

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

**FORFEITURE ORDER**

**Adopted: May 20, 2021**

**Released: May 21, 2021**

By the Commission: Acting Chairwoman Rosenworcel issuing a statement.

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**I. INTRODUCTION**

1. On September 14, 2018, the Commission issued a Notice of Apparent Liability for Forfeiture (*Notice*) proposing to fine IOU Acquisitions, Inc. (IOU or Company) \$207,290 for operating an unauthorized wireless data transmission service in a radiolocation service spectrum band and for intentionally altering the settings of wireless equipment to support both this unauthorized service and operation outside the authorized frequency bands allowed for the equipment.<sup>1</sup> After reviewing the Company’s response to the *Notice*,<sup>2</sup> we find no reason to cancel, withdraw, or reduce the proposed penalty and impose a penalty of \$207,290 against IOU.

**II. BACKGROUND**

2. *Legal Background.* Section 301 of the Communications Act of 1934, as amended (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.<sup>3</sup> A “Radiolocation Service” 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.”<sup>4</sup> Radiolocation Service is

<sup>1</sup> *IOU Acquisitions, Inc.; Air-Tel, LLC*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 8919 (2018).

<sup>2</sup> *IOU Acquisitions, Inc.*, Response to Notice of Apparent Liability (filed Oct. 13, 2018) (on file in EB-SED-17-00024050) (Notice Response).

<sup>3</sup> 47 U.S.C. § 301; 47 CFR § 1.903(a).

<sup>4</sup> 47 CFR § 90.103; *accord id.* § 90.101; *see also Notice*, 33 FCC Rcd at 8919-20, paras. 2-3.

a subset of radiodetermination, and 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,<sup>5</sup> “such as doppler radar to provide weather information to broadcast viewers.”<sup>6</sup>

3. The Global Positioning System (GPS) service is technologically distinct from both radiodetermination and Radiolocation Service. GPS relies on satellite communications to determine the location of an object and Commission regulations allow GPS to be used for navigation purposes.<sup>7</sup> A GPS tracking service is simply the transmission of data, specifically, the location information determined by GPS.<sup>8</sup> Because radiodetermination and radiolocation do not rely on satellite communications, they are considered technologically distinct services from GPS.

4. The Act and the Commission’s rules set forth requirements for radio frequency devices to obtain equipment authorization and to be operated in a manner consistent with the authorization. Section 302(b) of the Act mandates that “[n]o person shall... use devices [] which fail to comply with regulations promulgated pursuant to this section.”<sup>9</sup> In the context of Private Land Mobile Radio services, section 90.203 of the Commission’s rules requires that “each transmitter utilized for operation under this part . . . must be of a type which has been certified for use under this part.”<sup>10</sup> Radiolocation Service licensees are required to use “radiolocation devices” under section 90.103 of the Commission’s rules.<sup>11</sup>

5. *Factual Background.* IOU is a Colorado-based company licensed to provide Radiolocation Service under subpart F of part 90 of the Commission’s rules, holding Radiolocation Service license WQLW310 for frequencies 3300-3650 MHz since October 9, 2014.<sup>12</sup> Although IOU holds a Radiolocation Service license, the Company instead provided a GPS vehicle tracking service that transmitted GPS coordinates of mobile stations to land stations using equipment certified for use as wireless data transmission equipment.<sup>13</sup> The Company states that its GPS vehicle tracking service also included “wireless services,” “IP voice services,” and an “enhanced web portal that provides access to tracking information.”<sup>14</sup> To provide the GPS vehicle tracking service, IOU used equipment that was

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<sup>5</sup> 47 CFR § 2.1(c); *see also id.* § 90.7 (defining Radiodetermination as “[t]he determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves.”); *Notice*, 33 FCC Rcd at 8920, paras. 2-3.

<sup>6</sup> *Facilitating Shared Use in the 3.1-3.55 GHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 12662, 12664, para. 5 (2019).

<sup>7</sup> *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, 7666, 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.”).

<sup>8</sup> *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 & n.72 (2017); *see also Notice*, 33 FCC Rcd at 8925-26, para. 14.

<sup>9</sup> 47 U.S.C. § 302a(b).

<sup>10</sup> 47 CFR § 90.203(a).

<sup>11</sup> 47 CFR § 90.103(a).

<sup>12</sup> The Commission issued the WQLW310 license on May 10, 2010, and the license was assigned to the Company on September 23, 2014. *See* Universal Licensing System (ULS) Call Sign WQLW310 (granted May 10, 2010); ULS File No. 0006461572 (granted Sep. 23, 2014). The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. *See generally Notice*.

<sup>13</sup> *See Notice*, 33 FCC Rcd at 8921-22, para. 5; *see* Notice Response, para. 6.

<sup>14</sup> *See Notice*, 33 FCC Rcd at 8921, para. 5; *see* Notice Response, para. 5.

neither authorized for operation as Radiolocation Service equipment nor authorized for operation in the 3300-3650 MHz band, ignoring regulatory warnings in the equipment user manuals.<sup>15</sup> IOU provided the GPS vehicle tracking service in the 3300-3650 MHz band until September 24, 2017.<sup>16</sup>

6. On September 14, 2018, the Commission issued the *Notice* proposing a \$207,290 forfeiture against IOU, finding that IOU's operation of a GPS vehicle tracking service in the 3300-3650 MHz band apparently constituted a wireless data transmission service that was not authorized under its Radiolocation Service license. The *Notice* also determined that IOU apparently operated equipment that was not authorized to operate on frequencies allocated to the Radiolocation Service. Accordingly, the *Notice* found the Company apparently liable for its apparent willful and repeated violations of: (a) section 301 of 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 September 23, 2014, the date on which its licenses were obtained, until September 24, 2017;<sup>17</sup> and (b) section 302 of the Act and sections 90.103 and 90.203 of the Commission's rules by operating unauthorized equipment to effectuate such unauthorized operation during the same period of time.<sup>18</sup> The *Notice* also proposed a significant upward adjustment on the total base forfeiture as a result of the Company's years-long record of repeated and continuous violations and its deliberate use of unauthorized equipment.<sup>19</sup>

7. On October 13, 2018, IOU filed a response to the *Notice*.<sup>20</sup> The Company makes a number of arguments as to why the *Notice* should be canceled, but fails to explain how the GPS vehicle tracking service can be classified as a Radiolocation Service and legally operated in the frequency band designated for Radiolocation Services using noncompliant equipment.<sup>21</sup>

8. The Company admits that it and its predecessor provided the GPS vehicle tracking service since obtaining the Radiolocation Service license.<sup>22</sup> The Company also admits that the

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<sup>15</sup> See *Notice*, 33 FCC Rcd at 8922, para. 6. IOU used Cambium equipment certified for 3652.5-3697.5 MHz (FCC ID Z8H89FT0028). 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." At some points during the period for which the violations are assessed, the Company used Redline equipment (FCC ID QC8-AN801E) instead of the Cambium equipment. The Redline equipment was granted certification for 3650-3700 MHz. 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." *Id.* at 8922, para. 6, & n. 17. Both equipment manufacturers included regulatory warnings about choosing the appropriate regions and/or countries in their user manuals. The Cambium equipment manual stated, "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." The Redline equipment manual stated that the regional code "is incorporated into the options key. This feature enforces compliance to regional regulatory statutes." *Id.* at 8928, para. 20 & n. 70. IOU states the equipment had labels or "spec sheets" which indicated the equipment had the technical capability of operating from "3.3 to 3.8 GHz." *Notice Response*, para. 20.

<sup>16</sup> See *Notice*, 33 FCC Rcd at 8921-22, para. 5; see *Notice Response*, para. 8.

<sup>17</sup> 47 U.S.C. § 301; 47 CFR § 1.903(a).

<sup>18</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 90.103, 90.203. The *Notice* also proposed a \$327,290 forfeiture against Air-Tel, LLC for substantially similar violations. We address the claims made by Air-Tel, LLC in a companion Forfeiture Order.

<sup>19</sup> *Notice*, 33 FCC Rcd at 8931-32, paras. 27-30.

<sup>20</sup> See *Notice Response*. IOU did not provide a sworn declaration in support of its *Notice Response* as required by the *Notice*. See *Notice*, 33 FCC Rcd at 8933-34, para. 39. While we caution IOU that the lack of a supporting declaration is ordinarily unacceptable, for purposes of this Forfeiture Order, we will accept the factual assertions made in the *Notice Response*, unless otherwise contradicted by other record evidence.

<sup>21</sup> *Notice Response*, paras. 10-21.

<sup>22</sup> *Notice Response*, paras. 5, 14.

equipment's authorization only covers the 3650-3700 MHz band,<sup>23</sup> but that it configured its equipment to, and operated its equipment in, the 3300-3650 MHz band.<sup>24</sup> Furthermore, the Company confirmed that its service included the exchange of GPS coordinates, and that its underlying technology is wireless data transmission.<sup>25</sup> Finally, while the Company challenges the bases for finding it liable, it does not challenge the calculation of the proposed forfeiture.<sup>26</sup>

### III. DISCUSSION

9. In this Forfeiture Order, we find that IOU violated the Act and the Commission's rules by providing an unauthorized service in the 3300-3650 MHz band and operating equipment in a manner inconsistent with the equipment's authorization. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Act,<sup>27</sup> section 1.80 of the Commission's rules,<sup>28</sup> and the Commission's *Forfeiture Policy Statement*.<sup>29</sup> When we assess forfeitures, section 503(b)(2)(E) requires that we take into account 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."<sup>30</sup> We have fully considered IOU's response to the *Notice*, which includes a variety of legal and factual arguments, but we find none of them persuasive. We therefore impose the \$207,290 forfeiture proposed in the *Notice*.

#### A. IOU Engaged in Unauthorized Operations with Unauthorized Equipment

10. The core factual findings of the *Notice*—that IOU performed unauthorized GPS-tracking operations in the 3300-3650 MHz band using unauthorized equipment—are undisputed. Specifically, the *Notice* found that IOU's GPS vehicle tracking service apparently constituted a wireless data transmission service not authorized under its Radiolocation Service license.<sup>31</sup> The *Notice* also found IOU apparently altered and operated equipment that was not authorized to operate on frequencies allocated to the Radiolocation Service.<sup>32</sup> Based on these findings, the *Notice* concluded that IOU was apparently liable for its apparent willful and repeated violation of sections 301 and 302(b) of the Act and sections 1.903(a), 90.103, and 90.203 of the Commission's rules.<sup>33</sup> IOU does not dispute that it offered a GPS vehicle

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<sup>23</sup> Notice Response, para. 6.

<sup>24</sup> Notice Response, paras. 16, 20.

<sup>25</sup> Notice Response, para. 13-14.

<sup>26</sup> See generally Notice Response.

<sup>27</sup> 47 U.S.C. § 503(b).

<sup>28</sup> 47 CFR § 1.80.

<sup>29</sup> *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 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>30</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>31</sup> *Notice*, 33 FCC Rcd at 8924-27, paras. 11-17. Following the *Notice*, the Commission took steps to relocate authorized radiolocation licensees from the 3.3-3.55 GHz band to allow the 3.45-3.55 GHz band to be used for wireless services, including 5G. See *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078, 11088, para. 27 (2020) (removing the secondary non-federal radiolocation service allocation from the 3.3-3.55 GHz band); *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, Order Proposing Modification, 2021 WL 1086295, at \*6-7, paras. 17-19, \*44-45, paras.150-53 (2021) (allocating the spectrum for flexible wireless use and establishing timing of relocation for authorized radiolocation licensees).

<sup>32</sup> *Notice*, 33 FCC Rcd at 8927-29, paras. 18-22.

<sup>33</sup> 47 U.S.C. §§ 301, 302a(b); 47 CFR §§ 1.903(a), 90.103, 90.203. *Notice*, 33 FCC Rcd at 8932, para. 33.

tracking service or that the equipment it used was not authorized for use as a Radiolocation Service in the 3300-3650 MHz band.<sup>34</sup>

11. IOU holds a license that only authorizes the company to provide Radiolocation Service in the 3300-3650 MHz band. IOU freely admits that it was operating a “two-way wireless data network.”<sup>35</sup> IOU incorrectly argues, however, that its GPS vehicle tracking service is “a Land Mobile wireless data transmission service of which [Radiolocation Service] is a subpart of.”<sup>36</sup> IOU argues that, as long as its service uses radio waves and has some connection to direction, distance, speed, or position, however obtained or transmitted, such service is Radiolocation Service.<sup>37</sup> IOU further states that radar service is a wireless data transmission service and that radiolocation “is typically going to be the propagation of radio waves, just as any other wireless service.”<sup>38</sup> We are unpersuaded. The definition of Radiolocation Service is limited to determining direction, distance, speed, or position characteristics based on the propagation properties of radio waves, not by transmitting data on the radio waves.<sup>39</sup> Further, a Radiolocation Service allocation does not include an authorization to transmit GPS data, unless explicitly stated.<sup>40</sup> Simply put, IOU’s wireless data transmission service that exchanges GPS coordinates and includes “IP voice services data” is not a Radiolocation Service. Thus, IOU’s provision of two-way wireless data service in the 3300-3650 MHz band was unauthorized.

#### **B. Lack of Familiarity with the Rules Does Not Warrant Cancelling a Forfeiture**

12. A violator’s belief that it is not violating the law does not absolve the violator.<sup>41</sup> *First*, the Commission has repeatedly stated that “parties who rely on staff advice or interpretations do so at

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<sup>34</sup> Notice Response, para. 13 (GPS vehicle tracking service “included enhanced features through an integrated two-way wireless data network”); *id.*, para. 20 (IOU “acknowledges that it selected the ‘other’ operational code on the equipment that would allow it to use the equipment on its licensed frequencies. . .”).

<sup>35</sup> Notice Response, para. 13; *see also id.*, para. 5 (service involved GPS coordinates sent “thru the propagation of radio waves in the form of a wireless data transmission”); *id.*, para. 14 (“The Company’s underlying technology is wireless data transmission technology. . .”).

<sup>36</sup> Notice Response, para. 14; *id.*, paras. 1, 3, 12, 13.

<sup>37</sup> Notice Response, para. 13. IOU even claims that IP voice is authorized under a Radiolocation Service license if IP voice is part of “operations involving distance, speed, or position.” *Id.* at para. 14.

<sup>38</sup> Notice Response, paras. 2, 13.

<sup>39</sup> *See Notice*, 33 FCC Rcd at 8919-20, paras. 2-3.

<sup>40</sup> *Air-Tel, LLC; IOU Acquisitions, Inc.*, Order, 32 FCC Rcd 10157, 10158, para. 5 (WTB 2017) (“When the Commission intends to permit the transmission of data on radiolocation frequencies, it specifically provides for it.”) (*Petition Denial*); *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 & n.72 (2017) (“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.”) (citation omitted). *See Air-Tel, LLC*, Memorandum Opinion and Order, FCC 21-59 (2021).

<sup>41</sup> *See Centennial Radio Corp., Licensee of Station Kapi, Pueblo, Colo. For Forfeiture*, Memorandum Opinion and Order, 15 FCC 2d 817, 817-18, para. 4 (1969) (“[L]icensees are expected to be aware of and comply with all the requirements of the Communications Act and the rules thereunder and the Commission has never considered ‘oversight’ or lack of knowledge of the rules as valid excuses for failure to do so.”); *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (“The Commission expects, and it is each licensee’s obligation, to know and comply with all of the Commission’s rules.”).

their own risk.”<sup>42</sup> Thus, contrary to IOU’s assertions,<sup>43</sup> its (alleged) conversations with various Commission staff did not authorize a different service under the Radiolocation Service license.<sup>44</sup>

13. *Second*, the fact that IOU and the prior license-holder operated for many years without being investigated also does not warrant cancelling or reducing the forfeiture. The Commission assumes a license holder is compliant with its license, the Act, and the Commission’s rules—but when the agency receives and investigates a complaint, that assumption no longer holds.<sup>45</sup> Indeed, rather than justify IOU’s actions, the Company’s lengthy history of noncompliance actually serves as a basis for an upward adjustment to the base forfeiture amount.<sup>46</sup>

14. *Finally*, the emission designator listed on the license application did not authorize a different service under the Radiolocation Service license, nor did it authorize the operation of equipment outside its authorized frequency bands.<sup>47</sup> The Commission’s rules explicitly require that equipment used to provide service under part 90, including Radiolocation Service, must be certified for its particular use.<sup>48</sup> Here, the IOU equipment was not certified for part 90 radiolocation use.<sup>49</sup> Therefore, IOU violated the Commission’s rules by operating with equipment unauthorized for Radiolocation Service, and the emission designator listed on the license application did not excuse this violation.

### C. IOU Admits It Altered Certified Equipment

15. IOU operated equipment contrary to the equipment authorization, thereby violating section 302(b) of the Act and section 90.203 of the Commission’s rules.<sup>50</sup> IOU argues that the equipment it

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<sup>42</sup> *Hinton Telephone Company et al.*, Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 11625, 11637, para. 42 (1995).

<sup>43</sup> Notice Response, paras. 6-7.

<sup>44</sup> *Notice*, 33 FCC Rcd at 8925, para. 14 & n.47 (rejecting the Company’s argument that conversations with Commission staff regarding GPS-handset-assisted radiolocation authorized the Company’s service).

<sup>45</sup> *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (“The FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”) (citations omitted).

<sup>46</sup> *See Notice*, 33 FCC Rcd at 8931, para. 27.

<sup>47</sup> *Notice*, 33 FCC Rcd at 8926-27, para. 15 & n.54; *see also Petition Denial*, 32 FCC Rcd at 10159, 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.”).

<sup>48</sup> 47 CFR § 90.203.

<sup>49</sup> Nor did the fact that IOU operated at an output power level below 120 milliwatts, ostensibly to comply with the low-power requirements in section 90.217 of the Commission’s rules, allow the Company to provide a service not authorized by its license. 47 CFR § 90.217; Notice Response, paras. 6, 10. Although section 90.217 specifies alternative signal attenuation requirements for low-power transmitters used on a business category channel at frequencies above 800 MHz, this rule does not eliminate the need for part 90 devices, including radiolocation devices, to be certified under section 90.203. 47 CFR § 90.203. Furthermore, the user manuals for the equipment used by IOU indicate that it could not operate at the channel bandwidths specified in sections 90.217(a)-(c) (25 kHz, 12.5 kHz, and 6.25 kHz, respectively). 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 (Aug. 16, 2017) (on file in EB-SED-17-00024050 and EB-SED-17-00024053) (Both Cambium and Redline manuals indicate equipment capable of channel widths only as small as 5 MHz). Thus, regardless of the output power level, the equipment IOU used could not have been compliant with section 90.217 in any event.

<sup>50</sup> 47 U.S.C. § 302a(b); 47 CFR § 90.203; *see also* Notice Response, paras. 18-19. IOU never sought a waiver for the equipment to operate as a Radiolocation Service device or in the 3300-3650 MHz band until after the investigation began, and its request for a waiver was dismissed by WTB as moot. *Petition Denial*, 32 FCC Rcd at 10159, para. 7.

used “operated as radiolocation devices” and was “authorized for Part 90.203.”<sup>51</sup> Yet, IOU admits that the equipment is only authorized for wireless data transmissions in the 3650-3700 MHz band.<sup>52</sup> Indeed, both the Cambium and Redline equipment had certifications under subpart Z of part 90 of the Commission’s rules for “Wireless Broadband Services in the 3650-3700 MHz Band” and were authorized for bands 3652.5-3697.5 MHz (Cambium equipment) and 3650-3700 MHz (Redline equipment).<sup>53</sup> IOU also admits that it chose menu options on the equipment that allowed it to operate the equipment in the 3300-3650 MHz band to provide its GPS vehicle tracking service.<sup>54</sup>

16. The grant of a radiolocation license does not provide a licensee authority to operate any equipment of its choosing. IOU appears to argue that it was allowed to modify the certified equipment to operate contrary to its authorized parameters based on its Radiolocation Service license.<sup>55</sup> The Commission’s rules contain limited exceptions that would permit a licensee to operate unauthorized equipment for: (1) experimental radio authorizations, (2) operation in anechoic chambers or Faraday cages, (3) operation use in demonstrations or evaluations, and (4) other limited circumstances.<sup>56</sup> None of these circumstances apply to IOU or to its Radiolocation Service license.

17. Nor does IOU’s mistaken reliance on the equipment labels or manuals stating that the equipment was capable of operation in the radiolocation band excuse the unauthorized operation.<sup>57</sup> The capabilities indicated by the labels here were also accompanied by warnings to choose the proper regulatory settings to avoid noncompliant operation.<sup>58</sup> Further, the Commission has made clear that a violator’s reliance on the advice of a third party does not excuse the violator’s conduct.<sup>59</sup> In short, IOU has no justification for its operation of unauthorized equipment.

#### **D. The Amount of the Forfeiture Is Appropriate**

18. After considering the relevant statutory factors and the Commission’s *Forfeiture Policy Statement*, we find that IOU is liable for a total forfeiture of \$207,290.<sup>60</sup> As explained in the *Notice*, this total results from applying a \$147,290 forfeiture for unauthorized operation on a continuing basis, in addition to a \$60,000 forfeiture for its operation of unauthorized equipment.<sup>61</sup> The \$147,290 forfeiture for unauthorized operation constitutes the daily base forfeiture of \$10,000,<sup>62</sup> upwardly adjusted to the daily statutory maximum of \$19,639, applied from September 16, 2017 to September 24, 2017, and capped at

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<sup>51</sup> Notice Response, paras. 17-18.

<sup>52</sup> Notice Response, para. 6.

<sup>53</sup> See *Notice*, 33 FCC Rcd at 8922, para. 6 & n.17.

<sup>54</sup> Notice Response, para. 20.

<sup>55</sup> Notice Response, para. 20.

<sup>56</sup> See 47 CFR § 2.805.

<sup>57</sup> See Notice Response, para. 20.

<sup>58</sup> See *Notice*, 33 FCC Rcd at 8928-29, para. 21 & n.70. Much like a speedometer on a car does not allow a driver to ignore the speed limit, a label with the frequency capabilities of the equipment did not allow IOU to ignore the equipment’s Commission authorized frequency limitations.

<sup>59</sup> *Remel, Inc., & Its Corp. Parent Thermo Fisher Sci., Inc.*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 8778, 8782, para. 9 (2013) (forfeiture paid).

<sup>60</sup> 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.

<sup>61</sup> See *Notice*, 33 FCC Rcd at 8931-32, paras. 24-31.

<sup>62</sup> See 47 CFR § 1.80(d); *Notice*, 33 FCC Rcd at 8930, para. 24.

the statutory maximum of \$147,290 for a continuing violation.<sup>63</sup> The \$60,000 forfeiture for unauthorized equipment constitutes a base forfeiture of \$5,000 for each of the four unauthorized pieces of Cambium equipment operated by IOU, upwardly adjusted by \$40,000.<sup>64</sup> These upward adjustments are warranted due to IOU's lengthy history of repeated and continuous noncompliance, in addition to the deliberate nature of its violations.<sup>65</sup>

19. In IOU's Notice Response, the Company made no arguments to reduce or cancel the forfeiture based on any of the factors in section 1.80 of the Commission's rules; and, after independently considering them in the context of this Forfeiture Order, we find no reason to reduce the forfeiture amount proposed in the *Notice*. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$207,290 properly reflects the seriousness, duration, and scope of IOU's violations.

#### IV. ORDERING CLAUSES

20. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,<sup>66</sup> and section 1.80 of the Commission's rules,<sup>67</sup> IOU Acquisitions, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred seven thousand, two hundred and ninety dollars (\$207,290) for willfully and repeatedly violating sections 301 and 302 of the Act,<sup>68</sup> and sections 1.903(a), 90.103, and 90.203 of the Commission's rules.<sup>69</sup>

21. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>70</sup> IOU Acquisitions, Inc. shall send electronic notification of payment to [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov) on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>71</sup>

22. 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

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<sup>63</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7); *Notice*, 33 FCC Rcd at 8932, para. 30. 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).

<sup>64</sup> See 47 CFR § 1.80(b); *Notice*, 33 FCC Rcd at 8930-31, 32, paras. 26, 30. The Commission has discretion to depart from these guidelines, taking into account the particular facts of each individual case. *Forfeiture Policy Statement*, 12 FCC Rcd at 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").

<sup>65</sup> See *Notice*, 33 FCC Rcd at 8931-32, paras. 27-28.

<sup>66</sup> 47 U.S.C. § 503(b).

<sup>67</sup> 47 CFR § 1.80.

<sup>68</sup> 47 U.S.C. §§ 301, 302a.

<sup>69</sup> 47 CFR §§ 1.903, 90.103, 90.203.

<sup>70</sup> *Id.*

<sup>71</sup> 47 U.S.C. § 504(a).



system),<sup>72</sup> 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:<sup>73</sup>

- 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](mailto: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 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). 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. Please note that 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 to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – 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.

23. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.<sup>74</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>72</sup> Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

<sup>73</sup> 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](mailto:ARINQUIRIES@fcc.gov).

<sup>74</sup> See 47 CFR § 1.1914.

24. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to John Gazzo, IOU Acquisitions, Inc., 5721 Logan St., Denver, CO. 80216, and by e-mail to the address associated with its FCC Registration Number.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of IOU Acquisitions, Inc., Forfeiture Order, File No. EB-SED-17-00024050*

It does not get much airtime, but one of the most important parts of this agency's work on spectrum policy is enforcement. After all, the most dynamic, innovative, and data-driven spectrum policy doesn't amount to much if licensees don't feel compelled to comply with our rules.

That is why we take the action we do today. These cases involve two operators licensed to provide radiolocation, a service that uses radio waves to identify objects, using the 3.3-3.6 GHz band. But instead, they offered a different navigation service and modified their equipment in ways that were not authorized under our rules. As a result, they increased the likelihood of interference to other licensees using the band and following the rules. This failure to honor our policies has a cost and that leads us to the forfeiture decision here. In addition, resolving these matters clears the way for the agency's upcoming efforts to introduce new 5G uses in these airwaves.

Thank you to the Enforcement Bureau for bringing these cases before us, including Mark DeSantis, Rosemary Harold, Christopher Killion, Jason Koslofsky, Shannon Lipp, JoAnn Lucanik, Jeremy Marcus, Elizabeth Mumaw, and Ashley Tyson. Thank you also to Jess Greffenius, Joyce Jones, and Paul Powell from the Wireless Telecommunications Bureau; David Horowitz, Douglas Klein, Linda Oliver, and William Richardson from the Office of General Counsel; Ira Keltz and Tom Struble from the Office of Engineering and Technology; and Virginia Metallo from the Office of Economics and Analytics.