



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

April 19, 2007

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE AT (845) 246-1757**

Mr. Erick Krein
Senior Vice President
Tower Products, Inc.
812 Kings Highway
Saugerties, NY 12477

Re: File No. EB-06-SE-365

Dear Mr. Krein:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 503(b)(5), for marketing unauthorized radio frequency devices¹ in the United States in violation of Section 302(b) of the Act, 47 U.S.C. § 302a(b), and Section 2.803 of the Commission's Rules ("Rules"), 47 C.F.R. § 2.803; for importing radio frequency devices that do not meet one or more of the specified import conditions in violation of Section 2.1204(a) of the Rules, 47 C.F.R. § 2.1204(a); and for being unable to document compliance with the selected import conditions in violation of Section 2.1204(b) of the Rules, 47 C.F.R. § 2.1204(b). As explained below, future violations of these rules may subject Tower to monetary forfeitures.

Marketing Unauthorized Radiofrequency Devices in the United States

After receiving a complaint, the Spectrum Enforcement Division ("Division") of the Enforcement Bureau began an investigation to determine whether Tower was marketing an unauthorized video transmitter identified as Laird Telemedia² model LTM-WAVE-AG Wireless Monitoring System ("LTM-WAVE-AG") in the United States without an equipment certification.

As part of the investigation, the Division sent a letter of inquiry ("LOI") to Tower on October 24, 2006.³ In its response,⁴ Tower identified VideoComm Technologies, a Canadian company, as the manufacturer of the LTM-WAVE-AG and stated that it purchased approximately 306 units of that device from VideoComm and sold them in the United States. Additionally, Tower stated that it "learned after

¹ A "radiofrequency device" is defined as "any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means." 47 C.F.R. § 2.801.

² Laird Telemedia is a trade name used by Tower.

³ See Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Laird Telemedia. (October 24, 2006).

⁴ See Letter from Mitchell Lazarus, Esq., to Thomas D. Fitz-Gibbon, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 20, 2006).

receipt of the Commission's letter that the Device does not have a Commission certification" and that "[c]onsistent with Tower's belief that the Device was authorized for sale in the United States, the Device carries an incorrect FCC ID." Tower also stated that it ceased marketing the LTM-WAVE-AG on November 8, 2006.

On December 27, 2006, the Division issued an LOI to VideoComm.⁵ In its response,⁶ VideoComm stated that Tower, not VideoComm, was the manufacturer of the LTM-WAVE-AG. Specifically, VideoComm stated that it manufactured two subassemblies on an OEM basis for Tower – the TC-440 transmitter ("TC-440") and an associated antenna – which Tower used to manufacture the LTM-WAVE-AG. Additionally, VideoComm stated that it sold the TC-440 to Tower without any FCC ID number or other labeling. VideoComm further stated that Tower returned some fully assembled LTM-WAVE-AG devices for repairs and that, while performing the repairs, VideoComm discovered that FCC ID NIMT900⁷ had been engraved onto the TC-440. VideoComm also stated that, after this discovery, it contacted Tower's Engineering Manager and told him that the TC-440 does not have an FCC ID number because it is not an FCC approved device and that it is inappropriate to label the LTM-WAVE-AG with FCC ID NIMT900.

On February 27, 2007, the Division issued a second LOI to Tower.⁸ In its response,⁹ Tower states that it carried out no manufacture or assembly of the LTM-WAVE-AG and simply passed the transmitters and antennas acquired from VideoComm on to its customers "in the same state and condition as received." Additionally, Tower states that it labeled the LTM-WAVE-AG with FCC ID NIMT900 but asserts that it "believed in good faith that VideoComm had meant for Tower to apply FCC ID NIMT900 and took this as evidence that the Device was authorized for sale in the United States." Tower, however, also states that its Engineering Manager "believes that [a representative] of VideoComm mentioned to him in passing that the FCC ID on the Device was erroneous or improperly carried over from a previous product."

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 to this section." Section 2.803(a)(1) of the Rules, 47 C.F.R. § 2.803(a)(1), provides that:

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 ... [i]n the case of a device 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.

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to VideoComm Technologies (December 27, 2006).

⁶ See Letter from Henry Goldberg, Esq., and Laura A. Stefani, Esq., to Thomas D. Fitz-Gibbon, Attorney Advisor, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (February 12, 2007).

⁷ FCC ID No. NIMT900 is assigned to another device. It was granted to Electra Enterprises for a "small video transmitter" operating on the frequency 916.5 MHz.

⁸ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mitchell Lazarus (February 27, 2007).

⁹ See Letter from Mitchell Lazarus, Esq., to Thomas D. Fitz-Gibbon, Attorney Advisor, Spectrum Enforcement Division, Federal Communications Commission (March 26, 2007) ("March 26, 2007, LOI response").

Section 15.201(b) of the Rules, 47 C.F.R. § 15.201(b), provides that intentional radiators, such as the Wireless A/V Transmitter and Receiver, must be certified prior to the initiation of marketing in the United States.

As set forth above, Tower acknowledges that the LTM-WAVE-AG, an intentional radiator, is not certified and that it marketed this device in the United States. Accordingly, it appears that Tower has violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing unauthorized radiofrequency devices in the United States.

Illegal Importation of Radio Frequency Devices

Customs data examined during the Division's investigation indicates that Tower imported video transmitters manufactured by VideoComm on November 22, 2005, on the basis that the video transmitters met import condition (2): that "the radio frequency device is not required to have an equipment authorization and the device complies with the FCC technical administrative regulations."¹⁰ This information is apparently false or inaccurate because the devices imported by Tower are required to be certified before marketing.

Tower states in its March 26, 2007, LOI response that it typically received copies of FCC Form 740¹¹ from VideoComm four to five days after the date on the form and provides copies of four such forms. The forms indicate that Tower imported VideoComm's TC-440 "video sender modules" on the following dates: November 21, 2005 (4 devices), December 8, 2005 (43 devices), January 11, 2006 (6 devices), and April 10, 2006 (46 devices). All of these forms indicate that the TC-440 met import condition (4): that "the radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for sale or marketed."¹² This information is apparently false or inaccurate because all of the TC-440 devices imported by Tower were apparently imported for the purpose of sale.

Section 2.1204(a) of the Rules provides that radio frequency devices may be imported only if they meet one or more of ten specified import conditions. Section 2.1204(b) of the Rules provides that "[t]he ultimate consignee must be able to document compliance with the selected import condition and the basis for determining the import condition applied."

VideoComm apparently filed the above-described customs declarations in Tower's behalf and thus acted as Tower's agent.¹³ We find, accordingly, that Tower is apparently responsible for VideoComm's declaration of apparently false or inaccurate import conditions. Furthermore, Tower – having received copies of VideoComm's filings – apparently had actual knowledge of the import conditions declared by VideoComm. Accordingly, it appears that Tower has violated Section 2.1204(a) of the Rules by importing radio frequency devices that do not meet one or more of the ten specified import conditions and that it has violated Section 2.1204(b) of the Rules by being unable to document compliance with the selected import conditions.

¹⁰ See Section 2.1204(a)(2) of the Rules, 47 C.F.R. § 2.1204(a)(2).

¹¹ FCC Form 740 is used to report customs data. See 47 C.F.R. § 2.1205(a).

¹² See Section 2.1204(a)(4) of the Rules, 47 C.F.R. § 2.1204(a)(4).

¹³ Section 2.1203(a) of the Rules, 47 C.F.R. § 2.1203(a), permits the importation of a radiofrequency device only if "the importer or ultimate consignee, or their designated customs broker, declares that the device meets one of the conditions for entry set out in this section."

If, after receipt of this citation, Tower violates the Communications Act or the Commission's rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation. ¹⁴

If you choose to do so, you may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that Tower is taking to ensure that it does not violate the Commission's rules governing the marketing and importation of radiofrequency devices in the future.

The nearest Commission field office is the New York Field Office in New York, NY. Please call Thomas D. Fitz-Gibbon at 202-418-1160 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Thomas D. Fitz-Gibbon
Attorney Advisor
Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W., Rm. 3-A460
Washington, D.C. 20554

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

cc: Mitchell Lazarus, Esq.

¹⁴ See 47 C.F.R. § 1.80(b)(3).