

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

In the Matter of)	
)	File No. EB-08-SE-052
Inter Tech FM)	NAL/Acct. No. 200932100041
)	FRN # 0018458026

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 29, 2009

Released: February 2, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Inter Tech FM (“Inter Tech”) apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The noted apparent violation involves Inter Tech’s marketing of an unauthorized FM broadcast transmitter. In addition, we propose a forfeiture in the amount of eleven thousand dollars (\$11,000) against Inter Tech for providing to the Commission, during the course of this investigation, material factual information that is incorrect without a reasonable basis for believing the material factual information was correct, in willful violation of Section 1.17(a)(2) of the Rules.³ We accordingly propose a total forfeiture of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. In response to complaints alleging that Inter Tech was marketing⁴ unauthorized FM broadcast transmitters in the United States, the Spectrum Enforcement Division of the Enforcement Bureau (“Division”) began an investigation. As part of this investigation, Division Staff reviewed Inter Tech’s website⁵ on February 7, 2008, noting that Inter Tech was marketing a broad array of FM broadcast equipment. Because it appeared that Inter Tech may have been using this website to market unauthorized broadcast equipment, the Division sent Inter Tech a letter of inquiry⁶ on March 28, 2008 to

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ 47 C.F.R. § 1.17(a)(2).

⁴ “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease. 47 C.F.R. § 2.803(e)(4).

⁵ www.intertechfm.com (accessed February 7, 2008).

⁶ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (March 28, 2008) (“First LOF”).

further investigate whether Inter Tech was marketing unauthorized FM broadcast equipment.

3. In its April 23, 2008 response to the First LOI,⁷ Inter Tech stated that it manufactured and marketed fifteen different transmitter models.⁸ Of the fifteen transmitter models, Inter Tech stated that it currently markets fourteen of these models in the United States, and that it only recently discontinued marketing the remaining model, the Cybermax FM TX1 (also sold as the Cybermax FM TXV-1 and TXV-2, and Cyclone TX1, TXV-1 and TXV-2) (“Cybermax FM TX1”), in the United States in November of 2007.⁹ Inter Tech states that all of these models were marketed to full power FM stations operating in the broadcast services under Part 73 of the Rules, and verified in accordance with the requirements set forth in Section 73.1660(a)(1) of the Rules.¹⁰ As proof of verification, Inter Tech provided verification records for an exciter that Inter Tech claims is incorporated into each of the fifteen models.¹¹

4. Because Inter Tech did not provide the requested verification paperwork for the transmitters, including the Cybermax FM TX1 transmitter, the Division issued follow-up LOIs on July 10, 2008¹² and November 24, 2008.¹³ In its July 23, 2008 Response to the Second LOI,¹⁴ Inter Tech stated that it believed that by verifying the exciter, it had complied with Section 73.1660(a)(1) of the Rules.¹⁵ In the Division’s Third LOI, the Division sought an explanation for Inter Tech’s statement in its First LOI Response that it had discontinued marketing the Cybermax FM TX1 Transmitter in November of 2007, despite evidence that the Cybermax FM Transmitter TX1 was marketed on the website as late as February 7, 2008 under the name Cyclone TXV-2.¹⁶ Inter Tech claimed that it had accidentally uploaded a previous version of its website on that date, and that Inter Tech had removed the marketing material

⁷ See Letter from Chris Rea, Inter Tech FM to Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 23, 2008) (“First Response”).

⁸ *Id.* at 6.

⁹ *Id.* at 1 (stating that InterTech discontinued marketing the Cybermax FM TX1 or TXV-1 or TXV-2 in November 2007). See also *id.* at 4 (identifying the Cybermax TX1 or TXV-1 or TXV-2 under the names Cyclone TX1, Cyclone TXV-1, and Cyclone TXV-2). We note that our findings in this *NAL* pertain only to the marketing of the Cybermax FM TX1 transmitter. Our investigation into Inter Tech’s marketing of several other FM broadcast equipment models is ongoing, and therefore is not addressed in this *NAL*.

¹⁰ *Id.* at 4. See also 47 C.F.R. § 73.1660(a)(1). Verification is a self-authorization procedure where the manufacturer or the importer, in the case of imported equipment, makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. See 47 C.F.R. §§ 2.902 and 2.909(b).

¹¹ *Id.* See also 47 C.F.R. § 2.955 (describing those verification records required to be maintained by the manufacturer).

¹² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (July 10, 2008) (“Second LOI”).

¹³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Chris Rea, Inter Tech FM (November 24, 2008) (“Third LOI”).

¹⁴ See Letter from Chris Rea, Inter Tech FM to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 23, 2008) (“Second Response”).

¹⁵ *Id.* at 2.

¹⁶ See Third LOI at 2. See also *supra* para. 2.

associated with the Cyclone TXV-2 “as soon as [the marketing material] was discovered.”¹⁷

III. DISCUSSION

A. Marketing of Unauthorized Equipment

5. Section 302 of the Act authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy, and prohibits, among other things, the offering for sale of radio frequency devices to the extent that such activity does not comply with these regulations.¹⁸ Specifically, Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this Section.” Section 2.803(a)(2) of the Rules prohibits the sale or lease, offer of sale or lease, importation, or shipment of radio frequency devices,¹⁹ as well as the distribution of such devices for the purpose of selling such devices, unless the device complies with applicable administrative, technical, labeling and identification requirements of the Rules.

6. Section 73.1660(a)(1) of the Rules²⁰ requires verification of AM, FM, or TV transmitters used in the broadcast services, in accordance with the procedures described in Part 2 of the Rules. Under Section 2.811 of the Rules,²¹ the requirements of Section 2.803(a) through (d) of the Rules are not applicable to transmitters operated in any of the Part 73 radio broadcast services, provided that the conditions set forth in Part 73 for the acceptability of such transmitter for using under licensing are met. Therefore, absent compliance with the verification requirement set forth in Section 73.1660 of the Rules, Part 73 transmitters are considered to be “unauthorized” and may not be marketed in the United States.

7. Inter Tech states that the Cybermax FM TX1 Transmitter has been verified in accordance with Section 73.1660(a)(1) of the Rules for use in the broadcast service. Section 73.1660(a)(1) of the Rules, however, requires verification of transmitters, not component parts thereof. As proof of verification, Inter Tech submitted partial verification records²² for the Max 15 DSP FM exciter, an exciter that Inter Tech claims is incorporated into the Cybermax FM TX1 Transmitter. Because transmitters are a combination of several functional components that interact with one another to produce unique emanating characteristics and power levels, verification of an exciter incorporated into a transmitter is insufficient to verify the final transmitter. Therefore, we conclude that the Cybermax FM TX1 transmitter has not been verified. Accordingly, we find that Inter Tech apparently marketed the

¹⁷ See Third Response at 1.

¹⁸ 47 U.S.C. § 302a(a).

¹⁹ Section 2.801(a)(1) of the Rules defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy...” Radio frequency devices subject to the Rules include, among other items, radio communication transmitting devices and “any part or component thereof which in use emits radiofrequency energy.” 47 C.F.R. § 2.801(a)(1) and (d).

²⁰ 47 C.F.R. § 73.1660(a)(1).

²¹ See 47 C.F.R. § 2.811.

²² 47 C.F.R. § 2.955 (listing records required to be maintained as proof of verification). Under the verification procedures, the manufacturer of radio frequency devices, or the importer in the case of imported devices, must make measurements or take the necessary steps to obtain measurements to ensure that the subject devices comply with the Commission's technical standards. See 47 C.F.R. § 2.902(a).

Cybermax FM TX1 Transmitter in the United States, in willful²³ and repeated²⁴ violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.²⁵

B. Providing Incorrect Material Information to the Commission

8. Section 1.17 of the Rules states that no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”²⁶ Any person who has received a letter of inquiry from the Commission or its staff or is otherwise the subject of a Commission investigation is subject to the Rule.²⁷ In expanding the scope of Section 1.17 of the Rules in 2003 to include written statements that are made without a reasonable basis for believing the statement is correct and not misleading, the Commission explained that this requirement was intended to more clearly articulate the obligations of persons dealing with the Commission, ensure that they exercise due diligence in preparing written submissions, and enhance the effectiveness of the Commission’s enforcement efforts.²⁸ Thus, even in the absence of an intent to deceive, a false statement provided without a reasonable basis for believing that the statement is correct and not misleading constitutes an actionable violation of Section 1.17 of the Rules.²⁹

9. As the Commission has stated, parties must “use due diligence in providing information that is correct and not misleading to the Commission, including taking appropriate affirmative steps to

²³ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²⁴ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²⁵ *See Syntax-Brilliant Corporation*, Forfeiture Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6323, 6327 (2008) (emphasizing that equipment subject to verification but noncompliant with our technical and administrative Rules is considered to be “unauthorized” under 503(b)(5) of the Act and may not be marketed in the United States) (“*Syntax-Brilliant Forfeiture Order*”). *See also Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006) (imposing liability for the marketing of non-verified equipment), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid) (“*Behringer USA, Inc.*”).

²⁶ 47 C.F.R. § 1.17(a)(2).

²⁷ 47 C.F.R. § 1.17(b)(4).

²⁸ *See Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4021 (2003), *recon. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recon. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004) (“*Amendment of Section 1.17*”).

²⁹ *See id.* at 4017 (stating that the revision to Section 1.17 of the Rules is intended to “prohibit incorrect statements of omissions that are the results of negligence, as well as an intent to deceive”).

determine the truthfulness of what is being submitted. A failure to exercise such reasonable diligence would mean that the party did not have a reasonable basis for believing in the truthfulness of the information.”³⁰ In its First Response, Inter Tech stated that in November of 2007, it ceased marketing the Cybermax FM TXI (also marketed under the trade name Cyclone TXV-2).³¹ As of February 7, 2008, however, Inter Tech’s website listed this transmitter for sale under the name Cyclone TXV-2.³² Had Inter Tech exercised even minimal diligence prior to the submission of its First LOI Response, it would not have submitted incorrect and misleading material factual information in its LOI response.³³ Although there is insufficient information to conclude that Inter Tech’s provision of incorrect material factual information was intentional in violation of Section 1.17(a)(1) of the Rules,³⁴ we find that Inter Tech apparently willfully violated Section 1.17(a)(2) of the Rules by providing material factual information that was incorrect without a reasonable basis for believing that the information was correct and not misleading.³⁵

C. Proposed Forfeiture

10. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any Rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.³⁶ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.³⁷ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or Rule.³⁸ As set forth below, we conclude under this standard that Inter Tech is apparently liable for a forfeiture in the amount

³⁰ *Amendment of Section 1.17*, 18 FCC Rcd at 4021.

³¹ See First Response at 1.

³² See para. 2 *supra*.

³³ See *Invision Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13095, 13103-04 (2008) (finding that a television importer’s failure to exercise due diligence to ensure that the information provided in its LOI Response was correct and not misleading constituted a violation of Section 1.17(a)(2) of the Rules) (“*Invision*”); *Syntax-Brilliant Forfeiture Order*, 23 FCC Rcd at 6342 (finding that a television manufacturer apparently provided incorrect material information concerning its importation and interstate shipment of non-DTV-compliant televisions without a reasonable basis for believing that the information was correct and not misleading, in violation of Section 1.17(a)(2) of the Rules); *Citicasters License, L.P., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19338 (2007) (forfeiture paid) (finding that a licensee’s false certification that it had not violated the Act or any Commission Rules during the preceding license term had no reasonable basis and was not made with the intent to deceive the Commission but nonetheless, violated Section 1.17(a)(2) of the Rules) (“*Citicasters*”). See also *Cardinal Broadband LLC, aka Sovereign Telecommunications*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233, 12237 (Enf. Bur. 2008) (“*Cardinal Broadband LLC*”), response pending (finding that the failure to provide information requested in an LOI prior to receipt of the Division’s follow-up LOI constituted a violation of Section 1.17(a)(2) of the Rules).

³⁴ 47 C.F.R. 1.17(a)(1).

³⁵ See, e.g., *Cardinal Broadband LLC*, 23 FCC Rcd at 12237.

³⁶ 47 U.S.C. § 503(b).

³⁷ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³⁸ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (forfeiture paid).

of seven thousand dollars (\$7,000) for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803(a) of the Rules, and a forfeiture in the amount of eleven thousand dollars (\$11,000) for its willful violation of Section 1.17(a)(2) of the Rules, for a total proposed forfeiture of eighteen thousand dollars (\$18,000).

11. At the time of Inter Tech's apparent violations, under Section 503(b)(2)(B) of the Act,³⁹ we were authorized to assess a forfeiture penalty against certain entities, such as Inter Tech, who are not common carriers, broadcast licensees, or cable operators, of eleven thousand dollars (\$11,000) for each violation, or for each day of a continuing violation, up to a total of ninety seven thousand five hundred dollars (\$97,500) for any single act or failure to act. In exercising such authority, we are required to 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."⁴⁰

12. Section 503(b)(6) of the Act⁴¹ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL. Section 503(b)(6) does not, however, bar the Commission from assessing whether Inter Tech's conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.⁴² Thus, while we may consider the fact that Inter Tech's conduct has continued since 2006 or earlier, the forfeiture amount we propose herein relates only to Inter Tech's apparent violations that have occurred within the past year.

13. Under the Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement")⁴³ and Section 1.80 of

³⁹ 47 U.S.C. § 503(b)(2)(A). The Commission has amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for non-licensees from \$11,000/\$97,500 to \$16,000/\$112,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts for non-licensees from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts for non-licensees from \$10,000/\$75,000 to \$11,000/\$87,500). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See* 73 Fed. Reg. 44663-5.

⁴⁰ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

⁴¹ 47 U.S.C. § 503(b)(6).

⁴² *See* 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); *see also* *Behringer USA, Inc.*, 21 FCC Rcd at 1825; *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. denied*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005).

⁴³ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

the Rules,⁴⁴ the base forfeiture amount for the marketing of unauthorized equipment is seven thousand dollars (\$7,000). We conclude that Inter Tech marketed the unauthorized Cybermax FM TX1 transmitter. Accordingly, we find that a proposed forfeiture in the amount of seven thousand dollars (\$7,000) is warranted for the willful and repeated marketing of an unauthorized transmitter in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.⁴⁵

14. Pursuant to the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules, the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum,⁴⁶ or, in this case as based on the date of the violation, eleven thousand dollars (\$11,000).⁴⁷ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(E) of the Act, including “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.”⁴⁸

15. Considering all of the enumerated factors and the particular circumstances of this case, we find that Inter Tech in responding to our First LOI apparently willfully violated Section 1.17(a)(2) of the Rules by providing incorrect or misleading material factual information to Commission staff without a reasonable basis for believing the information was correct and not misleading. The Commission has stated that it relies “heavily on the truthfulness and accuracy of the information provided to us. If information submitted to us is incorrect, we cannot properly carry out our statutory responsibilities.”⁴⁹ Inter Tech’s failure to exercise due diligence to ensure that the information provided in its LOI Response was correct and not misleading hampered our ability to properly carry out our statutory responsibilities and consumed scarce Commission resources. Although Inter Tech ultimately provided the correct information, it did so only after the Division sent Inter Tech a Third LOI that specifically directed Inter Tech to explain why, if Inter Tech ceased marketing the Cybermax TX1 transmitter in November of 2007, Inter Tech’s website offered this transmitter for sale on February 7, 2008.⁵⁰ Accordingly, we find

⁴⁴ 47 C.F.R. § 1.80.

⁴⁵ See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873, 2877 (2006) (proposing a \$28,000 base forfeiture amount for the marketing of four unauthorized devices), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd 1040 (2007); *CoachComm, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 13278, 13282 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing a \$7,000 forfeiture amount for the marketing of one unauthorized device); *Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 458, 462 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing a \$28,000 base forfeiture amount for the marketing of four unauthorized devices), *forfeiture ordered*, Forfeiture Order, 23 FCC Rcd 8652 (Enf. Bur., Spectrum Enf. Div. 2008).

⁴⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*. See also *Syntax-Brilliant Forfeiture Order*, 23 FCC Rcd at 6343; *Citicasters*, 22 FCC Rcd at 19339 (using the base forfeiture amount for misrepresentation/lack of candor as the base forfeiture for violations of Section 1.17 of the Rules).

⁴⁷ See 47 U.S.C. § 503(b)(2)(D) (setting forth the statutory maximum forfeiture for entities other than broadcasters and common carriers). See also *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (adjusting the maximum statutory amounts for non- licensees from \$11,000/\$87,500 to \$16,000/\$112,500). The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. See 73 Fed. Reg. 44663-5. Because this violation occurred on April 23, 2008, the statutory maximum prior to this adjustment applies.

⁴⁸ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4).

⁴⁹ See *Amendment of Section 1.17*, 18 FCC Rcd 3293, 3297 (2002).

⁵⁰ See *Cardinal Broadband LLC*, 23 FCC Rcd at 12237 (proposing a forfeiture of \$25,000 when an interconnected (continued....))

that a proposed forfeiture of eleven thousand dollars (\$11,000) is warranted for Inter Tech's violation of Section 1.17(a)(2) of the Rules.

IV. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁵¹ and Sections 0.111, 0.311 and 1.80 of the Rules,⁵² Inter Tech FM **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules, and eleven thousand dollars (\$11,000) for willfully violating Section 1.17(a)(2) of the Rules, for a total proposed forfeiture of fifteen thousand dollars (\$18,000).

17. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture and Order*, Inter Tech FM **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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

19. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

20. The Commission will not consider reducing or canceling a forfeiture in response to a

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Voice over Internet Protocol ("VoIP") service provider provided correct information only after the Bureau sent a follow-up LOI directing it to provide substantially the same information requested in the First LOI); *Invision*, 23 FCC Rcd at 13103-04 proposing a forfeiture of \$4,000 for failure to exercise due diligence to ensure that the information provided in a letter of inquiry response was correct and not misleading where corrective information was provided in a timely manner without a specific request). See also *cf. Hauppauge Computer Works, Inc*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 3684, 3686-87 (Enf. Bur., Spectrum Enf. Div. 2008) (proposing an \$11,000 forfeiture for failure to provide a complete response to letter of inquiry) (forfeiture paid).

⁵¹ 47 U.S.C. § 503(b).

⁵² 47 C.F.R. § § 0.111, 0.311 and 1.80.

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 submitted.

21. **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 Chris Rea, Inter Tech FM, 8725 W. Sunset Road, Suite 200, Niles, Illinois 60714.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau