

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

In the matter of)	
)	
Skywave Electronics, Inc.)	File Number: EB-00AT-289
1205 N. Horace Ave.)	
Rockford, IL 61101)	NAL/Acct. No.: X3248003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 9, 2000

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Skywave Electronics, Inc. (“*Skywave*”) has apparently violated Section 302 of the Communications Act of 1934, (“the Act”), as amended¹, and Section 2.907 of the Commission’s rules² by marketing a non-compliant device for use in the FM broadcast band. We conclude that *Skywave* is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. Skywave Electronics, Inc. was issued a Grant of Equipment Authorization on August 18, 1998, for the manufacture and distribution of a low power transmitter device, model SKY-2000 Digital FM Transmitter, (FCC Identifier NX3SKY2000). The device was later modified and an updated Grant of Equipment Authorization was issued on July 13, 1999.

3. On August 6, 1999, an agent from the Enforcement Bureau’s Denver Field Office conducted an investigation into the apparent over-powered operation of a low power FM transmitter. The suspect unit, a SKY-2000 digital FM transmitter, manufactured by Skywave Electronics, Inc., Rockford, IL, was located using a Commission mobile digital direction finding

¹ 47 U.S.C. § 302

² 47 C.F.R. § 2.907

("MDDF") vehicle. Field measurements of the suspect transmitter determined it to be operating at 29 times the legal value that is authorized by Section 15.239 Commission rules³.

4. As a result of the Denver Field Office investigation, the FCC's Office of Engineering and Technology Laboratory (OET) requested and obtained two sample transmitters from *Skywave* to be evaluated for compliance. These units were inspected and evaluated by OET and one of the units failed to meet the emission requirements for the grant issued. An Official Citation was issued on October 5, 1999, for marketing a device that operated in violation of the Commission's rules.⁴

5. On September 28, 1999, agents from the Enforcement Bureau's Atlanta Field Office conducted an investigation into the marketing of low power FM transmitters as a result of local news reports featuring the transmitters. Agents found several non-compliant SKY-2000 FM transmitters manufactured and distributed by *Skywave* being operated throughout the local Atlanta area.

6. On September 28, 1999, during an inspection of a SKY-2000 transmitter, Mr. Daniel M. Larson, President of Skywave Electronics, Inc., advised an agent of the Atlanta Field Office, in a telephone conversation, that all units shipped from the *Skywave* after July 13, 1999 were in compliance with the new grant issued on July 13, 1999. However, FCC agents obtained evidence that several non-compliant units were shipped beyond the July 13, 1999 date.

III. DISCUSSION

7. Mr. Daniel M. Larson, as the President of Skywave Electronic, Inc., is responsible for knowledge of, and compliance with, applicable sections of the Commission's rules. Section 2.907⁵ defines certified equipment based on representations and test data submitted by the applicant. This certification attaches to all units subsequently marketed by the grantee. Section 15.239⁶ limits the power output of a low power FM transmitter to 250 microvolts per meter at 3 meters.

8. Beginning on September 28, 1999, FCC agents from the Atlanta Field Office located and measured the emissions of eleven low power transmitters manufactured and distributed by

³ 47 C.F.R. § 15.239

⁴ 47 C.F.R. § 15.239

⁵ 47 C.F.R. § 2.907

⁶ 47 C.F.R. § 15.239

Skywave and found all to greatly exceed the authorized limits of Section 15.239⁷ of the Commission's rules.

9. Section 503(b) of the Act, 47 U.S.C. § 503(b)(1),⁸ provides that any person who willfully⁹ and repeatedly¹⁰ fails to comply with the terms and conditions of the Commission's rules shall be liable for a forfeiture penalty. Based on the above evidence, we find that *Skywave* willfully and repeatedly violated Section 302 of the Act, Sections 302 and 2.907 of the Commission's rules¹¹.

10. Pursuant to *the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), the base forfeiture amounts are \$7,000 for the manufacture and distribution of non-compliance Part 15 devices. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹² *Skywave's* violations were repeated and willful. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

⁷ 47 C.F.R. § 15.239

⁸ 47 U.S.C. § 503(b)(1). *See also* Section 1.80(a)(1) and (2), 47 C.F.R. § 1.80(a)(1) and (2)

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to 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."

¹¹ Section 302 of the Act, 47 U.S.C. § 302 and 47 C.F.R. § 2.907

¹² 47 U.S.C. § 503(b)(2)(D). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act¹³, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules¹⁴, Skywave Electronics, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for violating Section 302 of the Act and Section 2.907 of the Commission's rules.¹⁵

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's rules¹⁶, within thirty days of the released date of this NOTICE OF APPARENT LIABILITY, Skywave Electronics, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X32480003.

14. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, Attn: Enforcement Bureau –TPSD, NAL/Acct. No. X3248003, and must include the NAL/Acct. No. X3248003.

15. 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.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

¹³ 47 U.S.C. § 503(b)

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80

¹⁵ Section 302 of the Act, 47 U.S.C. § 302 and 47 C.F.R. § 2.907

¹⁶ 47 C.F.R. § 1.80

¹⁷ See 47 C.F.R. § 1.1914

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Skywave Electronics, Inc., 1205 N. Horace Ave., Rockford, IL 61101.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office