

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

In the Matter of)	
)	File No. EB-05-SE-225
Rocky Mountain Radar)	NAL/Acct. No. 200732100010
El Paso, TX)	FRN # 0007500796

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 29, 2007

Released: January 31, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Rocky Mountain Radar (“RMR”) apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803, 15.205 and 15.209 of the Commission’s Rules (“Rules”).² The noted apparent violations involve RMR’s marketing of its RMR-S201 and RMR-C450 models of police radar jamming devices (“jammers”).³

II. BACKGROUND

2. The Spectrum Enforcement Division (“Division”) of the Enforcement Bureau obtained information, through several informal complaints, alleging that RMR was manufacturing and marketing unauthorized police radar jammers in the United States. The Division’s investigation indicates that the radar jammers are intended for use by motorists to prevent law enforcement officials from measuring the speed of the users’ vehicles. The Division preliminarily determined that at least two of the models, the RMR-S201 (also known as the Phazer II) and the RMR-C450 jammers, were intentional radiators,⁴ devices which are generally required under Section 15.201 of the Rules⁵ to be approved prior to marketing⁶ through

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 15.205 and 15.209.

³ RMR markets the RMR-S201 device as a radar “scrambler.” RMR markets the RMR-C450 device as a combination radar detector and radar “scrambler.” Based on the operative goals and characteristics of the devices, which are to cause police radar gun receivers to fail, we refer to the devices as “jammers” herein.

⁴ An intentional radiator is defined by Section 15.3(o) of the Rules, 47 C.F.R. § 15.3(o), as “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.”

⁵ 47 C.F.R. § 15.201.

the certification procedures described in Sections 2.1031 – 2.1060 of the Rules.⁷ The Division also concluded, however, that the devices under investigation were apparently not eligible to receive a grant of certification because their intended purpose is to interfere with a licensed radio service, a violation of Section 333 of the Act.⁸

3. On August 9, 2005, the Division sent RMR a letter of inquiry (“LOI”) seeking further information with regard to its devices.⁹ In its response to the LOI,¹⁰ RMR acknowledges that it markets and manufactures the devices, but denies that the devices under investigation are intentional radiators, stating “I hereby certify and affirm that none of the products listed [in the LOI]... are intentional radiators as defined by Part 15 None of the products is designed as an intentional radiator nor are they manufactured for that purpose or with that capability [W]e neither market nor manufacture any such devices”¹¹

4. Subsequently, the Commission’s Office of Engineering and Technology (“OET”) Laboratory obtained samples of the RMR-S201 and RMR-C450 devices directly from RMR for testing. Testing of the samples indicated that both units are designed to emit a signal that intentionally interferes with a radio service (licensed police radar), and are indeed capable of interfering with police radar. Therefore, the OET Laboratory concluded that the devices are intentional radiators, as described in Section 15.3(o) of the Rules. In addition, the OET Laboratory’s tests indicated that the RMR-C450 device produced a radiated emission in the restricted frequency band at 11.23 GHz that substantially exceeds the radiated emission limits for intentional radiators specified in Section 15.209 of the Rules.¹² The OET Laboratory also concluded that the RMR-C450 device was improperly certified. In this regard, the OET Laboratory noted that the grant of certification issued for the RMR-C450 device indicates that the device was tested as an “unintentional radiator.”¹³ As explained above, however, the OET Laboratory found that

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⁶ “Marketing” is defined as “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁷ 47 C.F.R. §§ 2.1031 – 2.1060.

⁸ 47 U.S.C. § 333.

⁹ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, to Michael B. Churchman, President, Rocky Mountain Radar (August 9, 2005). Attachment A listed RMR models: RMR-C410, RMR-C430, RMR-C450, RMR-S201 (Phazer II), and RMR-DLS312.

¹⁰ Letter from Michael B. Churchman, President, Rocky Mountain Radar, to Susan Magnotti, Spectrum Enforcement Division, Enforcement Bureau (September 6, 2005).

¹¹ *Id.* RMR obtained certification of the RMR C-450 under FCC ID No. QKK-C03 by representing to a Telecommunications Certification Body that the device was a radar detector. The use of radar detectors by motorists is not a violation of Commission rules. As noted above, however, RMR markets the RMR C-450 as both a radar detector and a radar “scrambler.”

¹² 47 C.F.R. § 15.209.

¹³ An “unintentional radiator” is defined by Section 15.3(z) of the Rules, 47 C.F.R. § 15.3(z), as:

[a] device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction.

the device is an intentional radiator.

5. Research conducted by Division staff indicates that, as of January 19, 2007, RMR continued to market the RMR-S201 and RMR-C450 on its company website, www.rockymountainradar.com.

III. DISCUSSION

6. 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 Commission’s implementing regulations provides in pertinent part 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 radiofrequency device¹⁴ 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.

As noted above, under Section 15.201 of the Rules, intentional radiators must ordinarily be authorized in accordance with the certification procedure prior to marketing. Section 2.803(g) of the Rules, however, provides in pertinent part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules . . . shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.

Further, Section 333 of the Act prohibits any person from willfully or maliciously interfering with or causing interference to any radio communications of any station licensed or authorized by the Commission. Moreover, Section 15.205 of the Rules prohibits radiated emissions, other than spurious emissions,¹⁵ in any of the restricted frequency bands listed in that section. Thus, intentional radiators that cannot legally be operated – because, for example, they interfere with or jam licensed police radar or operate in restricted frequency bands – are not eligible for a grant of equipment certification. Finally, Section 15.209 of the Rules sets forth the radiated emission limits applicable to intentional radiators.

A. Marketing of unauthorized radio frequency devices

7. RMR claims that the RMR-S201 and RMR-C450 devices cannot generate RF energy of their own, but that they simply reflect an altered version of an incoming radar signal. Therefore, RMR asserts, its devices cannot be considered intentional radiators as defined in the Commission’s rules. This

¹⁴ 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.”

¹⁵ Section 2.1(c) of the Rules, 47 C.F.R. § 2.1(c), defines a spurious emission as “[e]mission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information.”

argument is without merit. The Commission has previously ruled that similar devices marketed by RMR were indeed intentional radiators. In 1997, the former Compliance and Information Bureau issued an official citation to RMR advising it that the manufacture and marketing of its Spirit II radar jammer violated Section 302 of the Act and Section 2.803 of the Rules.¹⁶ In a subsequent Memorandum Opinion and Order, the Commission denied an application for review and petition to stay the official citation.¹⁷ The Commission concluded that “[t]he Spirit II, *and any other similar device*, meets the definition of an intentional radiator contained in Section 15.3(o) of the rules and therefore we hold that marketing of the Spirit II *and any other similar device* without FCC equipment authorization is in violation of Sections 15.201(a) and 2.803 of the Commission’s Rules.”¹⁸ (*emphasis added*). The Commission’s determination was upheld by the United States Court of Appeals for the Tenth Circuit.¹⁹

8. The RMR-S201 and RMR-C450 model devices function in a similar manner to the Spirit II model. Specifically, the Spirit II was designed with “a mixer diode inside a wave guide cavity with ridged antenna and matching screw.”²⁰ The current RMR-S201 and RMR-C450 models contain “an FM chirp generator, a mixer diode and a dual ridge wave-guide antenna.”²¹ The radar jamming functionality of each device occurs when an incoming signal from police radar is used to create a new signal by the internal circuitry of the jammers, and then is re-transmitted. Based on the OET Laboratory’s analysis, we conclude that if a device mixes an FM chirp generator with an incoming signal and sends the resultant signal to an antenna, then by definition it is an intentional radiator as described in Section 15.3(o) of the Rules. Accordingly, based on the information before us, the RMR-S201 and RMR-C450 devices are intentional radiators.

9. As noted above, research by Division staff indicates that as of January 19, 2007, RMR was continuing to market the RMR-S201 and RMR-C450 devices through its company website.²² As intentional radiators, these devices would ordinarily be required to be certified prior to marketing. These devices are not, however, eligible for a grant of certification because their intended purpose is to interfere with Commission authorized radio facilities, specifically, licensed police radar, in violation of Section 333 of the Act, and the OET Laboratory has determined that these devices in fact are capable of interfering with

¹⁶ *Rocky Mountain Radar*, Citation (Compliance and Inf. Bur., Compliance Div., Inv. Group, February 13, 1997). The citation was issued pursuant to 47 U.S.C. § 503(b)(5).

¹⁷ *Rocky Mountain Radar Application for Review, Request for Expedited Action, and Emergency Petition for Stay of Official Citations*, Memorandum Opinion and Order, 12 FCC Rcd 22453 (1997).

¹⁸ *Id.* at 22456.

¹⁹ *Rocky Mountain Radar, Inc. v. FCC*, 158 F.3d 1118 (10th Cir. 1998) (“Tenth Circuit Order”), *cert. denied*, 525 U.S. 1147 (1999).

²⁰ See Letter from Hugh V. H. Bishop, RMR consulting engineer, to Mr. Michael Churchman, President, Rocky Mountain Radar, dated August 12, 1997. The Spirit II device included an electronic component that produced a new signal based on the frequency of the incoming police radar signal, then transmitted the new signal through a specialized antenna back to the police radar gun receiver.

²¹ See http://www.rockymountainradar.com/faq_detail.sstg?id=1. The RMR-S201 and RMR-C450 model devices include an electronic component that generates a frequency modulated signal which, in combination with another electronic component, alters the incoming police radar signal to produce a new signal. The new signal is then transmitted through a specialized antenna back to the police radar gun receiver.

²² See <http://www.rockymountainradar.com/products.sstg>.

police radar. We accordingly conclude that RMR apparently violated Section 302(a) of the Act and Section 2.803 of the Rules by willfully and repeatedly²³ marketing the RMR-S201 and RMR-C450 devices, which are not eligible for a grant of equipment certification because they are intended to interfere with licensed police radar, in violation of Section 333 of the Act.

10. We further conclude that there are two additional grounds for finding RMR's marketing of the RMR-C450 device to be unlawful. The RMR-C450 device is not eligible for a grant of certification because it produces a radiated emission in the restricted frequency band at 11.23 GHz in violation of Section 15.205 of the Rules. This radiated emission also substantially exceeds the radiated emission limits for intentional radiators specified in Section 15.209 of the Rules. Accordingly, we conclude that RMR apparently willfully and repeatedly violated Section 302(a) of the Act and Sections 2.803, 15.205 and 15.209 of the Rules by marketing the RMR-C450 device, which is not eligible for a grant of equipment certification because it produces a radiated emission in the restricted frequency band at 11.23 GHz, and which produces emissions that substantially exceed the radiated emission limits for intentional radiators.

B. Proposed Forfeiture

11. Section 503(b)(1) of the Act and Section 1.80(a)(1) of the Rules authorize 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.²⁴ In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as "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."²⁵

12. Under Section 503(b)(2)(C) of the Act and Section 1.80(b)(3) of the Rules,²⁶ the Commission is authorized to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, by a non-common carrier or other entity not specifically designated in Section 503(b)(2), up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²⁷ In addition, under Section 1.80 of the Rules the Commission has established a base forfeiture amount of \$7,000 for the marketing of unauthorized equipment.

13. In this case, RMR is marketing two models of unauthorized intentional radiators. RMR's

²³ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law, and Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of such act more than once" and if continuous "more than one day." 47 U.S.C. § 312(f)(1) and (2). The legislative history of Section 312(f) establishes that these definitions apply to forfeitures proposed under Section 503(b) of the Act. *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982). *See also* *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

²⁴ 47 U.S.C. § 503(b)(1); 47 C.F.R. § 1.80(a)(1).

²⁵ 47 U.S.C. § 503(b)(2)(D).

²⁶ 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. 1.80(b)(3).

²⁷ In 2004, the Commission amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *see also* 47 C.F.R. § 1.80(c).

marketing of each of these unauthorized models is a separate violation. We find that a base forfeiture amount of \$7,000 is apparently warranted for each model, for a total proposed base forfeiture of \$14,000.²⁸ That aggregate base forfeiture amount is, however, subject to an upward adjustment.²⁹

14. Having considered the statutory factors enumerated above, we conclude that a significant upward adjustment is warranted. We find the violations here are intentional given that RMR marketed these devices after the Commission's 1997 Memorandum Opinion and Order and the subsequent Tenth Circuit Order put it on explicit notice that the marketing of these types of devices is unlawful.³⁰ RMR's continuing violation of the equipment authorization requirements evinces a pattern of intentional non-compliance with and disregard for these rules. Accordingly, we find that an upward adjustment of \$11,000 over the \$14,000 base forfeiture amount is warranted.³¹ We conclude that RMR is apparently liable for a \$25,000 forfeiture.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act³² and Sections 0.111, 0.311 and 1.80 of the Rules,³³ Rocky Mountain Radio **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803, 15.205 and 15.209 of the Rules.

16. **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*, Rocky Mountain Radar **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

²⁸ See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), *forfeiture ordered*, Forfeiture Order, FCC 07-3 (released January 16, 2007); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, Order, 19 FCC Rcd 24509 (2004) (both finding that the marketing of each separate model of unauthorized equipment constitutes a separate violation).

²⁹ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17112 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (noting that we "retain the discretion to issue a higher or lower forfeiture" than the base forfeiture amounts set forth in our Rules and our Forfeiture Guidelines) ("*Forfeiture Policy Statement*").

³⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; see also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (establishing intentional violation as an upward adjustment factor).

³¹ See e.g., *Pilot Travel Centers, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113, 23114 (2004) (upwardly adjusting a proposed forfeiture for marketing non-certified CB transceivers where an entity continued to market the devices after receiving Citations that put it on notice that the marketing of this type of equipment was unlawful) (*subsequent history omitted*).

³² 47 U.S.C. § 503(b).

³³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

17. 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/LB358340, 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.

18. 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.

19. 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 practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director—Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴

21. **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 Michael B. Churchman, President, Rocky Mountain Radar, 6469 Doniphan Dr., El Paso, Texas 79932.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³⁴ See 47 C.F.R. § 1.1914.