

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

In the Matter of)	File No: EB-11-SJ-0055
Argos Net, Inc.)	File No: EB-11-SJ-0062
Caguas, PR)	NAL/Acct. No.: 201232680002
)	FRN: 0021525951
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 23, 2012

Released: March 23, 2012

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Argos Net, Inc. (Argos), an operator of Unlicensed National Information Infrastructure (U-NII) transmission systems in Puerto Rico, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 15.1(b) of the Commission's rules (Rules)² by operating intentional radiators not in accordance with Part 15 of the Rules³ and without a license. We conclude that Argos is apparently liable for forfeiture in the amount of twenty five thousand dollars (\$25,000). We further order Argos to submit a statement under penalty of perjury certifying that it is now operating its U-NII systems in compliance with the Rules and applicable authorizations.

II. BACKGROUND

2. Part 15 of the Rules allows devices employing relatively low-level radiofrequency (RF) signals to be operated without individual licenses, as long as their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified level.⁴ Such devices must be authorized and operated in accordance with the Part 15 Rules.⁵ For example, Section 15.5 of the Rules provides that operation of an intentional radiator must not cause harmful interference and, if harmful interference occurs, the operation of the device must cease.⁶ Operating a Part 15 device in a manner that is inconsistent with the Part 15 Rules requires a license pursuant to Section 301 of the Act. Such operation without a license violates that provision.⁷

3. As part of its ongoing coordination efforts with the Federal Aviation Administration (FAA), the Enforcement Bureau received a complaint about radio emissions causing interference to the FAA's Terminal Doppler Weather Radar (TDWR) installation serving the San Juan International Airport.

¹ 47 U.S.C. § 301; *see also* 47 C.F.R. § 15.407.

² 47 C.F.R. § 15.1(b).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, First Report and Order, 4 FCC Rcd 3493 (1989).

⁵ 47 C.F.R. §§ 15.1(a), 15.5.

⁶ 47 C.F.R. § 15.5.

⁷ 47 C.F.R. § 15.1(b).

TDWR installations exist at 45 major airports in the United States and Puerto Rico and assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft.⁸

4. On November 18, 2011, an agent from the Enforcement Bureau's San Juan Office (San Juan Office), in conjunction with an FAA engineer, monitored radio transmissions centered on the frequency 5605 MHz in Gurabo, Puerto Rico. These transmissions on the frequency 5605 MHz included a Service Set Identifier (SSID) of "Lenny" and a Media Access Control (MAC) address of "00:15:6D:EC:2E:B5." That same day, the agent used direction-finding techniques to locate the source of the transmissions on the frequency 5605 MHz to a communications site in Gurabo, Puerto Rico, consisting of two antenna structures.

5. On November 29, 2011, an agent from the San Juan Office interviewed the president of Argos, who admitted that Argos owned a device manufactured by Ubiquity with a MAC address of "00:15:6D:EC:2E:B5" and an SSID of "Lenny" located at the Gurabo communications site. Argos stated that the "Lenny" device was now operating on the frequency 5715 MHz, not 5605 MHz. Argos supplied information about the device, which stated it was a Ubiquity model Rocket M5. The Rocket M5 model is certified for use as a Part 15 intentional radiator only in the 5745-5825 MHz band⁹ and is not certified as a U-NII intentional radiator.¹⁰

6. On December 8, 2011, an agent from the San Juan Office met Argos's president and technician at the Gurabo communications site. The agent observed the Rocket M5 known as "Lenny" and confirmed it was operating on the frequency 5715 MHz. The agent stressed to Argos that Part 15 devices must be operated consistent with Part 15 Rules and the devices' equipment authorizations and must not cause harmful interference to TDWR systems.

7. On December 21, 2011, based on a complaint filed by the FAA of intermittent interference to the TDWR serving the San Juan International Airport, an agent from the San Juan Office used direction finding techniques to locate the source of radio transmissions centered on the frequency 5620 MHz to a communications site located on State Road 795 in Caguas, Puerto Rico. The transmissions on 5620 MHz included an SSID of "UBNT AP Caguas 2" and a MAC address of "00:15:6D:E9:73:DD."

8. On December 22, 2011, Argos admitted that it owned a Ubiquity NanoStation5 device with an SSID of "UBNT AP Caguas 2" and a MAC address of "00:15:6D:E9:73:DD" at the Caguas communications site. Argos stated on December 22, 2011 that it was operating on the frequency 5620 MHz due to technician error. The NanoStation5 model is certified for use as a Part 15 intentional radiator only in the 5745-5825 MHz band¹¹ and is not certified as a U-NII intentional radiator.¹² According to

⁸ MIT Lincoln Laboratories, <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited Jan. 26, 2011).

⁹ Agents from the San Juan Office were unable to determine the FCC IDs for the Rocket M5's in use. However, there are five FCC IDs associated with Ubiquiti Rocket M5 devices: SWX-M5, SWX-M5B, SWX-M5G, SWX-M5L and SWX-M5D. All of these FCC IDs are certified as Part 15C devices and are authorized to operate only in the 5745 MHz – 5825 MHz band.

¹⁰ 47 C.F.R. § 15.403(s) (defining U-NII devices as "[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions."). Although Argos's device was not authorized to operate in the U-NII bands, it is subject to the U-NII rules (47 C.F.R. 15.401-15.407) because Argos operated them as U-NII devices on U-NII frequencies.

¹¹ There is only one FCC ID for the NanoStation5, SWX-NS5. This FCC ID is certified as a Part 15C device and is authorized to operate only in the 5745 MHz – 5825 MHz band.

Commission records, Argos does not hold licenses to operate on the frequencies, 5605 MHz, 5620 MHz, or 5715 MHz in Puerto Rico.

III. DISCUSSION

9. Section 503(b) of the Act¹³ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. 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.¹⁴ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act¹⁵ and the Commission has so interpreted the term in the Section 503(b) context.¹⁶ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁸

A. Unlicensed Operations

10. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.¹⁹ Part 15 of the Rules,²⁰ however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to Section 15.1(b) of the Rules, “the operation of an intentional or unintentional radiator that is not in accordance with the regulations in [Part 15] must be licensed pursuant to the provisions of Section 301 of the Communications

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¹² Although Argos’s device was not authorized to operate in the U-NII band, it is subject to the U-NII rules (47 C.F.R. 15.401-15.407) because Argos operated it as a U-NII device on a U-NII frequency. *See supra* note 10.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 U.S.C. § 312(f)(1).

¹⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503)... As defined ... ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

¹⁶ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California Broadcasting Co.*).

¹⁷ *See, e.g., Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁹ 47 U.S.C. § 301.

²⁰ *See* 47 C.F.R. §§ 15.1 *et seq.*

Act...²¹ Thus, if an intentional radiator fails to comply with all of the applicable conditions set forth in Part 15 of the Rules, it is no longer covered by the unlicensed provisions of those Rules and must obtain an individual license pursuant to Section 301 of the Act.

11. On November 18, and December 8 and 21, 2011, as described above, agents from the San Juan Office observed Argos operate two Part 15 intentional radiators, a Ubiquity Rocket M5 on the center frequency of 5605 MHz and 5715 MHz and a Ubiquity NanoStation5 on the center frequency of 5620, from two communications sites in Puerto Rico.²² Argos's two Ubiquity devices are not certified for use on the frequencies 5605 MHz, 5620 MHz, and 5715 MHz. Therefore, Argos's operations did not comply with either of the device's equipment authorizations or Part 15 requirements and thus required a license. According to Commission records, Argos does not hold a license to operate on the frequencies 5605 MHz, 5620 MHz, or 5715 MHz anywhere in Puerto Rico. Thus, based on the evidence before us, we find that Argos apparently willfully²³ and repeatedly violated Section 301 of the Act and Section 15.1(b) of the Rules by operating unlicensed radio transmitters on November 18, and December 8 and 21, 2011 from two different sites in Puerto Rico.

B. Proposed Forfeiture Amount and Reporting Requirement

12. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.²⁴ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²⁵ Because Argos operated two unlicensed devices at two different locations on different dates, we propose a \$10,000 forfeiture for each location. In addition, Argos's operation of its unlicensed device at the Caguas site after being warned on the importance of operating U-NII devices consistent with the Rules and the equipment authorizations demonstrates a deliberate disregard for the Commission's requirements. Thus, we find an upward adjustment in the forfeiture amount of \$5,000 for the unlicensed operation on December 21, 2011 is warranted. Although we could impose larger upward adjustments for Argos's apparent violations, we decline to do so, based on the particular circumstances of this case. We caution Argos and other U-NII service providers, however, that we may do so in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent. Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Argos is apparently liable for a forfeiture of \$25,000 for violations of Section 301 of the Act and Section 15.1(b) of the Rules.

13. Finally, we order Argos to submit a written statement, pursuant to Section 1.16 of the Rules,²⁶ signed under penalty of perjury by an officer or director of Argos stating that Argos is now operating all of its U-NII devices in compliance with their equipment authorizations and the Rules. This

²¹ 47 C.F.R. § 15.1(b).

²² Argos also admitted to operating a Ubiquity NanoStation5 on the frequency 5620 MHz on December 22, 2010.

²³ Although Argos contends it operated on the frequency 5620 MHz due to technician error, violators can be held liable for violations resulting from mistakes. See *Tidewater Communications LLC*, Order on Review, 25 FCC Rcd 1675, 1676 (2010).

²⁴ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ 47 C.F.R. § 1.16.

statement must be provided to the San Juan Office at the address listed in paragraph 19 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Commission's rules, Argos Net, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act and Section 15.1(b) of the Commission's rules.²⁷

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Argos Net, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. **IT IS FURTHER ORDERED** that, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Argos Net, Inc. **SHALL SUBMIT** a written statement as described in paragraph 13 to the San Juan Office listed below.

17. Argos Net, Inc. is **HEREBY NOTIFIED** that its operation of a Ubiquiti Rocket M5 and Nanostation5 resulted in harmful interference to the FAA's TDWR system that serves the San Juan International Airport. Argos Net, Inc. is **HEREBY WARNED** that any further operation of any U-NII device, including the Ubiquiti Rocket M5 and Nanostation5, on any frequency, and at any location, that results in interference to the FAA's TDWR system serving the San Juan International Airport may be considered a willful violation of Section 333 of the Act, which prohibits willful interference to any radio communication of any station licensed or authorized under the Act or operated by the United States Government.²⁸

18. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN 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. 20554.²⁹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Argos Net, Inc. will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

19. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

²⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 15.1(b).

²⁸ 47 U.S.C. § 333.

²⁹ See 47 C.F.R. § 1.1914.

to Sections 1.80(f)(3) and 1.16 of the Rules.³⁰ The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, US Federal Building, Room 762, San Juan, PR, 00918-1731 and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

20. 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.

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Argos Net, Inc., Oficina #212, Calle Acosta #32, Caguas, PR, 00725.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent
San Juan Field Office
South Central Region
Enforcement Bureau

³⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).