

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

In the Matter of	)	
	)	
San Jose Navigation, Inc.	)	File No. EB 05-SE-077
	)	NAL/Acct. No. 200632100006
	)	FRN # 0010366078

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 14, 2006**

**Released: March 14, 2006**

By the Commission:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we propose a forfeiture amount of seventy five thousand dollars (\$75,000) against San Jose Navigation, Inc. (“San Jose”) for its marketing of intentional radiating equipment,<sup>1</sup> Global Positioning Satellite (“GPS”) signal re-radiator kits, in apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”)<sup>2</sup> and Sections 2.803 and 15.205 of the Commission’s Rules (“Rules”).<sup>3</sup> The GPS re-radiator kits are not Commission authorized and are not eligible for such authorization, because they operate in restricted frequency bands allocated for authorized safety-of-life operations.

**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, 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>

3. The equipment authorization program requires that intentional radiators be issued a grant of certification prior to the initiation of marketing.<sup>5</sup> “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose

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<sup>1</sup> Section 15.3(o) of the Rules, 47 C.F.R. § 15.3(o), defines an intentional radiator as a “device that intentionally generates and emits radio frequency energy by radiation or induction.”

<sup>2</sup> 47 U.S.C. § 302a(b).

<sup>3</sup> 47 C.F.R. §§ 2.803 and 15.205.

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

<sup>5</sup> Certification is an equipment authorization issued by the Commission or one of its designated Telecommunications Certification Bodies, based on representations and test data submitted by the applicant. 47 C.F.R. § 2.907(a).

of selling or leasing or offering for sale or lease.<sup>6</sup> 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.” Section 2.803(a)(1) of the Commission’s implementing regulations 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: (1) In 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 labelled as required by Sec. 2.925 and other relevant sections in this chapter.

Under Section 15.201 of the Rules,<sup>7</sup> intentional radiators must ordinarily be authorized in accordance with the certification procedure prior to marketing. However, under Section 2.803(g) of the Rules, intentional radiators and other radio frequency devices that could not be authorized or legally operated under the current rules – for example, intentional radiators, such as GPS re-radiators, which operate in the restricted frequency bands listed in Section 15.205 of the Rules -- may not be “operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.”

4. In early 2005, the Commission received complaints from the Department of Transportation, National Telecommunications & Information Administration (“NTIA”) and other federal government agencies (“federal agencies”). The federal agencies expressed concern that GPS re-radiator equipment potentially could interfere with federal government GPS operations. In response to these complaints, the Spectrum Enforcement Division (“Division”) of the Commission’s Enforcement Bureau (“Bureau”) initiated investigations into the marketing of such equipment in the United States.

5. During the course of the Division’s investigations, retail companies found to be marketing the subject GPS re-radiator kits in the United States,<sup>8</sup> identified San Jose as the manufacturer of such kits.<sup>9</sup> The Division staff subsequently found that San Jose was marketing four models of GPS re-radiator kits, Models RA-45, RA-46, RK-104 and RK-304, on its website.<sup>10</sup> These models consist of a receive antenna, an amplifier to boost the signal level, and a radiating antenna. A GPS re-radiator does not internally generate a radio frequency signal. Rather, a GPS re-radiator is designed and configured to take radio frequency signals from an outside source, the global positioning satellites, amplify those signals, and radiate those signals through its antenna. The Commission has determined that this type of configuration constitutes intentional radiating devices under Section 15.3(o) of the Rules.<sup>11</sup>

6. On May 4, 2005, the Division issued a letter of inquiry (“LOI”) to San Jose.<sup>12</sup> In its response to the LOI,<sup>13</sup> San Jose admitted that it manufactures the four models of GPS re-radiator kits,

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<sup>6</sup> 47 C.F.R. § 2.803(e)(4).

<sup>7</sup> 47 C.F.R. § 15.101.

<sup>8</sup> The retailers received Citations for marketing the unauthorized GPS re-radiator devices. See *Gilsson Technologies*, 20 FCC Rcd 8241 (Enf. Bur. Spectrum Enf. Div., 2005); *Wal-Mart Stores, Inc.*, 20 FCC Rcd 7618 (Enf. Bur. Spectrum Enf. Div., 2005).

<sup>9</sup> San Jose is a manufacturer headquartered in Taipei, Taiwan, and the grantee of two unrelated Commission equipment certifications. See FCC Identifier RUU-G19041000 (granted November 19, 2004); FCC Identifier RUU-G00548213 (granted March 17, 2004).

<sup>10</sup> See [www.sanav.com](http://www.sanav.com).

<sup>11</sup> See *Rocky Mountain Radar*, 12 FCC Rcd 22453 (1997).

<sup>12</sup> See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal

Models RA-45, RA-46, RK-104 and RK-304.<sup>14</sup> San Jose stated that it manufactured approximately 5,000 units of these devices for sale in the United States between August 2001 and May 20, 2005,<sup>15</sup> and distributed these 5,000 units to distributors in the United States between March 15, 2002 and March 15, 2005.<sup>16</sup> According to San Jose, it did not realize that the devices violate the Rules prior to receiving the letter of inquiry.<sup>17</sup> San Jose submitted two “FCC Class B Declaration Reports (DOCs)” for the Models RA-45 and RA-46, issued by the SGS Taiwan Ltd. test laboratory on April 15, 2005.

### III. DISCUSSION

7. Under Section 503(b)(1)(b) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>18</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>19</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>20</sup> Under this standard, we issue this NAL.

#### A. Marketing unlawful equipment.

8. As detailed below, we find that San Jose apparently willfully and repeatedly violated Section 302(b) of the Act and Sections 2.803 and 15.205 of the Rules by marketing four models of GPS re-radiator kits, which by their nature are ineligible for equipment certification.

9. We find that San Jose manufactured and distributed for sale the four models of GPS re-radiator kits from at least March 2002 to March 2005. We further find that these kits are intentional radiators.<sup>21</sup> Intentional radiators, as previously stated, ordinarily must be certificated prior to marketing

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Communications Commission to San Jose Navigation, Inc. (May 4, 2004).

<sup>13</sup> See Letter from San Jose Navigation, Inc. to Jennifer Burton, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (June 20, 2005) (“Response”).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3. San Jose’s statements are inconsistent in this regard. Specifically, although San Jose stated that it began distributing these devices in the United States in March 2002, it also stated that it distributed approximately 4,000 devices to one U.S. distributor between July 2001 and December 2004, and approximately 1,000 devices to another U.S. distributor between March 2002 and March 2005. *Id.* Thus, it is not clear whether San Jose actually began distributing these devices in March 2002 or July 2001. For purposes of this NAL, however, we will consider that San Jose has been distributing the devices since at least March 2002.

<sup>17</sup> See Response at 4.

<sup>18</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) and (2) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law, and defines “repeated” as “the commission or omission of such act more than once” and if continuous “more than one day.” 47 U.S.C. § 312(f)(1) and (2). The legislative history of Section 312(f)(1) and (2) clarifies that the definitions of willful and repeated applies to both Sections 312 and 503(b) of the Act. See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982). Consistent with the legislative history, the Commission has so interpreted the terms in the Section 503(b) context. See, e.g., *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991); *Callais Cablevision, Inc.*, 16 FCC Rcd 1359, 1362 ¶ 9 (2001).

<sup>19</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>20</sup> See, e.g., *SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>21</sup> See *supra* note 11 and accompanying text.

in the United States. According to San Jose's specifications, its four models of GPS re-radiator kits operate in the GPS L1 band, at 1575.42 MHz. Because the GPS L1 band is shared co-equally between the federal government and non-government operations, and is within the restricted frequency bands listed in Section 15.205 of the Rules, intentional radiating equipment is prohibited from emitting signals other than spurious emissions in that band.<sup>22</sup> Indeed, the Commission recently denied a petition for rulemaking requesting amendment of the rules to permit marketing of GPS re-radiator kits, noting that the restricted bands in which these devices operate are allocated for authorized radio services that concern safety-of-life operations or that require the reception of extremely low signal levels due to the nature of their operation.<sup>23</sup> Accordingly, we find that San Jose's four models of GPS re-radiator kits, which operate in the restricted frequency bands, are not eligible for Commission equipment certification.

10. Additionally, we find that the documents San Jose submitted "FCC Class B Declaration Reports (DOCs)" for Models RA-45 and RA-46, which purport to demonstrate that models comply with Part 15 technical requirements, do not demonstrate compliance. As explained above, the Models simply cannot comply with Part 15 technical requirements because the equipment operates within the restricted frequency bands and thus cannot be authorized.

11. We also find the reports irrelevant and flawed. The reports appear to be Declaration of Conformity ("DOC")<sup>24</sup> test reports. Intentional radiating equipment, however, is subject to the Commission's certification, not DOC, equipment authorization procedures.<sup>25</sup> Further, the reports indicate that the models were tested for compliance with Part 15 emission limits in the 30 MHz to 1000 MHz frequency range, but the models, in fact, operate in the GPS L1 band at 1575.42 MHz, which is above the frequency range tested by SGS Taiwan. The reports also indicate that the models were connected to a computer during testing, even though these devices are not designed to be connected to a computer during operation. Finally, we note that San Jose's testing appears to have been initiated only after the Division initiated its investigation in early 2005, and the test reports were issued more than three years after San Jose began distributing its GPS signal re-radiator kits in the United States.

## B. Proposed Forfeiture Amount.

12. Section 503(b)(6) of the Act<sup>26</sup> bars the Commission from proposing a forfeiture for apparent violations that occurred more than one year prior to the date of this NAL, but does not prohibit us from assessing whether San Jose's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.<sup>27</sup> Therefore, the forfeiture amount

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<sup>22</sup> 47 C.F.R. § 2.1 defines "spurious emissions" as "[e]missions on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions."

<sup>23</sup> See *GPS Networking, Inc.*, RM-11002, 20 FCC Rcd 12256, 12258 (2005). It should be noted that one commenter in that proceeding expressed concern that GPS re-radiator devices could interfere with accurate E911 location reporting. *Id.* at note 4.

<sup>24</sup> A DOC is a procedure where the responsible party – the manufacturer, or in the case of imported equipment, the importer – has measurements taken to ensure that the equipment complies with the appropriate technical standards. See 47 C.F.R. § 2.906(a). Under the DOC procedure, the measurements must be made by an FCC-accredited laboratory. See 47 C.F.R. § 2.948(a)(3). In addition, a copy of the DOC listing the party responsible for compliance must be included in the literature supplied with the product. See 47 C.F.R. § 2.1077.

<sup>25</sup> The DOC procedure may be used only for certain types of unintentional radiators. See 47 C.F.R. § 15.101.

<sup>26</sup> 47 U.S.C. § 503(b)(6).

<sup>27</sup> See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *rev. pending*; *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60

proposed herein takes into account the continuing nature San Jose's apparent violations, but relates to the company's marketing of Models RA-45, RA-46, RK-104 and RK-304 within the last year.

13. Section 1.80 of the Rules<sup>28</sup> establishes a base forfeiture amount of \$7,000 for the marketing of unauthorized equipment. Section 503(b)(2)(C) of the Act, however, authorizes the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.<sup>29</sup> In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs the Commission to consider factors, such as "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 such other matters as justice may require."<sup>30</sup>

14. Consistent with precedent,<sup>31</sup> we find that San Jose's marketing of four distinct models of intentional radiators constitutes separate and continuing violations, warranting the assessment of separate base forfeiture amounts. Having weighed the statutory factors enumerated above, we find that circumstances presented warrant a substantial upward adjustment of the aggregate base forfeiture amount of \$28,000 (\$7,000 for each of the four unlawfully marketed models).<sup>32</sup>

15. Specifically, the record establishes that San Jose marketed, imported and distributed for sale GPS re-radiator kits that by design intentionally emit signals in restricted frequency bands, potentially interfering with and jeopardizing critical authorized safety-of-life operations. The record further establishes that San Jose imported and distributed for sale a significant number (5,000) of its kits. Additionally, San Jose's apparent violations were continuous in nature, occurring over a three-year period. Given the critical safety concerns,<sup>33</sup> the volume of unauthorized devices distributed,<sup>34</sup> the

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RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967); *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, DA 05-2928 (Enf. Bur., Spectrum Enf. Div., November 8, 2005) ("*Bureau D'Electronique Appliquee*").

<sup>28</sup> 47 C.F.R. § 1.80.

<sup>29</sup> 47 U.S.C. § 503(b)(2)(C). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *see also* 47 C.F.R. § 1.80(c).

<sup>30</sup> 47 U.S.C. § 503(b)(2)(D). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>31</sup> *See e.g., Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 ¶ 9 (2004), *consent decree ordered*, 19 FCC Rcd 24509 (2004) (finding that the marketing of each model of unauthorized equipment constitutes separate violations).

<sup>32</sup> *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17112 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (noting that the we "retain the discretion to issue a higher or lower forfeiture" than the base forfeiture amounts set forth in our Rules and our Forfeiture Guidelines).

<sup>33</sup> *Cf. Pilot Travel Centers, LLC*, 19 FCC Rcd 23113, 23117 ¶ 16 (2004) (upwardly adjusting a proposed forfeiture based on a finding that the marketing and distribution of unauthorized radio transmitters, *inter alia*, potentially interferes with transmitters and other devices authorized to operate in such frequency ranges); *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22630-32 ¶¶ 20-23 (2002) (upwardly adjusting a forfeiture based on a finding that a cable system's signal leakage violations increased the likelihood of interference with aeronautical frequencies and potentially jeopardized air safety); *Centel Cellular of North Carolina Limited Partnership*, 10 FCC Rcd 915 (1994), *modified*, 11 FCC Rcd 10800, 10804-05 ¶¶ 6-7 (1996) (upwardly adjusting a forfeiture based on a finding that a wireless carrier constructed a tower that directly penetrated an air safety zone and interfered with airline flight paths, threatening and potentially jeopardizing air safety).

continuous nature of the violations,<sup>35</sup> and the fact that the devices are not capable of being certified in any event, we conclude that a significant upward adjustment is warranted. Accordingly, we propose an aggregate forfeiture in the amount of \$75,000 for San Jose's willful and repeated violations of Section 302(b) of the Act and Sections 2.803 and 15.205 of the Rules.

16. Finally, we do not find San Jose's claim -- that it was unaware that its GPS re-radiator devices violated the rules until it received the Division's letter of inquiry -- warrants a downward adjustment of the proposed aggregate forfeiture amount.<sup>36</sup> It is a well established and long-standing principle that ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.<sup>37</sup>

#### IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>38</sup> San Jose Navigation, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seventy five thousand dollars (\$75,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a) and 15.205 of the Rules.

18. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, San Jose Navigation, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

19. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>39</sup> 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. 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 the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>40</sup>

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<sup>34</sup> See, e.g., *Bureau D'Electronique Applique*, 20 FCC Rcd at 3448 ¶ 9 (upwardly adjusting a proposed aggregate forfeiture based on the volume of unauthorized devices distributed, and the five-year span in which such devices were marketed).

<sup>35</sup> See *supra* note 27 and accompanying text.

<sup>36</sup> See *supra* note 18 and accompanying text.

<sup>37</sup> See *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor"); see also *Southern California Broadcasting Co.*, 6 FCC Rcd at 3448 ¶ 3; *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437, 438 ¶ 6 (1972).

<sup>38</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>39</sup> 47 U.S.C. § 504(a).

<sup>40</sup> See 47 C.F.R. § 1.1914.

20. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

21. 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; 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.<sup>41</sup>

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to San Jose Navigation, Inc., 9F, No. 105, Shi-Cheng Road, Pan-Chiao City, Taipei, Taiwan, R.O.C.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>41</sup> *Id.*