

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

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|----------------------------|---|-----------------------------|
| In the Matter of           | ) |                             |
|                            | ) |                             |
| Charles E. Vance III       | ) | File Number: EB-04-LA-133   |
| d/b/a CB Candy Electronics | ) |                             |
|                            | ) | NAL/Acct. No.: 200632900005 |
| Ontario, California        | ) | FRN: 0014383509             |

**FORFEITURE ORDER**

**Adopted: March 14, 2007**

**Released: March 16, 2007**

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 fourteen thousand dollars (\$14,000) to Charles E. Vance, III d/b/a CB Candy Electronics (“Vance”), for willful and repeated violation of Section 302(b) of the Commissions Act of 1934, as amended (“Act”),<sup>1</sup> and Sections 2.803(a)(1) and 2.815(c) of the Commission’s Rules (“Rules”).<sup>2</sup> On March 22, 2006, the Enforcement Bureau’s Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$14,000 to Vance for offering for sale non-certified Citizens Band (“CB”) transceivers and external RF power amplifiers in Ontario, California.<sup>3</sup> In this *Order*, we affirm the findings of the Los Angeles Office.

**II. BACKGROUND**

2. On June 28, 2005, an agent from the Enforcement Bureau’s Los Angeles Office visited the CB Candy Electronics website. The agent downloaded a sales catalog that displayed and offered for sale multiple makes and models of non-certificated CB transceivers, including Galaxy models DX-33, DX-66V and DX-99V, as well as the Connex 3300 model, among others.<sup>4</sup> The catalog also included numerous makes and models of external radio frequency power amplifiers, specifically Skipper 350-B, Palomar 1000, 450HD, 600HD; Red Devil 250R, 350 HD, and others. A review of the Commission’s records revealed that these devices had not received an equipment authorization from the Commission.

3. On June 28, 2005, the Los Angeles Office issued a Citation to Vance for violation of Section 302(b) of the Act, and Section 2.803(a)(1) of the Commission’s Rules by offering for sale, non-certified CB transceivers and Section 2.815(c) of the Commission’s Rules (“Rules”) by offering for sale external RF power amplifiers.<sup>5</sup> The Citation warned Vance that future violations might subject him to civil

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. §§ 2.803(a)(1), 2.815(c).

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632900005 (Enf. Bur., Western Region, Los Angeles Office, released March 22, 2006).

<sup>4</sup> *See Pilot Travel Centers*, 19 FCC Rcd 23113 (2004), *Hightech CB Shop*, 20 FCC Rcd 12514 (EB 2005).

<sup>5</sup> Citation to Charles E. Vance, III d/b/a/ CB Candy Electronics, released June 28, 2005 (“Citation”).

monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,<sup>6</sup> seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.<sup>7</sup>

4. In a response dated July 21, 2005, counsel for Vance disputed “all legal and factual contentions set forth in the citation” and stated that the transceivers listed in the Citation were legal to sell. The response did not address the marketing of external power amplifiers but stated the expectation that the Citation would be withdrawn within 14 days. The Los Angeles Office did not withdraw or otherwise cancel the Citation within the 14 day period set forth by counsel for Vance.

5. On September 6, 2005, and again on February 3, 2006, an agent from the Los Angeles Office again visited the CB Candy Electronics website. The agent downloaded the identical catalog as found on the website on June 28, 2005. All of the non-certified CB transceivers and external RF power amplifiers were still being offered for sale.

6. On March 22, 2006, the Los Angeles Office issued a *NAL* in the amount of \$14,000 to Vance, finding that Vance apparently willfully and repeatedly offered for sale non-certified CB transceivers and external RF power amplifiers in Ontario, California. Counsel for Vance filed a response (“*Response*”) on May 4, 2006,<sup>8</sup> stating he was unable to obtain a copy of the catalog referenced in the *NAL* from Commission staff and argues that the refusal to provide him a copy of the catalog was a denial of due process.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>11</sup> In examining Vance’s 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>12</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>13</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>14</sup> Section 2.815(c) of the Rules

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<sup>6</sup> See 47 C.F.R. § 1.80(b)(3).

<sup>7</sup> See 47 C.F.R. §§ 501, 503(b), 510.

<sup>8</sup> Counsel for Vance requested, and was granted, an extension until May 15, 2006, to respond to the *NAL*.

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>13</sup> 47 U.S.C. § 302a(b).

<sup>14</sup> 47 C.F.R. § 2.803(a)(1).

provides that “[n]o person shall manufacture, sell or lease, 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 external radio frequency power amplifier or amplifier kit capable of operation on any frequency below 144 MHz unless the device has received a grant of type acceptance . . . .”<sup>15</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>16</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>17</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>18</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>19</sup> Additionally, the Commission’s Office of Engineering and Technology (“OET”) has evaluated the models at issue here and has determined that these devices could easily be altered for use as CB transceivers.

10. In his *Response*, counsel for Vance indicated that he was unable to open his copy of the catalog referenced in the *NAL* because it was password protected. Counsel requested that the Commission staff give him a copy of the catalog. Counsel was instructed to file a Freedom of Information Act (“FOIA”)<sup>20</sup> request, because the material gathered as part of the investigation was not routinely available to the public.<sup>21</sup> Alternatively, it was also suggested that counsel contact his client for either a copy of the catalog or the password. Counsel argues that the refusal to give him the catalog was a denial of due process. We disagree. Sections 0.453 and 0.455 of the Rules<sup>22</sup> detail the records that are routinely available for public inspection at the Commission. Unless a type of record is listed in Sections 0.453 and 0.455, a request to inspect the record must be made pursuant to the Commission’s FOIA procedures, specifically Section 0.461 of the Rules.<sup>23</sup> The type of investigatory records compiled for this

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<sup>15</sup> 47 C.F.R. § 2.815(c).

<sup>16</sup> See 47 C.F.R. §§ 2.907, 2.927(a).

<sup>17</sup> 47 C.F.R. § 95.603(c).

<sup>18</sup> 47 C.F.R. § 95.655(a).

<sup>19</sup> Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief, Intellectual Property Rights, US Customs Service, 14 FCC Red 7797 (OGC, 1999).

<sup>20</sup> 5 U.S.C. 552(b).

<sup>21</sup> See 47 C.F.R. § 0.461.

<sup>22</sup> 47 C.F.R. §§ 0.453, 0.455. Section 0.453 of the Rules lists the Commission’s public reference rooms and the type of documents available for public inspection at those reference rooms. Section 0.455 of the Rules lists other locations at which records may be inspected, and the type of records that are available for public inspection at those locations.

<sup>23</sup> 47 C.F.R. § 0.461.

enforcement action are not listed in Sections 0.453 and 0.455 and, therefore, counsel was required to file a request pursuant to Section 0.461 of the Rules to obtain them.<sup>24</sup> Counsel filed no such request and, consequently, failed to invoke the procedure mandated by the Commission to obtain such records. We therefore find no merit to his allegation that he was denied due process.

11. Counsel also states that he “assume[s] you will hear directly from Charles E. Vance d/b/a CB Candy or any new attorney he might hire.” We have received no other response to the *NAL*. Consequently, based on the information before us, having examined it according to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we find that neither reduction nor cancellation of the proposed \$14,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

12. **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, Charles E. Vance, III d/b/a CB Candy Electronics **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$14,000 for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a)(1) and 2.815(c) of the Rules.<sup>25</sup>

13. 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>26</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>27</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Charles E. Vance, III d/b/a CB Candy Electronics at his address of record and his counsel of record, Michael C. Olson, at his address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>24</sup> See *Octavio Sarmiento, Jr.*, 17 FCC Rcd 25277 (EB 2002). See also 47 C.F.R. § 0.457.

<sup>25</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), 2.815(c).

<sup>26</sup> 47 U.S.C. § 504(a).

<sup>27</sup> See 47 C.F.R. § 1.1914.