

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

In the Matter of)	File No. EB-06-SE-124
)	
Ramko Distributors, Inc.)	NAL/Acct. No. 200732100023
)	
Toledo, Ohio)	FRN: 0016293854

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 30, 2007**Released: March 30, 2007**

By the Commission:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Ramko Distributors, Inc. (“Ramko”) apparently liable for marketing 17 models of non-certified radio transceivers, in apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”), and Section 2.803 of the Commission’s Rules (“Rules”).¹ The subject devices are neither Commission authorized, nor eligible for such authorization. Based on the facts and circumstances before us, we conclude that Ramko is apparently liable for a forfeiture in the amount of one hundred fifty thousand dollars (\$150,000).

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, among other things, the offering for sale of radio frequency devices to the extent that such activity does not comply with these regulations.² 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. Specifically, 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

¹ 47 U.S.C. § 302a(b) and 47 C.F.R. § 2.803.

² 47 U.S.C. § 302a.

radio frequency device³ unless ... [i]n the case of a device that is 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.

In addition, Section 2.803(g) of the Rules provides that:

[R]adio frequency devices that could not be operated or legally authorized under the current rules ... shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed

3. Certain devices, including Citizens Band (“CB”) radio transmitting equipment, may not be marketed within the United States unless they have been tested and found to comply with Commission technical requirements, granted Commission certification and properly labeled.⁴ “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 of selling or leasing or offering for sale or lease.⁵

4. Section 95.603(c) of the Rules provides that “[e]ach CB transmitter (a transmitter that operates or is intended to operate at a station authorized in the CB [service]) must be certificated.”⁶ 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].”⁷ 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.⁸

5. 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, which is just above the CB frequency segment, are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation on the CB frequencies after completion of minor and trivial internal modifications to the equipment.⁹ 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.”¹⁰

³ 47 C.F.R. § 2.801 defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means.”

⁴ 47 C.F.R. § 2.927(a).

⁵ 47 C.F.R. § 2.803(e)(4).

⁶ 47 C.F.R. § 95.603(c).

⁷ 47 C.F.R. § 95.655(a).

⁸ 47 C.F.R. § 95.655(c).

⁹ The “10-meter” band refers to the amateur service band from 28.0 – 29.7 MHz. *See* 47 C.F.R. § 97.305(c). CB stations are authorized channels in the “11-meter” band, which is the frequency segment 26.965 – 27.405 MHz. *See* 47 C.F.R. § 95.407.

¹⁰ *Amendment of the Part 95, Subpart E, Technical Regulations in the Personal Radio Services Rules*, Order, 3 FCC Rcd 5032 (1988). The Commission later simplified the Rules to combine “type acceptance” and “certification” procedures into a single procedure called “certification.” *Amendment of Parts 2, 15, 18 and Other Parts of the Commission’s Rules*, Report and Order, 13 FCC Rcd 11415 (1998).

6. 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 *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' ARS equipment."¹¹ 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 among those devices subject to equipment authorization procedures, 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. The *Notice* also stated that the Commission considers these transceivers as devices 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."¹² 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.¹³

7. On November 26, 2001, the Enforcement Bureau's ("Bureau") Dallas, Texas Field Office ("Dallas Office") issued a Citation to Ramko for illegally marketing 41 models of non-certified "10-meter" CB radio transceivers.¹⁴ The Dallas Office noted that the Commission had evaluated devices similar to the radio frequency devices at issue and concluded that the devices marketed by Ramko were not only amateur radios but could easily be altered for use as CB devices.¹⁵ The Dallas Office further noted that the Commission has concluded that such devices fall within the definition of a CB transmitter and therefore cannot legally be imported or marketed in the United States.¹⁶ The Citation warned Ramko of the possible consequences of continued marketing of these devices in violation of the rules, including monetary forfeitures and criminal sanctions. On November 30, 2001, Ramko submitted a follow-up letter to the Citation, disputing "all of the [Citation's] legal and factual contentions," and adding "[w]e expect that your office will withdraw the ... citation within 30 days from the date of this letter."¹⁷ By letter dated

¹¹ *Extended Coverage High Frequency Transceivers*, Public Notice, Report No. 62882 (OET rel. May 13, 1996) ("*Notice*").

¹² *Id.*

¹³ Letter from Christopher Wright, General Counsel, Federal Communications Commission, to John Atwood, Chief, Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC 1999) ("*OGC Letter*").

¹⁴ *Ramko Distributors, Inc.*, Citation, EB-01-DL-664 (Enf. Bur., Dallas Office, Nov. 26, 2001) ("2001 Citation" or "Citation"). Section 503(b)(5) of the Act, 47 U.S.C. § 503(b)(5), provides that prior to imposing a forfeiture penalty on an entity, such as Ramko, that does not hold a Commission license, permit, certificate or other authorization, or application for license, permit, certificate or other authorization, a Citation must be issued and ample time given to consult a Commission field office. If the entity subsequently engages in the activity described in the citation, then a forfeiture penalty may be imposed. *See also* 47 C.F.R. § 1.80(d).

¹⁵ 2001 Citation at 3 ¶ 6. The 2001 Citation listed the following 41 devices: Connex models 3300, 3300HP, 4400, 4400HP, 4800HP, and 4800HPE; Galaxy models DX33, DX33HML, DX44, DX44V, DX55, DX55V, DX66, DX66V, DX73, DX73V, DX77, DX77V, DX77HML, DX88, DX88HL, DX99, DX99V, DX2517, and DX2527; General models Grant, Hill, Jackson, Lee, and Longstreet; Magnum models 257, Alpha Force, and Delta Force; Mirage models 44, 66, 88, 99, and 2950; Virage models V3300 and V3300HP; and Superstar model 121. *Id.* at 1-2 ¶¶ 3-4.

¹⁶ 2001 Citation at 3 ¶ 6, *citing OGC Letter*.

¹⁷ Letter from Michael C. Olson, counsel for Ramko, to James D. Wells, District Director, Dallas, Texas Field Office, Enforcement Bureau, Federal Communications Commission (Nov. 30, 2001).

January 28, 2002, the Dallas Office again explained that the subject devices were CB transmitters pursuant to Section 95.603(c) of the Rules and warned Ramko to stop marketing the equipment immediately.¹⁸ The Dallas Office again cautioned Ramko that continued marketing could result in enforcement action such as monetary fines, seizure of the equipment and criminal sanctions.¹⁹ In a second follow-up letter to the Citation submitted in February 2002, Ramko again disputed the Citation's conclusions and asked the Dallas Office to withdraw the Citation.²⁰ In April 2002, Ramko filed a third letter which asserted that in the absence of a response to its February letter, it assumed that the Dallas Office agreed with its position and would withdraw the Citation.²¹

8. In 2006, the Bureau's Spectrum Enforcement Division ("Division") received a July 2005 Ramko flyer ("2005 flyer") which advertised substantially the same equipment that was the subject of the 2001 Citation. Specifically, 15 of the devices advertised for sale in the 2005 flyer were listed in the 2001 Citation.²² Because it appeared that Ramko may have continued to market CB transmitting devices as amateur radio equipment after receiving the 2001 Citation, on April 17, 2006, the Division issued a letter of inquiry ("First LOI") to Ramko concerning certain devices that it was marketing as amateur radio equipment.²³

9. On May 22, 2006, Ramko filed a late response to the First LOI.²⁴ In its response, Ramko stated that it neither manufactured nor imported the subject devices.²⁵ Ramko failed to provide responses to the First LOI's questions concerning the length of time it marketed each device, the total number of units of each device sold, and the identity of its retailers and distributors, arguing that it (1) has a two-year document retention policy and that "most documents dated before 2004 have probably already been destroyed"; (2) cannot conduct a computerized search for the number of units sold before April 1, 2006, when new computer software was installed and that matching customers to products before then would be limited to the existing paper invoices; and (3) is unable match customers with products under the current computer system.²⁶ Ramko conceded, however, that it sent out catalogs or price lists which were "substantially similar" to the contents of its web page. Further, Ramko admitted that none of the subject

¹⁸ Letter from James D. Wells, District Director, Dallas, Texas Field Office, Enforcement Bureau, Federal Communications Commission to Michael C. Olson (Jan. 28, 2002) ("January 28, 2002 Letter").

¹⁹ *Id.*

²⁰ Letter from Michael C. Olson, to James D. Wells, District Director, Dallas, Texas Field Office, Enforcement Bureau, Federal Communications Commission (Feb. 13, 2002).

²¹ Letter from Michael C. Olson, to James D. Wells, District Director, Dallas, Texas Field Office, Enforcement Bureau, Federal Communications Commission (Apr. 4, 2002).

²² The 2005 flyer advertised the following 16 10-meter radios: Connex models 3300, 3300HP, and 4800HPE; Galaxy models DX33, DX44, DX55, DX66, DX77, DX88, DX99, and DX2517; General models Jackson and Lee; Magnum models Delta Force and Mini Mag; and Superstar model 121. Of these 16 devices, the following 15 devices were listed in the 2001 Citation: Connex models 3300, 3300HP, and 4800HPE; Galaxy models DX33, DX44, DX55, DX66, DX77, DX88, DX99, and DX2517; General models Jackson and Lee; Magnum model Delta Force; and Superstar model 121.

²³ Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Carl E. Disbrow, President, Ramko Distributors, Inc. (April 17, 2006).

²⁴ Letter from Thad Disbrow, Vice President-Secretary, Ramko Distributors, Inc., to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 22, 2006) ("First Response").

²⁵ *Id.* at 2.

²⁶ *Id.*

devices received Commission authorization prior to marketing.²⁷ Ramko objected to the findings of the 2001 Citation and argued that the radios “as received and sold by Ramko” were governed by Part 97 of the Rules and did not require certification prior to marketing.²⁸ Ramko also claimed that an email from a Commission staff member supported its position.²⁹ Finally, Ramko said that the Bureau failed to respond to a second follow-up letter from Ramko to the 2001 Citation, and that Ramko therefore believed that the Bureau “dropp[ed] the matter” at that time.³⁰

10. On July 20, 2006, the Division issued a Second LOI to Ramko (“Second LOI”).³¹ The Division again requested that Ramko provide information concerning certain devices that it was marketing as amateur radio equipment. In view of Ramko’s statement that it had a two-year document retention policy, the Division directed Ramko to provide the requested information for the most recent two-year period.

11. On August 23, 2006, Ramko filed a response to the Second LOI.³² In its response, Ramko provided data on the total number of units sold for certain of the subject devices for the five-month period from April 1, 2006, to August 17, 2006.³³ This data indicated that Ramko sold units of the following 13 devices during this five-month period: Connex models 3300, 3300HP, and 4400; Galaxy models DX33, DX44, DX55, DX66, DX77, DX99, and DX2517; General models Jackson and Lee; and Magnum model Mini Mag.³⁴ Ramko also provided a price list, which stated the sale price for 12 of these devices.³⁵ Additionally, in response to a question as to whether the subject devices were capable of operating, or of being modified to operate, on any frequencies beyond the ARS band, Ramko stated that “every Amateur radio is capable of being modified to work out of band.”³⁶ Ramko also said that

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1.

³⁰ *Id.*

³¹ Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Carl E. Disbrow, President, Ramko Distributors, Inc. (July 20, 2006).

³² Letter from Thad Disbrow, Vice President-Secretary, Ramko Distributors, Inc., to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 23, 2006) (“Second Response”).

³³ In its Second Response, Ramko claimed that it changed its computer software as of April 1, 2006 and could only provide data from that date forward. Second Response at 2. Ramko also provided sales data for certain other devices that were not the subject of the Division’s LOIs.

³⁴ Ramko requested confidential treatment of certain information submitted in its Second Response, including the total number of units of each device sold. Second Response at 2. Ramko asserted that this information constitutes trade secrets customarily guarded from competitors and that disclosure of this information would result in substantial competitive harm. We will accord confidential treatment of Ramko’s sales data. For purposes of this *NAL*, we need not address Ramko’s request for confidential treatment of certain other information included in its Second Response.

³⁵ Ramko’s price list included price information for the following 12 models: Connex models 3300, 3300HP, and 4400; Galaxy models DX33, DX44, DX55, DX66, DX77, DX99, and DX2517; General model Jackson; and Magnum model Mini Mag. Ramko’s price list also included price information for certain other devices that were not the subject of the Division’s LOIs.

³⁶ Second Response at 2.

“information on how to modify almost every brand of Amateur radio to work out of band is freely available on the Internet.”³⁷

12. Subsequently, in September 2006, the Division observed that Ramko was advertising the following 16 models of 10-meter radios in a flyer on its website: Connex models 3300, 3300HP, and 4800HPE; Galaxy models DX33, DX44, DX55, DX66, DX77, DX88, DX99 and DX2517; General models Jackson and Lee; Magnum models Delta Force and Mini Mag; and Superstar model 121.

13. Thus, the record indicates that Ramko either sold or advertised for sale the following 17 models of 10-meter radios between April 1, 2006 and September 2006: Connex models 3300, 3300HP, 4400, and 4800HPE; Galaxy models DX33, DX44, DX55, DX66, DX77, DX88, DX99 and DX2517; General models Jackson and Lee; Magnum models Delta Force and Mini Mag; and Superstar model 121. Of these 17 models, 16 models were specifically identified by the Bureau in the 2001 Citation as devices that could easily be altered for use as CB devices and therefore could not be lawfully marketed in the United States.³⁸

14. 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.³⁹ 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.⁴⁰ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or rule.⁴¹ As set forth below, we conclude under this standard that Ramko is apparently liable for forfeiture for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803 of the Rules by marketing radio transceivers that are neither Commission authorized nor eligible for such authorization.

III. DISCUSSION

A. Marketing of non-certified radio transceivers

15. We conclude that Ramko apparently violated Section 302(b) of the Act and Section 2.803 of the Rules by willfully and repeatedly marketing 17 unauthorized radio transceivers in the United States. Specifically, we find that Ramko marketed the following 17 devices: Connex models 3300, 3300HP, 4400, and 4800HPE; Galaxy models DX33, DX44, DX55, DX66, DX77, DX88, DX99 and DX2517; General models Jackson and Lee; Magnum models Delta Force and Mini Mag; and Superstar

³⁷ *Id.*

³⁸ Although the Magnum Mini Mag was not specifically listed in the 2001 Citation, we note that it is a 10-meter radio transceiver substantially similar to the devices identified in the 2001 Citation.

³⁹ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992) (“*Southern California*”). The term “repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

⁴⁰ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁴¹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

model 121. As set forth in detail above, the record establishes that Ramko sold or advertised for sale each of these devices between April 1, 2006 and September 2006.⁴² Ramko concedes that these devices have not been certified.⁴³ Moreover, as previously discussed, these devices are not eligible for certification under Section 95.655(a) of the Rules because they are capable of operating on frequencies not authorized for the CB service.⁴⁴ Ramko marketed these devices after receiving the 2001 Citation advising it that amateur radios that may be easily modified to transmit on CB frequencies are considered CB transmitters and therefore may not legally be marketed in the United States.

16. In its responses, Ramko contends that the subject devices are “legal Amateur equipment.” Ramko argues that these devices “as received by Ramko and as sold by Ramko, transmit on the 10 meter Amateur band,” and require no certification under Part 97 of the Rules.⁴⁵ We reject this argument. Section 95.603(c) of the Rules states that a CB transmitter is a “transmitter that operates or is intended to operate at a station authorized in the CB” service and that such transmitters must be certificated. The *OGC Letter* clarified that ARS transmitters that “have a built-in capability to operate on CB frequencies and can easily be altered to activate that capability” are intended for use in the CB service as well as the amateur service and fall within the definition of “CB transmitter” under Section 95.603(c).⁴⁶ In *Pilot Travel Centers, LLC*, the Commission affirmed the interpretation set forth in the *OGC Letter*.⁴⁷ The 17 devices at issue are substantially similar to devices that have been evaluated by the Commission’s Office of Engineering and Technology and found to be easily altered for use as CB devices.⁴⁸ Further, Ramko does not dispute that these 17 devices are capable of being easily modified to operate on CB frequencies. Accordingly, we find that these devices fall within the definition of “CB transmitter.”

17. Next, Ramko asserts that Commission staff agree with its position that the subject devices are legal to market. In support of this assertion, Ramko references an informal 1997 email from a Commission staffer whom Ramko states “advised that the radios were legal to sell as Amateur equipment.”⁴⁹ We disagree with Ramko’s assertion. First, the Commission has consistently held that regulatees are responsible for compliance with the Commission’s rules and that they should not rely on

⁴² See *supra* paragraphs 11-12.

⁴³ First Response at 2.

⁴⁴ See *supra* paragraph 4.

⁴⁵ First Response at 1-2; Second Response at 2.

⁴⁶ See *OGC Letter*, 14 FCC Rcd at 7797.

⁴⁷ *Pilot Travel Centers, LLC*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113, 23114 (2004), *consent decree issued*, Order and Consent Decree, 21 FCC Rcd 5308, 5311 (2006) (“*Pilot Travel*”). The Bureau has also affirmed the *OGC Letter*’s interpretation in numerous enforcement proceedings. See *Gambler’s CB & Ham Radio Sales & Service*, Forfeiture Order, 21 FCC Rcd 14628, 14630 (Regional Dir., Northeast Region, Enf. Bur., rel. December 21, 2006) (“*Gambler’s*”); *Hightech CB Shop*, Forfeiture Order, 20 FCC Rcd 12514, 12517 (Enf. Bur. 2005), *recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 19269 (Enf. Bur. 2005), (“*Hightech Shop*”); *Loves Travel Stops and Country Stores, Inc.*, Forfeiture Order, 21 FCC Rcd 10798, 10802 (Regional Dir., South Central Region, Enf. Bur. 2006) (“*Loves Travel*”); *Travelcenters of America Troutdale, Oregon*, Forfeiture Order, 21 FCC Rcd 6978, 6981 (Regional Dir., Western Region, Enf. Bur. 2006) (“*Travelcenters*”).

⁴⁸ See *Pilot Travel*, 19 FCC Rcd at 23116 (noting that OET had determined that Galaxy models DX33HML, DX66V and DX99V were capable of being easily modified to operate on CB frequencies); *Hightech Shop*, 20 FCC Rcd at 12516 (noting that OET had determined that Connex model 3300HP was capable of being easily modified to operate on CB frequencies); *Travelcenters*, 21 FCC Rcd at 19271 (noting that OET had determined that Galaxy models DX33HML, DX44V, DX66V, DX88HL, and DX99V were capable of being easily modified to operate on CB frequencies).

⁴⁹ First Response at 1.

informal opinions from Commission staff.⁵⁰ In addition, as previously noted, the *OGC Letter*, which was issued subsequent to the 1997 email, clarified that ARS transmitters that have a built-in capability to operate on CB frequencies and can easily be altered to do so fall within the definition of a “CB transmitter” and require certification prior to marketing or importation.⁵¹ The *OGC Letter* was published in the FCC Record. Pursuant to Section 0.445(e) of the Rules, interpretations designed to have general applicability and legal effect that are published in the FCC Record “may be relied upon, used or cited as precedent by the Commission” in any matter.⁵² Furthermore, the 2001 Citation put Ramko on actual notice of the *OGC Letter* and also notified Ramko that 41 devices that it was marketing as amateur radios, including 16 of the devices at issue here, could not legally be marketed in the United States.⁵³ Once Ramko received the 2001 Citation, it knew or should have known that the email did not contain current information and it cannot use the email as justification for violating the rules.⁵⁴

18. Finally, Ramko claims that because the Bureau did not respond to Ramko's second follow-up letter to the 2001 Citation, it believed that the Bureau agreed with its position and “dropp[ed] the matter.”⁵⁵ We find it unreasonable for Ramko to have concluded that the Dallas Office agreed with its position and was dropping the matter. The Dallas Office at no time – orally or in writing – agreed with Ramko’s position or closed the case. To the contrary, the only written correspondence from the Dallas Office – the 2001 Citation and the follow-up letter dated January 28, 2002 – unambiguously stated that Ramko’s assertions were incorrect and that its actions flatly violated Section 302(b) of the Act and 2.803 of the Rules.⁵⁶ In the face of clear statements from the Bureau that Ramko’s actions were unlawful, the company’s decision to proceed with marketing the equipment was at its own risk.⁵⁷

19. Accordingly, based on the preponderance of the evidence, we find that Ramko apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803 of the Rules by selling or offering for sale 17 models of radio transceivers which, by their nature, are ineligible for equipment certification.

⁵⁰ See *Texas Media Group, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852 (1990), *aff’d sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991) (“It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff.”); *Hinton Telephone Company*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637 (1995) (“The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.”).

⁵¹ See *OGC Letter*, 14 FCC Rcd at 7797.

⁵² 47 C.F.R. § 0.455(e).

⁵³ 2001 Citation at 1-2.

⁵⁴ See *Hightech Shop*, 20 FCC Rcd at 12518.

⁵⁵ See notes 21-22 and accompanying text.

⁵⁶ 2001 Citation at 1-2; January 28, 2002 Letter.

⁵⁷ The Bureau has repeatedly rejected this argument in similar cases involving the marketing of ARS transmitters that can be easily modified to operate on CB frequencies. In each of these cases, the Bureau issued a Citation that placed the retailer on clear notice that such marketing violates Section 302(b) of the Act and Section 2.803 of the Rules and the retailer filed multiple follow-up letters disputing the Citation. The Bureau subsequently found that it was unreasonable for the retailer to conclude, based on the Bureau’s failure to respond to a second or third follow-up letter to the Citation, that the Bureau agreed with the retailer’s position and was withdrawing the Citation. See *Gambler’s*, 21 FCC Rcd at 14631; *Hightech Shop*, 20 FCC Rcd at 12516; *Loves Travel*, 21 FCC Rcd at 10801.

B. Proposed Forfeiture Amount

20. Section 503(b) of the Act and Section 1.80(a) of the Rules provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. Based upon the record before us, it appears that Ramko's violations of Section 302(b) of the Act and Section 2.803 of the Rules were willful and repeated.

21. Section 1.80(b)(4) of the Rules establishes a base forfeiture amount of \$7,000 for each violation involving the marketing of unauthorized equipment.⁵⁸ Section 503(b)(2)(E) 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.⁵⁹ In determining the appropriate forfeiture amount, Section 503(b)(2)(E) 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."⁶⁰ In the present case, we find that each instance of marketing of an unauthorized model constitutes a separate and continuing violation, and, as discussed below, we find that the circumstances presented warrant a substantial proposed forfeiture amount.

22. The record establishes that within the past year, Ramko has marketed 17 models of non-certified radio transceivers in the United States. Consequently, as an initial matter, we find that Ramko is apparently liable for a base forfeiture of \$7,000 for each of the 17 models of non-certified devices, for an aggregate base forfeiture of \$119,000. That base forfeiture amount is, however, subject to an upward adjustment.⁶¹

23. Having considered the statutory factors enumerated above, we conclude that an upward adjustment is warranted. We find the violations here are intentional given that Ramko continued to market these unauthorized radio transceivers after the 2001 Citation put it on actual notice that marketing of this equipment is unlawful.⁶² The proposed upward adjustment here is consistent with our decision in *Pilot Travel*,⁶³ in which we proposed a comparable upward adjustment of the base forfeiture amount from \$91,000 to \$125,000, noting that Pilot Travel had received Citations that the marketing of its non-certified CB transmitters was unlawful but continued marketing the equipment. In that case, as here, we concluded that the company's behavior evinced a pattern of intentional non-compliance with and disregard for these rules, meriting a larger forfeiture amount based on the company's culpability. Accordingly, we propose an aggregate forfeiture of \$150,000 for Ramko's apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803 of the Rules.

⁵⁸ 47 C.F.R. § 1.80(b)(4).

⁵⁹ 47 U.S.C. § 503(b)(2)(E). *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 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).

⁶⁰ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

⁶¹ *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17112 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (noting that 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).

⁶² *See Pilot Travel*, 19 FCC Rcd at 23117.

⁶³ *Id.*

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Act⁶⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶⁵ Ramko Distributors, Inc., IS NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of one hundred fifty thousand dollars (\$150,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803 of the Rules.

25. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Ramko Distributors, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

26. 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.⁶⁶ 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 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁶⁷

27. 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.

28. 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 principles; 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.⁶⁸

29. 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 Mr. Thad Disbrow, Ramko Distributors, Inc., 3840 LaGrange Street, Toledo, Ohio 43612.

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⁶⁴ 47 U.S.C. § 503(b).

⁶⁵ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

⁶⁶ 47 U.S.C. § 504(a).

⁶⁷ See 47 C.F.R. § 1.1914.

⁶⁸ *Id.*

Marlene H. Dortch
Secretary