

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

In the Matter of)
)
Rocky Mountain Radar)
Application for Review, and)
Request for Expedited Action)
and Emergency Petition for)
Stay of Official Citations)

MEMORANDUM OPINION AND ORDER

Adopted: December 4, 1997

Released: December 10, 1997

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address an Application for Review and Request for Expedited Action filed pursuant to 47 C.F.R. § 1.115, and an Emergency Petition for Stay of Official Citations filed by Rocky Mountain Radar. By these documents, Rocky Mountain Radar seeks review and stay of the citations issued by the Compliance and Information Bureau (CIB) informing Rocky Mountain Radar that the marketing of the Spirit II radar jammer device was in violation of Commission rules and that continued marketing could subject Rocky Mountain Radar to monetary forfeitures. For the reasons noted below, we deny the Application for Review and the Petition for Stay.

II. BACKGROUND

2. On February 12, 1997, the Director, Investigations Group, CIB, issued an official citation¹ to Rocky Mountain Radar advising it that the manufacture and marketing of the Rocky Mountain Spirit II radar jammer violated provisions of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 302,² relating to the manufacturing and marketing

¹ The citation was issued pursuant to 47 U.S.C. § 503(b)(5).

² Section 302 of the Act authorizes the Commission to make reasonable regulations governing the interference potential of devices "which in their operation are capable of emitting radio frequency by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications." 47 U.S.C. § 302(a).

of devices that interfere with radio transmissions and the Commission's equipment authorization provisions of Section 2.803 of the Commission's Rules, 47 C.F.R. § 2.803.

3. In its February 24, 1997, response to the initial citation, Rocky Mountain Radar contended that its device was not an intentional radiator and thus was not covered by the Commission's authorization rules. It noted that Section 15.3(u) of the rules, 47 C.F.R. § 15.3(u), defines "radio frequency energy (RF)" as electromagnetic energy at any frequency in the radio spectrum between 9 kHz and 3,000,000 MHz, and contended that its device fell outside these frequencies. Rocky Mountain Radar further argued that the device is exempt from the equipment authorization process because it falls within the exemption allowed under Section 15.103(a), 47 C.F.R. § 15.103(a), for digital devices that are unintentional radiators used exclusively in any transportation vehicle including motor vehicle and aircraft.

4. Both the Office of Engineering and Technology (OET) and CIB reviewed the documentation and response submitted by Rocky Mountain Radar and, by letter dated July 22, 1997, OET and CIB rejected the arguments made by Rocky Mountain Radar. On the same date, CIB advised Damark International Inc. (Damark), a distributor of the Spirit II, that the device was not authorized and should not be marketed. The OET and CIB examined a report of testing performed on the device by Rocky Mountain Radar's consultant. The report did not rebut CIB's initial determination that the Spirit II radar jammer device is designed to receive, modulate and emit a modulated signal at microwave frequencies. After reviewing the documentation, CIB and OET determined that the device emitted RF energy on frequencies between 9 kHz and 3,000,000 MHz, and was not an exempt device under Section 15.103(a) of the rules, 47 C.F.R. § 15.103(a), but instead, constituted an "intentional radiator" under Section 15.3(o). See 47 C.F.R. § 15.3(o). For this reason, CIB and OET concluded that the device did not qualify for the exemption from the authorization requirements in Section 15.103(a). CIB and OET also concluded that, inasmuch as the intended purpose of the device is to interfere with licensed police communications, it could not be certified and its continued sale is a violation of Sections 15.201(b). See 47 C.F.R. § 15.201(b). CIB, therefore, warned Rocky Mountain Radar that continued marketing of the Spirit II radar scrambler device would be in violation of Commission rules.

5. On August 15, 1997, Rocky Mountain Radar filed the instant Emergency Petition for Stay of Official Citations (Petition). On August 18, 1997, Rocky Mountain filed an Application for Review and Request for Expedited Action (Application) by the Commission of the citations issued by the Bureau. In its Petition, Rocky Mountain Radar requests a stay based upon its argument that (1) the FCC has no jurisdiction over the device because "it does not and physically cannot generate or emit radio frequency energy," and thus, the Bureau's characterization of the device as an "intentional radiator" is based on a misstatement of fact; (2) Rocky Mountain Radar will sustain irreparable financial injury if it is not allowed to market this device; (3) it is up to each state, rather than the Commission, to determine whether the Spirit II device presents a danger or harm to the public or public safety agencies and prohibit the sales of the device in their states; and (4) that a Stay would be in the public interest because the public has an interest in limiting governmental conduct to the existing

rules and laws. In its Application, Rocky Mountain Radar essentially raises the same arguments. Rocky Mountain Radar also requests a Stay of CIB's Official Citations to Damark.

III. DISCUSSION

6. We first address Rocky Mountain Radar's argument that the FCC has no jurisdiction because the device at issue does not and cannot generate or emit radio frequency energy. Section 15.3(o) of the rules, 47 C.F.R. § 15.3(o), defines an *intentional radiator* as a device that intentionally generates and emits radio frequency energy by radiation or induction. Section 15.3(u) of the rules, 47 C.F.R. § 15.3(u), in turn, defines radio frequency energy as electromagnetic energy at any frequency in the radio spectrum between 9 kHz and 3,000,000 MHz. Rocky Mountain Radar contends that "[t]here is no current FCC rule that permits the Commission to prohibit the marketing or sale of a device that does not generate and emit RF energy." (emphasis in original). In particular, Rocky Mountain Radar maintains that Section 15.3(o) of the rules requires both the generation and emission of RF energy for a device to fall within the definition of an "intentional radiator." In support of its argument, Rocky Mountain Radar submits the results of measurements performed by a consultant showing that the Spirit II does not generate or emit any radio frequencies.

7. The Commission's authority under Section 302(a) of the Act, 47 U.S.C. § 302(a), extends to "devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications." In this regard, we observe that the Rocky Mountain Radar Spirit II device is designed to function only when it is illuminated by a police radar signal. The Spirit II device uses the radar signal as a source of RF energy, modulates the signal electronically to generate a different RF signal, and emits that RF signal to cause interference to police radars. Thus, we disagree with Rocky Mountain Radar's assertion that the device does not generate and emit RF energy. The fact that the original source of the radio frequency energy is external to the device does not place the Spirit II beyond the Commission's jurisdiction. When the device is in operation, it uses a source of RF energy to itself generate a new RF signal and emit this signal into space to cause interference. Rocky Mountain Radar provided tests conducted by one consulting firm while the device was not subject to any RF input signal as it would be when operating near a police radar. The opinion offered by this consulting firm regarding the emissions characteristics of the device when it was not subject to normal or intended operation is therefore not dispositive of the issue whether the device is covered by the Commission's authorization rules.³ Further, contrary to Rocky Mountain Radar's assertions that its device contained no RF circuitry whatsoever, its consultant, Hugh V.H. Bishop, states that "[t]here are no RF devices in the Spirit II other than a mixer diode inside a wave guide cavity with ridged antenna and matching screw." Mr. Bishop goes on to

³ Under the Commission's rules governing testing procedures for emissions measurements of conducted and radiated emissions shall be performed with all radiating sources emitting. See 47 C.F.R. § 15.31.

conclude that "since the mixer is not on it's (sic) own an active device for the mixer to have any purpose there must be incident radiation at microwave frequencies." Mr. Bishop's conclusions are therefore contrary to Rocky Mountain Radar's assertion that the device contains no RF circuitry for the generation and emission of radio frequency energy. In light of the foregoing discussion, we conclude that the Spirit II, and any other similar device, meet the definition of an intentional radiator contained in Section 15.3(o) of the rules and therefore we hold that marketing of the Spirit II and any other similar device without FCC equipment authorization is in violation of Sections 15.201(a) and 2.803 of the Commission's Rules. See 47 C.F.R. §§ 15.201(a), 2.803.

8. We also reject Rocky Mountain Radar's argument that its device qualifies as exempt from equipment authorization under Section 15.103(a). We find that this exemption is not applicable in this case. The exemption applies only to digital devices utilized exclusively in any transportation vehicle including motor vehicles and aircraft. Section 15.3(k) defines a digital device, in relevant part, as an unintentional radiator (device or system) that generates and uses timing signals or pulse rates at a rate in excess of 9,000 pulses (cycles) per second and uses digital techniques. 47 C.F.R. § 15.3(k). The Spirit II is not an unintentional radiator and does not generate pulse rates in excess of 9,000 pulses per second. Further, Rocky Mountain Radar has not demonstrated that its device would be used exclusively in transportation vehicles. Accordingly, we reject Rocky Mountain Radar's argument that the Spirit II is exempt from equipment authorization pursuant to Section 15.103(a).

9. We also observe that irrespective of the definitional issues addressed above, Section 15.5 of the Commission's Rules, 47 C.F.R. § 15.5, expressly states that operation of an intentional, unintentional, or incidental radiator is subject to the condition that it may not cause harmful interference. The Spirit II device directly conflicts with this requirement because it interferes with police radars which are devices properly authorized by the Commission. In this connection, we have specifically alerted the public that the intentional use of radar jammers is considered "malicious interference" and is strictly prohibited by the Section 333 of the Act, 47 U.S.C. § 333.⁴

10. We find that it would be contrary to the public interest to permit continued marketing of a device that is designed to deliberately cause radio frequency interference to authorized radio services in violation of the Communications Act and our rules. Rocky Mountain Radar has offered no persuasive reason why we should refrain from enforcing our rules, therefore, we reject Rocky Mountain Radar's Petition for Stay of Official Citations.

⁴ See FCC Public Notice entitled "FCC Regulates Radar Transmitters, But Not Radar Detectors", 11 FCC Rcd 17268 (1996). Section 333 of the Act, 47 U.S.C. § 333, states that no person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under the Act.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED**, that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154 (i) and 47 C.F.R. §1.115, and 47 C.F.R. § 1.41, et. seq., the Application for Review and Emergency Petition for a Stay of Official Citations filed by Rocky Mountain Radar are **DENIED**.

12. **IT IS FURTHER ORDERED** that Rocky Mountain Radar's petition to stay the Official Citation issued to Damark International, Inc. **IS DENIED**.

13. **IT IS FURTHER ORDERED** that a copy of copy of this Order shall be sent by certified mail, return-receipt requested, to Rocky Mountain Radar and counsel.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary