



based on an inability to pay. In support of the request, GI Joe's submitted federal income tax returns.<sup>5</sup>

### III. DISCUSSION

3. 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>6</sup> Section 1.80 of the Rules,<sup>7</sup> and the Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>8</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>9</sup>

4. We decline to grant GI Joe's request that we cancel or reduce the proposed forfeiture. The Commission has determined that, in general, an individual's or entity's gross revenues are the best indicator of an ability to pay a forfeiture.<sup>10</sup> After reviewing GI Joe's claim and supporting documentation, we find that a cancellation or reduction of the forfeiture based on an inability to pay is not warranted.

5. We have examined GI Joe's response to the NAL pursuant to the statutory factors above and in conjunction with the Policy Statement. As a result of our review, and based on the record before us, we conclude that GI Joe's willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a)(1), 2.815(b), and 2.815(c) of the Rules by offering for sale non-certified Citizens Band ("CB") transceivers and external radio frequency ("RF") power amplifiers. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$21,000 forfeiture is warranted.

### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>11</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>12</sup> Wesley Noe, d.b.a. GI

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<sup>5</sup> GI Joe's submitted its initial response to the NAL on May 26, 2006. At the request of FCC staff, GI Joe's submitted additional documentation with regard to its federal income tax returns on November 1, 2006.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 ¶ 11 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues). In this case, the forfeiture represents a smaller percentage than those issued in the *Local Long Distance, Inc.*, and *Hoosier Broadcasting Corp.*, cases, and only a nominally higher percentage compared to the forfeiture issued in *PJB Communications of Virginia, Inc.*

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Joe's Radio Electronics and GI Joe's CB Radio, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-one thousand dollars (\$21,000) for willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a)(1), 2.815(b), and 2.815(c) of the Rules.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</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>14</sup>

8. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Wesley Noe, d.b.a. GI Joe's Radio Electronics and GI Joe's CB Radio, at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.  
Regional Director, Northeast Region  
Enforcement Bureau

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<sup>13</sup> 47 U. S. C. § 504(a).

<sup>14</sup> See 47 C.F.R. § 1.1914.