

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

In the Matter of)	
)	File No. EB-08-SE-052
Inter Tech FM)	NAL/Acct. No. 200932100071
)	FRN # 0018458026

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 8, 2009

Released: July 10, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Inter Tech FM (“Inter Tech”) apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The noted apparent violations involve Inter Tech’s marketing of FM broadcast transmitters and external RF power amplifiers³ (“amplifiers”) without proper authorization.

II. BACKGROUND

2. In response to complaints alleging that Inter Tech was marketing⁴ unauthorized FM broadcast equipment in the United States, the Spectrum Enforcement Division of the Enforcement Bureau (“Division”) began an investigation. As part of this investigation, Division staff reviewed Inter Tech’s website⁵ on February 7, 2008, and observed that Inter Tech was marketing certain transmitters and amplifiers on its website. The Division sent Inter Tech a letter of inquiry⁶ (“LOI”) on March 28, 2008.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ Section 2.815 of the Rules, 47 C.F.R. § 2.815, defines an external radio frequency power amplifier as “any device which, (1) when used in conjunction with a radio transmitter as a signal source is capable of amplification of that signal, and (2) is not an integral part of a radio transmitter as manufactured.”

⁴ “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease. 47 C.F.R. § 2.803(e)(4).

⁵ www.intertechfm.com (accessed February 7, 2008).

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (March 28, 2008) (“First LOI”).

3. In its April 23, 2008 response to the First LOI,⁷ Inter Tech identified the FM transmitter models that it currently manufactured and marketed in the United States under the trade name Cybermax.⁸ Inter Tech stated that all of the transmitter models it manufactured were marketed exclusively to full power FM stations operating in the broadcast services under Part 73 of the Rules, and verified in accordance with the requirements set forth in Section 73.1660(a)(1) of the Rules.⁹ As proof of verification, Inter Tech provided verification records for the Max 15 DSP FM exciter, an exciter that Inter Tech claimed was incorporated into its transmitters.¹⁰

4. Inter Tech also admitted that it marketed several Cybermax amplifier models for “export only,” but denied being the manufacturer of these models, claiming that these models consisted of third-party modules¹¹ that Inter Tech incorporated into casings.¹² Inter Tech did not, however, state whether the Cybermax amplifiers it marketed or the modules incorporated therein were certified in accordance with the requirements set forth in Section 2.815(b) of the Rules.¹³

⁷ See Letter from Chris Rea, Inter Tech FM to Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 23, 2008) (“First Response”).

⁸ *Id.* at 1, 6. The Cybermax transmitter models identified by Inter Tech included: (1) the Cybermax FM 15+; (2) the Cybermax FM 15+ DSP; (3) the Cybermax FM 20+; (4) the Cybermax FM 20+ DSP; (5) the Cybermax FM 150; (6) the Cybermax FM 150 DSP; (7) the Cybermax FM 300; and (8) the Cybermax FM 300 DSP. Inter Tech also acknowledged that it marketed and manufactured several other Cybermax models which are essentially identical to these models. *Id.* at 6. We note that in a related matter that the Division issued a Notice of Apparent Liability to Inter Tech for its unauthorized marketing of a single, now discontinued transmitter, the Cybermax FF TX 1, in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules, and for providing incorrect material factual information in violation of Section 1.17(a)(2) of the Rules. The Division action was limited to the discontinued transmitter only and did not address the transmitters subject to this proceeding. See *Inter Tech FM*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1151 (Enf. Bur., Spectrum Enf. Div. 2009), *response pending*.

⁹ See First Response at 4. See also 47 C.F.R. § 73.1660(a)(1) (requiring AM, FM or TV transmitters to be verified for compliance following the procedures describe in Part 2 of the Rules). Verification is a self-authorization procedure where the manufacturer or the importer, in the case of imported equipment, makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. See 47 C.F.R. §§ 2.902 and 2.909(b). While Inter Tech claims to have marketed these transmitters solely to full power FM stations, Inter Tech admitted that one of these transmitters was “inadvertently” sold to Sidon Video Productions and then resold to a Low Power FM (“LPM”) station located in the United States. First Response at 6.

¹⁰ See First Response at 4. See also 47 C.F.R. § 2.955 (describing those verification records required to be maintained by the manufacturer).

¹¹ Inter Tech’s use of the word “module” in this context does not refer to the Commission’s Part 15 certification for modular use, as these amplifiers are not low power devices. See 47 C.F.R. § 15.212. Inter Tech refers to these devices as modules to indicate that these devices are standardized components often used in the creation of other devices, such as transmitters. The Commission’s definition of “modular device,” however, is a legal term of art, indicating Part 15 devices certified for incorporation into new devices without necessitating the certification of the final device. See 47 C.F.R. § 15.212.

¹² See First Response at 5. Inter Tech identified these amplifier models under the following trade names and numbers: the Cybermax FM 150A (also sold as Cyclone FM150A), and the Cybermax FM300A (also sold as Cyclone FM300A). Inter Tech also acknowledged that it marketed several other Cybermax amplifiers models which are essentially identical to the models listed above.

¹³ 47 C.F.R. § 2.815(b).

5. In its First Response, Inter Tech failed to provide sufficient evidence that the transmitters and amplifiers marketed under the trade name Cybermax were authorized. Accordingly, the Division issued a follow-up LOI on July 10, 2008, requesting further information about the Cybermax product line.¹⁴ In its July 23, 2008 response to the follow-up Second LOI,¹⁵ Inter Tech stated that it believed that by verifying the exciter contained in the Cybermax transmitters, it had complied with Section 73.1660(a)(1) of the Rules.¹⁶ Inter Tech also indicated that the modules incorporated into the Cybermax amplifiers were manufactured by Broadcast Warehouse, but did not state directly whether the modules or amplifiers had been certified.¹⁷ Instead, Inter Tech explained that it believed that “when [an amplifier] was assembled with other RF components, *e.g.*, as a stand alone transmitter, that certification for the amplifier component was not required,” and that it was “operating under the premise of self verification.”¹⁸ Inter Tech stated that it ensured that these amplifiers were exported through the use of a disclaimer and a policy of delivery to foreign addresses only.¹⁹ Inter Tech also stated, however, that upon learning that products capable of amplification below 144 MHz were required to be certified, it “stopped marketing and selling such products to the domestic market.”²⁰ Finally, Inter Tech stated that it had “never altered, changed, used, duplicated, incorporated, copied, made changes to names, trade names, or models of any identical certified equipment.”²¹

6. The Bureau issued a Third LOI on November 24, 2008.²² In its Third Response, dated November 26, 2008, but received on December 22, 2008, Inter Tech provided a complete and detailed list of its Cybermax transmitters, indicating that four transmitter models contained the verified exciter, with no amplification,²³ and four transmitter models contained the verified exciter coupled with a Broadcast Warehouse amplifier.²⁴ Inter Tech indicated that three of the four transmitter models with amplification contained the verified exciter and the Broadcast Warehouse amplifier TX-300,²⁵ while the fourth

¹⁴ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (July 10, 2008) (“Second LOI”).

¹⁵ See Letter from Chris Rea, Inter Tech FM to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 23, 2008) (“Second Response”).

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 1-2.

¹⁸ *Id.*

¹⁹ *Id.* at 1.

²⁰ *Id.* at 2.

²¹ *Id.*

²² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (November 24, 2008) (“Third LOI”).

²³ See Letter from Chris Rea, Inter Tech FM to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 26, 2008) (“Third Response”), at 2. The four Cybermax transmitters which contained the verified exciter with no amplification are: (1) the Cybermax FM 15+; (2) the Cybermax FM 15+ DSP; (3) the Cybermax FM 20+; and (4) the Cybermax FM 20+ DSP. *Id.*

²⁴ *Id.* The four Cybermax transmitters which contained the verified excited coupled with the Broadcast Warehouse amplifier are: (1) the Cybermax FM 150; (2) the Cybermax FM 150 DSP; (3) the Cybermax FM 300; and (4) the Cybermax FM 300 DSP. *Id.*

²⁵ *Id.* According to Inter Tech, the Cybermax FM 150 DSP, the Cybermax FM 300, and the Cybermax FM 300 DSP transmitters included the verified exciter and the Broadcast Warehouse amplifier TX-300. *Id.*

transmitter model with amplification contained the verified exciter and the Broadcast Warehouse amplifier TX-150.²⁶

7. In its Third Response, Inter Tech also indicated that it used only two certified Broadcast Warehouse amplifiers to create the six Cybermax amplifiers marketed on its website.²⁷ One of these models ranged in power from 25 to 50 watts, while the other ranged in power from 150 to 300 watts.²⁸ Inter Tech claimed that because Broadcast Warehouse was fully aware of Inter Tech's intent to incorporate the Broadcast Warehouse amplifiers into the Cybermax product line, and because the Cybermax amplifiers were marketed for export only, Inter Tech did not need the authorization of Broadcast Warehouse or the Commission to use the Broadcast Warehouse amplifiers in the Cybermax models prior to marketing.²⁹ Inter Tech failed to explain, however, why it had stated in its Second Response that it had ceased marketing the amplifiers in the United States upon learning that the amplifiers were required to be certified.³⁰

III. DISCUSSION

A. Marketing of Unauthorized Transmitters

8. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy, and prohibits, among other things, the offering for sale of radio frequency devices to the extent that such activity does not comply with these regulations.³¹ Specifically, 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 prohibits the sale or lease, offer of sale or lease, importation, or shipment of radio frequency devices,³² as well as the distribution of such devices for the purpose of selling such devices, unless the device complies with applicable administrative, technical, labeling and identification requirements of the Rules.

9. Section 73.1660(a)(1) of the Rules³³ requires verification of AM, FM, or TV transmitters used in the broadcast services, in accordance with the procedures described in Part 2 of the Rules. Under

²⁶ *Id.* Inter Tech indicated that the Cybermax FM 150 transmitter included the verified exciter and the Broadcast Warehouse amplifier TX-150. *Id.*

²⁷ *Id.* Inter Tech identified the following Broadcast Warehouse amplifiers as the modules that it incorporated into its own casing: the TX25-50 and the TX150-300.

²⁸ *Id.* Commission records indicate that these amplifiers were certified under two FCC Identification Numbers, as follows: (1) FCC ID TUOTX25-50 (TX25-50); and (2) FCC ID TUOTX150-300 (TX150-300).

²⁹ *Id.*

³⁰ *See supra* note 20 and accompanying text.

³¹ 47 U.S.C. § 302a(a).

³² Section 2.801(a)(1) of the Rules defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy” Radio frequency devices subject to the Rules include, among other items, radio communication transmitting devices and “any part or component thereof which in use emits radiofrequency energy.” 47 C.F.R. § 2.801(a)(1) and (d).

³³ 47 C.F.R. § 73.1660(a)(1).

Section 2.811 of the Rules,³⁴ the requirements of Section 2.803(a) through (d) of the Rules are not applicable to transmitters operated in any of the Part 73 radio broadcast services, provided that the conditions set forth in Part 73 for the acceptability of such transmitters for use under licensing are met. Therefore, absent compliance with the verification requirement set forth in Section 73.1660(a)(1) of the Rules, Part 73 transmitters are considered to be “unauthorized” and may not be marketed in the United States. Under Section 2.909(b) of the Rules,³⁵ manufacturers or importers of equipment subject to verification are responsible for the equipment’s compliance with all applicable technical and administrative rules.

10. We conclude that Inter Tech apparently manufactured and marketed two unauthorized transmitters in the United States from February 7, 2008 until at least July 10, 2008, the date of the Second LOI.³⁶ It appears that Inter Tech has since ceased marketing these two unauthorized transmitters in the United States.³⁷ Inter Tech claims that the Cybermax transmitters were verified in accordance with Section 73.1660(a)(1) of the Rules for use in the FM broadcast service.³⁸ As proof of verification, Inter Tech submitted verification records³⁹ for the Max 15 DSP FM exciter, an exciter that Inter Tech stated was incorporated into each of the transmitters.⁴⁰ The verification of the exciter, however, is insufficient to verify the Cybermax transmitters because the addition of the Broadcast Warehouse amplifiers altered the emanating characteristics of the device. Inter Tech incorporated two different certified Broadcast Warehouse amplifiers into its transmitters.⁴¹ Thus, we conclude that for the purpose of assessing liability in this case, Inter Tech manufactured and marketed two unverified transmitter models. As the manufacturer of these transmitter models, Inter Tech is responsible for the transmitter’s compliance with the Commission’s technical and administrative rules prior to marketing in the United States.⁴² Accordingly, we find that Inter Tech apparently marketed two unauthorized transmitters in the United

³⁴ See 47 C.F.R. § 2.811.

³⁵ 47 C.F.R. § 2.909(b).

³⁶ Inter Tech stated in its First Response that as of that date, it marketed and planned to continue manufacture of the Cybermax transmitters that are the subject of this *NAL*. See First Response at 1, 6. In its Second and Third Responses, Inter Tech did not indicate an intent to discontinue manufacture or sale of these transmitters, and implied that it believed that such manufacture and marketing was compliant with the Rules. See Second Response at 2; Third Response at 2.

³⁷ A review of Inter Tech’s website on March 18, 2009 reveals that these transmitters are currently marketed as “export only.” See www.intertechfm.com (March 18, 2009).

³⁸ See First Response at 4; Second Response at 2.

³⁹ 47 C.F.R. § 2.955 (listing records required to be maintained as proof of verification). Under the verification procedures, the manufacturer of radio frequency devices, or the importer in the case of imported devices, must make measurements or take the necessary steps to obtain measurements to ensure that the subject devices comply with the Commission’s technical standards. *Id.* See also 47 C.F.R. § 2.902(b).

⁴⁰ See *supra* note 10 and accompanying text.

⁴¹ See *supra* notes 25 and 26 and accompanying text.

⁴² 47 C.F.R. § 2.909(b).

States, in willful⁴³ and repeated⁴⁴ violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.⁴⁵

B. Marketing of Third-Party Amplifiers under the Cybermax Name

11. Under Section 2.815(c) of the Rules, amplifiers capable of operation on any frequency below 144 MHz must be certificated. Under Section 2.1043 of the Rules,⁴⁶ changes to certificated equipment shall not be performed without application for and authorization of a new grant of certification, unless such changes do not affect the characteristics required to be reported to the Commission or unless such changes constitute a permissive change to equipment by the manufacturer or a party working under the express authorization of the manufacturer. Moreover, under Section 2.924 of the Rules,⁴⁷ changes to the model number or trade name of equipment that is electrically identical⁴⁸ and that is subject to certification by anyone other than the grantee, or under the authorization of the grantee, must be performed in accordance with the procedures set forth in Section 2.933 of the Rules.⁴⁹ Section 2.933 of the Rules, in turn, provides for the filing of a new application for equipment authorization with the Commission.⁵⁰ Finally, under Section 2.909(a) of the Rules, if radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee, the party performing the modification is responsible for compliance of the product with all applicable administrative and technical requirements.⁵¹

⁴³ 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. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

⁴⁴ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) 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). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

⁴⁵ *See Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6327 (2008) (emphasizing that equipment subject to verification but noncompliant with our technical and administrative Rules is considered to be “unauthorized” under 503(b)(5) of the Act and may not be marketed in the United States) (“*Syntax-Brilliant Forfeiture Order*”). *See also Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006) (imposing liability for the marketing of non-verified equipment), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid) (“*Behringer*”).

⁴⁶ 47 C.F.R. § 2.1043.

⁴⁷ 47 C.F.R. § 2.924.

⁴⁸ Under Section 2.924 of the Rules, a device is considered to be electrically identical if no changes are made to the device authorized by the Commission, or if the changes made to the device would be treated as class I permissive changes within the scope of Section 2.1043(b)(1) of the Rules, 47 C.F.R. § 2.1043(b)(1).

⁴⁹ 47 C.F.R. § 2.933.

⁵⁰ *Id.*

⁵¹ 47 C.F.R. § 2.909(a).

12. We find that Inter Tech was the responsible party for the two uncertified amplifier models marketed in the United States from February 7, 2008, until at least July 10, 2008, the date of the Second LOI. Inter Tech states that it is merely a system integrator that incorporated the Broadcast Warehouse models into casings.⁵² While Inter Tech denies making changes to the trade name and/or model number of these amplifiers, it marketed these amplifiers under the Cybermax trade name and model number.⁵³ Absent authority from Broadcast Warehouse pursuant to Sections 2.924 and 2.929(b) of the Rules,⁵⁴ Inter Tech's replacement of the Broadcast Warehouse name and number with the Cybermax name and model number constitutes a modification under Section 2.909(a) of the Rules.⁵⁵ While Inter Tech claims that Broadcast Warehouse was aware of Inter Tech's intent to incorporate the amplifier modules into its Cybermax product line, Inter Tech offered no proof that Broadcast Warehouse authorized its actions. Accordingly, as the modifier of two Broadcast Warehouse models subject to certification, Inter Tech is responsible for the equipment's compliance with the Commission's technical and administrative rules.⁵⁶ As such, Inter Tech was required to obtain certification for the use of the Cybermax name in conjunction with the Broadcast Warehouse amplifiers prior to marketing the devices in the United States.

13. Inter Tech claims that these amplifiers are marketed for "export only," and thus are exempt under Section 2.807(b) of the Rules⁵⁷ from the marketing restrictions set forth in Section 2.803(a)(1) of the Rules.⁵⁸ This exemption, however, only applies to devices that the manufacturer actually exports.⁵⁹ While Inter Tech stated in its Second Response that all marketing materials for these amplifiers contained the disclaimer "export only," the marketing materials provided by Inter Tech in its First Response contained an advertisement for the one of the Cybermax amplifier models without any such disclaimer, and with the offer to deliver it anywhere in the United States, or to make it available for local pick up.⁶⁰ Moreover, in its Second Response, Inter Tech stated that it had ceased marketing the amplifiers in the United States when it learned that these amplifier models had to be certified as a result of the Second LOI, an admission that Inter Tech failed to explain in its Third Response.⁶¹ We find, accordingly, that Inter Tech apparently marketed two unauthorized amplifiers in the United States in willful and repeated violation of Section 302(b) of the Act and Sections 2.803(b) of the Rules.

⁵² See First Response at 5.

⁵³ See First Response at 5; Second Response at 2.

⁵⁴ 47 C.F.R. §§ 2.924, 2.929(b).

⁵⁵ See 47 C.F.R. § 2.909(a).

⁵⁶ *Id.*

⁵⁷ 47 C.F.R. § 2.807(b).

⁵⁸ See First Response at 5; Third Response at 2.

⁵⁹ See *Gibson Tech Ed, Inc. d/b/a/ Hobbytron.com*, Memorandum Opinion and Order, 21 FCC Rcd 9642, 9645 (Enf. Bur. 2006); *New Image Electronics*, Forfeiture Order, 17 FCC Rcd 3594, 3596 (Enf. Bur. 2002).

⁶⁰ Marketing materials for the other Cybermax amplifiers were not included as part of its First Response.

⁶¹ See Second Response at 2. In its Third Response, Inter Tech indicated that it had discontinued marketing of the Cybermax FM150A and Cybermax FM 300A amplifiers. See Third Response at 2.

C. Proposed Forfeiture

14. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any Rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁶² To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁶³ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or Rule.⁶⁴ As set forth below, we conclude under this standard that Inter Tech is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000) for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803(a) of the Rules.

15. At the time of Inter Tech's apparent violations, under Section 503(b)(2)(B) of the Act,⁶⁵ we were authorized to assess a forfeiture penalty against certain entities, such as Inter Tech, who are not common carriers, broadcast licensees, or cable operators, eleven thousand dollars (\$11,000) for each violation, or for each day of a continuing violation, up to a total of ninety seven thousand five hundred dollars (\$97,500) for any single continuing violation. In exercising such authority, we are required to 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."⁶⁶

16. Section 503(b)(6) of the Act⁶⁷ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL. Section 503(b)(6) does not, however, bar the Commission from assessing whether Inter Tech's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory

⁶² 47 U.S.C. § 503(b).

⁶³ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁶⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (forfeiture paid).

⁶⁵ 47 U.S.C. § 503(b)(2)(A). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times 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*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for non-licensees from \$11,000/\$97,500 to \$16,000/\$112,500); *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 amounts for non-licensees from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for non-licensees from \$10,000/\$75,000 to \$11,000/\$87,500). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. See 73 Fed. Reg. 44663-5.

⁶⁶ 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

⁶⁷ 47 U.S.C. § 503(b)(6).

period.⁶⁸ Thus, while we may consider the fact that Inter Tech's conduct has continued since at least February 2008, the forfeiture amount we propose herein relates only to Inter Tech's apparent violations that have occurred within the past year.

17. Under the Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement")⁶⁹ and Section 1.80 of the Rules,⁷⁰ the base forfeiture amount for each violation involving the marketing of unauthorized equipment is \$7,000. Further, we have found that each instance of marketing of an unauthorized model constitutes a separate and continuing violation.⁷¹ Consistent with recent precedent, we propose a total forfeiture of \$14,000 for the marketing of the two unverified transmitters.⁷² With respect to the marketing of the two certified Broadcast Warehouse amplifiers under the Cybermax name, however, we propose to reduce the base forfeiture amount from \$7,000 per model to \$4,000 per model. Inter Tech's marketing of these amplifiers, which had previously been certified by Broadcast Warehouse, is similar to the marketing of mislabeled equipment, which we consider to be a less egregious violation and for which we have proposed a base forfeiture of \$4,000.⁷³ Accordingly, we propose a forfeiture of \$14,000 for the willful and repeated marketing of two unauthorized transmitter models, and \$8,000 for the willful and repeated marketing of two unauthorized amplifier models, for an aggregate forfeiture of twenty-two thousand dollars (\$22,000).

⁶⁸ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer*, 21 FCC Rcd at 1825; *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. denied*, 11 FCC 2d 193 (1967).

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

⁷⁰ 47 C.F.R. § 1.80.

⁷¹ See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873 (2006), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 1040 (2007); *Behringer* 21 FCC Rcd at 1827; *ACR Electronics, Inc.*, 19 FCC Rcd 22293, 22302 (2004), *forfeiture ordered*, 21 FCC Rcd 3698 (2006); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, 19 FCC Rcd 24509 (2004) (all finding that the marketing of each separate unauthorized model constitutes a separate violation).

⁷² See, e.g., *Behringer*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd at 1827 (proposing a base forfeiture of \$7,000 per model before upward adjustment); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (proposing a base forfeiture of \$7,000 per model for the marketing of unauthorized equipment prior to upward adjustment); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004) (proposing a base forfeiture of \$7,000 per model for a total proposed forfeiture of \$35,000).

⁷³ See, e.g., *Proxim Wireless Corporation*, 24 FCC Rcd 1145, 1150 (Enf. Bur., Spectrum Enf. Div. 2009) (forfeiture paid); *Data Capture Solutions, Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 23 FCC Rcd 12743, 12747 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Ryzex, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 878, 884 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *DBK Concepts, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2870, 2875 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *Multi-Tech Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17824 (Enf. Bur., Spectrum Enf. Div. 2008) (all proposing reduced forfeitures of \$4,000 per model for marketing unauthorized equipment that violates labeling rules only).

IV. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act⁷⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷⁵ Inter Tech FM **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-two thousand dollars (\$22,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

19. **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 and Order*, Inter Tech FM **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Inter Tech FM will also send electronic notification on the date said payment is made to Neal.McNeal@fcc.gov and Nissa.Laughner@fcc.gov.

21. 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.

22. 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.

⁷⁴ 47 U.S.C. § 503(b).

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

23. **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 Chris Rea, Inter Tech FM, 8725 W. Sunset Road, Suite 200, Niles, Illinois 60714.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau