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

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| In the Matter of | ) | |
| | ) | File No. EB-08-SE-1306 |
| R.F. Technologies, Inc. | ) | NAL/Acct. No. 201032100004 |
| | ) | FRN # 0014064299 |

# NOTICE OF APPARENT LIABILITY FOR FORFEITURE

**Adopted:** November 4, 2009 **Released:** November 6, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

## I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find R.F. Technologies, Inc. ("R.F. Technologies") apparently liable for a forfeiture in the amount of seven thousand dollars ($7,000) for willful and repeated violation 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 apparent violation involves R.F. Technologies' marketing of an unauthorized radio frequency device.

## II. BACKGROUND

2. R.F. Technologies sells and services products, such as the RF400BP, that are designed for business drive-thru facilities. The RF400BP, a portable belt-pack transceiver, is connected to a headset and is typically worn by fast food restaurant employees to communicate with drive-thru customers. The Enforcement Bureau's Spectrum Enforcement Division ("Division") received a complaint alleging that R.F. Technologies was marketing[3] the RF400BP, which bore no FCC Identifier and did not appear to have been authorized by the Commission. The Bureau's review of Commission records revealed no equipment authorization for this device.

3. On March 19, 2009, the Division issued a letter of inquiry ("LOI") to R.F. Technologies concerning the authorization of the device and the company's marketing of the device within the United States.[4] In response, R.F. Technologies stated that it had engaged a research firm to perform the necessary functions to obtain FCC approval for the RF400BP and averred that the firm completed testing

[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. § 2.803(a).

[3] Marketing, as defined in 47 C.F.R. § 2.803(e)(4), "includes, includes sale or lease, or offering for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease."

[4] *See* letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Babak Noorian, President, R.F. Technologies (March 19, 2009).

of the device for FCC Part 90 compliance with favorable results.[5] According to R.F. Technologies, however, due to mistake and poor communication, an equipment certification for the RF400BP was never obtained.[6] R.F. Technologies identifies Gigatek as the manufacturer of the R.F. Technologies-branded device.[7] R.F. Technologies stated that it began importing the RF400BP in March 2007, began advertising and selling the device within the United States in July 2007, and ceased all marketing of the device on March 23, 2009.[8] The company sold or leased 256 units during this period and has no units remaining in inventory.[9] R.F. Technologies further stated that it had received no complaints indicating that the device has caused interference to communications.[10]

## III. DISCUSSION

### A. Marketing of Unauthorized Equipment

4. 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 Rules provides:

> 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 radio frequency device[11] unless … [i]n the case of a device that is 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.

The RF400BP is a portable belt-worn device that wirelessly transmits and receives radio frequency signals. As an intentional radiator,[12] Section 15.201 of the Rules required that the device be certificated by the Commission prior to marketing.[13]

5. The Division's investigation revealed no equipment authorization for the RF400BP. Although R.F. Technologies engaged a research firm to obtain an equipment certification for the

[5] *See* letter from Holly A. Reese, Counsel for R.F. Technologies, Inc., to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau (April 15, 2009) ("LOI Response") at 2-3. Upon further inquiry by the Division, R.F. Technologies produced test data to support its assertion that the device met Part 90 technical requirements.

[6] *Id.* at 2. R.F. Technologies notes that it did obtain an equipment authorization, and thus an FCC Identifier, during this period for a different portable transceiver. *Id.*

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

[8] *Id.*

[9] *Id.*

[10] *Id.* at 4.

[11] 47 C.F.R. § 2.801 defines a radiofrequency device as "any device which in it its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means."

[12] An intentional radiator is "[a] device that intentionally generates and emits radio frequency energy by radiation or induction." 47 C.F.R. § 15.3 (o).

[13] 47 C.F.R. § 15.201(b); *see also* 47 C.F.R. §§ 2.1031-2.1060.

RF400BP, it admits that no certification was obtained for the device.[14] It was incumbent upon R.F. technologies to ensure that it obtained the certification prior to marketing the device. Further, the Commission has long held FCC licensees and regulatees responsible for the acts and omissions of their agents and contractors.[15] R.F. Technologies also admits that it began importing its RF400BP transceiver on March 7, 2007, and advertised, distributed, and sold the device within the United States between July 2007 and March 23, 2009.[16] Accordingly, we find that R.F. Technologies apparently marketed an unauthorized radio frequency device in willful[17] and repeated[18] violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

**B. Proposed Forfeiture**

6. Section 503(b) of the Act 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.[19] 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."[20]

7. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a Notice of Apparent Liability.[21] Section 503(b)(6) does not, however, bar the Commission from assessing whether R.F. Technologies' 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.[22] Thus, while we may consider the fact that R.F. Technologies' conduct

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[14] LOI Response at 2.

[15] *See Eure Family Ltd. Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861 (2002); *VIA Technologies, Inc*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 19526, 19529 (Enf. Bur., Spectrum Enf. Div. 2004).

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

[17] 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, 4388 (1991) ("*Southern California*").

[18] 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 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

[19] 47 U.S.C. § 503(b).

[20] 47 U.S.C. § 503(b)(2)(E); s*ee also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

[21] 47 U.S.C. § 503(b)(6).

[22] *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,* 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,* 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

commenced more than one year ago, the forfeiture amount we propose herein relates only to R.F. Technologies' apparent violations that have occurred within the past year.

8. Pursuant to the Commission's *Forfeiture Policy Statement*[23] and Section 1.80 of the Rules,[24] the base forfeiture amount for the marketing of unauthorized equipment is $7,000. Section 503(b)(2)(D) of the Act authorizes the Commission to assess a maximum forfeiture of $16,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of $112,500 for any single continuing violation.[25]

9. Based on the record before us, and having considered the statutory factors set forth above, we conclude that the base amount of $7,000 is warranted concerning the marketing of the RF400BP. Accordingly, we propose a $7,000 forfeiture against R.F. Technologies for marketing an unauthorized radio frequency device in willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

## IV. ORDERING CLAUSES

10. Accordingly**, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, [26] R.F. Technologies, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars ($7,000) for marketing an uncertified radio frequency device in willful and repeated violation of Section 302(a) of the Act and Section 2.803(a) of the Rules.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, R.F. Technologies, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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

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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) (forfeiture paid).

[23] *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 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

[24] 47 C.F.R. § 1.80.

[25] 47 U.S.C. § 503(b)(2)(D). 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 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,* 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts 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,* 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from $10,000/$75,000 to $11,000/$87,500). The most recent inflation adjustment took effect September 2, 2008. *See* 73 Fed. Reg. 44663-5.

[26] 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

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. R.F. Technologies, Inc. will also send electronic notification on the date said payment is made to Kevin.Pittman@fcc.gov and JoAnn.Lucanik@fcc.gov.

13. 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. The response should also be e-mailed to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau, FCC, at Kevin.Pittman@fcc.gov, and JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC, at JoAnn.Lucanik@fcc.gov.

14. 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 ("GAAP"); 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.

15. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Holly A. Reese, Counsel for R.F. Technologies, Inc., Goldenberg Heller Antognoli & Rowland, P.C., 2227 South State Route 157, P.O. Box 959, Edwardsville, Illinois 62025.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau