

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
IOU Acquisitions, Inc.;)	File Nos.: EB-SED-17-00024050
)	NAL/Acct. No.: 201832100030
)	FRN: 0023894660
)	
Air-Tel, LLC)	File Nos.: EB-SED-17-00024053
)	NAL/Acct. No.: 201832100031
)	FRN: 0020520946

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 12, 2018

Released: September 14, 2018

By the Commission:

I. INTRODUCTION

1. IOU Acquisitions, Inc. (IOU) and Air-Tel, LLC (Air-Tel) (collectively, the Companies) hold licenses to provide Radiolocation Service (RLS) in the 3300-3650 MHz band. Over the course of several years, the Companies apparently used these licenses not to provide RLS service, but rather to provide an unauthorized wireless data transmission service in the same band. The Companies apparently did so by intentionally altering the settings of wireless equipment to operate outside of authorized frequency bands. The Companies did not cease providing their unauthorized service until after the Commission commenced an investigation. We propose a penalty of \$207,290 against IOU and \$327,290 against Air-Tel for these apparent violations.

II. BACKGROUND

A. Radiolocation Service

2. An RLS license authorized under Subpart F of Part 90 of the Commission's rules permits operation of "stations to determine distance, direction, speed, or position by means of radiolocation devices, for purposes other than navigation."¹ Radiolocation is defined in the Commission's rules as "[r]adiodetermination used for purposes other than those of radionavigation;"² radiodetermination is

¹ 47 CFR § 90.103; *accord id.* § 90.101 ("The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation"); *see also id.* § 2.1(c) (defining "Radiolocation Service" as "[a] radiodetermination service for the purpose of radiolocation" and "Radiodetermination Service" as "[a] radiocommunication service for the purpose of radiodetermination"). As explained in greater detail below, the Companies did not use "radiolocation devices," further demonstrating they did not provide RLS. *See infra* Section III.B. Section 1.903(a) of the Commission's rules requires stations in the Wireless Radio Services to be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. 47 CFR § 1.903(a). The term "Wireless Radio Services" is defined as including all radio services authorized under Part 90 of the Commission's rules, including RLS. 47 CFR § 1.907.

² 47 CFR § 2.1(c); *see also id.* § 90.7 ("Radiodetermination used for purposes other than those of radionavigation."). Radionavigation is defined as "Radiodetermination used for the purposes of navigation, including obstruction warning." *Id.* § 2.1(c); *accord id.* § 90.7. As the Companies note in their Petition, described below, these rules have remained essentially the same for at least 30 years. *See infra* para. 9 (Petition at 6).

defined as “[t]he determination of the position, velocity and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves.”³ In other words, radiodetermination relies on the propagation properties of radio waves to determine the position of an object for any purpose. RLS, a subset of radiodetermination, is typically a radar service that relies on the propagation properties of radio waves to determine the position of an object for non-navigation purposes.⁴

3. GPS is technologically distinct from both radiodetermination and RLS. It relies on satellite communications to determine the location of an object and can be used for navigation purposes.⁵ A GPS tracking service is simply the transmission of data, specifically, the location information determined by GPS.⁶

B. IOU and Air-Tel’s Licenses and Operations

4. IOU and Air-Tel are related Colorado-based companies licensed to provide RLS under Subpart F of Part 90 of the Commission’s rules.⁷ IOU has held RLS license WQLW310 for frequencies

³ 47 CFR § 2.1(c); *see also id.* § 90.7 (“The determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves.”).

⁴ Beyond these definitions in the Commission’s rules, radiodetermination and radiolocation have long been customarily identified as a radar service that determines position based on the transmission and reception of radio waves. *See* National Telecommunications and Information Administration, NTIA Special Publication 00-40, Federal Radar Spectrum Requirements at 1 (May 2000), <http://www.ntia.doc.gov/osmhome/reports/ntia00-40/ntia00-40.pdf> (last visited June 1, 2018) (“The term RADAR is derived from the description of its first primary role as a RADio Detection And Ranging system. Originally, it was developed as a means of detecting approaching aircraft at long ranges to enable military defenses to react in sufficient time to counter incoming threats. Most natural and man-made objects reflect radio frequency waves and, depending on the radar’s purpose, information can be obtained from objects such as aircraft, ships, ground vehicles, terrain features, weather phenomenon, and even insects. The determination of the object’s position, velocity and other characteristics, or the obtaining of information relating to these parameters by the transmission of radio waves and reception of their return is sometimes referred to as radiodetermination.”).

Other RLS licensees use their licenses for perimeter security radar at electric power substations or airports, speed enforcement radar, or weather radar. *See e.g.*, ULS Call Sign WQXN422 (motion detector – perimeter security at the Denver airport); ULS Call Sign WRBP708 (Alabama Power Company for surveillance and security to transmission substations); ULS Call Sign WQDV921 (Town of Warrensburg, NY for speed enforcement); ULS Call Sign WPYY795 (license is for doppler weather radar). In all these cases, the radiolocation signal does not carry any information. Rather, the information regarding an object’s size, speed, location, etc., is determined based on the signal’s propagation characteristics.

⁵ *Review of the Commission’s Part 95 Personal Radio Services Rules et al.*, Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 25 FCC Rcd 7651, 7682, para. 39 n.79 (2010) (“GPS is a satellite-based navigation and positioning system...”); *Globalstar LLC*, Order and Authorization, 21 FCC Rcd 398, 405, para. 20 (2006) (“The Commission adopted these emission limits to prevent interference with reception of signals from radionavigation satellites in the 1559-1610 MHz band. The U.S. Government’s Global Positioning System (“GPS”) satellites operate in this band, transmitting radionavigation signals for general civilian use in a one-megahertz band centered on 1575.42 MHz and a coded signal primarily for military use in a ten-megahertz band also centered on the 1575.42 MHz carrier frequency.”).

⁶ *See infra* para. 14.

⁷ Letter of Inquiry Response and attachments from Jonathan M. Grossman, Cozen O’Connor P.C., counsel to IOU Acquisitions, Inc., to Marlene H. Dortch, Secretary, FCC, Attn: Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1, 7-8 (June 2, 2017) (collectively IOU LOI Response) (on file in EB-SED-17-00024050); Letter of Inquiry Response and attachments from Jonathan M. Grossman, Cozen O’Connor P.C., counsel to Air-Tel, LLC, to Marlene H. Dortch, Secretary, FCC, Attn: Jason Koslofsky, Spectrum Enforcement

(continued...)

3300-3650 MHz since October 9, 2014, and Air-Tel has held RLS license WQLX454 for frequencies 3300-3600 MHz since July 1, 2016.⁸ The Companies do not hold licenses to provide non-RLS wireless data transmission service. According to the Companies, the two licenses are used in conjunction with non-RLS license WQLI491 for the 3650-3700 MHz band, held by Note Acquisitions, Inc. (Note), to offer a commercial service through a fourth company named DMR Networks, Inc. (DMR).⁹ Both IOU and Air-Tel have management agreements with DMR and are managed by DMR's senior manager, John Christian Gazzo.¹⁰ Note is also closely connected to Mr. Gazzo.¹¹

5. The Companies claim their respective licenses are used to provide a "GPS vehicle tracking" service that "uses signal transmissions between land and mobile facilities to estimate and/or

(Continued from previous page...)

Division, FCC Enforcement Bureau, at 2, 8-9 (June 2, 2017) (collectively Air-Tel LOI Response) (on file in EB-SED-17-00024053).

⁸ IOU LOI Response at 1, 7-8; Air-Tel LOI Response at 2, 8-9. *See also* Universal Licensing System (ULS) Call Sign WQLW310 (granted May 5, 2010); ULS Call Sign WQLX454 (granted May 18, 2010); *infra* note 10.

⁹ IOU LOI Response at 1, 7-8; Air-Tel LOI Response at 2, 8-9. Note's license, WQLI491, for operation in the 3650-3700 MHz band, is a "non-exclusive nationwide" (NN) license to non-Federal entities for commercial use, typically for wireless broadband service. ULS Call Sign WQLI491. DMR uses the name "Air-Tel" and "CallComm" to market this commercial service. Air-Tel LOI Response at 8-9, Attachs. AirTel-08A-000001-2; IOU LOI Response at 7-8, Attachs. IOU-08A-000001-2. Note used separate equipment from IOU and Air-Tel. *See* E-mail and attachments from David Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC, to Jason Koslofsky, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC (Oct. 31, 2017 10:16 PM EST); E-mail and attachments from David Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC, to Jason Koslofsky, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC, Revised Attach. C (Nov. 1, 2017 7:34 PM EST) (collectively, Third Joint LOI Response) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

¹⁰ Mr. Gazzo has apparently been closely connected to these licenses throughout their history. *See* Petition of Air-Tel, LLC, and IOU Acquisitions, Inc., for Declaratory Ruling and Waiver, at 2 (Oct. 30, 2017) (Petition) (stating that Mr. Gazzo was originally involved in obtaining and setting up both licenses). Both licenses, WQLW310 and WQLX454, were originally granted in 2010 to Sage and Company, LLC (Sage). *See* File Nos. 0004184294 (WQLW310), 0004184297 (WQLX454). In October 2014, Sage assigned both licenses to IOU; in July 2016, IOU assigned one of the licenses, WQLX454, to Air-Tel. *See* File Nos. 0006461572 (WQLW310), 0006461572 (WQLX454) and 0007307197 (WQLX454).

In addition to managing both companies, Mr. Gazzo also apparently has ownership interests in both IOU and Air-Tel. Air-Tel LOI Response at 2 (identifying JG Partners, LTD as an owner of Air-Tel, with an email address apparently associated with John Gazzo); Colorado Secretary of State, JG Partners, Ltd., <https://www.sos.state.co.us/biz/BusinessEntityDetail.do?quitButtonDestination=BusinessEntityResults&nameTyp=ENT&masterFileId=20141409966&entityId2=20141409966&fileId=20141409966&srchTyp=ENTITY> (last visited July 10, 2018) (Certificate of Limited Partnership filed July 3, 2014 lists John Gazzo as a general partner); File Nos. 0007928803 (ownership information for IOU includes e-mail address and phone number associated with Mr. Gazzo's other company, Washington CallComm, LLLP), 0005375460 (ownership information for Washington CallComm, LLLP identifies Mr. Gazzo as Disclosable Interest Holder and contains same phone number as IOU), 0005375344 (application by Washington CallComm, LLLP contains same e-mail address as IOU).

¹¹ Note's license, WQLI491, was originally granted to SMR Online Inc (SMR) in January 2010; the application identifies Mr. Gazzo as SMR's point of contact. *See* File No. 0004094397. In September 2014, SMR assigned WQLI491 to Note. *See* File No. 0006468589. The Nevada Secretary of State identifies Mr. Gazzo as an active director of Note. *See* Nevada Secretary of State, Note Acquisition Inc., <http://nvsos.gov/sosentitysearch/CorpDetails.aspx?lx8nvq=29DpgRDLbV8vzmCxbMDLIA%253d%253d&nt7=0> (last visited July 6, 2018). Mr. Gazzo's company, DMR, also has a management agreement with Note. IOU LOI Response at 6.

communicate mobile station positioning information.”¹² The “land stations support connections between mobile stations and other land station facilities to gather and exchange radiolocation data”¹³ According to the Companies, the “exchange[d] radiolocation data” are the GPS coordinates of the mobile stations, and the connection between the mobile and land stations is a wireless data transmission.¹⁴ The “GPS vehicle tracking” service provided by the Companies also includes “wireless services,” “IP voice services,” and an “enhanced web portal that provides access to tracking information”—additional services that are provided in the same frequency band, using the same equipment.¹⁵ The Companies provided these services since obtaining their licenses until September 24, 2017 and prior holders of both licenses had provided them since 2010.¹⁶

6. In providing the “GPS vehicle tracking” service, the Companies have been using equipment in their fixed locations that is only authorized for wireless service in the 3650-3700 MHz band.¹⁷ The Companies apparently programed this equipment to operate outside of its authorized frequencies despite repeated warnings to the contrary in equipment user manuals.¹⁸ Most recently, and within the statute of limitations period, Air-Tel apparently used twelve units of one model of equipment

¹² IOU LOI Response at 7; Air-Tel LOI Response at 7. *See also* Air-Tel LOI Response, Attachs. AirTel-08A-000001-2; IOU LOI Response, Attachs. IOU-08A-000001-2 (marketing materials describing the service as “GPS Vehicle Tracking” and “CallComm GPS Vehicle Tracking”).

¹³ IOU LOI Response at 7; Air-Tel LOI Response at 7.

¹⁴ Petition at 3 (“The stations operated by having the base station send a signal to the mobile unit, and the mobile unit responding with a transmission of its *geographic coordinates* back to the base station; the mobile having determined its geographic coordinates by means of an *embedded GPS unit*.”) (emphasis added); IOU LOI Response at 7 (IOU uses its RLS license for “wireless radio transmission which transfer data over a modulated wave using Digital, on-off or quantized, no modulation signal”); Air-Tel LOI Response at 7 (same).

¹⁵ *See* Second Letter of Inquiry Response and attachments from Jonathan M. Grossman, Cozen O’Connor P.C., counsel to IOU Acquisitions, Inc. and Air-Tel, LLC, to Marlene H. Dortch, Secretary, FCC, Attn: Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau, at 5 (August 16, 2017) (collectively Joint Second LOI Response) (on file in EB-SED-17-00024050 and EB-SED-17-00024053) (in response to the question of whether the RLS licenses are used to provide “the wireless services associated with tracking services; [and] IP voice services attendant to the tracking services,” the Companies responded, “Yes... the station is authorized to transmit digitized packets, regardless of their content, as long as the transmitted information is part of the RLS.”); *see also* IOU LOI Response at 7; Air-Tel LOI Response at 7.

¹⁶ Petition at 2-3, 5 (operations under the licenses were the same from 2010 until September 24, 2017).

¹⁷ Joint Second LOI Response at 3. In July 2017, for their fixed locations, the Companies started using Cambium equipment (FCC ID Z8H89FT0028), which was granted certification on December 27, 2016, for 3652.5-3697.5 MHz. IOU LOI Response at 8; Air-Tel LOI Response at 9; Joint Second LOI Response at 3. The test reports for the Cambium equipment stated certification was being sought under Subpart Z of Part 90 of the Commission’s rules for “Wireless Broadband Services in the 3650-3700 MHz Band.” Prior to the Cambium equipment, the Companies used Redline equipment (FCC ID QC8-AN80IE) that was granted certification on December 24, 2008, with operation restricted to 3650-3700 MHz. IOU LOI Response at 8; Air-Tel LOI Response at 9; Joint Second LOI Response at 3; Petition at 10, n.11; Third Joint LOI Response at 2 (“When IOU acquired the Licenses [WQLW310 and WQLX454] in 2014, the facilities were already in operation using Redline Model AN80i equipment.”). The Redline equipment is described as a “broadband wireless transceiver device” in the certification grant, and the test report submitted with the equipment stated certification was being sought in accordance with “FCC Part 90 Subpart Z Wireless Broadband Services in the 3650-3700 MHz Band.”

¹⁸ *See infra* notes 70-73 and the accompanying paragraph.

across its fixed locations (Cambium FCC ID Z8H89FT0028), and IOU used four units of the same model of equipment for its one fixed location (Cambium FCC ID Z8H89FT0028).¹⁹

C. The Investigation

7. In April 2017, the Enforcement Bureau's (Bureau) Spectrum Enforcement Division (Division) received a complaint alleging the Companies were providing non-RLS wireless data transmission service rather than RLS. On April 18, 2017, the Division initiated an investigation by sending both Companies separate Letters of Inquiry.²⁰ Following an extension of time to respond and a meeting with the Division on May 16, 2017,²¹ the Companies submitted separate LOI Responses on June 2, 2017.²² On June 23, 2017, a Bureau Field Agent inspected the Companies' shared facilities in Denver, Colorado.²³ The Field inspection was facilitated by Mr. Gazzo, apparently acting on behalf both Companies.²⁴ The Division sent separate Second LOIs to both Companies on July 19, 2017,²⁵ and received a Joint Second LOI Response on August 16, 2017.²⁶ After meeting with the Companies and their counsel on September 19, 2017, the Division asked the Companies additional clarifying questions regarding their equipment,²⁷ which they answered on October 31, 2017, and November 1, 2017.²⁸

8. On October 13, 2017, Air-Tel and IOU filed requests for Special Temporary Authority (STA) with the Wireless Telecommunications Bureau (WTB) to operate in the 3500-3550 MHz band using equipment authorized only for use in the 3650-3700 MHz band.²⁹ In their STA Requests, Air-Tel

¹⁹ See *supra* note 17; Third Joint LOI Response, Revised Attachs. A and B. Each unit was an individual piece of equipment with its own serial number. Third Joint LOI Response, Revised Attachs. A and B. Air-Tel and IOU have also apparently employed a variety of mobile equipment, none of which is licensed for Radiolocation Service in the 3300-3650 MHz band under Part 90. Joint Second LOI Response at 3-4 (listing "mobile units" and "portable units" certified for the 136-174 MHz, 400-470 MHz, and 2402-2480 MHz bands, among others).

²⁰ Letter of Inquiry from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to IOU Acquisitions, Inc., ATTN Amanda Anderson (Apr. 18, 2017) (on file in EB-SED-17-00024050); Letter of Inquiry from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Eric St. Germain, President, Air-Tel, LLC (Apr. 18, 2017) (on file in EB-SED-17-00024053).

²¹ E-mail from Jason Koslofsky, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC, to Jonathan M. Grossman, Esq., counsel to IOU Acquisitions, Inc. and Air-Tel, LLC (May 1, 2017, 14:13 EDT) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

²² IOU LOI Response; Air-Tel LOI Response.

²³ See Field Report (June 28, 2017) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

²⁴ *Id.*

²⁵ Second Letter of Inquiry from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jonathan M. Grossman, Esq., counsel to IOU Acquisitions, Inc. (July 19, 2017) (on file in EB-SED-17-00024050); Second Letter of Inquiry from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jonathan M. Grossman, Esq., counsel to Air-Tel, LLC (July 19, 2017) (on file in EB-SED-17-00024053).

²⁶ See Joint Second LOI Response.

²⁷ E-mail from Jason Koslofsky, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC, to David Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC (Oct. 13, 2017 3:19 PM EST) (on file in EB-SED-17-00024050 and EB-SED-17-00024053).

²⁸ See Third Joint LOI Response.

²⁹ See File Nos. 0007958887 (IOU STA Request); 0007959895 (Air-Tel STA Request) (collectively, STA Requests). In the STA Requests, the Companies admit their operations do not constitute "survey operations" which are the only operations allowed in 3300-3500 MHz band. IOU STA Request at 2; Air-Tel STA Request at 2; *cf.* 47 CFR § 90.103(b), (c)(13).

and IOU admitted they were using unauthorized equipment and stated they migrated their purported radiolocation services to Note's non-radiolocation license, WQLI491, in the 3650-3700 MHz band.³⁰ The Companies also stated they ceased operations on their licenses as of September 24, 2017.³¹ On October 19, 2017, WTB denied the STA Requests, concluding that "the described service does not constitute Land Mobile Radiolocation, and is not permitted on the requested frequencies."³²

9. Following the denial of the STA Requests, Air-Tel and IOU filed a Petition for Declaratory Ruling and Waiver on October 30, 2017.³³ In their Petition, the Companies asked WTB to declare the prior operations on their licenses to be RLS, and to waive any Commission rules prohibiting them from using equipment certified for 3650-3700 MHz to re-establish their operations on 3500-3550 MHz.³⁴ The Petition argued that RLS includes the "use of GPS-assisted handsets for radiolocation" because the definition of radiodetermination in Section 90.7 provides for the "obtaining" of information related to position.³⁵ The Petition predicated its request for an equipment waiver on the Companies' belief that no equipment is Commission-certified for use in the 3500-3550 MHz band.³⁶ On December 1, 2017, WTB denied the Petition, concluding "that the transmission of GPS coordinates does not constitute radiolocation as the term is defined in the Commission's rules."³⁷

10. Following the denial of the Petition, Air-Tel (but not IOU) filed a Petition for Reconsideration on January 2, 2018.³⁸ In that petition, Air-Tel argues that GPS-assisted location services are RLS or, in the alternative, that Air-Tel should be granted a waiver for both the service it is providing and the equipment it previously used.³⁹ That petition remains pending.

III. DISCUSSION

11. We find that IOU and Air-Tel apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (the Act), and Section 1.903(a) of the Commission's rules by apparently conducting unauthorized operations of an unauthorized wireless data transmission service from the date on which they obtained their licenses until September 24, 2017.⁴⁰ We also find that IOU and Air-Tel apparently willfully and repeatedly violated Section 302 of the Act and Section 90.203 of the

³⁰ IOU STA Request at 2; Air-Tel STA Request at 2. Wireless broadband is permitted in the 3650-3700 MHz band under part 90, Subpart Z. 47 CFR § 90.1301, *et seq.*

³¹ IOU STA Request at 2; Air-Tel STA Request at 2; E-mail and attachments from David Kaufman, counsel for IOU Acquisitions, Inc. and Air-Tel, LLC, to Jason Koslofsky, Attorney-Advisor, Spectrum Enforcement Division, Enforcement Bureau, FCC (9:36 AM EST Oct. 17, 2017) (on file in EB-SED-17-00024050 and EB-SED-17-00024053) (Declarations from IOU and Air-Tel that the Companies ceased operations on September 24, 2017).

³² *See* File Nos. 0007958887; 0007959895.

³³ Petition at 1. Air-Tel has also requested extensions of time to construct facilities in Tampa, Florida. *See, e.g.*, Air-Tel, LLC, Request for Extension of Time to Construct (Oct. 30, 2017). Air-Tel's requests have been partially granted, with the construction date extended until November 7, 2018. *See* ULS File No. 0007978114.

³⁴ Petition at 1.

³⁵ *Id.* at 6-7 (quoting 47 CFR § 90.7).

³⁶ *Id.* at 9-10.

³⁷ *Air-Tel, LLC IOU Acquisitions, Inc.*, Order, DA 17-1162, para. 7 (WTB Dec. 1, 2017), 2017 WL 5969308, at *2 (Petition Denial).

³⁸ *See* Petition for Reconsideration of Air-Tel, LLC (Jan. 2, 2018) (Petition for Recon).

³⁹ Petition for Recon at 2.

⁴⁰ 47 U.S.C. § 301; 47 CFR § 1.903(a).

Commission's rules by operating unauthorized equipment to effectuate such unauthorized operation during the same period of time.⁴¹

A. IOU and Air-Tel Apparently Provided Unauthorized Wireless Service

12. IOU and Air-Tel apparently violated Section 301 of the Act and Section 1.903(a) of the Commission's rules by providing non-RLS wireless data transmission service in the 3300-3650 MHz band without a valid Commission authorization to do so. Section 301 of the Act and Section 1.903(a) of the Commission's rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with, a Commission-granted authorization.⁴²

13. First, the Companies' licenses authorized them to provide RLS, *not* wireless data transmission service, in the 3300-3650 MHz band.⁴³ Air-Tel and IOU nonetheless maintain their "GPS vehicle tracking" service *is* RLS and consistent with their licenses because it uses radio to determine the position of the mobile units.⁴⁴ They further claim the Commission endorsed emission designators associated with wireless data transmission and contemplated "GPS-assisted radiolocation" when it granted the original RLS licenses.⁴⁵

14. Contrary to the Companies' assertions, the record indicates that neither Air-Tel nor IOU provided RLS under their respective licenses; they instead provided a wireless GPS tracking data transmission service. The Companies acknowledge that the putative "radiolocation" undergirding their service was nothing more than a simple exchange of GPS coordinates through a two-way wireless data transmission.⁴⁶ As WTB explicitly concluded in denying the Petition, transmitting GPS coordinates does not constitute RLS.⁴⁷ The Commission's rules do not classify radio transmissions as radiolocation simply because the transmission carries some information about location.⁴⁸ Radiolocation determines an object's position through the use of passive processes—measuring distance, for example, by comparing the power differential between originating and received signal strength or estimating location by a signal's time of

⁴¹ 47 U.S.C. § 302a(b); 47 CFR § 90.203.

⁴² 47 U.S.C. § 301; 47 CFR § 1.903(a).

⁴³ See Universal Licensing System (ULS) Call Sign WQLW310 (granted May 5, 2010); ULS Call Sign WQLX454 (granted May 18, 2010). To be more precise, Air-Tel had authorization to provide RLS in the 3300-3600 band; IOU had authorization to provide RLS in the 3300-3650 band. *Id.*

⁴⁴ See IOU LOI Response at 7; Air-Tel LOI Response at 7; Petition at 3.

⁴⁵ See IOU LOI Response at 7-8; Air-Tel LOI Response at 7-8; Petition at 2-3.

⁴⁶ See Petition at 3 ("The stations operated by having the base station send a signal to the mobile unit, and the mobile unit responding with a transmission of its *geographic coordinates* back to the base station; the mobile having determined its geographic coordinates by means of an *embedded GPS unit*." (emphasis added); IOU LOI Response at 7 (IOU uses its RLS license for "wireless radio transmission which transfer data over a modulated wave using Digital, on-off or quantized, no modulation signal"); Air-Tel LOI Response at 7 (same).

⁴⁷ Petition Denial at para. 7. To the extent the Companies argue in their Petition that they or prior licensees relied on Mr. Gazzo's conversations with someone at the Commission "to engage in GPS-handset-assisted radiolocation if the applications were granted," Petition at 2, we reiterate such discussions do not serve as official statements of the Commission. *Texas Media Group, Inc.; Trey Broadcast Communications, Inc.*, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852, para. 8 (1990) ("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."), *aff'd sub nom. Malkan FM Assocs. v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991); *Hinton Telephone Company et al.*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637, para. 42 (1995) ("The Commission has specifically held that parties who rely on staff advice or interpretations do so at their own risk.").

⁴⁸ Petition Denial at para. 5.

arrival.⁴⁹ GPS, as the Commission has previously observed, is categorically distinct,⁵⁰ because it does not use these propagation properties of radio waves to determine position.⁵¹ Transmitting GPS coordinates over a wireless connection is no more a type of radiolocation than is a college student's text informing her parents that she is waiting at the airport arrival gate.

15. Second, the underlying technology and actual service offered by Air-Tel and IOU involved a two-way data exchange between land and mobile facilities, rendering it a wireless data transmission service and not RLS. Air-Tel and IOU admit the underlying technology was a wireless data transmission technology,⁵² including two-way wireless transmission equipment.⁵³ The emissions designators associated with the licenses are also associated with wireless data transmission.⁵⁴ Moreover, the actual services that Air-Tel and IOU state that were part of the "GPS vehicle tracking" operations in

⁴⁹ See, e.g., *Providing for A Radiolocation Service*, Report and Order of the Commission, 39 FCC 382, 382–83 (1951) ("Radiolocation techniques fall, generally, into two classes: (1) pulse-type direct ranging methods which are basically ultra-high frequency and above with resulting line-of-sight limitations on range and (2) phase comparison methods which permit use of the low or medium frequencies and the elimination of the line-of-sight limitation.") (footnote omitted).

⁵⁰ Cf. *Amendment of Parts 2, 15, 80, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2012) (WRC-12), Other Allocation Issues, and Related Rule Updates*, Report and Order, 32 FCC Rcd 2703, 2714, para. 30 (2017) (new spectrum allocation for radio buoys "addresses the limited situations where radio buoys cannot be authorized under the radiolocation service allocation because of newer technology that uses features like GPS rather than radiodetermination.").

⁵¹ *Id.* n.72 ("Radio buoys traditionally have been operating under a radiolocation service allocation because their location is determined by the transmission of an omnidirectional signal that is used for radio direction finding. Radio buoys using GPS technology do not fall under this definition because their position is not determined by means of the propagation properties of radio waves.") (citing 47 CFR § 2.1(c)); see also *Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rule Updates*, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4226 n.345 (2015) ("Under the Commission's rules, radiodetermination is defined as the determination of the position, velocity, and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves and radiolocation is defined as radiodetermination used for purposes other than those of radionavigation. Radio direction-finding is defined as radiodetermination using the reception of radio waves for the purpose of determining the direction of a station or object. While most radio buoys currently operate in the radiolocation service, some also transmit their GPS coordinates, and thus, the associated ship station does not necessarily use radio direction-finding to locate these radio buoys. Our proposal to allocate the 1900-2000 kHz band to the maritime mobile service would support the transmission of a radio buoy's GPS coordinates and other data, such as the identification number of the buoy and water temperature.") (citing 47 CFR § 2.1(c)).

⁵² IOU LOI Response at 7 (IOU uses the RLS license for "wireless radio transmission which transfer data over a modulated wave using Digital, on-off or quantized, no modulation signal"); Air-Tel LOI Response at 7 (same).

⁵³ *Supra* paras. 6, 9. See *supra* note 17, 19; Joint Second LOI Response at 4 ("the DMR-installed mobile units interact with the base station using the [RLS licenses]"); cf. 47 CFR § 90.103 (RLS must be provided using "radiolocation devices").

⁵⁴ Joint Second LOI Response at 5; IOU LOI Response at 8; Air-Tel LOI Response at 8. Emission designators indicate what type of emissions are being used by a licensee, including the type of information being transmitted. See 47 CFR §§ 2.201, 90.207; see also Petition Denial at para. 2 n.3. The emission designators for the licenses at issue indicates they are being used for "data transmission, telemetry, telecommand." Petition Denial at para. 2 n.3. The Companies requested these emission designators, but the Commission's grant of such emission designators did not alter the nature of the service authorized by the Commission's rules. *Id.* at para. 6 ("Notwithstanding that the licenses were granted for emission designators not ordinarily associated with radiolocation, Petitioners were never granted a waiver of the applicable service rules to permit them to provide non-radiolocation services under part 90 radiolocation licenses.").

the 3300-3650 MHz band, including “IP voice services,” were not RLS.⁵⁵ Thus, “IP voice services” are not authorized by Air-Tel and IOU’s licenses.

16. Once Air-Tel and IOU became aware of the Division’s tentative conclusions, they migrated their purported RLS operations from the RLS band (3300-3650 MHz) to Note⁵⁶—which holds a nationwide non-exclusive license in the 3650-3700 MHz band where wireless data transmission service is permitted⁵⁷—and continued to use the same wireless data transmission equipment.⁵⁸ The fact that Note was able to continue to provide an identical service to that of the Companies (using identical wireless equipment) in the 3650-3700 MHz band corroborates the conclusion above: the “GPS vehicle tracking” service is properly characterized as wireless a data transmission service, notwithstanding the Companies’ provision of it in the RLS band.⁵⁹

17. Accordingly, we find that Air-Tel and IOU operated in the 3300-3650 MHz band to provide unauthorized wireless data transmission services in apparent violation of the Act and the Commission’s rules. The Companies have apparently willfully and repeatedly violated Section 301 of the Act, and Section 1.903(a) of the Commission’s rules by operating an unauthorized wireless service without a license.⁶⁰

B. IOU and Air-Tel Apparently Used Unauthorized Equipment to Provide their Unauthorized Service

18. Pursuant to Section 302(b) of the Act and its implementing rules, RLS licensees are restricted to using authorized radiolocation devices. Section 302(b) of the Act mandates that “[n]o person . . . shall use devices which fail to comply with the regulations promulgated pursuant to this section.”⁶¹ Section 90.203 of the Commission’s rules states that “each transmitter utilized for operation

⁵⁵ Joint Second LOI Response at 5 (In response to the question of whether the RLS licenses are used to provide “the wireless services associated with tracking services; [and] IP voice services attendant to the tracking services,” the Companies responded, “Yes. . . . the station is authorized to transmit digitized packets, regardless of their content, as long as the transmitted information is part of the RLS.”); *see also* IOU LOI Response at 7; Air-Tel LOI Response at 7.

⁵⁶ IOU STA Request at 2; Air-Tel STA Request at 2. In employing the term “migrate,” the Companies apparently mean that the GPS Tracking service provided by Air-Tel and IOU had been transferred to Note. Consequently, the equipment used to provide Air-Tel and IOU service ceased operating in the 3300-3650 MHz band; data exchanges between the Companies and end users occurred outside of this band, as well, after September 24, 2017.

⁵⁷ *See* 47 CFR § 90.1301, *et seq.*

⁵⁸ IOU LOI Response at 12; Air-Tel LOI Response at 12; Third Joint Response at 3 (detailing Note’s use of Cambium equipment to provide wireless broadband services). The Companies complain about the congestion their customers (or DMR’s customers) have experienced in the 3650-3700 MHz band as a reason to allow them to continue operation in the RLS band. Petition at 5.

⁵⁹ There is no allocation for RLS in the 3650-3700 MHz band. 47 CFR § 2.106.

⁶⁰ 47 U.S.C. § 301; 47 CFR § 1.903(a); *see, e.g., Midessa Television Limited Partnership*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250, para. 10 (2014) (*Midessa*) (unauthorized operation of broadcast auxiliary services despite entity holding license for associated full-power broadcast station) (forfeiture paid); *Life on the Way Communications, Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 28 FCC Rcd 1346 (EB 2013) (unauthorized operation of earth station by entity that only held a broadcast station license), Forfeiture Order, 30 FCC Rcd 2603 (EB 2015), *aff’d*, Memorandum Opinion and Order, 31 FCC Rcd 523 (2016); *John L. White*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541, 12544, para. 9 (MB 2009) (unauthorized operation at variance from license where licensee failed to first file for and obtain Commission approval for modification of broadcast station facilities), Forfeiture Order, 27 FCC Rcd 4129 (MB 2012).

⁶¹ 47 U.S.C. § 302a(b).

under this part . . . must be of a type which has been certificated for use under this part.”⁶² Section 90.103 of the Commission’s rules requires Radiolocation Service licensees to use “radiolocation devices.”⁶³

19. The Companies apparently failed to use radiolocation equipment. The Companies initially used Redline Advanced Broadband Wireless Infrastructure Solutions (Model AN-80i) equipment to offer their services under WQLW310 and WQLX454.⁶⁴ In July 2017, Air-Tel and IOU replaced the Redline AN-80i equipment with Cambium (Model PMP450i) equipment—a point-to-multipoint wireless solution.⁶⁵ The FCC has not certified either type of equipment for operations in the 3300-3650 MHz band or for RLS. Nor is the equipment certified for Subpart F of Part 90 for RLS; instead, both equipment models are certified for operation under Subpart Z of Part 90 of the Commission’s rules to provide wireless service in the 3650-3700 MHz band.⁶⁶

20. Air-Tel and IOU freely admit they deployed this equipment across their fixed locations.⁶⁷ In their Petition, for example, the Companies state that “[i]mmediately prior to that [September 24, 2017] shutdown, [Air-Tel and IOU] were operating using Cambium Model 450i transmission equipment.”⁶⁸ They make a similar admission concerning the Redline equipment, stating they used it prior to switching to the Cambium equipment in July 2017.⁶⁹

21. In addition, the Companies acknowledge they selected operational codes on the equipment that would apparently allow them to offer wireless transmissions on the frequencies they wanted, even if use of those codes would lead to operation of the equipment outside of permitted parameters. Specifically, both models have selectable fields for region and/or country that “enforce[] compliance to regional regulatory statutes.”⁷⁰ These fields should accurately reflect the country in which

⁶² 47 CFR § 90.203(a).

⁶³ 47 CFR § 90.103(a).

⁶⁴ See *supra* note 17; see also Field Report (field agent observed Redline equipment installed in the Companies’ joint Colorado location in June 2017); Petition at 10, n.11 (the Companies used Redline equipment prior to the Cambium equipment). The Redline equipment, FCC ID QC8-AN80IE, was granted certification on December 24, 2008, with operation restricted to 3650-3700 MHz. The Cambium equipment, FCC ID Z8H89FT0028, was granted certification on December 27, 2016, for the band 3652.5-3697.5 MHz.

⁶⁵ See *supra* note 17. The Companies were obligated to cease operations in the 3550-3650 MHz portion of the band when they changed their equipment in July 2017, but they may have continued operating in that portion of the band. Cf. 47 CFR § 2.106, n.US105 (“In the band 3550–3650 MHz, non–Federal stations in the radiolocation service that were licensed or applied for prior to July 23, 2015 may continue to operate on a secondary basis until the end of the equipment’s useful lifetime.”).

⁶⁶ Nor was the Motorola equipment that was apparently previously used by earlier licensees certified for Subpart F of Part 90 for RLS. See Third Joint LOI Response, Revised Attachs. A and B. Air-Tel and IOU also provided a list of equipment identified as the mobile units the Companies used with their customers. Joint Second LOI Response at 3-4 (identifying various radios and cell phones as used to provide the Companies’ “GPS vehicle tracking” service). A review of each FCC IDs provided for the mobile equipment determined none of the listed models are authorized for RLS in the 3300-3650 MHz band. *Id.* It is not clear that this equipment was altered, however, to operate in an unauthorized manner.

⁶⁷ IOU STA Request at 1; Air-Tel STA Request at 1; Petition at 1.; Petition for Recon at 2 (requesting waiver to continue using Cambium equipment in use at the term operations were suspended).

⁶⁸ Petition at 9.

⁶⁹ See *id.* at 10, n.11 (“Prior to July, 2017, the Licenses had been operated using Redline Model AN-80i equipment that supports the same emission designators as does the [Cambium] Equipment, and that similarly is certified by this Commission for use in the adjoining 3650-3700 MHz band.”).

⁷⁰ The Cambium 450i and Redline AN-80i user manuals explain this point at length. Joint Second LOI Response, Attach. AirTel & IOU-08A-000056 (Cambium “PMP 450 equipment shipped to the United States is locked to a

(continued...)

the equipment is being used.⁷¹ Instead, the Companies chose “other-regulatory” for Region and “other” for Country, rather than “North America” and “United States,” respectively.⁷² In other words, once the Companies obtained the wireless equipment, they intentionally programmed it to use a non-U.S. country code, enabling the equipment to operate outside of its U.S./FCC certification and authorized frequency band.⁷³

22. Accordingly, Air-Tel and IOU’s use of transmitters that have not been certified as radiolocation devices or for the specific RLS bands 3300-3650 MHz constitutes an apparent violation of Section 302(b) of the Act and of Section 90.203 of the Commission’s rules.⁷⁴ Air-Tel and IOU have apparently willfully and repeatedly violated Section 302 of the Act and Section 90.203 of the Commission’s rules by operating unauthorized equipment in 3300-3650 MHz band.⁷⁵

C. Proposed Forfeiture

23. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”⁷⁶ Section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against IOU and Air-Tel of up to \$19,639 for each violation or each day of a continuing violation, with a statutory maximum for any continuing violation of \$147,290 for any single act or failure

(Continued from previous page...)

Country Code setting of ‘United States.’ Units shipped to regions other than the United States must be configured with the corresponding Country Code to comply with local regulatory requirements.”); *accord id.* Attach. AirTel & IOU-08A-000122; *id.* Attachs. AirTel & IOU-08C-000090-91 (available RF bands for the Redline AN-80i are “limited by regional regulations”); *id.*, Attach. AirTel & IOU-08C-000099 (“regional code” for the Redline AN-80i “is incorporated into the options key. This feature enforces compliance to regional regulatory statutes.”); *id.*, Attach. AirTel & IOU-08C-000100 (for the Redline AN-80i, the United States is a “region” for only the 3650-3700 MHz band, not for 3300-3650 MHz band).

⁷¹ See, e.g., *id.*, Attach. AirTel & IOU-08A-000122 (Cambium 450i user manual, “Regulatory” field, “This field indicates whether the configured Region Code and radio frequency are compliant with respect to their compatibility. PMP 450 equipment shipped to the United States is locked to a Country Code setting of ‘United States.’ Units shipped to regions other than the United States must be configured with the corresponding Country Code to comply with local regulatory requirements.”).

⁷² Third Joint LOI Response at 3; see also Petition at 10 (“The [Cambium] Equipment is distributed with a drop-down menu for the installing engineer to use to specify the frequency band or bands for the Equipment to transmit on once installed; [the Companies’] engineer [Gazzo] had used the drop-down menu to specify Petitioners’ licensed spectrum of 3300-3650 MHz or 3300-3550 MHz, as the case may be, depending on the licensed spectrum at a particular location.”).

⁷³ Third Joint LOI Response at 3.

⁷⁴ See, e.g., *AT&T, Inc. San Juan, PR*, Forfeiture Order, 27 FCC Rcd 10803, 10805 paras. 6-7 (EB 2012) (violations of Part 15 and 47 USC § 302a(b) to operate a certified device contrary to its equipment authorization).

⁷⁵ 47 U.S.C. § 302a(b); 47 CFR § 90.203.

⁷⁶ 47 U.S.C. § 503(b). 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 “repeated” as “the commission or omission of such act more than once or, if . . . continuous, for 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 apply to both Sections 312 and 503(b) of the Act. See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982). The Commission interprets the use of these terms in Section 503 of the Act consistent with this legislative history. See, e.g., *Southern California Broadcasting Company Licensee, Radio Station KIEV(AM) Glendale, California.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991); *recons. denied*, 7 FCC Rcd 3454 (1992). The unauthorized operation and use of unauthorized equipment at issue here was conscious and deliberate, occurring for more than one day. It thereby satisfies the definitions of willful and repeated.

to act constituting that continuing violation.⁷⁷ In exercising our forfeiture authority, we must consider 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.”⁷⁸ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁷⁹ Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.⁸⁰

24. Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$10,000 for unauthorized operation.⁸¹ For operation of unauthorized equipment, Section 1.80(b) sets a base forfeiture amount of \$5,000.⁸² We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.⁸³

25. Our investigation concludes that both Air-Tel and IOU apparently operated an unauthorized wireless data transmission service, in willful and repeated violation of Section 301 of the Act, and Section 1.903(a) of the Commission’s rules. The violations continued from July 1, 2016 and October 9, 2014, when the Companies obtained their respective RLS licenses, until September 24, 2017, when they ceased operations.⁸⁴ Accordingly, we propose a separate base forfeiture of \$10,000 for IOU and \$10,000 for Air-Tel for each day of their separate unauthorized operation violations.

26. In operating its unauthorized service, IOU apparently committed at least four separate willful and repeated violations of Section 302 of the Act and Section 90.203 of the Commission’s rules by using at least four pieces of Cambium equipment outside of their certified frequencies from July 2017 until September 24, 2017.⁸⁵ Similarly, Air-Tel apparently committed at least 12 separate willful and repeated violations of Section 302 of the Act and Section 90.203 of the Commission’s rules by using at least 12 pieces of Cambium equipment outside of their certified frequencies from July 2017 until

⁷⁷ See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). This amount reflects inflation adjustments to Section 503(b)(2)(D) of the Act, which specifies a \$10,000 base forfeiture for each violation or each day of a continuing violation and a \$75,000 base forfeiture for any single act or failure to act. See 47 CFR § 1.80(b)(9); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 33 FCC Rcd 46, Appendix A (EB 2018).

⁷⁸ 47 U.S.C. § 503(b)(2)(E).

⁷⁹ 47 CFR § 1.80(b)(8), Note § I.

⁸⁰ *Id.* at Note § II.

⁸¹ 47 CFR § 1.80(b); see also *Midessa*, 29 FCC Rcd at 13250, para. 10.

⁸² 47 CFR § 1.80(b).

⁸³ *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, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁸⁴ 47 U.S.C. § 301; 47 CFR § 1.903(a).

⁸⁵ 47 U.S.C. § 302a(b); 47 CFR § 90.203; Third Joint LOI Response, Revised Attachs. A and B (showing four pieces of Cambium equipment in use by IOU prior to the September 24, 2017 shutdown). As noted above, IOU used Redline equipment from October 9, 2014 to July 2017, and began using Cambium equipment after that date. See *supra* note 17.

September 24, 2017.⁸⁶ Accordingly, we propose a total base forfeiture of \$20,000 for IOU (4 pieces x \$5,000) and \$60,000 (12 pieces x \$5,000) for Air-Tel for operation of unauthorized equipment.

27. In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment is warranted for the violations. First, a significant upward adjustment is appropriate for both Companies given their years-long record of repeated and continuous violations. IOU has been providing its unauthorized service since October 9, 2014, when it obtained its license,⁸⁷ and Air-Tel since July 1, 2016.⁸⁸ The Companies have, moreover, relied upon unauthorized equipment to provide such service since its inception.⁸⁹ This long history of repeated and continuous noncompliance warrants a substantial upward adjustment.⁹⁰

28. Second, Air-Tel and IOU's violations warrant an upward adjustment.⁹¹ As noted above, the Companies took deliberate steps to provide their unauthorized service by altering certified equipment so that it could be operated outside of its authorized operating parameters.⁹² Air-Tel and IOU, through their long-standing engineer, deliberately chose incongruous "region" and "country" settings on their equipment to allow the equipment to operate outside of the certified frequencies of 3650-3700 MHz, and did so despite

⁸⁶ 47 U.S.C. § 302a(b); 47 CFR § 90.203; Third Joint LOI Response, Revised Attachs. A and B (showing twelve pieces of Cambium equipment in use by Air-Tel prior to the September 24, 2017 shutdown). As noted above, Air-Tel used Redline equipment from July 1, 2016 to July 2017, and began using Cambium equipment after that date. *See supra* note 17.

⁸⁷ Petition at 3 (noting licenses were in operation from May 2010 to September 2017).

⁸⁸ Air-Tel LOI Response at 8. As noted above, Mr. Gazzo has been at the center of the unauthorized service and equipment operation throughout the terms of the RLS licenses at issue, which date back to 2010. This indicates the duration of noncompliance is as much as seven years for the various Gazzo-related entities. *See supra* para. 4.

⁸⁹ *See supra* note 17.

⁹⁰ While Section 503(b)(6) of the Act generally bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that the Companies' apparent misconduct occurred over an extended period to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc. et al.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72, para. 8 (2000) (quoting *Cate Communications Corporation*, 60 RR 2d 1386 (1986)); *see also AT&T Inc., Parent Company of New Cingular Wireless PCS, LLC and AT&T Mobility Puerto Rico, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 856, 861-62, paras. 12-13 (2015) (upward adjustment warranted for term of unauthorized operations on expired licenses that ranged between three-and-a-half to five years), Order and Consent Decree, 31 FCC Rcd 10484 (EB 2016); *Midessa*, 29 FCC Rcd at 13250-51, para. 11 (upward adjustment for four-year period of unauthorized operations); *Union Oil Company of California*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810-11, para. 10 (2012) (upward adjustment for six- and eight-year periods of unauthorized operations) (forfeiture paid).

⁹¹ 47 U.S.C. § 503(b)(2)(E) (In exercising our forfeiture authority, we must consider 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."); 47 CFR § 1.80(b)(8), Note to paragraph (b)(8) (intentional violations warrant an upward adjustment); *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28, para. 22 (2006) (concluding that an over 150% upward adjustment was warranted for, among other things, Behringer's continued marketing of unauthorized devices despite knowing that it was in violation), Forfeiture Order, 22 FCC Rcd 10451(2007) (forfeiture paid).

⁹² *See supra* para. 21.

warnings in the user manuals that proper settings were necessary to ensure regulatory compliance.⁹³ This apparent behavior warrants an upward adjustment.⁹⁴

29. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none.

30. In sum, we propose upwardly adjusting IOU and Air-Tel's unauthorized operation violations to the daily statutory maximum of \$19,639. IOU and Air-Tel operated their unauthorized wireless service continuously until stopping on September 24, 2017. We thus assess the forfeitures for their unauthorized operations on a continuing basis for the time period between September 16, 2017, and September 24, 2017. IOU and Air-Tel are therefore each apparently liable for a total proposed forfeiture of \$147,290, the statutory maximum.⁹⁵ We also propose upward adjustments of \$40,000 for IOU's use of unauthorized equipment and \$120,000 for Air-Tel's use of unauthorized equipment.

31. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors, we propose a total forfeiture of \$207,290 for which IOU is apparently liable, and we propose a total forfeiture of \$327,290 for which Air-Tel is apparently liable.

32. Finally, considering that we find Air-Tel and IOU have apparently not provided RLS while holding RLS licenses, we direct the Wireless Telecommunications Bureau to evaluate the Companies' operations and initiate the necessary process to cancel them, if warranted.

IV. CONCLUSION

33. We have determined that IOU and Air-Tel apparently willfully and repeatedly violated Sections 301 and 302 of the Act, and Sections 1.903, 90.103, and 90.203 of the Commission's rules. As such, IOU is apparently liable for a forfeiture of \$207,290, and Air-Tel is apparently liable for a forfeiture of \$327,290.

V. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁹⁶ and Sections 1.80 of the Commission's rules,⁹⁷ IOU Acquisitions, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two hundred and seven thousand two hundred and ninety dollars (\$207,290) for willful and repeated violations of Sections 301 and 302 of the Act⁹⁸ and Sections 1.903, 90.103, and 90.203 of the Commission's rules.⁹⁹

35. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act¹⁰⁰ and Sections 1.80 of the Commission's rules,¹⁰¹ Air-Tel, LLC is hereby **NOTIFIED** of this **APPARENT**

⁹³ *Id.*; see also *supra* note 71.

⁹⁴ 47 U.S.C. § 503(b)(2)(E); *TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, et al.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 9470, 9480, para. 18 (2013), Forfeiture Order, 29 FCC Rcd 8648, 8656-57, paras. 16-17 (2014) (upward adjustment appropriate for intentional actions where target disregarded warnings to comply with the Commission's rules).

⁹⁵ See *supra* note 77. This represents eight days of violations by the Companies capped at the statutory maximum for a continuing violation.

⁹⁶ 47 U.S.C. § 503(b).

⁹⁷ 47 CFR § 1.80.

⁹⁸ 47 U.S.C. §§ 301, 302a.

⁹⁹ 47 CFR §§ 1.903, 90.103, 90.203.

¹⁰⁰ 47 U.S.C. § 503(b).

¹⁰¹ 47 CFR § 1.80.

LIABILITY FOR A FORFEITURE in the amount of three hundred and twenty-seven thousand two hundred and ninety dollars (\$327,290) for willful and repeated violations of Sections 301 and 302 of the Act¹⁰² and Sections 1.903, 90.103, and 90.203 of the Commission's rules.¹⁰³

36. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,¹⁰⁴ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, IOU Acquisitions, Inc. and Air-Tel, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 39 below.

37. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the applicable NAL/Account Number and FRN referenced above. IOU Acquisitions, Inc. and Air-Tel, LLC shall send electronic notification of payment to EB-SED-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁰⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

38. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.¹⁰⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

39. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

¹⁰² 47 U.S.C. §§ 301, 302a.

¹⁰³ 47 CFR §§ 1.903, 90.103, 90.203.

¹⁰⁴ 47 CFR § 1.80.

¹⁰⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁰⁶ See 47 CFR § 1.1914.

to Sections 1.16 and 1.80(f)(3) of the Commission's rules.¹⁰⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau—Spectrum Enforcement Division, and must include the applicable NAL/Account Number referenced in the caption. The statement must also be e-mailed to EB-SED-Response@fcc.gov.

40. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

41. **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 Eric St. Germain, Managing Member, Air-Tel, LLC, 2727 Pine Street, Unit #3, Boulder, CO 80302; to Alex Doyle, Treasurer, IOU Acquisitions, Inc., 13950 Quebec Street, Brighton, CO 80602; and to David J. Kaufman, Esq., Rini O'Neil, PC, counsel to IOU Acquisitions, Inc. and Air-Tel, LLC, 1200 New Hampshire Ave., NW, Suite 600, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁰⁷ 47 CFR §§ 1.16, 1.80(f)(3).