

**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
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 14, 2006

Released: April 18, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Vitec Group Communications Limited (“Vitec”) apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a)(2) of the Commission’s Rules (“Rules”).² The noted apparent 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 (“Vitec”)³ 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 radiators⁴ and are required by Section 15.201 of the Rules⁵ to be approved prior to marketing through the equipment

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(2).

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

⁴ 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).

⁵ 47 C.F.R. § 15.201.

certification⁶ procedures described in Sections 2.1031 – 2.1060 of the Rules.⁷ The Commission's equipment authorization database, however, indicated that Vitec did not hold any equipment certifications.

3. The Bureau subsequently began an investigation of Vitec's marketing activities. As part of the investigation, the Bureau 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 Rules⁸ 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 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. Further, according to the specifications posted on www.clearcom.com, the CellCom was capable of operation in the 1880 – 1930 MHz frequency range. Unlicensed intercom systems, such as the Cell-Com, are authorized to operate in the frequency range 1920 – 1930 MHz⁹ and are not authorized to operate on the frequencies between 1880 and 1920 MHz. It therefore appeared that the CellCom was ineligible for equipment certification and thus could not be advertised before equipment authorization even with the disclaimer notice specified by Section 2.803(c) of the Rules.¹⁰

5. The Bureau sent Vitec a letter of inquiry ("LOI")¹¹ on October 24, 2005. Vitec submitted responses both directly¹² and through its counsel.¹³ In its direct response, Vitec stated that it obtained

⁶ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

⁷ 47 C.F.R. §§ 2.1031 – 2.1060

⁸ 47 C.F.R. § 2.803(c).

⁹ *See* Part 15, Subpart D of the Rules, 47 C.F.R. §§ 15.301- 15.323.

¹⁰ *See* 47 C.F.R. § 2.803(g).

¹¹ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Clear-Com Communications Systems (October 24, 2005).

¹² Letter from Chris Exelby, Managing Director, Vitec Group Communications, to Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (November 25, 2005).

¹³ Letter from Christopher D. Imlay, Esq. to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement

equipment certifications covering its digital wireless intercom system on November 2, 2005¹⁴ 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, 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. Vitec also asserted that the inquiries set forth in the LOI were “moot” because they were based on the “incorrect allegation” that its digital wireless intercom system was ineligible for equipment certification. In support of this assertion, Vitec noted that “these devices, which operate in the frequency range 1920.0 – 1930.0 MHz at a power output of 0.25 watts,” were certified on November 2, 2005.

6. On February 13, 2006, the Bureau sent Vitec a follow-up LOI,¹⁵ seeking to clarify whether the CellCom 10 system is the same intercom system that was previously advertised on Vitec’s website as being capable of operation in the 1880 – 1930 MHz frequency range.¹⁶ In its response,¹⁷ Vitec indicated that the devices, as they are configured to operate in the United States, are restricted to a transmit range of 1920 – 1930 MHz. Vitec acknowledged that the system, through password protected software, is capable of being programmed to operate outside the United States on frequencies outside the 1920 – 1930 MHz band (for example, in Europe where the band 1880 – 1900 MHz is available for these devices). Vitec asserted, however, that it is not possible for users in the United States to operate the system on frequencies beyond the 1920 – 1930 MHz band because the passwords for the software are only provided to authorized dealers.

III. DISCUSSION

7. 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)(2) 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

Division, Enforcement Bureau (December 6, 2005).

¹⁴ 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.

¹⁵ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Clear-Com Communications Systems (February 13, 2006).

¹⁶ See paragraph 4 *supra*.

¹⁷ Letter from Christopher D. Imlay, Esq. to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (March 2, 2006).

purpose of selling or leasing or offering for sale or lease, any radio frequency device¹⁸ 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*].

8. The record establishes that Vitec advertised its digital wireless intercom system in the April 2005 issue of *Broadcast Engineering* and displayed it at the 2005 NAB trade show between April 16 and 21, 2005. The record also establishes that Vitec did not hold any grants of equipment certification until November 2, 2005. Vitec argues that its advertising or display prior to equipment certification was permissible if the disclaimer notice specified by Section 2.803(c) was provided. However, Vitec clearly did not include a disclaimer notice in the April 2005 *Broadcast Engineering* advertisement and it provided no evidence that it included a disclaimer notice with its display at the 2005 NAB trade show.

9. In both LOI responses submitted through its attorney, Vitec claims that it did not “market” its digital wireless intercom system in the United States prior to November 2, 2005. This claim, however, is contradicted by Vitec’s direct response to the first LOI, which stated 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” (emphasis added). Moreover, we note that the definition of “marketing” set forth in Section 2.803(e)(4) of the Rules specifically includes “advertising.”¹⁹

10. Accordingly, we find that Vitec apparently willfully²⁰ and repeatedly²¹ 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* and at the 2005 NAB trade show prior to certification.

11. 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.²² In exercising such authority, we are required to take into account “the nature, circumstances, extent,

¹⁸ 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.”

¹⁹ See *ACR Electronics, Inc.*, FCC 06-37 (released March 23, 2006) (imposing a forfeiture of \$65,000 for advertising and displaying radio frequency devices prior to certification without the disclaimer notice specified in Section 2.803(c)).

²⁰ 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).

²¹ 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).

²² 47 U.S.C. § 503(b).

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.”²³

12. 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*”)²⁴ and Section 1.80 of the Rules,²⁵ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. In this case, Vitec marketed an intercom system that includes two types of uncertified transmitters (base station and mobile). Vitec’s marketing of each uncertified transmitter is a separate violation. We find that a proposed forfeiture amount of \$7,000 is apparently warranted for each violation for a total proposed forfeiture of \$14,000.²⁶ Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Vitec is apparently liable for a \$14,000 forfeiture.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Vitec Group Communications Limited **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a)(2) of the Rules.

14. **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*, Vitec Group Communications Limited **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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.

16. 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.

17. 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; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.

²³ 47 U.S.C. § 503(b)(2)(D).

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

²⁵ 47 C.F.R. § 1.80.

²⁶ *See Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 (2004).

Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁷

19. **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

Joseph P. Casey
Chief, Spectrum Enforcement Division

²⁷ See 47 C.F.R. § 1.1914.