Bureau”) received a report from Industry Canada⁵ indicating that the HWRG54 does not comply with Canada’s equipment certification standards. Specifically, the report from Industry Canada indicated that the device produced a spurious emission at 2.6 GHz. The Bureau purchased an HWRG54 wireless access point and sent it to the Commission’s Office of Engineering and Technology (“OET”) Laboratory for testing. The OET Laboratory tested the HWRG54

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ 47 C.F.R. § 15.247(d).

⁴ A wireless access point is a transmitter/receiver used to provide wireless internet access.

⁵ Industry Canada is a regulatory agency of the Canadian Government.

and determined that it produced a spurious emission⁶ on the frequency 2.6 GHz that substantially exceeded the limit specified by Section 15.247(d) of the Rules.

4. On March 2, 2006, the Bureau issued a letter of inquiry (“LOI”) to AboCom.⁷ On April 17, 2006, AboCom responded to the LOI.⁸ In its response, AboCom states that, beginning May 31, 2004, it manufactured the HWRG54 for Hawking at its factory in Taiwan in accordance with specifications provided by Hawking. Additionally, AboCom states that, beginning May 12, 2004, it manufactured the same wireless access point (designated by the model number AR315W) for Phoebe. AboCom’s response indicates that it shipped a large quantity of HWRG54 devices to Hawking between May 31, 2004, and October 5, 2005, and a large quantity of AR315W devices to Phoebe between May 12, 2004, and June 14, 2005.⁹ AboCom also provides a copy of a test report dated November 4, 2005, which purportedly shows that the HWRG54 did not produce a spurious emission exceeding the limit specified by Section 15.247(d) of the Rules. Notably, however, the report is incomplete because it does not identify or describe the measurement procedures used.¹⁰

5. The OET Laboratory subsequently tested a second sample of the HWRG54 and again found that it produced a spurious emission at 2.6 GHz that substantially exceeded the limit specified by Section 15.247(d) of the Rules. OET also determined that the HWRG54 is capable of operating on frequencies beyond the 2.412 – 2.482 GHz range authorized by its equipment authorization.

III. DISCUSSION

6. 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.” Section 2.803(a)(1) of the Commission’s implementing regulations 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 device¹¹ unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly

⁶ Section 2.1(c) of the Rules, 47 C.F.R. § 2.1(c), defines a spurious emission as “Emission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information.”

⁷ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to AboCom Systems, Inc. (March 2, 2006).

⁸ See Letter from Eric Oh-Yang, Chairman & Chief Executive Officer, AboCom Systems, Inc., to Brett Greenwalt, Engineer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 10, 2006) (“LOI Response”).

⁹ *Id.*, Exhibit B.

¹⁰ 47 C.F.R. § 2.947(b) and (c).

¹¹ 47 C.F.R. § 2.801 defines a radiofrequency device as “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.”

identified and labeled as required by § 2.925 and other relevant sections in this chapter.

Section 15.247(d) of the Commission's implementing regulations provides that:

In any 100 kHz bandwidth outside the frequency band in which the spread spectrum or digitally modulated intentional radiator is operating, the radio frequency power that is produced by the intentional radiator shall be at least 20 dB below that in the 100 kHz bandwidth within the band that contains the highest level of the desired power, based on either an RF conducted or a radiated measurement, provided the transmitter demonstrates compliance with the peak conducted power limits. If the transmitter complies with the conducted power limits based on the use of RMS averaging over a time interval, as permitted under paragraph (b)(3) of this section, the attenuation required under this paragraph shall be 30 dB instead of 20 dB. Attenuation below the general limits specified in Sec. 15.209(a) is not required. In addition, radiated emissions which fall in the restricted bands, as defined in Sec. 15.205(a), must also comply with the radiated emission limits specified in Sec. 15.209(a) (see Sec. 15.205(c)).

7. Furthermore, in accepting the grant of an equipment authorization, AboCom warranted that:

each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) filed with the application for certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.¹²

8. AboCom admits that it sold and distributed large quantities of the HWRG54 and AR315W wireless access points to Hawking and Phoebe, but claims, on the basis of its incomplete November 4, 2005 test report, that the devices are compliant. The OET Laboratory's tests, however, demonstrate that these devices produce spurious emissions exceeding the limit prescribed by Section 15.247(d) of the Rules and, therefore, are not compliant. The OET Laboratory's tests also show that the device is capable of operating on frequencies beyond the 2.412 - 2.482 GHz range authorized by AboCom's equipment authorization. We find, based on a preponderance of the evidence, that AboCom apparently willfully¹³ and repeatedly¹⁴ violated Section 302(b) of the Act and Section 2.803(a) Rules by marketing equipment that does not comply with Section 15.247(d) of the Rules and the terms of its equipment authorization.

¹² See 47 C.F.R. § 2.931.

¹³ 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).

¹⁴ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... 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).

9. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁵ In exercising such authority, we are required to 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 such other matters as justice may require.”¹⁶

10. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*.¹⁷ Section 503(b)(6) does not, however, bar the Commission from assessing whether AboCom’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.¹⁸ Thus, while we may consider the fact that AboCom’s conduct has continued over a period that began on May 12, 2004, the forfeiture amount we propose herein relates only to AboCom’s apparent violations that have occurred within the past year.

11. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)¹⁹ and Section 1.80(b)(4) of the Rules,²⁰ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. Section 503(b)(2)(C) of the Act authorizes the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²¹ Based on the record before us, and having considered the statutory factors enumerated above, we believe that an upward adjustment of the \$7,000 base forfeiture amount is warranted here. First, we believe that an upward adjustment is warranted in view of the

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 U.S.C. § 503(b)(2)(D).

¹⁷ 47 U.S.C. § 503(b)(6).

¹⁸ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.* 21 FCC Rcd 1820, 1825, ¶ 20 (2006); *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (“*Bureau D’Electronique Appliquee*”).

¹⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

²⁰ 47 C.F.R. § 1.80(b)(4).

²¹ 47 U.S.C. § 503(b)(2)(C). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); see also 47 C.F.R. § 1.80(c).

substantial number of non-compliant devices AboCom sold and distributed to Hawking and Phoebe and the fact that the violations continued over a 17-month period.²² Further, we take into account AboCom's ability to pay a forfeiture in determining the appropriate forfeiture amount. As the Commission made clear in the *Forfeiture Policy Statement*, large or highly profitable entities, such as AboCom,²³ could expect forfeitures higher than those reflected in the base amounts.²⁴ Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that AboCom is apparently liable for a \$25,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁶ AboCom Systems, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

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

14. 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

²² See, e.g., *San Jose Navigation, Inc.*, 21 FCC Rcd 2873, 2876 ¶ 15 (2006) (upwardly adjusting a proposed forfeiture based on the volume of non-compliant devices distributed, and the three-year span in which such devices were marketed); *Bureau D'Electronique Appliquee*, 20 FCC Rcd at 3448 ¶ 9 (upwardly adjusting a proposed forfeiture based on the volume of unauthorized devices distributed, and the five-year span in which such devices were marketed).

²³ AboCom had revenues of approximately 4 billion Taiwan dollars in 2005 (approximately \$133 million in US dollars). Worldscope-International Company Profiles, April 21, 2006.

²⁴ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100.

²⁵ 47 U.S.C. § 503(b).

²⁶ 47 C.F.R. § 0.111, 0.311 and 1.80.

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.

15. 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.

16. 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 practices; 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.

17. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.²⁷

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by facsimile and international registered mail to AboCom Systems, Inc., 1F No. 21 Yanfa, 2nd Road, SBIP, Hsinchu City, Taiwan.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁷ See 47 C.F.R. § 1.1914.