

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of) File No: EB-SED-17-00024010
Sound Around, Inc.) NAL/Acct. No.: 202032100006
) FRN: 0028317733
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 2, 2020

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By the Commission:

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I. INTRODUCTION

1. Wireless microphones play an important role in enabling broadcasters and non-broadcasters, such as professional theaters and television and movie producers, to orchestrate a variety of events, including news stories, local entertainment, and production services. The Commission has authorized wireless microphone operations in different spectrum bands to accommodate the growing use of these devices by different users. The technical and operational rules for wireless microphone operations in these different bands vary, depending on the band, and generally are designed to enable wireless microphone users to operate in shared bands along with other users, including licensed users. This, in turn, heightens our responsibility to ensure that wireless microphones are marketed in accordance with the Commission’s equipment marketing requirements. Parties that market wireless microphones in a manner inconsistent with their equipment authorizations increase the potential for harmful interference and undermine the system of spectrum sharing.

2. Here, Sound Around, Inc. (Sound Around or Company) marketed 32 apparently noncompliant models of wireless microphones in the last year that do not appear to have been authorized in accordance with the Commission’s rules.¹ The Enforcement Bureau (Bureau) previously issued a citation that notified Sound Around of its legal and regulatory equipment marketing obligations and

¹ Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

ordered it to stop marketing noncompliant radio frequency devices.² Despite the issuance of this *Marketing Citation*, Sound Around continued its apparently unlawful practices. Therefore, we propose a penalty of \$685,338 against Sound Around for marketing 32 models of apparently noncompliant wireless microphones.

II. BACKGROUND

3. *Legal Background.* Section 302(b) of the Communications Act of 1934, as amended (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.”³ Section 2.803(b)(1) of the Commission’s rules provides that no person may market a radio frequency device that is subject to certification unless the device has been authorized in accordance with the rules and is properly identified and labeled.⁴ Similarly, pursuant to section 74.851(f) of the Commission’s rules, transmitters like certain wireless microphones to which the part 74 rules apply must be authorized in accordance with the certification procedures before they may be marketed in the United States.⁵ In the context of the Commission’s equipment marketing rules, the term “marketing” means the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”⁶

4. The Commission allows the use of wireless microphones on a licensed and unlicensed basis, depending on the spectrum band used, technical characteristics of the devices, and user eligibility.⁷ The technical rules under which wireless microphones operate will differ depending on the spectrum band in which they operate. Wireless microphones may be designed to operate on discrete frequencies within a spectrum band, or they may operate over a range of frequencies. In 2015, the Commission adopted two related orders that revised our rules with regard to licensed wireless microphone operations in various frequency bands, including the TV bands and on 600 MHz band frequencies (600 MHz guard band, 600 MHz duplex gap, and 600 MHz service band), and unlicensed wireless microphone operations in the TV bands and the 600 MHz band frequencies.⁸

5. The Commission has allocated certain frequency bands for specific uses. Under part 87 of the Commission’s rules, 108-117.975 MHz is set aside for aviation-related uses.⁹ Wireless microphones are not authorized to operate in the aviation bands for public safety reasons, as these aviation bands are set aside for instrument landing systems and radio navigation, among other important

² See *Sound Around Inc.*, Citation, 26 FCC Rcd 9474 (EB 2011) (*Marketing Citation*).

³ 47 U.S.C. § 302a(b).

⁴ 47 CFR § 2.803(b)(1).

⁵ *Id.* § 74.851(f). The Commission’s certification procedures are described in sections 2.1031-2.1060 of the Commission’s rules.

⁶ See *id.* § 2.803(a).

⁷ See generally *Promoting Spectrum Access for Wireless Microphone Operations, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 30 FCC Rcd 8739, 8741-43, paras. 4-8 (2015) (general discussion of wireless microphones) (*Wireless Microphones R&O*).

⁸ See *Wireless Microphones R&O*, 30 FCC Rcd 8739 (revising rules pertaining to licensed wireless microphones, including those regulated as “low power auxiliary stations” under part 74 of the Commission’s rules); *Amendment of Part 15 of the Commission’s Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37, and Amendment of Part 74 of the Commission’s Rules for Low Power Auxiliary Stations in the Repurposed 600 MHz Band and 600 MHz Duplex Gap; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 30 FCC Rcd 9551 (2015) (*TV Bands Part 15 R&O*) (addressing unlicensed wireless microphones regulated under part 15 of the Commission’s rules).

⁹ 47 CFR §§ 2.106, 87.173.

services.¹⁰ Conversely, among the bands where wireless microphones are permitted to operate are the broadcast television (TV) bands and 600 MHz frequencies pursuant to specified rules, including marketing rules. The frequencies applicable in this case include, 54 to 72 MHz, 174 to 216 MHz, and 470 to 608 MHz, the designated broadcast TV bands, and 600 MHz frequencies.¹¹

6. *Factual Background.* Sound Around is a privately held company located in Brooklyn, New York.¹² Sound Around sells audio and video electronics and accessories for the home, car, professional, and marine audio/video markets through its own websites, pyleusa.com and pyleaudio.com, and the websites of other retailers.¹³ In particular, Sound Around has long marketed wireless microphones.¹⁴

7. After receiving and investigating a complaint, the Bureau's Spectrum Enforcement Division (Division) issued the *Marketing Citation* in 2011 to Sound Around for violations of section 302(b) of the Act,¹⁵ and sections 2.803, 15.205(a), and 74.851(g) of the Commission's rules,¹⁶ for marketing noncompliant wireless microphones that were apparently capable of operating in restricted frequency bands¹⁷ as well as the 700 MHz frequency band, where they were no longer authorized to operate in the United States.¹⁸ The *Marketing Citation* warned the Company to take immediate measures to ensure compliance with the equipment marketing rules.¹⁹

8. Following receipt of an additional complaint in 2016 that Sound Around was continuing to market noncompliant wireless microphones, the Division sent a Letter of Inquiry (LOI) in 2017 to Sound Around that directed the Company to submit a sworn written response to questions about its allegedly unauthorized marketing of wireless microphones.²⁰ On July 11, 2017, five days after the due date, Sound

¹⁰ See e.g., Federal Aviation Administration, *Spectrum Engineering & Policy - Radio Frequency Bands Supporting Aviation*, https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/safety_ops_support/spec_management/engineering_office/rfb.cfm (last visited Feb. 19, 2020).

¹¹ 47 CFR § 74.802(a) (licensed wireless microphones); § 15.236 (unlicensed wireless microphones).

¹² See Letter from Max Moskowitz, Esq., Counsel to Sound Around, Inc, Ostrolenk Faber LLP, to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, at 4 (Sept. 1, 2017) (on file in EB-SED-17-00024010) (September 1st Response).

¹³ The Division's investigation has revealed that Sound Around products are being marketed on the websites of Best Buy and Office Depot. See, e.g., *Office Depot*, Pyle PDWM4300 Wireless Microphone System, <https://www.officedepot.com/a/products/121839/Pyle-PDWM4300-Wireless-Microphone-System-169MHz/> (last visited Jan. 17, 2020) (screenshot on file in EB-SED-17-00024010).

¹⁴ *Marketing Citation*, 26 FCC Rcd at 9475, para. 4. The *Marketing Citation* noted that Sound Around engaged in unlawful marketing in 2009, 2010, and 2011. *Id.*, 26 FCC Rcd at 9475-76, paras. 4-6.

¹⁵ 47 U.S.C. § 302a(b).

¹⁶ 47 CFR §§ 2.803, 15.205(a), 74.851(g).

¹⁷ See *id.* § 15.205. Some frequency bands are designated as "restricted frequency bands" because they need extraordinary protection from interference. For instance, frequency bands used for radio astronomy depend on extremely sensitive receivers, and other frequency bands carry signals essential to public safety, like search-and-rescue bands and GPS.

¹⁸ *Marketing Citation*, 26 FCC Rcd at 9475, para. 9.

¹⁹ *Marketing Citation*, 26 FCC Rcd at 9474, para. 2.

²⁰ See Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Abe Brach, President, Pyle Audio, Inc. (June 6, 2017) (on file in EB-SED-17-00024010). The LOI was addressed to Pyle Audio. The Division was subsequently informed that "Pyle" is a registered trademark of Sound Around, Inc., which imports Pyle Audio brand products. See September 1st Response at 3.

Around sent to the Division an e-mail that purported to respond to the LOI.²¹ On July 12, 2017, the Division informed Sound Around that its e-mail did not constitute an adequate response.²² Subsequently, Sound Around filed responses on September 1 and 19, 2017, and again on December 19, 2017.²³ Finally, the Company made additional submissions in February and August 2018.²⁴

9. Sound Around's submissions contained inconsistent and sometimes conflicting information; thus, the Division was not able to determine the actual frequencies on which many of the subject wireless microphones operate, or if the microphones were even authorized in accordance with the Commission's requirements. To resolve these inconsistencies, on April 9, 2019, the Division took a screenshot of Sound Around's website, pyleusa.com, which showed all of the wireless microphone models available for purchase at that time.²⁵ On April 30, 2019, the Division sent a follow-up LOI to Sound Around.²⁶ In the 2019 LOI, the Division directed Sound Around to provide the actual operating frequencies, the FCC identification numbers, and the authorized frequencies for 82 wireless microphone models that were advertised for sale on the Company's website as of April 9, 2019.²⁷

10. On June 7, 2019, Sound Around responded to the 2019 LOI.²⁸ The 2019 LOI Response provided the FCC identification numbers and actual operating frequencies for some, but not all, of the 82 models in question. The 2019 LOI Response also indicated that some models had not been sold after January 1, 2017.²⁹ For the models for which Sound Around provided the FCC identification numbers, Division staff entered the numbers into the search function of the Commission's equipment authorization database and obtained the grant of authorization associated with each such number. Each grant approved a microphone model that would purportedly operate as a low power auxiliary station pursuant to part 74 of the Commission's rules.

11. A closer review of the information provided by Sound Around in its 2019 LOI Response, however, indicated that 32 models of the 82 at issue in the 2019 LOI either (i) were operating on

²¹ See E-mail from Sol Row, Legal Dept., Pyle Audio, to Gabriel Collazo, Electronics Engineer, Spectrum Enforcement Division, FCC Enforcement Bureau. (July 11, 2017, 15:15 ET) (on file in EB-SED-17-00024010).

²² See E-mail from Gabriel Collazo, Electronics Engineer, Spectrum Enforcement Division, FCC Enforcement Bureau, to Sol Row, Legal Dept., Pyle Audio, Inc. (July 12, 2017, 17:57 ET) (on file in EB-SED-17-00024010).

²³ See September 1st Response; E-mail from Max Moskowitz, Esq., Counsel to Sound Around, Inc, Ostrolenk Faber LLP, to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 19, 2017, 8:46 ET) (on file in EB-SED-17-00024010); E-mail from Steve Coran, Esq., Lerman Senter PLLC (Counsel to Sound Around), to Aspasia Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Dec. 19, 2017, 17:56 ET) (on file in EB-SED-17-00024010).

²⁴ See E-mail from Jerry Brach, Vice President, Sound Around, Inc., to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 1, 2018, 17:02 ET) (on file in EB-SED-17-00024010); Letter from Max Moskowitz, Esq., Counsel to Sound Around, Inc, Ostrolenk Faber LLP, to Matthew Conaty, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 2, 2018) (on file in EB-SED-17-00024010); Letter from Max Moskowitz, Esq., Counsel to Sound Around, Inc, Ostrolenk Faber LLP, to Matthew Conaty, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 3, 2018) (on file in EB-SED-17-00024010).

²⁵ See e.g., Sound Around, *Microphone Systems – Musical Instruments – Products*, <https://www.pyleusa.com/shop/musical-instruments/microphone-systems.html> (screenshot taken Apr. 9, 2019) (on file in EB-SED-17-00024010).

²⁶ See Letter from JoAnn Lucanik, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jerry Bach, Vice President, Sound Around, Inc. (Apr. 30, 2019) (on file in EB-SED-17-00024010) (2019 LOI).

²⁷ 2019 LOI at 3-4.

²⁸ See Letter from Max Moskowitz, Ostrolenk Faber LLP, to JoAnn Lucanik, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (June 7, 2019) (on file in EB-SED-17-00024010) (2019 LOI Response).

²⁹ *Id.* at Exh. A; see also *infra* para. 12.

frequencies for which the models had no authorization, or (ii) were not certified, as evidenced by the lack of an FCC identification number. Specifically, regarding the microphone models operating on unauthorized frequencies:

- For 22 of the microphone models, the operating frequencies provided by Sound Around differed from the frequencies assigned to the microphones' FCC identification numbers.³⁰
- Two of the 22 models, PDMW94 and PDMW96, had operating frequencies in the aviation band, 108 – 117.975 MHz.³¹ The Division also further observed continued marketing of these two models on January 28, 2020.³²
- For another microphone model for which Sound Around provided an FCC identification number, the Company failed to provide the actual operating frequencies.³³

Regarding the uncertified microphone models:

- For eight microphone models, Sound Around stated that it did not know the FCC identification number.³⁴
- For one microphone model, Sound Around stated without any elaboration that an FCC identification number was not applicable.³⁵

12. The 50 other models listed in the 2019 LOI consisted either of models that Sound Around claimed it had not sold after January 1, 2017, or models for which Division staff were able to determine that (i) the authorized frequencies associated with the FCC identification numbers provided by Sound Around matched the actual operating frequencies provided by Sound Around, or (ii) there was indicia of compliance with the Commission's rules.³⁶

III. DISCUSSION

13. The Commission finds that Sound Around apparently willfully and repeatedly violated section 302 of the Act and sections 2.803 and 74.851 of the Commission's rules when it marketed 32 models of wireless microphones that were noncompliant or not authorized.³⁷ Sound Around's apparent violations of the Commission's rules occurred notwithstanding the previously issued *Marketing Citation* that alerted the Company to its earlier marketing of radio frequency devices in violation of the Act and of the Commission's equipment marketing rules. Accordingly, the Commission proposes a forfeiture of \$685,338.³⁸

³⁰ See 2019 LOI Response at Exh. A.

³¹ *Id.*; see also 47 CFR §§ 2.106, 87.173.

³² See Sound Around, Pyle - Musical Instruments - Microphone Systems, <http://www.pyleaudio.com/products/Musical-Instruments/Microphone-Systems> (screenshot taken Jan. 28, 2020) (on file in EB-SED-17-00024010).

³³ See 2019 LOI Response at Exh. A.

³⁴ See *id.*

³⁵ See *infra* Appx. (providing charts showing the relevant information for the 32 subject wireless microphone models).

³⁶ See 2019 LOI Response at Exh. A. The indicia included, for example, that the microphones were wired instead of wireless.

³⁷ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 74.851.

³⁸ Following the issuance of the *Marketing Citation*, Sound Around became subject to a Notice of Apparent Liability for any continued marketing of such noncompliant devices. See 47 U.S.C. § 503(b)(5); see also *Y Pay More*, Forfeiture Order, 26 FCC Rcd 12805, 12806, para. 3 (2011); *Travel Club Mktg. Inc.*, Notice of Apparent Liability

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A. Sound Around Apparently Violated Section 302 of the Act and Sections 2.803 and 74.851 of the Commission's Rules

14. All devices that intentionally emit radio frequency energy and are marketed in the United States must be properly authorized and obtain an identification number issued in accordance with a Commission authorization.³⁹ The identification number will, in part, identify the type of equipment being marketed. Based on the FCC identification numbers provided by Sound Around in its most recent response,⁴⁰ all of the wireless microphones at issue are certified for use under part 74 of the Commission's rules concerning low power auxiliary stations.⁴¹ Pursuant to section 74.851(f), the wireless microphones at issue here must be authorized in accordance with the Commission's certification procedures before they may be marketed in the United States.⁴² The 32 wireless microphone models at issue here are apparently noncompliant because they are either (i) authorized and operating contrary to their authorizations or (ii) not authorized at all. The charts in the Appendix show that for 23 of the models in question, the frequencies authorized to the FCC ID and actual operating frequencies Sound Around attributed to the devices were inconsistent, and for nine additional models, Sound Around did not have an FCC ID.⁴³

15. *Operation Contrary to an Authorization.* For 23 models listed in the 2019 LOI and the response to the LOI, we find Sound Around apparently violated section 302(b) of the Act and sections 2.803 and 74.851 of the Commission's rules. For 22 of the wireless microphone models for which Sound Around both provided an FCC ID and identified the actual operating frequencies, those actual operating frequency bands, in fact, differ from the limited frequency bands for which the manufacturer requested authorization and for which the Commission issued the authorization associated with each microphone's FCC ID.⁴⁴ For the one wireless microphone for which Sound Around did not provide actual operating frequencies, PDWM3378, Sound Around has not shown that the model actually operates on compliant frequencies associated with its purported FCC ID, despite repeated requests from the Division for such information. It thus appears that these 23 wireless microphone models operate on frequencies on which they are not authorized to operate and therefore they are apparently not compliant with section 302(b) of the Act and sections 2.803 and 74.851 of the Commission's rules.

16. *Operation without an Authorization.* We also find that for nine additional Sound Around models, the Company has violated the Act and the Commission's rules by failing to have the devices authorized and properly labeled. Each grant of equipment certification for a wireless microphone includes a unique FCC ID assigned to each authorized device.⁴⁵ Further, each authorized device must bear either a physical or electronic label that lists the device's FCC ID,⁴⁶ and the FCC ID must be "readily

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for Forfeiture, 26 FCC Rcd 15831, 15834, para. 10 (2011), Forfeiture Order, 30 FCC Rcd 8861 (2015); *Presidential Who's Who, Inc.*, Forfeiture Order, 29 FCC Rcd 3451, para. 1 (2014). The *Marketing Citation* afforded Sound Around "a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission which is nearest to such person's place of residence," in accordance with 47 U.S.C. § 503(b)(5)(B), but Sound Around did not seek such a personal interview following the issuance of the citation nor did it avail itself of the option to submit a written response. *Marketing Citation*, 26 FCC Rcd at 9478, para.12.

³⁹ See 47 CFR Part 2, Subpart I; see also 47 CFR § 2.926.

⁴⁰ 2019 LOI Response at Exh. A.

⁴¹ See 47 CFR § 74.801.

⁴² 47 CFR § 74.851(f).

⁴³ See *infra* Appx., attached hereto and incorporated herein by this reference.

⁴⁴ *Id.*

⁴⁵ See 47 CFR § 2.926.

⁴⁶ See 47 CFR §§ 2.925, 2.935.

legible”⁴⁷ and “readily accessible.”⁴⁸ In its response to the LOI, Sound Around failed to provide FCC IDs for nine models of wireless microphones listed for sale on its website. Moreover, a review of the Commission’s equipment authorization database for authorizations under Sound Around’s name, its tradename Pyle, and its FCC Registration Number did not reveal FCC IDs for these nine models. Accordingly, we find that these nine models do not appear to have been authorized and therefore are being marketed in violation of the Commission’s rules and section 302(b) of the Act.

17. In short, the investigation revealed that Sound Around marketed 32 models of noncompliant wireless microphones that are apparently not authorized or are operating contrary to their authorizations.⁴⁹ Sound Around marketed the 32 subject wireless microphone models within the past twelve months, including the two models operating in the aviation band being marketed as recently as January 28, 2020.⁵⁰ Accordingly, we find that Sound Around unlawfully marketed in the United States 32 models of noncompliant wireless microphones on its website in apparent violation of section 302 of the Act and sections 2.803 and 74.851 of the Commission’s rules.

B. Proposed Forfeiture

18. 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.”⁵¹ Here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture against Sound Around of up to \$20,489 for each day of a continuing violation, up to a statutory maximum of \$153,669 for a single act or failure to act.⁵² 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.”⁵³ In addition, the Commission has established forfeiture guidelines, which provide base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁵⁴ 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.⁵⁵

⁴⁷ See 47 CFR § 2.925(f).

⁴⁸ See 47 CFR § 2.935(b).

⁴⁹ Consumers who own these Sound Around devices should cease using them immediately or risk enforcement action for operating equipment in violation of the Commission’s rules. Operators of noncompliant devices may still face enforcement action for violations of the Commission’s technical rules, *see e.g.*, 47 CFR § 15.1, and operation of part 74 microphones without a license may subject the user to enforcement action for violations of the Commission’s rules, *see e.g., id.* § 74.832.

⁵⁰ See Sound Around, Pyle - Musical Instruments - Microphone Systems, <http://www.pyleaudio.com/products/Musical-Instruments/Microphone-Systems> (screenshot taken Jan. 28, 2020) (on file in EB-SED-17-00024010).

⁵¹ 47 U.S.C. § 503(b).

⁵² See 47 U.S.C. § 503(b)(2)(D); 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, DA 19-1325, 2019 WL 7370226 (EB 2019); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 85 Fed. Reg. 2318 (Jan. 15, 2020).

⁵³ 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(8); *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, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

⁵⁴ 47 CFR § 1.80(b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

⁵⁵ 47 CFR § 1.80(b), Note to paragraph (b)(8); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of

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19. When entities who are not themselves holders of (or applicants for) any form of Commission authorization and whose violations do not involve conduct for which such authorization is necessary, the Commission must issue a citation warning them of the violation charged before imposing monetary penalties.⁵⁶ If such persons subsequently engage “in conduct of the type described in [the] citation,” the Commission can issue a Notice of Apparent Liability (NAL) proposing a forfeiture.⁵⁷ In assessing such forfeitures, the Commission may consider both the conduct that led to the citation and the conduct following it.⁵⁸ Here, Sound Around does not hold the necessary Commission authorizations for 32 models of devices it is marketing. The Division issued the *Marketing Citation* to Sound Around in 2011.⁵⁹ Because Sound Around subsequently engaged in the conduct that led to the *Marketing Citation* by marketing devices that are apparently not authorized, an NAL against Sound Around is now appropriate.⁶⁰

20. Section 1.80(b) of the Commission’s rules sets a base forfeiture of \$7,000 for marketing of unauthorized equipment for each violation or each day of a continuing violation.⁶¹ Sound Around has been marketing 32 models of apparently noncompliant wireless microphones during the statute of limitations period based on the April 9, 2019, screenshots and the information provided by the Company during the investigation. Accordingly, we propose a total base forfeiture of \$224,000.⁶²

21. In addition, given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that significant upward adjustments are warranted for Sound Around’s apparent (i) long-running (repeated and continuous) marketing of noncompliant wireless microphone models (applied to 30 models) and (ii) egregious threats to public safety for two models.⁶³

22. *First*, Sound Around has been apparently repeatedly and continuously marketing noncompliant radio frequency devices for a considerable period of time—since at least 2009.⁶⁴

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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”).

⁵⁶ See 47 U.S.C. § 503(b)(5).

⁵⁷ *Id.*

⁵⁸ See S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (“If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability ‘would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.’”) (emphasis added); see also *Dialing Servs., LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6205, para. 35 (2017) (“There is no question that the Commission may take into account violations that occurred before a citation was issued when the cited person or entity thereafter engages in the same unlawful conduct.”).

⁵⁹ See *supra* note 2.

⁶⁰ See *ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com et al.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5540, para. 20 (2018) (*HobbyKing*).

⁶¹ 47 CFR § 1.80(b); see *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1826, para. 19 (2006) (forfeiture paid) (*Behringer*); *C.T.S. Technology Co., Limited*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 8107, 8112, para. 14 (2014), Forfeiture Order, 31 FCC Rcd 6126 (2016).

⁶² This total base forfeiture accounts for one day of violations on April 9, 2019, at \$7,000 per violation multiplied by the 32 violations (32 x \$7,000 = \$224,000).

⁶³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01, para. 27; 47 CFR § 1.80(b)(8) (upward adjustment criteria includes the following: egregious misconduct; ability to pay/relative disincentive; intentional violation; substantial harm; prior violations; substantial economic gain; and repeated or continuous violation).

⁶⁴ See *Marketing Citation*, 26 FCC Rcd at 9475-76, paras. 3-6 (Sound Around’s noncompliant marketing goes back to at least 2009).

Moreover, Sound Around was issued the *Marketing Citation* for unlawfully marketing wireless microphones in 2011, and thus was on notice that such conduct violates the Commission's rules. Despite this notice, the Company apparently continued to market noncompliant wireless microphones. This long history of repeated and continuous marketing of non-compliant wireless microphones in apparent violation of the Commission's rules and section 302 of the Act warrants a significant upward adjustment.⁶⁵

23. *Second*, Sound Around's marketing of the two microphone models that operate in the aviation band appears to have been egregious because of the microphones' potential for causing harmful interference to a critical public safety radio service.⁶⁶ In its 2019 LOI Response, Sound Around provided the actual operating frequencies for 22 apparently unauthorized wireless microphones listed for sale on its website, *pyleusa.com*.⁶⁷ Sound Around lists models PDMW94 and PDMW96 as actually operating in the aviation band.⁶⁸ We treat these two apparent violations as continuing violations because we have evidence of the apparent violations continuing from April 9, 2019 to as recently as January 28, 2020. Moreover, the possibility of causing harmful interference to operations in frequencies reserved for aviation has the potential to cause substantial harm to public safety and supports an upward adjustment for those two models to the statutory maximum for a continuing violation of \$153,669 for each model.⁶⁹

24. Based on the foregoing, we propose to upwardly adjust the proposed forfeiture for the 30 apparent equipment marketing violations (not involving public safety spectrum) by \$168,000 (*i.e.* \$5,600 x 30 models), resulting in a proposed forfeiture of \$378,000 for these models (base forfeiture of \$7,000 x 30 models = \$210,000 + \$168,000 upward adjustment). For the two models that threaten public safety, we propose to upwardly adjust to the statutory maximum of \$153,669 for a continuing violation

⁶⁵ See, e.g., *Midessa Television Ltd. P'ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (upward adjustment for the base forfeiture because of extended duration of the violation); *Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810-11, paras. 10-11 (2012) (upward adjustment of the base forfeiture because of extended duration of the violation) (forfeiture paid). Although some violations are not actionable due to the expiration of the statute of limitations period, where the company no longer markets certain models, the Commission has determined such violations may be relevant in determining adjustments to base forfeiture levels in setting the forfeiture amount. See *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000) (the Commission can consider facts that occurred outside the statute of limitations period in assessing an appropriate forfeiture amount).

⁶⁶ See *supra* note 10 (Federal Aviation Administration list of frequency bands supporting aviation and their use).

⁶⁷ See 2019 LOI Response at Exh. A.

⁶⁸ See *id.*

⁶⁹ See *HobbyKing*, 33 FCC Rcd at 5541, para. 23 (upward adjustment applied where the continued marketing of noncompliant transmitters threatened to interfere with Federal Aviation Administration systems); *Towerstream Corp.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604, 11614, para. 29 (2013) (proposed forfeitures upwardly adjusted over 100% to the statutory maximum for target's "blatant disregard for Commission authority and the consequent harm to public safety"); Order and Consent Decree, 31 FCC Rcd 8530 (EB 2016); *Pilot Travel Centers, LLC*, 19 FCC Rcd 23113, 23117, para. 17 (upward adjustment where company continued marketing noncompliant devices following nine citations and devices had the potential to interfere with authorized users) (*Pilot Travel Centers*); *San Jose Navigation, Inc.*, 21 FCC Rcd 2873, 2877-78, para. 15 (2006) (upward adjustment because the noncompliant devices being marketed "intentionally emit signals in restricted frequency bands, potentially interfering with and jeopardizing critical authorized safety-of-life operations [the] apparent violations were continuous in nature, occurring over a three-year period the volume of unauthorized devices distributed and the fact that the devices are not capable of being certified in any event"), Forfeiture Order, 22 FCC Rcd 1040 (2007), Order and Consent Decree, 26 FCC Rcd 1494 (2010); *Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362-63, para. 11 (2001) (upwardly adjusting a forfeiture approximately 125% based on a finding that a cable system's signal leakage violations increased the likelihood of interference with aeronautical frequencies and potentially jeopardized air safety), Forfeiture Order, 17 FCC Rcd 22626 (2002).

for each model, resulting in a proposed forfeiture of \$307,338 (*i.e.*, \$153,669 x 2 models) for those two apparent violations.⁷⁰ The overall proposed forfeiture, base plus upward adjustments, for the apparent equipment marketing violations is \$685,338.

25. 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.

26. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$685,338, for which Sound Around is apparently liable.

IV. ORDERING CLAUSES

27. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act⁷¹ and section 1.80 of the Commission's rules,⁷² Sound Around, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six hundred and eighty-five thousand three hundred and thirty-eight dollars (\$685,338) for willful and repeated violations of section 302(b) of the Act⁷³ and sections 2.803(b)(1) and 74.851(f) of the Commission's rules.⁷⁴

28. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁷⁵ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Sound Around, Inc. **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 31 below.

29. Sound Around, Inc. shall send electronic notification of payment to EB-SED-Response@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),⁷⁶ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁷⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as

⁷⁰ The Division observed marketing of the two models on Sound Around's websites within the last twelve months for multiple days. For equipment marketing violations involving devices that threaten public safety, the Commission has previously assessed violations at the statutory maximum on a continuing basis to appropriately sanction the violations. *See e.g., HobbyKing*, 33 FCC Rcd at 5541, para. 23; *see also C.T.S. Technology Co., Limited*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 8107, 8113, paras. 17-18 (2014) (signal jammers assessed at continuing statutory maximum), Forfeiture Order, 31 FCC Rcd 6126 (2016) (affirming forfeiture proposed in the Notice of Apparent Liability).

⁷¹ 47 U.S.C. § 503(b).

⁷² 47 CFR § 1.80.

⁷³ 47 U.S.C. § 302a(b).

⁷⁴ 47 CFR §§ 2.803(b)(1), 74.851(f)

⁷⁵ 47 CFR § 1.80.

⁷⁶ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

⁷⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁷⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

30. 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 20554.⁷⁹ 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.

31. 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 to sections 1.16 and 1.80(f)(3) of the Commission’s rules.⁸⁰ 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 NAL/Account Number referenced in the caption. The statement must also be e-mailed to EB-SED-Response@fcc.gov.

32. 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.

⁷⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁷⁹ See 47 CFR § 1.1914.

⁸⁰ 47 CFR §§ 1.16, 1.80(f)(3).

33. **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 Zigmond Brach, Chief Executive Officer, Sound Around, Inc., 1600 63rd Street, Brooklyn, New York 11204, and to Max Moskowitz, Esq., Ostrolenk Faber LLP, 11800 Avenue of the Americas, New York, New York 10036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

FCC ID: X6CGM-633	Model	FCC ID authorized frequencies	Actual operating frequencies
1	PDWM94	174.2 – 215.8 MHz	117.5/114.5 MHz
2	PDWM96	174.2 – 215.8 MHz	117.5/114.5 MHz
3	PDWM4650	174.2 – 215.8 MHz	65.10 MHz
4	PDWM4700	174.2 – 215.8 MHz	500 - 600 MHz
5	PDWM8325	174.2 – 215.8 MHz	65.10 MHz
6	PDWM8350	174.2 – 215.8 MHz	65.10 MHz

FCC ID: QSRHT-15	Model	FCC ID authorized frequencies	Actual operating frequencies
7	PDWM4520	614.2 – 697.8 MHz	573 - 579.80 MHz
8	PDWM1800	614.2 – 697.8 MHz	523 – 597.80 MHz

FCC ID: QSRHT-25	Model	FCC ID authorized frequencies	Actual operating frequencies
9	PDWM4360U	614.2 – 697.8 MHz	573 - 579.80 MHz
10	PDWM4350U	614.2 – 697.8 MHz	573 - 579.80 MHz
11	PDWM3375	614.2 – 697.8 MHz	573 - 579.80 MHz
12	PDWM3400	614.2 – 697.8 MHz	573 - 579.80 MHz

FCC ID: QSRHT-35A	Model	FCC ID authorized frequencies	Actual operating frequencies
13	PDWM2135	614.2 – 697.8 MHz	174 - 216 MHz
14	PDWM2560	614.2 – 697.8 MHz	523 – 597.80 MHz
15	PDWM8275	614.2 – 697.8 MHz	523 – 597.80 MHz

FCC ID: QSRKST6U	Model	FCC ID authorized frequencies	Actual operating frequencies
16	PDWM3360	720 – 806 MHz	573 – 597.975 MHz

FCC ID: QSRPT-15	Model	FCC ID authorized frequencies	Actual operating frequencies
17	PDWM4560	614.2 – 697.8 MHz	573 - 579.80 MHz
18	PDWM4540	614.2 – 697.8 MHz	523 – 579.80 MHz

FCC ID: QSRPT-25	Model	FCC ID authorized frequencies	Actual operating frequencies
19	PDWM8250	614.2 – 697.8 MHz	523 - 597.80 MHz
20	PDWM8225	614.2 – 697.8 MHz	523 – 597.80 MHz
21	PDWM3378	614.2 – 697.8 MHz	None provided
22	PDWM1904	614.2 – 697.8 MHz	523 – 597.80 MHz
23	PDWM3365	614.2 – 697.8 MHz	523 – 597.80 MHz

No FCC ID provided	Model
24	PSUFM1280B
25	PDWM8374
26	PDWM13UH
27	PDWM12UH
28	PDWM2145
29	PDWM2140
30	PDWM2115
31	PDWM8900
32	PDWM2130