

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

In the Matter of
Flatcode Communications, Inc.
Bronx, New York
File No.: EB-11-PA-0121
Citation No.: C201132400003

CITATION
ILLEGAL PROGRAMMING OF UNAUTHORIZED FREQUENCIES

Adopted: June 27, 2011 Released: June 28, 2011

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official CITATION issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended ("Communications Act"), to Flatcode Communications, Inc. ("Flatcode") for programming into a transmitter frequencies for which the operator of the transmitter was not authorized, in violation of section 90.427(b) of the Commission's Rules ("Rules").

2. Flatcode should take immediate steps to come into compliance and to avoid any recurrence of this misconduct. As explained below, and as provided in the Communications Act, future violations of the Rules in this regard may subject your company to substantial monetary penalties, seizure of equipment, and criminal sanctions.

II. BACKGROUND

3. On March 15, 2011, agents from the Enforcement Bureau's Philadelphia Office conducted an investigation and found that Flatcode had programmed radio transmitting equipment for the Sheraton Four Points ("Sheraton") in Allentown, Pennsylvania with the General Mobile Radio Service frequency 462.550 MHz for which the Sheraton was not authorized. A representative for Flatcode later admitted to the FCC agent during a telephone conversation that Flatcode programmed the Sheraton's two-way portable radios.

1 47 U.S.C. § 503(b)(5).

2 47 C.F.R. § 90.427(b).

3 The General Mobile Radio Service (GMRS) is a land-mobile radio service available for short-distance two-way communications to facilitate the activities of an adult individual and his or her immediate family members. See 47 C.F.R. §95.179. A non-individual (any entity that is not an individual – such as corporations, partnerships, associations, governmental units etc.) is not eligible to obtain a license for a new GMRS system.

III. APPLICABLE LAW AND VIOLATIONS

4. Section 90.427(b) of the Rules states that “[e]xcept for frequencies used in accordance with § 90.417, no person shall program into a transmitter frequencies for which the licensee using the transmitter is not authorized.” By programming radio transmitters with frequencies for which the Sheraton was not authorized, Flatcode violated section 90.427(b) of the Rules.

IV. FUTURE COMPLIANCE

5. If, after receipt of this Citation, Flatcode violates the Communications Act or the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures of up to \$16,000 for each such violation or each day of a continuing violation and up to \$112,500 for any single act or failure to act.⁴ In addition, violations of the Communications Act or the Rules can result in seizure of equipment through *in rem* forfeiture actions, as well as criminal sanctions, including imprisonment.⁵

6. Flatcode may respond to this Citation within thirty (30) days after the release date of this Citation either through (1) a personal interview at the closest FCC office, or (2) a written statement. Any written statements should specify what actions have been taken by Flatcode to ensure that it does not program radio transmitters with unauthorized frequencies in the future. Please reference file number EB-11-PA-0121 when corresponding with the Commission.

7. Under the Privacy Act of 1974, any statement or information provided by you may be used by the Commission to determine if further enforcement action is required.⁶ Any knowingly or willfully false statement, or concealment of any material fact, made in reply to this Citation is punishable by fine or imprisonment.⁷ Please also note that section 1.17 of the Rules requires that you provide truthful and accurate statements to the Commission.⁸

V. CONTACT INFORMATION

8. The closest FCC Office is the New York Office in New York. You may contact Dan Noel by telephone, (212) 337-1865, to schedule a personal interview, which must take place within thirty (30) days after the release date of this Citation. You should send any written statement within thirty (30) days after the release date of this Citation to: Federal Communications Commission, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047.

9. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need including as much detail as you can. Also

⁴ See 47 U.S.C. § 401, 501, 503; 47 C.F.R. § 1.80(b)(3). This amount is subject to further adjustment for inflation (*see id.* § 1.80(b)(5)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

⁵ See 47 U.S.C. § 510.

⁶ See Privacy Act of 1974, 5 U.S.C. § 552a(e)(3).

⁷ See 18 U.S.C. § 1001 *et seq.*

⁸ 47 C.F.R. § 1.17 (“... no person subject to this rule shall; (1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and (2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”).

include a way we can contact you if we need more information. Please allow at least five (5) days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

To request this document in accessible formats for people with disabilities (braille, large print, electronic files, audio format): 202-418-0530 (voice), 202-418-0432 (tty).

VI. ORDERING CLAUSES

10. **IT IS ORDERED** that a copy of this Citation shall be sent both by First Class U.S. Mail and certified mail to Flatcode Communications, Inc., 1954 Jerome Avenue, Bronx, New York 10453.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau