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

In the Matter of	)	
	)	File No. EB-09-SE-098
Uniden America Corporation	)	NAL/Acct. No. 201032100003
	)	FRN 0001657303

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 3, 2009 **Released: November 5, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find Uniden America Corporation ("Uniden") apparently liable for a forfeiture in the amount of twenty-three thousand dollars ($23,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act")[1] and Section 2.803(g) of the Commission's Rules ("Rules").[2] The noted apparent violations involve Uniden's marketing of non-compliant General Mobile Radio Service ("GMRS") transmitters.

II. BACKGROUND

2. Section 95.183(a)(4) of the Rules[3] prohibits GMRS operators from transmitting coded messages and messages with hidden meanings. The Enforcement Bureau's Spectrum Enforcement Division ("Division") received information indicating that Uniden was marketing GMRS transmitters equipped with voice scrambling technology. After its receipt of this information, the Division began an investigation. In pursuance of the investigation, the Division conducted internet research on April 8, May 5 and May 6, 2009, on Uniden's website, www.uniden.com. During the internet research, Division staff observed that Uniden was offering for sale the following GMRS transmitter models described as having a "Voice Scramble Security" feature: the Uniden GMR1048-2CK, GMR1448-2CK, GMR1558-2CK, GMR1588-2CK, GMR-1595-2CK, GMR2059-CK, GMR-2089-2CK and GMR2099-2CK. All of those transmitters operate both on frequencies assigned to the GMRS and on frequencies assigned to the Family Radio Service ("FRS"). The Division's examination of the user manuals for these models indicated that, for four models (GMR1448-2CK, GMR2059-CK, GMR-2089-2CK and GMR2099-2CK), voice scrambling operates only on FRS frequencies. However, for the other four models (GMR1048-2CK, GMR1558-2CK, GMR1588-2CK and GMR-1595-2CK), the user manuals did not indicate that voice scrambling is limited to FRS frequencies.

3. The Division directed a letter of inquiry ("LOI") to Uniden on June 25, 2009.[4] Uniden responded on August 24, 2009.[5] In its response, Uniden stated that its voice scrambling feature is

---

[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. § 2.803(g).

[3] 47 C.F.R. § 95.183(a)(4).

[4] Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Uniden America Corporation. (June 25, 2009).

commonly called voice inversion, which is "a process that interchanges high and low speech frequencies by removing the carrier frequency and [transmitting] only one sideband in a communications link. This renders the speech unintelligible unless received by a device capable of replacing the carrier frequency exactly."[6]

4. Uniden's LOI response indicates that it began marketing[7] the following transmitter models on or before November 1, 2005: GMR1048-2CK, GMR1558-2CK, GMR1588-2CK and GMR-1595-2CK (collectively designated by Uniden as "UAC Products"), which were manufactured at its factory in China.[8] The GMR1048-2CK appears to be certified under the FCC ID AMUOT016; the GMR1558-2CK under the FCC ID AMWUT017; and the GMR1588-2CK and GMR-1595-2CK under the FCC ID AMUOT018. All of Uniden's UAC Products were equipped with a voice scrambling feature which was available on GMRS frequencies.[9] Uniden's Personal Telephone Communications ("PTC") Division, which sells to major retailers and distributors, sold and distributed large quantities of UAC Products during 2006 and 2007.[10] Uniden states that initially it believed its UAC Products were compliant with the Commission's Rules but it revisited the issue after one of the Telecommunications Certification Bodies ("TCBs") it used for testing its devices expressed concern in mid-2006 about the voice scrambling feature.[11] On August 24, 2006, Uniden consulted Commission staff and received a "verbal clarification that voice inversion scrambling on GMRS channels" is not permitted by the Commission's Rules.[12] Uniden states that Commission staff requested that it make an official inquiry through the FCC's Knowledge Database ("KDB") system.[13] On October 1, 2006, Uniden states that it received a newsletter from another of the TCBs that it used for testing which included a clarification consistent with the staff opinion.[14] On April 16, 2007, the Commission's staff published an interpretation of its rules advising that voice scrambling constitutes coded messaging and, therefore, is not allowed for GMRS devices.[15] Uniden states that, by this date, it had discontinued the manufacture of the UAC Products and replaced them with models that did not have the voice inversion feature of the UAC products.[16] Uniden acknowledges, however, that its PTC Division "continued to sell through [its]

(Continued from previous page)
[5] Letter from Gregg P. Skall, Counsel for Uniden America Corporation., to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 24, 2009) ("LOI Response").

[6] LOI Response at 4.

[7] Marketing, as defined in 47 C.F.R. § 2.803(e)(4), "includes 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."

[8] LOI Response at 1-2, 5.

[9] *Id.* at 1-2.

[10] *Id.* at 5, Attachment 2. Uniden requested confidential treatment of the attachments to its LOI Response, including the exact number of GMRS devices sold and distributed in the United States. *Id.* at 1. Accordingly, this information is discussed in an Appendix, which we are treating as confidential at this time. The request for confidentiality remains pending.

[11] *Id.* at 2.

[12] *Id.* at 1-2.

[13] *Id.* at 3.

[14] *Id.*

[15] *Id.* *See* Office of Engineering and Technology KDB Publication number 791760 at www.fcc.gov/labhelp.

[16] *Id.*

inventory of UAC Products until it was depleted in December 2007."[17] Uniden also indicates that its Product Service and Support (PSS) Division, which sells exclusively to online customers, did not receive notice that the UAC Products were being discontinued and continued to sell small quantities of those devices during 2008 and 2009.[18]

5. Uniden filed supplementary LOI responses on September 22[19] and October 7, 2009.[20] Uniden argues in the latter response that that the following factors mitigate its violations: its efforts to comply with the Rules "in the face of strong competitive pressures"; its resulting loss of market share; the small quantities of UAC devices marketed during 2008 and 2009; Uniden's efforts to obtain a rule clarification; and its history of compliance.[21] Uniden contends that $7,000 would be the appropriate base forfeiture amount in this case and that this amount should be reduced to $3,500.[22]

III. DISCUSSION

A. Uniden Apparently Marketed Noncompliant Devices

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(g) provides in pertinent part:

> The provisions in paragraphs (b) through (f) of this section do not apply to radio frequency devices that could not be authorized or legally operated under the current rules. Such devices 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.

Additionally, Section 95.183(a)(4) of the Rules provides in pertinent part that "[a] station operator must not communicate … coded messages or messages with hidden meanings."

7. Uniden admits that it marketed three models of transmitters equipped with voice scrambling technology that functioned on GMRS frequencies and, therefore, were not compliant with Section 183(a)(4) of the Rules. We, accordingly, find that Uniden apparently marketed non-compliant radio frequency devices, in willful[23] and repeated[24] violation of Section 302(b) of the Act and Section 2.803(g) of the Rules.

---

[17] LOI Response at 3.

[18] *Id.* at 3, Attachment 2.

[19] Letter from Gregg P. Skall, Counsel for Uniden America Corporation, to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 2s, 2009) ("Second LOI Response").

[20] Letter from Gregg P. Skall, Counsel for Uniden America Corporation, to Marlene H. Dortch Secretary,, Federal Communications Commission (October 7, 2009) ("Third LOI Response"), at 2-3

[21] *Id.* at 2-3

[22] *Id.* at 3.

[23] 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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

B. Proposed Forfeiture

8. Section 503(b) of the Act[25] 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. 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."[26]

9. Section 503(b)(6) of the Act[27] 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 Uniden'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 period.[28]

10. Under the *Forfeiture Policy Statement*[29] and Section 1.80 of the Rules,[30] the base forfeiture amount for the marketing of unauthorized equipment is $7,000. Uniden apparently marketed three distinct models of GMRS transmitters that were equipped with the voice scrambling feature: the model certified under FCC ID AMWUT018 (designated by Uniden as models GMR1588-2CK and GMR1595-2CK); the model certified under FCC ID AMWUT017 (designated by Uniden as model GMR1558-2CK);and the model certified under FCC ID AMUOT016 (designated by Uniden as model GMR1048-2CK). Uniden argues that mitigating circumstances warrant limiting the base forfeiture amount to $7,000.[31] The Commission has found, however, that the marketing of each separate unauthorized or non-compliant model constitutes a separate violation subject to the $7,000 base forfeiture amount.[32] We find no basis for departing from this precedent in this case. We accordingly conclude that

(Continued from previous page)
[24] 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). *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

[25] 47 U.S.C. § 503(b).

[26] 47 U.S.C. § 503(b)(2)(E).

[27] 47 U.S.C. § 503(b)(6).

[28] *See* 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); *see also Behringer USA, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered,* Forfeiture Order, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *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, 9671-71 (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. den.,*11 FCC 2d 193 (1967); *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,* 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (*"B.E.A.*").

[29] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997) ("*Forfeiture Policy Statement*"), *recon. denied,* 15 FCC Rcd 303 (1999).

[30] 47 C.F.R. § 1.80.

[31] Third LOI Response at 3.

[32] *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) ("*San Jose*"); *Behringer,* 21 FCC Rcd at 1827; *ACR Electronics, Inc*., Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22293, 22302 (2004), *forfeiture ordered*, (continued….)

the base forfeiture amount of $7,000 is apparently warranted for each of Uniden's three models for a total proposed forfeiture of $21,000.

11. Based on the record before us, and having considered the statutory factors enumerated above, we believe that an upward adjustment of the $21,000 base forfeiture amount is warranted here. First, we believe that an upward adjustment is warranted in view of the substantial number of non-compliant devices Uniden imported, sold and distributed in the United States and the fact that the violations continued over a significant period.[33] Although Uniden argues that that it marketed only a small number of UAC Products in 2008 and 2009, as noted above, we can also consider Uniden's earlier conduct in determining the appropriate forfeiture amount. Uniden sold a very substantial number of UAC Products during 2006 and 2007, which warrants an upward adjustment. Further, we take into account Uniden's ability to pay a forfeiture in determining the appropriate forfeiture amount. As the Commission made clear in the *Forfeiture Policy Statement*, large or highly profitable entities, such as Uniden[34] could expect forfeitures higher than those reflected in the base amounts.[35] Finally, we find that Uniden's continued marketing of significant quantities of UAC Products through the end of 2007, well after Uniden received guidance from Commission staff that voice scrambling is prohibited in the GMRS, is egregious. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Uniden's proposed forfeiture should be upwardly adjusted from the base amount by $10,000 to $31,000.

12. Based on the record before us, and having considered the statutory factors enumerated above, we also believe that downward adjustment is also warranted. First, Uniden argues that it has a record of overall compliance. We agree and find that a downward adjustment of $5,000 is warranted on this basis. Uniden also argues that its conduct is mitigated by its efforts to comply with the Rules "in the face of strong competitive pressures," its resulting loss of market share, and its efforts to obtain a rule clarification. We find that this corrective action before the Commission notified Uniden of its violations warrants a downward adjustment. However, we must also take into account Uniden's continued marketing, via its PTC Division, of significant quantities of UAC Products through the end of 2007, well after Uniden received guidance from Commission staff that voice scrambling is prohibited in the GMRS,

(Continued from previous page)
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).

[33] *See, e.g., San Jose,* 21 FCC Rcd at 2876 (upwardly adjusting a proposed forfeiture based on the volume of non-compliant devices distributed, and the three-year span in which such devices were marketed); *B.E.A.,* 20 FCC Rcd at 3448 (upwardly adjusting a proposed forfeiture based on the volume of unauthorized devices distributed, and the five-year span in which such devices were marketed).

[34] The reported revenues for the year ending March 31, 2008, of Uniden's parent, Uniden Corporation, a Japanese company, were ¥ 6,300,000,000 (approximately $710,000,000). Stock Quote and Company Profile, Businessweek.com.

[35] Specifically, the Commission stated:

> [O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level .... For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100.

and the continued marketing by its PSS Division of smaller quantities during 2008 and 2009. Taking these facts into account, we find that Uniden's corrective action warrants a downward adjustment of $3,000. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Uniden's proposed forfeiture should be adjusted downward by a total of $8,000.

13. On the basis of the foregoing, we find that Uniden is apparently liable for a proposed forfeiture of $23,000.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,[36] Uniden, **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-three thousand dollars ($23,000) for marketing non-compliant GMRS transmitters in willful and repeated violation of Section 302(a) of the Act and Section 2.803(g) of the Rules.

15. **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, Uniden **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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. Uniden will also send electronic notification on the date said payment is made to Thomas.Fitz-Gibbon@fcc.gov.

17. 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.

18. 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.

[36] 47 C.F.R. § 0.111, 0.311 and 1.80.

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 Uniden America Corporation, 4700 Amon Carter Boulevard, Fort Worth, TX 76155, and to its attorney, Gregg P. Skall, Womble, Carlyle, Sandridge & Rice, LLC, Seventh Floor, 1401 I Street, NW, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau