

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Hightech CB Shop	)	File Number EB-05-TP-066
8391 U.S. 301 South,	)	NAL/Acct. No.200532700009
Jacksonville, Florida 32234	)	FRN 0013520705
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: May 24, 2005**

By the District Director, Tampa Field Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture ("NAL")*, we find that Hightech CB Shop ("Hightech") apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> and Section 2.803(a) of the Commission's Rules ("Rules")<sup>2</sup> by offering for sale a non-certified Citizens Band ("CB") transceiver.<sup>3</sup> We conclude, pursuant to Section 503(b) of the Act,<sup>4</sup> that Hightech is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

**II. BACKGROUND**

2. On May 9, 2001, the Commission's Tampa Office of the Enforcement Bureau ("Tampa Office") issued a Citation to Hightech for violation of Section 302(b) of the Act and Sections 2.803(a)(1)<sup>5</sup> and 2.815(b)<sup>6</sup> of the Rules by offering for sale RF linear amplifiers and non-certified CB transceivers at its CB shop located at 8391 U.S. 301 S., Jacksonville, Florida.

3. On December 13, 2004, the Tampa Office received a complaint about the marketing of illegal, non FCC certified devices by Hightech at its shop.

4. On February 4, 2005, agents from the Tampa Office visited the Hightech CB Shop and observed several radio transceivers offered for sale on display shelves. One of the agents examined one of the radios, a Connex 3300 HP, and observed that the device did not have any markings or labels that identified the radio as an FCC certified device. The agent told a shop employee that he was interested in making a purchase and requested more information about the radio. The shop employee identified the transceiver as a 10-Meter Amateur Radio, Connex 3300 HP model, and offered to sell the device to the agent for \$239.00. The shop employee stated that the Connex models could be easily modified to operate

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<sup>1</sup>47 U.S.C. § 302a(b).

<sup>2</sup>47 C.F.R. § 2.803(a).

<sup>3</sup>CB radio operation is confined to forty specified channels from 26.965 MHz to 27.405 MHz (carrier frequency).

<sup>4</sup>47 U.S.C. § 503(b).

<sup>5</sup>47 C.F.R. § 2.803(a)(1).

<sup>6</sup>47 C.F.R. § 2.85(b).

on CB frequencies, that the store accepted credit card payments, and that the radio could be delivered by mail.

5. On February 7, 2005, an agent from the Tampa Office again visited the Hightech CB Shop and requested information about the Connex 3300 HP transceiver. Shop employees offered to sell the Connex 3300 HP to the agent for \$239.00.

### **III. DISCUSSION**

6. Section 503(b) of the Act 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. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>7</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>8</sup>

7. 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.”<sup>9</sup> Section 2.803(a) of the Rules provides that: “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 . . . unless such device has been authorized by the Commission.”<sup>10</sup>

8. CB radio transceivers are subject to the equipment authorization procedure known as Certification and must be certified and properly labeled prior to being marketed or sold in the United States.<sup>11</sup> Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”<sup>12</sup> Section 95.655(a) of the Rules also states that

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<sup>7</sup>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’, 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 or any rule or regulation of the Commission authorized by this Act. . . .” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>8</sup>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.”

<sup>9</sup>47 U.S.C. § 302a(b).

<sup>10</sup>47 C.F.R. § 2.803(a).

<sup>11</sup>*See* 47 C.F.R. §§ 2.907, 2.927(a).

<sup>12</sup>47 C.F.R. § 95.603(c) [FCC 88-256], amended changing “type acceptance” to “certification” [FCC 98-58]. *See also Extended Coverage High Frequency Transceivers*, Public Notice 62882, 1996 WL 242469, available at <<[http://www.fcc.gov/Bureaus/Engineering\\_Technology/Public\\_Notices/1996/pnet6023.txt](http://www.fcc.gov/Bureaus/Engineering_Technology/Public_Notices/1996/pnet6023.txt)>> (OET, rel. May 13, 1996).

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no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).<sup>13</sup>

9. On May 9, 2001, the Tampa Office issued a Citation to Hightech for violation of Section 302(b) of the Communications Act, and Sections 2.803(a)(1) and 2.815(b) of Commission's Rules by, among other things, offering for sale a 10-Meter ARS radio that could be easily modified to operate on CB frequencies, *i.e.*, a non-certified CB transceiver. On February 4 and 7, 2005, an employee at the Hightech CB Shop offered to sell a non-certified CB transceiver, specifically a Connex 3300 HP, to an agent from the Tampa Office. On February 4, 2005, an employee at the shop told the agent that the Connex 3300 HP could be easily modified to operate on CB frequencies. Prior to the agent's visit to the shop, OET tested the Connex models 3300 and 3300 HP and determined that they were ARS transceivers that could be easily altered for use on CB frequencies. Accordingly, the Connex 3300HP is a CB transceiver that cannot be certified under the Rules.

10. Based on the evidence before us, we find that Hightech apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a) of the Rules by offering for sale non-certified CB transceivers.

11. Pursuant to Section 1.80(b)(4) of the Rules,<sup>14</sup> the base forfeiture amount for the marketing of unauthorized or non-compliant equipment is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b) (2) (D) of Act, which include 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 other such matters as justice may require.<sup>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Hightech is apparently liable for a \$7,000 forfeiture.

**IV. ORDERING CLAUSES**

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>16</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>17</sup> Hightech CB Shop **IS** hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this *NAL*, Hightech CB Shop **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251.

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<sup>13</sup>47 C.F.R. § 95.655(a).

<sup>14</sup>47 C.F.R. § 1.80(b) (4).

<sup>15</sup>47 U.S.C. § 503(b)(2)(D).

<sup>16</sup>47 U.S.C. § 503(b).

<sup>17</sup>47 C.F.R. §§ 0.111, 0.311, 1.80.

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Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Tampa Field Office, 2203 N. Lois Avenue, Suite 1215, Tampa, Florida 33607 within thirty days of the date of this *NAL* and **MUST INCLUDE THE NAL/Acct. No.** referenced above.

16. 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.

17. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to High Tech CB Shop, 8391 U.S. 301 South, Jacksonville, Florida, 32234.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow  
District Director  
Tampa Office  
South Central Region  
Enforcement Bureau

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<sup>18</sup>See 47 C.F.R. § 1.1914.