

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

In the Matter of	)	
	)	
Vitec Group Communications Limited	)	File No. EB-05-SE-172
Cambridge, United Kingdom	)	NAL/Acct. No. 200632100009
	)	FRN 0012947594
	)	

**FORFEITURE ORDER**

**Adopted Date: October 31, 2006**

**Released Date: November 2, 2006**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eleven thousand two hundred dollars (\$11,200) to Vitec Group Communications Limited (“Vitec”) 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)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Vitec’s marketing of unauthorized radio frequency devices in the United States.

**II. BACKGROUND**

2. In May 2005, the Enforcement Bureau (“Bureau”) received a complaint alleging that Clear-Com Communication Systems<sup>3</sup> was marketing unapproved radiofrequency devices in the United States in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules. Specifically, the complaint indicated that Vitec advertised an unapproved digital wireless intercom system called the “CellCom Digital Wireless Intercom” (“CellCom”) in the April 2005 issue of *Broadcast Engineering* and also displayed it at the 2005 National Association of Broadcasters (“NAB”) trade show in Las Vegas, NV. Digital wireless intercom systems, such as the CellCom, are classified as intentional radiators<sup>4</sup> and are required by Section 15.201 of the Rules<sup>5</sup> to be approved prior to marketing through the equipment certification<sup>6</sup> procedures described in Sections 2.1031 – 2.1060 of the Rules.<sup>7</sup>

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> Clear-Com Communications Systems is a trade name that Vitec, a British company, uses in the United States. In this *Forfeiture Order*, we will refer to the company as Vitec throughout.

<sup>4</sup> An intentional radiator is “A device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3 (o).

<sup>5</sup> 47 C.F.R. § 15.201.

<sup>6</sup> A certification is an equipment authorization issued by the Commission, based on representations and test data

3. The Bureau's Spectrum Enforcement Division (Division") subsequently began an investigation of Vitec's marketing activities. As part of the investigation, the Division obtained a copy of the April 2005 issue of *Broadcast Engineering* and confirmed that it contains an advertisement for the CellCom. Section 2.803(c) of the Rules<sup>8</sup> allows the advertising or display of radio frequency devices prior to equipment authorization only if the following disclaimer notice is provided:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

The *Broadcast Engineering* advertisement does not contain this notice.

4. The Bureau determined through internet research that the website [www.clearcom.com](http://www.clearcom.com) contained photographs of Vitec's display of the CellCom at the 2005 National Association of Broadcasters ("NAB") trade show, which took place April 16-21, 2005. The disclaimer notice specified by Section 2.803(c) of the Rules is not visible in the photographs of Vitec's NAB display. The Bureau's internet research also established that Vitec was advertising the CellCom on the website and that this advertising did include the notice specified by Section 2.803(c) of the Rules.

5. The Bureau sent Vitec a letter of inquiry ("LOI")<sup>9</sup> on October 24, 2005. Vitec submitted responses both directly<sup>10</sup> and through its counsel.<sup>11</sup> In its direct response, Vitec stated that it obtained equipment certifications covering its digital wireless intercom system on November 2, 2005<sup>12</sup> and that it did not sell or distribute the product in the United States prior to the grant of the certifications. Vitec acknowledged, however, that "the advertising in *Broadcast Engineering* and display at NAB did take place as you note during April 2005, the object being to market this product prior to launch." In the subsequent response submitted through its counsel, Vitec denied any violation of the Act or the Rules. Vitec stated that it manufactures its "CellCom 10" digital wireless intercom system in England and imports it into the United States. Vitec further stated that it displayed the system at the 2005 NAB trade show and advertised it on its website and in "at least" *Broadcast Engineering* magazine. Vitec asserted,

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submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

<sup>7</sup> 47 C.F.R. §§ 2.1031 – 2.1060

<sup>8</sup> 47 C.F.R. § 2.803(c).

<sup>9</sup> Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Clear-Com Communications Systems (October 24, 2005).

<sup>10</sup> Letter from Chris Exelby, Managing Director, Vitec Group Communications, to Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (November 25, 2005).

<sup>11</sup> Letter from Christopher D. Imlay, Esq. to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (December 6, 2005).

<sup>12</sup> The Commission's equipment authorization data base indicates that, November 2, 2005, Vitec was granted equipment certifications FCC ID # S30-CEL-BP (portable two-way radios) and FCC ID # S30-CEL-TA (base station) for the Vitec CellCom 10 Digital Wireless Intercom.

however, that it did not “market or sell” the system in the United States prior to receipt of the equipment certifications on November 2, 2005.

6. On April 14, 2006, the Bureau’s Spectrum Enforcement Division issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Vitec in the amount of fourteen thousand dollars (\$14,000) for apparent willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a)(2) of the Rules.<sup>13</sup> In its response, Vitec argues that the proposed forfeiture should be cancelled because its pre-certification advertising of the Cellcom 10 digital wireless system did not violate the Section 302(b) of the Act or Section 2.803(a)(2) of the Rules, and that, if there is basis for a monetary forfeiture, the amount proposed by the NAL is excessive.<sup>14</sup>

### III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>15</sup> Section 1.80 of the Rules,<sup>16</sup> and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>17</sup> In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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.<sup>18</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.” Section 2.803(a)(1) 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<sup>19</sup> 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 identified and labeled as required by § 2.925 and other relevant sections in this chapter [*emphasis added*].

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<sup>13</sup> *Vitec Group Communications, Ltd.*, 21 FCC Rcd 4025 (Enf. Bur., Spectrum Enf. Div., 2006).

<sup>14</sup> Letter from Christopher D. Imlay, Esq. to Chief, Spectrum Enforcement Division, Enforcement Bureau (May 18, 2006) (“NAL response”).

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80.

<sup>17</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>18</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>19</sup> 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.”

9. Vitec provides a “Statement Under Penalty of Perjury” indicating that it did provide the disclaimer notice specified by Section 2.803(c) of the Rules when it displayed the CellCom 10 at the NAB convention between April 16 and 21, 2005.<sup>20</sup> On the basis of that information, we find the display of the CellCom at the NAB convention did not violate Section 302(b) of the Act or Section 2.803(a)(1) of the Rules.

10. Vitec admits that it advertised its digital wireless intercom system in the April 2005 issue of *Broadcast Engineering* before the grant of an equipment authorization and furnishes a copy of the advertisement, which does not include the disclaimer notice specified by Section 2.803(c) of the Rules.<sup>21</sup> Vitec, however, argues that it was not required to include the disclaimer notice because the *Broadcast Engineering* advertisement did not offer or advertise the CellCom 10 for “sale or lease.”<sup>22</sup> We reject this argument. The purpose of Vitec’s *Broadcast Engineering* advertisement was to generate future sales by advertising the CellCom 10 prior to certification. This is illustrated by Vitec’s statement in its direct response to the first LOI that “the advertising in *Broadcast Engineering* . . . did take place as you note during April 2005, the object being to *market* this product prior to launch” (emphasis added).

11. Vitec also argues that the one year statute of limitations contained in Section 503(b)(6)(B) of the Act<sup>23</sup> bars imposing a forfeiture on the basis of Vitec’s *Broadcast Engineering* advertisement. Specifically, Vitec claims that the statute of limitations date passed before the issuance of the *NAL* because the *Broadcast Engineering* issue in which Vitec’s advertisement appeared, April 2005, was distributed to subscribers during March 2005, which is more than one year before the April 14, 2006, issuance of the *NAL*.<sup>24</sup> We reject this argument. The April issue of *Broadcast Engineering* was current until the end of that month and, therefore, Vitec’s violation continued through the end of April 2005, which is within the one year statute of limitations period.

12. We, accordingly, find that Vitec willfully<sup>25</sup> and repeatedly<sup>26</sup> violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by marketing its digital wireless intercom system in the April 2005 issue of *Broadcast Engineering* prior to certification.

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<sup>20</sup> *NAL* response, Exhibit B.

<sup>21</sup> *Id.* at pp. 6-7, Exhibit A.

<sup>22</sup> *Id.* at pp. 6-7.

<sup>23</sup> 47 U.S.C. § 503(b)(6)(B), which provides that “No forfeiture penalty shall be determined or imposed against any person under this subsection if such person does not hold a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”

<sup>24</sup> *NAL* response at p. 6.

<sup>25</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>26</sup> 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. §

13. Vitec also argues that, if there is basis for a monetary forfeiture, the amount proposed by the *NAL* is excessive.<sup>27</sup> First, Vitec contends that the calculation of the proposed base forfeiture amount -- \$14,000 -- is erroneous. The base forfeiture amount for the marketing of unauthorized equipment is \$7,000.<sup>28</sup> We proposed a \$14,000 forfeiture because the CellCom system included two types of uncertified transmitters -- base station and mobile -- whose marketing constituted separate offenses. Vitec argues that the base forfeiture amount should be \$7,000 because CellCom 10 is a single device. We reject that argument. The base and mobile transmitters constituting the CellCom 10 are covered by separate equipment authorizations<sup>29</sup> and must, therefore, be considered distinct devices.

14. In addition, Vitec contends that the Spectrum Enforcement Division's holding in *Schumacher Electronic Corporation*, 19 FCC Rcd 6344 (Enf. Bur. 2004), *consent decree issued*, 19 FCC Rcd. 8825 (Enf. Bur. 2004), requires a reduction of the forfeiture amount in this case. In *Schumacher*, the Spectrum Enforcement Division proposed a forfeiture of \$7,000 for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules where Schumacher had displayed three unauthorized battery charger models at a trade show without providing the disclaimer specified by Section 2.803(c) of the Rules. *Schumacher* is not consistent with the Commission's decision in *Samson Technologies, Inc.*, 19 FCC Rcd 4221 (2004), *consent decree issued*, 19 FCC Rcd 24542 (2004). In that case, the Commission determined that a base forfeiture amount of \$7,000 is warranted for each kind of unauthorized device that is marketed (a total of \$35,000 for five devices). *Samson* has been followed in numerous cases<sup>30</sup> and we will follow it here. Accordingly, we find that our calculation of the proposed base forfeiture amount -- \$14,000 -- was correct.

15. Vitec also argues that none of the upward adjustment criteria<sup>31</sup> set forth in the *Forfeiture Policy Statement* and 47 C.F.R. § 1.80(b)(4) apply.<sup>32</sup> This argument has no merit because the forfeiture amount proposed by the *NAL* does not include an upward adjustment.

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312(f)(2).

<sup>27</sup> *NAL* response at p. 11.

<sup>28</sup> *Forfeiture Policy Statement* and 47 C.F.R. § 1.80.

<sup>29</sup> FCC ID S30-CEL-BP and FCC ID S30-CEL-TA.

<sup>30</sup> E.g., *Pilot Travel Centers, LLC*, 19 FCC Rcd 23113, 23117 (2004) (proposing \$91,000 base forfeiture amount for 13 devices), *consent decree issued*, 21 FCC Rcd 5308 (2006); *Behringer USA, Inc.*, 21 FCC Rcd. 1820, 1827 (2006) (proposing \$350,000 base forfeiture amount for 50 devices), *response pending*; *San Jose Navigation, Inc.*, 21 FCC Rcd 2873, 2877 (2006) (proposing \$28,000 base forfeiture amount for four devices), *response pending*; *Via Technologies*, 19 FCC Rcd 19556 (Enf. Bur., Spectrum Enf. Div., 2004) (proposing \$14,000 base forfeiture amount for two devices), *forfeiture ordered*, 19 FCC Rcd 24341 (2004); *Ramsey Electronics, Inc.*, 21 FCC Rcd 458, 462 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing \$28,000 base forfeiture amount for four devices); *Gibson Tech Ed, Inc.*, 20 FCC Rcd 14438, 14441 (Enf. Bur., Spectrum Enf. Div., 2005) (proposing \$14,000 base forfeiture amount for two devices), *forfeiture ordered*, 21 FCC Rcd 2915 (Enf. Bur., Spectrum Enf. Div., 2006), *recon. den.*, 21 FCC Rcd 9642 (Enf. Bur. 2006); and *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3448 (Enf. Bur., Spectrum Enf. Div., 2005) (proposing \$14,000 base forfeiture amount for two devices), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf., Bur., Spectrum Enf. Div., 2005).

<sup>31</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

16. In addition, Vitec argues that the proposed forfeiture amount should be reduced on the basis of the following downward adjustment criteria<sup>33</sup>: minor violation, good faith and history of overall compliance.<sup>34</sup> The Commission has held that a violation of a provision of the Communications Act cannot be classified as a “minor” violation.<sup>35</sup> Therefore, we do not find that Vitec’s violation of the Communications Act was minor. Further, Vitec has not identified any specific action that would constitute good faith -- nor are we aware of any. Accordingly, we do not find that Vitec acted in good faith. We do, however, find that Vitec has a history of overall compliance which warrants reduction of the forfeiture amount to \$11,200.

17. We have examined Vitec’s response to the *NAL* pursuant to the statutory factors set forth in Paragraph 7 above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that cancellation of the forfeiture is not warranted but that the forfeiture amount should be reduced from \$14,000 to \$11,200.

#### IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>36</sup> Vitec Group Communications, Ltd., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eleven thousand two hundred dollars (\$11,200) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

19. 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 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>37</sup>

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<sup>32</sup> *NAL* response at p. 11.

<sup>33</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>34</sup> *NAL* response at p. 11.

<sup>35</sup> *Catherine R. Waddill*, 13 FCC Rcd 23861, 23866 (1998); *Paging Network of Los Angeles, Inc.*, 8 FCC Rcd 1702, 1703 (1993).

<sup>36</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>37</sup> See 47 C.F.R. § 1.1914.

20. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Vitec Group Communications Limited, 4065 Hollis Street, Emeryville, CA 94608, and to its attorney, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, MD 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division