

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

In the Matter of	)	File No. EB-03-DL-099
	)	
Pilot Travel Centers, L.L.C.	)	NAL/Acct. No. 200532500001
	)	
Knoxville, Tennessee	)	FRN # 0006096010

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: November 18, 2004**

**Released: November 22, 2004**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Pilot Travel Centers, L.L.C. (“Pilot”) apparently liable for a forfeiture in the amount of one hundred twenty-five thousand dollars (\$125,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> Specifically, we find Pilot apparently liable for offering for sale radio frequency devices without the required Commission equipment authorization.

**II. BACKGROUND**

2. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy,<sup>3</sup> and prohibits, *inter alia*, the offering for sale of radio frequency devices to the extent such activity does not comply with those regulations. The purpose of this section is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market. The Commission carries out its responsibilities under Section 302 in two ways. First, the Commission establishes technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market complies with the technical requirements.<sup>4</sup> The equipment authorization program requires that equipment be tested either by the manufacturer or at a private test laboratory to ensure that it complies with the technical requirements. For a large number of devices, including Citizens Band (“CB”) radio transmitting equipment,<sup>5</sup> equipment may not be marketed within the United States unless it has been tested and found to comply with Commission technical requirements, granted Commission Certification, and properly labeled.<sup>6</sup> “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping,

<sup>1</sup>47 U.S.C. § 302a(b).

<sup>2</sup>47 C.F.R. § 2.803(a)(1).

<sup>3</sup>47 U.S.C. § 302a.

<sup>4</sup>47 C.F.R. Part 2, Subpart J.

<sup>5</sup>CB radio operation is confined to forty specified channels from 26.965 MHz to 27.405 MHz (carrier frequency).

<sup>6</sup>See 47 C.F.R. § 2.927(a).

and/or distribution for the purpose of selling or leasing or offering for sale or lease.<sup>7</sup>

3. Unlike CB radio transmitting equipment, 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>8</sup>

4. Despite these changes to the definition of a CB transmitter, Commission enforcement agents continued to encounter non-certified CB transmitters marketed as ARS transmitters. On May 13, 1996, the Commission’s Office of Engineering and Technology (“OET”) released a Public Notice “to clarify the Commission’s Rules regarding equipment that is intended to operate in various radio services in the high frequency radio spectrum, including ‘10-Meter’ Amateur Radio Service (ARS) equipment.”<sup>9</sup> The *Notice* stated that transmitters intended for operation on non-amateur frequencies must be approved prior to manufacture, importation or marketing. The *Notice* specifically included ARS transceivers designed “such that they can easily be modified by the users to extend the operating frequency range into the frequency bands” of the CB and other non-amateur radio services among those devices subject to equipment authorization procedures. The *Notice* also stated that the Commission considers these transceivers as intended to be operated on frequencies where the use of type accepted equipment is required “because of the simplicity of modifying them to extend their operating frequency range.”<sup>10</sup> The Commission’s Office of General Counsel (“OGC”) later released a letter on the importation and marketing of ARS transmitters, which clarified that such transmitters that “have a built-in capability to operate on CB frequencies and can easily be altered to activate that capability, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.<sup>11</sup>

5. From December 9, 2001 through May 6, 2003, the Commission received four complaints specifically naming Pilot Travel Centers as marketing non-certified CB transceivers. From August 2001 through September 2002, Enforcement Bureau field agents visited eleven Pilot retail outlets at the following locations: Sulphur Springs, Texas; Dallas, Texas; Weatherford, Texas; Brooks, Oregon; Casa Grande, Arizona; Quartzsite, Arizona; North Palm Springs, California; North Las Vegas, Nevada; Barstow, California; Boron, California; and Hesperia, California. At these locations, the stores displayed and offered for sale various models of non-certified CB transceivers marketed as ARS transmitters. Prior to the field visits, OET had tested all of these models and found each of them to be non-certified CB transceivers.

6. As a result of agent inspections of Pilot retail stores from December 2, 1999 to September 6, 2002, Enforcement Bureau Field Offices issued nine Citations to Pilot. The Bureau issued one Citation

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<sup>7</sup>47 C.F.R. § 2.803(a).

<sup>8</sup>47 C.F.R. § 95.603(c) [FCC 88-256], amended changing “type acceptance” to “certification” [FCC 98-58].

<sup>9</sup>*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) (“*Notice*”).

<sup>10</sup>*Id.*

<sup>11</sup>Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

to Pilot's corporate headquarters in Knoxville, Tennessee, and eight Citations to different Pilot retail outlets in Brooks, Oregon; Casa Grande, California; Quartzsite, California; North Palm Springs, California; North Las Vegas, Nevada; Barstow, California; Boron, California; and Hesperia, California. Each of these Citations advised Pilot of observed violations of the Commission's equipment authorization and marketing rules, specifically, marketing non-certified CB transceivers in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. The Citations warned Pilot that future violations may subject Pilot to civil monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation,<sup>12</sup> seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.<sup>13</sup>

7. On December 7, 2001, the Enforcement Bureau's Dallas Field Office ("Dallas Office") received from Pilot a response dated December 6, 2001 to the Citation issued to Pilot's corporate headquarters in Knoxville, Tennessee. The response from Pilot's Vice President, General Counsel, and Secretary stated that "[a]ll of the radios in question are marketed as amateur radios and, as sold, operate on the 10-meter amateur band. Part 97 of 47 C.F.R., not Part 95, governs these transceivers. Part 97 does not require type acceptance of amateur radios." On January 28, 2002, the Dallas Office mailed a letter to Pilot's corporate headquarters addressing Pilot's response to the Citation. The letter advised Pilot that the devices referred to in the Citation are intended for use on CB as well as ARS frequencies, because they have built-in design features which facilitate their operation on CB frequencies by the exercise of simple, end-user accessible, modifications to the devices. The letter further advised that such devices are considered CB transmitters pursuant to Section 95.603(c) of the Rules, irrespective of any labeling purporting the devices to be "Amateur Radio Transceivers." The Dallas Office received no further response from Pilot. In addition, Enforcement Bureau Field Offices received five other responses from Citations issued to Pilot, one response from Pilot's Vice President, General Counsel, and Secretary and four other responses from a Pilot Paralegal. All five responses similarly disputed the Commission's statements in the Citations that Pilot illegally marketed non-certified CB transmitters. Enforcement Bureau Field Offices issued follow-up responses to each of these letters advising Pilot that the devices in question are considered CB transmitters and that marketing of the non-certified devices was not lawful.

8. Subsequent to issuance of the above-mentioned Citations and follow-up letters, from December 11, 2003 to July 3, 2004, Enforcement Bureau field agents made seven visits to Pilot retail stores nationwide where Pilot offered for sale non-certified models of Galaxy brand CB transceivers.<sup>14</sup> As noted above, OET had already tested these specific models and determined them all to be dual use Amateur Radio and CB transmitters. Each of the models could be modified to allow transmit capabilities on CB frequencies.

9. On December 16, 17, and 18, 2003, Enforcement Bureau field agents purchased three Galaxy transceivers (models DX33HML, DX99V and DX66V, respectively) from three different Pilot retail stores and had them tested by the laboratory of OET. On April 1, 2004, the laboratory of OET issued an evaluation report for each of the three purchased transceivers and found that they were all non-certified CB transmitters.

### III. DISCUSSION

10. Section 302(b) of the Act provides that no 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 that:

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<sup>12</sup>See 47 C.F.R. § 1.80(b)(3).

<sup>13</sup>See 47 U.S.C. §§ 501, 503(b), 510.

<sup>14</sup>See ATTACHMENT for a listing of the Pilot stores visited and the models observed.

(a) 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: (1) [i]n the case of a device 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[.]

11. Section 95.603(c) of the Rules requires that “[e]ach CB transmitter (a transmitter that operates or is intended to operate at a station authorized in the CB) must be certificated.” Section 95.655(a) of the Rules states that “[n]o transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not [authorized for CB in Part 95 of the Rules].” This section also states that “[CB t]ransmitters with frequency capability for the Amateur Radio Services . . . will not be certificated.” Additionally, Section 95.655(c) of the Rules prohibits any internal or external add-on device that functions to extend the transmitting frequency capability of a CB transmitter beyond its original capability.

12. Prior to October 2002, Pilot offered for sale various non-certified CB transmitters at eleven of its retail outlets. Commission Field Offices issued a total of nine Citations to Pilot’s corporate headquarters and its retail outlets warning Pilot that future violations would subject Pilot to penalties including civil monetary forfeitures. Subsequently, in forty-seven separate instances from October 8, 2002 to July 3, 2004, Pilot offered for sale various models of non-certified Galaxy brand CB transmitters, which had all been tested and determined by OET to be non-certified CB transmitters. Although they were labeled as “amateur radios,” the specified models of Galaxy transmitters are CB transmitters, because each was designed to be easily modified by the end user to allow operation on CB frequencies. Additionally, in at least eleven of the forty-seven instances of marketing by Pilot, Pilot employees referred to the devices as “CB’s.”

13. Based on the evidence before us, we find that in thirteen instances -- six on December 11, 2003, one each on December 16, 17, and 18, 2003, three on March 25, 2004, and one on July 3, 2004 -- Pilot offered for sale non-certified CB transmitters in apparent willful<sup>15</sup> and repeated<sup>16</sup> violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.<sup>17</sup>

14. Section 503(b) of the Act,<sup>18</sup> 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. In exercising such authority, we are 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

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<sup>15</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 . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>16</sup>The 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.” 47 U.S.C. § 312(f)(2).

<sup>17</sup>Although Pilot offered for sale non-certified CB transmitters on days prior to December 11, 2003, the Commission is barred from enforcing those violations by the statute of limitations contained in Section 503(b)(6) of the Act.

<sup>18</sup>47 U.S.C. § 503(b).

offenses, ability to pay, and such other matters as justice may require.”<sup>19</sup>

15. 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*”)<sup>20</sup> and Section 1.80 of the Rules,<sup>21</sup> the base forfeiture amount for marketing unauthorized equipment is \$7,000 per violation. Thus, the total base forfeiture amount for all of Pilot’s violations is \$91,000.

16. We are concerned, however, with the pattern of apparent violations here. Our equipment authorization rules ensure that radio transmitters and other electronic equipment comply with Commission technical requirements. The proliferation of non-certified CB transmitters may result in interference to certified CB transmitters and other devices, thereby undermining the effectiveness of our technical rules. Furthermore, we have previously stated that ARS equipment that can be easily modified to extend the operating frequency range into CB frequency bands are CB transmitters subject to equipment authorization procedures.<sup>22</sup>

17. We are particularly troubled that Pilot continues to violate these rules despite receiving nine Citations for marketing non-certified CB transmitters. These Citations put Pilot on actual notice that marketing of this equipment is unlawful, yet Pilot intentionally continued to market the unlawful equipment. Pilot’s continuing violations of the equipment authorization requirements evince a pattern of intentional non-compliance with and apparent disregard for these rules. Accordingly, we believe an upward adjustment of the base forfeiture amount is warranted.<sup>23</sup> Applying the *Forfeiture Policy Statement* and statutory factors (e.g., nature, extent and gravity of the violation and the history of prior offenses)<sup>24</sup> to the instant case, we conclude that it is appropriate to propose a forfeiture of \$125,000 for Pilot’s apparent violations. Therefore, we find Pilot apparently liable for a forfeiture in the amount of \$125,000.

#### IV. ORDERING CLAUSES

18. 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, Pilot Travel Centers, L.L.C. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred and twenty-five thousand dollars (\$125,000) for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.

19. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Pilot Travel Centers, L.L.C. **SHALL PAY** the full amount of the proposed forfeiture amount or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. Payment of the forfeiture may 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

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<sup>19</sup>47 U.S.C. § 503(b)(2)(D).

<sup>20</sup>12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>21</sup>47 C.F.R. § 1.80.

<sup>22</sup>See 47 C.F.R. § 95.603(c). See also Letter from Christopher Wright, General Counsel, FCC to John Atwood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (1999).

<sup>23</sup>See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866 (2002) (base forfeiture amount tripled); *American Tower Corporation*, 16 FCC Rcd 1282 (2002) (base forfeiture amount doubled).

<sup>24</sup>See also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8<sup>th</sup> Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>25</sup>

21. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: South Central Region Headquarters and must include the NAL/Acct. No. 200532500001.

22. 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.

23. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular First Class Mail and by Certified Mail Return Receipt Requested to: Pilot Travel Centers L.L.C., 5508 Lonas Drive, Knoxville, Tennessee 37909.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>25</sup>See 47 C.F.R. § 1.1914.

## ATTACHMENT

1. December 11, 2003, Pilot center #320, Dallas, Texas. Non-certified CB transceiver Galaxy model DX33HML displayed and offered for sale.
2. December 11, 2003, Pilot center #320, Dallas, Texas. Non-certified CB transceiver Galaxy model DX66V displayed and offered for sale.
3. December 11, 2003, Pilot center #320, Dallas, Texas. Non-certified CB transceiver Galaxy models DX99V displayed and offered for sale.
4. December 11, 2003, Pilot center #433, Dallas, Texas. Non-certified CB transceivers Galaxy model DX33HML displayed and offered for sale.
5. December 11, 2003, Pilot center #433, Dallas, Texas. Non-certified CB transceivers Galaxy model DX66V displayed and offered for sale.
6. December 11, 2003, Pilot center #433, Dallas, Texas. Non-certified CB transceivers Galaxy model DX99V displayed and offered for sale.
7. December 16, 2003, Pilot center #95, Wildwood, Florida. Non-certified CB transceiver Galaxy model DX33HML displayed, offered for sale, and sold.
8. December 17, 2003, Pilot center #94, Punta, Florida. Non-certified CB transceiver Galaxy model DX99V displayed, offered for sale, and sold.
9. December 18, 2003, Pilot center #328, Dallas, Texas. Non-certified CB transceiver Galaxy model DX66V displayed, offered for sale, and sold.
10. March 25, 2004, Pilot center #460, Oklahoma City, Oklahoma. Non-certified CB transceiver Galaxy model DX33HML displayed and offered for sale.
11. March 25, 2004, Pilot center #460, Oklahoma City, Oklahoma. Non-certified CB transceiver Galaxy model DX66V displayed and offered for sale.
12. March 25, 2004, Pilot center #460, Oklahoma City, Oklahoma. Non-certified CB transceiver Galaxy model DX99V displayed and offered for sale.
13. July 3, 2004, Pilot center #35, South Bend, Indiana. Non-certified CB transceiver Galaxy model DX66V displayed and offered for sale.