

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

In the Matter of)	
)	
Vitec Group Communications Limited)	File No. EB-05-SE-172
Cambridge, United Kingdom)	NAL/Acct. No. 200632100009
)	FRN 0012947594
)	

ORDER ON REVIEW

Adopted: December 3, 2009

Released: December 4, 2009

By the Commission:

I. INTRODUCTION

1. In this *Order on Review*, we deny the *Application for Review*¹ filed by Vitec Group Communications Limited (“Vitec”). Vitec seeks review of a *Memorandum Opinion and Order* issued by the Enforcement Bureau (“Bureau”) on April 20, 2007.² In that *Memorandum Opinion and Order*, the Bureau denied Vitec’s *Petition for Reconsideration*³ of a monetary forfeiture in the amount of eleven thousand two hundred dollars (\$11,200) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),⁴ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).⁵ The noted violations involve Vitec’s marketing of unauthorized radio frequency devices in the United States.

II. BACKGROUND

2. In May 2005, the Bureau received a complaint alleging that Clear-Com Communication Systems⁶ was marketing unapproved radiofrequency devices in the United States in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules. Specifically, the complaint indicated that Vitec advertised an unapproved digital wireless intercom system called the “CellCom Digital Wireless Intercom”⁷ in the April 2005 issue of *Broadcast Engineering* and also displayed it at the 2005 National

¹ *Application for Review* filed on April 20, 2007, by Christopher D. Imlay, counsel for Vitec Group Communications Limited (“*Application for Review*”).

² *Vitec Group Communications Limited*, Memorandum Opinion and Order, 22 FCC Rcd 7396 (Enf. Bur. 2007).

³ *Petition for Reconsideration* filed on November 29, 2007, by Christopher D. Imlay, counsel for Vitec Group Communications Limited (“*Petition for Reconsideration*”).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803(a)(1).

⁶ Clear-Com Communications Systems is a trade name that Vitec, a British company, uses in the United States. In this *Order on Review*, we refer to the company as Vitec throughout.

⁷ Vitec subsequently identified this device as the “CellCom 10” digital wireless intercom system. Letter from Christopher D. Imlay, Esq. to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (December 6, 2005) at 2.

Association of Broadcasters (“NAB”) trade show in Las Vegas, NV. Digital wireless intercom systems, such as the CellCom 10, are classified as intentional radiators⁸ and are required by Section 15.201 of the Rules⁹ to be approved prior to marketing through the equipment certification¹⁰ procedures described in Sections 2.1031 – 2.1060 of the Rules.¹¹

3. The Bureau’s Spectrum Enforcement Division (“Division”) subsequently investigated Vitec’s marketing activities. As part of the investigation, the Division obtained a copy of the April 2005 issue of *Broadcast Engineering* and confirmed that it contains an advertisement for the CellCom 10. The advertisement describes the CellCom 10 as “revolutionary” and exhorts readers to “join the revolution.” Section 2.803(c) of the Rules¹² allows the advertising or display of radio frequency devices prior to equipment authorization only if the following disclaimer notice is provided:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

The *Broadcast Engineering* advertisement did not contain this notice.

4. The Division further determined through Internet research that the website www.clearcom.com contained photographs of Vitec’s display of the CellCom 10 at the 2005 NAB trade show, which took place on April 16-21, 2005. The disclaimer notice specified by Section 2.803(c) of the Rules also was not visible in those photographs.

5. The Division sent Vitec a letter of inquiry (“LOI”)¹³ on October 24, 2005. Vitec submitted responses both directly¹⁴ and through its counsel.¹⁵ In its direct response, Vitec stated that it obtained equipment certifications¹⁶ covering its digital wireless intercom system on November 2, 2005, and that it did not sell or distribute the product in the United States prior to the grant of the certifications.¹⁷ Vitec acknowledged, however, that “the advertising in *Broadcast Engineering* and

⁸ An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3 (o).

⁹ 47 C.F.R. § 15.201.

¹⁰ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

¹¹ 47 C.F.R. §§ 2.1031 – 2.1060.

¹² 47 C.F.R. § 2.803(c).

¹³ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Clear-Com Communications Systems (October 24, 2005).

¹⁴ Letter from Chris Exelby, Managing Director, Vitec Group Communications, to Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (November 25, 2005) (“November 25, 2005 LOI Response”).

¹⁵ Letter from Christopher D. Imlay, Esq., to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (December 6, 2005) (“December 6, 2005 LOI Response”).

¹⁶ The Commission’s equipment authorization data base indicates that, on November 2, 2005, Vitec was granted equipment certifications under FCC ID # S30-CEL-BP (portable two-way radios) and FCC ID # S30-CEL-TA (base station) for the Vitec CellCom 10 Digital Wireless Intercom.

¹⁷ November 25, 2005 LOI Response at 1.

display at NAB did take place as you note during April 2005, the object being to market this product prior to launch.”¹⁸ In the subsequent response submitted through its counsel, Vitec denied any violation of the Act or the Rules.¹⁹ The Division directed a second LOI to Vitec on February 13, 2006.²⁰ In its response to that letter, Vitec stated that it manufactures its CellCom 10 digital wireless intercom system in England and imports it into the United States.²¹ Vitec asserted that it did not “market or sell” the system in the United States prior to its receipt of the equipment certifications on November 2, 2005.²²

6. On April 14, 2006, the Division issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Vitec in the amount of fourteen thousand dollars (\$14,000) for apparent willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a)(1) of the Rules.²³ In its NAL response, Vitec argued that the proposed forfeiture should be cancelled because its pre-certification advertising and display of the Cellcom 10 digital wireless intercom system did not violate Section 302(b) of the Act or Section 2.803(a)(1) of the Rules, and that, if there was a basis for a monetary forfeiture, the amount proposed by the NAL was excessive.²⁴ Vitec provided a statement indicating that it furnished the required disclaimer notice at the 2005 NAB convention. Based on this statement, the Division found that the display of the CellCom 10 at the NAB convention did not violate Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. The Division, however, did find that the advertisement of the Cellcom 10 in *Broadcast Engineering* magazine without a disclaimer notice violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²⁵ The Division also concluded that Vitec had a history of overall compliance which warranted reduction of the forfeiture amount from \$14,000 to \$11,200, but rejected Vitec’s other arguments for reduction of forfeiture amount.²⁶ In its *Petition for Reconsideration*, Vitec reiterated arguments originally made in its NAL response.²⁷ The Bureau again rejected those arguments in its *Memorandum Opinion and Order*.²⁸

7. In its *Application for Review*, Vitec again argues that its pre-certification advertising did not violate the Section 302(b) of the Act or Section 2.803(a)(1) of the Rules, that the one-year statute of

¹⁸ *Id.*

¹⁹ December 6, 2005, LOI Response at 2.

²⁰ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Christopher D. Imlay, Esq. (February 13, 2006).

²¹ Letter from Christopher D. Imlay, Esq., to Kathryn S. Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (March 2, 2006) at 3.

²² *Id.* at 3.

²³ *Vitec Group Communications, Ltd.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 4025 (Enf. Bur., Spectrum Enf. Div., 2006).

²⁴ Letter from Christopher D. Imlay, Esq. to Chief, Spectrum Enforcement Division, Enforcement Bureau (May 18, 2006) (“NAL Response”) at 5-12.

²⁵ *Vitec Group Communications Limited*, Forfeiture Order, 21 FCC Rcd 12871, 12890 (Enf. Bur., Spectrum Enf. Div. 2006)

²⁶ *Id.* at 12891-92.

²⁷ *Petition for Reconsideration* at 6-12.

²⁸ *Vitec Group Communications Limited*, Memorandum Opinion and Order, 22 FCC Rcd 7396 , 7399-7401(Enf. Bur. 2007).

limitations bars imposition of a forfeiture, and that, even if there is a basis for a monetary forfeiture, the \$11,200 forfeiture amount assessed by the Bureau is excessive.²⁹

III. DISCUSSION

8. 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 Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including *advertising* for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device³⁰ 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 [*emphasis added*].

9. Vitec claims that it did not admit “that any advertising or marketing of [the Cellcom 10] was included in the *Broadcast Engineering* entry.”³¹ Vitec did, in fact, make such an admission when it stated that “The CellCom 10 has been advertised in, at least, *Broadcast Engineering Magazine*.”³² Vitec does not deny that the device depicted in the *Broadcast Engineering* advertisement is the Cellcom 10. We, therefore, find that Vitec advertised the CellCom 10 in the April 2005 issue of *Broadcast Engineering* prior to the grant of an equipment authorization.³³ Vitec, however, contends, as it did in its NAL response and its *Petition for Reconsideration*, that it was not required to include the disclaimer notice specified by Section 2.803(c) of the Rules in the *Broadcast Engineering* advertisement because the *Broadcast Engineering* advertisement did not offer or advertise the CellCom 10 for “sale or lease.”³⁴ Specifically, Vitec argues that the advertisement did not “suggest or state that any particular device was for sale or lease,” that the purpose the advertisement was to “to exhort readers to visit the booth [at the NAB convention], not to buy any particular product ...”³⁵ and that the CellCom 10 was not actually available for sale at the time of the advertisement.³⁶ We disagree with Vitec’s claim that its advertisement did not exhort the reader to buy any particular product. To the contrary, the advertisement described the CellCom 10 as “revolutionary” and exhorted readers to “join the revolution.” Its clear intent was to generate future sales of the CellCom 10. We also concur with the Bureau’s finding that the lack of availability of the CellCom 10 at the time of the pre-certification advertising is not material.³⁷

²⁹ *Application for Review* at 2-3, 7-13.

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

³¹ *Application for Review* at 8.

³² December 6, 2005 LOI Response at 3.

³³ NAL Response at 6-7, Exhibit A.

³⁴ NAL Response at 6-7; *Petition for Reconsideration* at 6-8; *Application for Review* at 8-10.

³⁵ *Application for Review* at 9.

³⁶ NAL Response at 7; *Petition for Reconsideration* at 7; *Application for Review* at 8-9.

³⁷ See *ACR Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22293 (2004) (proposing a

Furthermore, we agree with the Bureau that Vitec's construction of the Commission's marketing regulations to permit "pre-marketing a product that is anticipated to be available in the future"³⁸ would largely eviscerate the prohibition against pre-certification advertising without a disclaimer and likely lead to widespread abuse of the marketing regulations. We will not construe the rules to allow such "pre-marketing" of unauthorized devices without the disclaimer required by Section 2.803(c). We, accordingly reject Vitec's argument and find that Vitec marketed the CellCom 10 prior to certification without the required disclaimer notice. We therefore affirm the Bureau's determination that Vitec willfully³⁹ and repeatedly⁴⁰ violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

10. Vitec also argues that the one year statute of limitations of Section 503(b)(6)(B) of the Act⁴¹ bars imposition of a forfeiture on the basis of Vitec's *Broadcast Engineering* advertisement.⁴² In its response to the *NAL*, Vitec claimed that the statute of limitations expired before the issuance of the *NAL* because the *Broadcast Engineering* issue in which Vitec's advertisement appeared, April 2005, was distributed to subscribers during March 2005, which is more than one year before the April 14, 2006, issuance of the *NAL*.⁴³ The Division rejected that argument.⁴⁴ Vitec contended in its petition for reconsideration that the violation, if any, occurred only "on the first day of publication of that issue of *Broadcast Engineering* magazine" during March 2005⁴⁵ -- another argument rejected by the Bureau.⁴⁶ Vitec again argues that the violation, if any, was a "one day event."⁴⁷ We disagree with Vitec's interpretation and affirm the Bureau's finding. The April issue of *Broadcast Engineering* was current

\$75,000 forfeiture for pre-certification advertising of a device that was not yet available for sale without the requisite disclaimer), *forfeiture ordered*, 21 FCC Rcd 3698 (2006) (forfeiture paid) ("*ACR Electronics*").

³⁸ *Petition for Reconsideration* at 8.

³⁹ 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,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

⁴⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... 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).

⁴¹ Section 503(b)(6)(B) of the Act provides that

No forfeiture penalty shall be determined or imposed against any person under this subsection if such person does not hold a broadcast station license issued under subchapter III of this chapter and if the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.

47 U.S.C. § 503(b)(6)(B).

⁴² *Application for Review* at 11-12.

⁴³ *NAL Response* at 6.

⁴⁴ 21 FCC Rcd at 12890.

⁴⁵ *Petition for Reconsideration* at 12.

⁴⁶ 22 FCC Rcd at 7400.

⁴⁷ *Application for Review* at 11.

until the end of that month and, therefore, Vitec's violation continued at least through the end of April 2005, and, therefore, the *NAL* was issued within the one-year statute of limitations period.

11. Additionally, Vitec argues that, if there is a basis for a monetary forfeiture, the \$14,000 base forfeiture amount calculated by the Bureau is excessive and, therefore, the \$11,200 forfeiture amount is also excessive.⁴⁸ The base forfeiture amount for marketing unauthorized equipment is \$7,000.⁴⁹ The Division found that the CellCom 10 included two types of uncertified devices that were eventually authorized under separate equipment authorizations – base stations and mobile transmitters – whose marketing constituted separate offenses and, thus, found that the aggregate base forfeiture amount is \$14,000.⁵⁰ Vitec argues, as it did in its *Petition for Reconsideration*, that the CellCom 10 is a single device.⁵¹ Specifically Vitec states that “The CellCom 10 is one device, incorporating two components The components are not sold separately. They do not work separately. The belt packs and base station constitute a single system.”⁵²

12. We find that Vitec's designation and marketing of the CellCom 10's base and mobile transmitters as a single model is not dispositive. While it is true that the CellCom 10 functions only if its users have both the base and mobile transmitters, it does not follow that the base and mobile transmitters can be sold only as a package. For example, both base and mobile transmitters can be sold separately as replacements, while mobile transmitters can be sold separately to expand the number of mobile transmitters.⁵³ We conclude that Vitec's marketing strategy does not change the essential nature of the CellCom 10 base and mobile transmitters as separate and distinct devices. We, accordingly, affirm the Bureau's determinations that the CellCom 10 includes two distinct kinds of devices, that \$14,000 is the correct base forfeiture amount, and that \$11,200 is the proper forfeiture amount, as adjusted to reflect Vitec's history of overall compliance.

13. We have examined Vitec's *Application for Review* pursuant to the statutory factors prescribed by Section 503(b)(2)(D) of the Act and Section 1.80 of the Rules, and in conjunction with the *Forfeiture Policy Statement*. We find that neither cancellation nor reduction of the forfeiture is warranted and that the *Memorandum Opinion and Order* should be affirmed.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 1.115 of the Rules,⁵⁴ Vitec's *Application for Review* of the Bureau's April 20, 2007, *Memorandum Opinion and Order* **IS DENIED** and the *Memorandum Opinion and Order* **IS AFFIRMED**.

15. 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/Account*

⁴⁸ *Application for Review* at 12.

⁴⁹ See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

⁵⁰ 21 FCC Rcd at 12891.

⁵¹ *Petition for Reconsideration* at 9; *Application for Review* at 12.

⁵² *Application for Review* at 12.

⁵³ Because the devices have separate equipment authorizations, FCC ID S30-CEL-BP and FCC ID S30-CEL-TA, they are authorized to be marketed separately.

⁵⁴ 47 C.F.R. § 1.115.

Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Vitec will also send electronic notification on the date said payment is made to Thomas.Fitz-Gibbon@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this *Order On Review* shall be sent by first class mail and certified mail return receipt requested to Vitec Group Communications Limited, 4065 Hollis Street, Emeryville, CA 94608, and to its attorney, Christopher D. Imlay, Esq., Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, MD 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary