

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

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

**FORFEITURE ORDER**

**Adopted: January 11, 2007****Released: January 16, 2007**

By the Commission:

**I. INTRODUCTION**

1. By this Forfeiture Order (“Order”), we find that San Jose Navigation, Inc. (“San Jose”) marketed intentional radiating equipment, specifically Global Positioning Satellite (“GPS”) signal re-radiator kits, which are not authorized and not eligible for authorization by the Commission because the devices operate in restricted frequency bands. We further find that, in marketing these GPS signal re-radiator kits, San Jose willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Sections 2.803 and 15.205 of the Commission’s Rules (“Rules”).<sup>2</sup> For San Jose’s violations, we impose a monetary forfeiture in the amount of seventy-five thousand dollars (\$75,000).

**II. BACKGROUND**

2. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices of home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Sections 2.803(a) and 15.201(b) of the Commission’s promulgated regulations prohibit the marketing of intentional radiators<sup>3</sup> without prior Commission certification.<sup>4</sup> “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, or distribution for the purpose of selling or leasing or offering for sale or lease.<sup>5</sup>

3. A GPS signal re-radiator is designed and configured to take radio frequency signals from an outside source, the global positioning satellites, and amplify and re-radiate those signals. The Commission has determined that this type of configuration constitutes an intentional radiator under Section 15.3(o) of the Rules.<sup>6</sup> As intentional radiators, GPS signal re-radiators ordinarily would be

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. §§ 2.803 and 15.201(b).

<sup>3</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>4</sup> 47 C.F.R. §§ 2.803(a) and 15.201(b).

<sup>5</sup> 47 C.F.R. § 2.803(e)(4).

<sup>6</sup> 47 C.F.R. § 15.3(o). See *Rocky Mountain Radar*, 12 FCC Rcd 22453 (1997).

subject to the Commission's equipment certification procedures prior to marketing. These devices cannot be certificated or legally operated, however, because they operate in the restricted frequency bands that are allocated for safety-of-life operations and listed in Section 15.205 of the Rules.<sup>7</sup>

4. In response to complaints from the Department of Transportation, the National Telecommunications & Information Administration and other federal agencies, which expressed concern that GPS signal re-radiator kits could interfere with government GPS operations, the Enforcement Bureau launched an investigation of San Jose in 2005. That investigation culminated in the issuance of the Notice of Apparent Liability for Forfeiture ("NAL") against San Jose for its apparent willful and repeated violation of the above equipment marketing restrictions.<sup>8</sup> As discussed herein, we find, as the underlying NAL found, that San Jose unlawfully marketed GPS signal re-radiator kits that were not certificated and not eligible for certification.

5. Specifically, the NAL found that San Jose manufactured and marketed in the United States four models of GPS signal re-radiator kits (the RA-45, RA-46, RK-104 and RK-304).<sup>9</sup> The NAL also found that these four models are designed to operate at 1575.42 MHz in the GPS L1 frequency band, a restricted frequency band under Section 15.205 of the Rules. As noted in the NAL, intentional radiating devices are prohibited from operating (other than spurious emissions) in the restricted GPS L1 frequency band.<sup>10</sup> Finally, the NAL found that from March 2002 through March 2005, San Jose distributed for sale in the United States 5,000 units of GPS signal re-radiator kits.<sup>11</sup>

6. The NAL concluded that San Jose "marketed, imported and distributed for sale GPS re-radiator kits that intentionally emit signals in restricted frequency bands, potentially interfering with and jeopardizing critical authorized safety-of-life operations."<sup>12</sup> The NAL further concluded that San Jose's apparent violations of the equipment marketing restrictions involved a significant number of unauthorized devices and "were continuous in nature, occurring over a three-year period" and thus warranted a substantially upward adjusted proposed forfeiture amount.<sup>13</sup> Accordingly, the NAL proposed a \$75,000 forfeiture.

7. In its response to the NAL, San Jose does not dispute the violations, but seeks cancellation or reduction of the proposed \$75,000 forfeiture.<sup>14</sup> San Jose claims that its violations were not intentional, that its corrective measures demonstrate good faith, and that its payment of the forfeiture would cause economic hardship.

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<sup>7</sup> See 47 C.F.R. § 2.803(g). Section 2.803(g) provides, in pertinent part, that the equipment marketing provisions of Section 2.803:

[D]o not apply to radio frequency devices that could not be authorized or legally operated under the current rules. Such devices shall 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.

San Jose did not market its GPS signal re-radiator kits under a Part 5 license or a special temporary authorization granted by the Commission.

<sup>8</sup> *San Jose Navigation, Inc.*, 21 FCC Rcd 2873 (2006) ("NAL").

<sup>9</sup> NAL at ¶¶ 5-6, 15.

<sup>10</sup> *Id.* at ¶ 9.

<sup>11</sup> *Id.* at ¶¶ 6, 15.

<sup>12</sup> *Id.* at ¶ 15.

<sup>13</sup> *Id.*

<sup>14</sup> See Response to the NAL (filed April 14, 2006) ("Response").

### III. DISCUSSION

8. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>15</sup> Section 1.80 of the Rules,<sup>16</sup> and the Commission's Forfeiture Policy Statement guidelines.<sup>17</sup> In assessing forfeitures, the Commission is required to take into account the nature, circumstances, extent and gravity of the violation(s); the violator's degree of culpability, history or prior offenses and ability to pay; and such other matters as justice may require.<sup>18</sup> We have considered San Jose's claims in light of the above factors and Commission precedent, and, as explained below, have determined that there is no basis for cancellation or reduction of the proposed forfeiture.

9. In its response, San Jose claims that it did not knowingly, and did not intend to, violate the Commission's equipment marketing restrictions.<sup>19</sup> As the NAL correctly noted,<sup>20</sup> lack of knowledge regarding, or intent to violate, the Commission's requirements does not exonerate, excuse or mitigate past violations and is not a defense to forfeiture penalties.<sup>21</sup> Section 503(b)(1)(B) of the Act subjects persons found by the Commission to have willfully or repeatedly violated the Commission's requirements to forfeiture penalties.<sup>22</sup> The term willful is defined as "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate the law."<sup>23</sup> Consistent with Section 503(b)(1)(B), we find that San Jose consciously and deliberately marketed unauthorized devices, and thus that its violations of the Act and Rules were willful and properly subject to forfeiture penalty. Additionally, we find, as the NAL found, that San Jose's violations were repeated, having continued over a three-year period.<sup>24</sup>

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<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80.

<sup>17</sup> *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("Forfeiture Policy Statement").

<sup>18</sup> *See* 47 U.S.C. § 503(b)(2)(D); *see also* 47 C.F.R. § 1.80(b)(4).

<sup>19</sup> *See* Response at 1.

<sup>20</sup> *See* NAL at ¶ 16.

<sup>21</sup> *See Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997) (dismissing a manufacturer's claim that it lacked knowledge of the Commission's equipment certification requirements, finding that forfeiture liability does not rest upon "prior knowledge or understanding of the law" and is not mitigated by "ignorance of the law"); *see also Emery Telephone*, 13 FCC Rcd 23854, 23859 ¶ 12 (1998), *recon. dismissed in part and denied in part*, 15 FCC Rcd 7181 (1999); *Florida Cellular Mobile Communications Corporation*, 7 FCC Rcd 78956, 7857 ¶ 7 (1992), *aff'd sub nom, Florida Cellular Mobile Communications Corporation v FCC*, 28 F.3d 191 (D.C. Cir. 1995), *cert. denied*, 514 U.S. 1016 (1995); *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶¶ 3-4 (1991); *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437 ¶ 6 (1972); *Bureau D'Electronique Appliquee, Inc.*, DA 05-2928 ¶ 11 (Enf. Bur., Spectrum Enf. Div., November 8, 2005).

<sup>22</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>23</sup> The definition of willful is set forth in Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f) establishes that this definition applies to the forfeiture provisions of Section 503 of the Act. *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. Sess. 51 (1982); *see also Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

<sup>24</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), defines "repeated" as the commission or omission of any act that occurs "more than once," and if continuous, occurs "for more than one day." As with the term willful, the definition of repeated set forth in Section 312(f) applies to the forfeiture provisions of Section 503 of the Act. *See supra* n. 23.

10. In addition, San Jose claims that it demonstrated good faith by promptly instituting corrective measures after the Enforcement Bureau launched its investigation.<sup>25</sup> Specifically, San Jose asserts that after receiving the Enforcement Bureau's letter of inquiry, the company ceased shipping kits to the United States, contacted its distributors, and authorized the return and refund of approximately 2,500 GPS signal re-radiator kits.<sup>26</sup> The Commission expects the implementation of corrective measures to bring past violations into compliance.<sup>27</sup> It is the Commission's long-standing policy, however, that corrective measures implemented after Commission inquiry or enforcement action do not nullify past violations and thus do not warrant reduction or cancellation of forfeiture liability.<sup>28</sup> We also note that although San Jose did not indicate it was working with its distributors with respect to the 2,500 re-radiator kits already sold to retail outlets and customers, we encourage San Jose to make reasonable efforts with its distributors to make sure that retail customers are aware of the potential interference these kits pose to government GPS operations and that as many of these kits as possible are returned to San Jose.

11. San Jose also claims that it is a small firm, with "capital of less than USD 600,000," and that it has sustained substantial economic losses in its efforts to remedy its prior marketing of GPS signal re-radiator kits.<sup>29</sup> In assessing an inability to pay claim, the Commission requires the claimant to provide reliable and objective documentation that reflects its current overall financial status. (e.g., a balance sheet or a profit and loss statement certified by the claimant).<sup>30</sup> The fact that a claimant is a small entity<sup>31</sup> or has sustained economic losses,<sup>32</sup> in itself, does not entitle it to a reduction in or cancellation of a forfeiture. San Jose did not provide supporting financial documentation, and thus we have no basis by which to assess its inability to pay claim.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, San Jose Navigation, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the

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<sup>25</sup> See Response at 1.

<sup>26</sup> *Id.*

<sup>27</sup> See *Behringer USA, Inc.*, 21 FCC Rcd 1820 ¶ 24 (2006); *ACR Electronics, Inc.*, 19 FCC Rcd 22293, 22304 ¶ 25 (2004), *forfeiture ordered*, 21 FCC Rcd 3698 (2006); *AT&T Wireless Services, Inc.*, 17 FCC Rcd 7891 (2002), *forfeiture ordered*, 17 FCC Rcd 21866, 21875-76 ¶¶ 26-28 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994); see also *TCI Cablevision of Maryland, Inc.*, 7 FCC Rcd 6013, 6014 ¶ 8 (1992) (rejecting a claim that subsequent corrective actions mitigate past violations because it "would tend to encourage remedial rather preventative action").

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17107 ¶ 44.

<sup>31</sup> *Id.* at 17158 ¶ 113 (recognizing that a small entity may not have the resources to submit financial documentation corroborating its inability to pay and that the Commission has the flexibility to consider profit and loss statements or balance sheets certified by the entity). See also *Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2548 ¶¶ 3, 5 (2004) (rejecting an economic hardship claim based, *inter alia*, on small entity status) ("*Alpha Ambulance*"); *Brown Broadcasting System, Inc.*, DA 05-1708 ¶ 4 (Enf. Bur. June 24, 2005) (noting that a company's status as a small entity, alone, will not suffice; the company must provide objective financial documentation that demonstrates its inability to pay).

<sup>32</sup> See *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 ¶ 8 (1992) (noting that information about net losses may be relevant in assessing an inability to pay claim, but where "gross revenues are sufficiently great ... the mere fact that a business is operating at a loss does not itself mean that it cannot afford to pay a forfeiture"); see also *Alpha Ambulance*, 19 FCC Rcd at 2548 ¶ 5; *Independent Communications, Inc.*, 15 FCC Rcd 16060, 16061 ¶ 4 (2000); *Forfeiture Policy Statement*, 12 FCC Rcd at 17106 ¶ 43.

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.

13. 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>33</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.

14. Requests for payment of the full amount of the NAL under an installment plan should be sent to: 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>34</sup>

15. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail return receipt requested to Jerry Huang, Sales and Marketing Manager, 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>33</sup> 47 U.S.C. § 504(a).

<sup>34</sup> See 47 C.F.R. § 1.1914.