

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

In the Matter of	)	
	)	
Power 7 Technology Corporation	)	File No. EB-08-SE-597
	)	NAL/Acct. No. 200932100047
	)	FRN 0015078983
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 17, 2009**

**Released: February 19, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture and Order* (“NAL”), we find Power 7 Technology Corporation (“Power 7”) apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The apparent violations involve Power 7’s marketing of unauthorized radio frequency devices.

**II. BACKGROUND**

2. In March 2008, the FCC’s Enforcement Bureau (“Bureau”) received a complaint alleging that the emissions of the Macally FM Cup Automobile Full Channel FM Transmitter and iPod Charger (“FM Cup Transmitter”) exceed the limit specified in Section 15.239(b) of the Rules for intentional radiators operating in the 88-108 MHz band.<sup>3</sup> The Bureau’s Spectrum Enforcement Division (“Division”) subsequently began an investigation of the FM Cup Transmitter. As part of the investigation, the FCC’s Office of Engineering and Technology (“OET”) Laboratory tested the FM Cup Transmitter on April 23, 2008. The tests confirmed that the emissions from the FM Cup Transmitter exceeded the limit specified in Section 15.239(b) of the Rules. In pursuance of its investigation, the Division directed a letter of inquiry (“LOI”) dated June 18, 2008, to Macally USA Mace Group, Inc. (“Macally”).<sup>4</sup> In its July 17, 2008, response to the LOI, Macally identified Power 7 as the manufacturer of the FM Cup Transmitter from April 2007 to the present.<sup>5</sup>

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> See 47 C.F.R. § 15.239(b).

<sup>4</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Macally. (June 18, 2008).

<sup>5</sup> Letter from Mike Chen, President, Macally USA Mace Group, Inc., to Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission. (July 17, 2008).

3. As an intentional radiator,<sup>6</sup> the FM Cup Transmitter was required by Section 15.201 of the Rules<sup>7</sup> to be approved prior to marketing through the equipment certification<sup>8</sup> procedures described in Sections 2.1031 – 2.1060 of the Rules.<sup>9</sup> Commission records indicate that Power 7 did not obtain an equipment certification for the FM Cup Transmitter until July 11, 2008.<sup>10</sup>

4. By LOI dated July 29, 2008, the Division initiated an investigation into whether Power 7 marketed an unauthorized radio frequency device -- specifically, the FM Cup Transmitter -- in the United States.<sup>11</sup> In its response, Power 7 states that it manufactured 66,750 FM Cup Transmitters for Macally and shipped them between March 29, 2007, and April 12, 2008.<sup>12</sup> Power 7 states that the reason it did not obtain a certification for the FM Cup Transmitter until July 11, 2008, is that the Project Manger “was under pressure for product delivery, and was not aware of the FCC requirement status.”<sup>13</sup> Additionally, Power 7 asserts that it modified the FM Cup Transmitter to comply with Section 15.239(b) of the Rules and that all units shipped during or after November 2007 comply with Section 15.239(b).<sup>14</sup>

### III. DISCUSSION

#### A. Marketing of Unauthorized and Non-Compliant Equipment

5. 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)(1) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including *advertising* for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device<sup>15</sup>

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<sup>6</sup> An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3 (o).

<sup>7</sup> 47 C.F.R. § 15.201.

<sup>8</sup> A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

<sup>9</sup> 47 C.F.R. §§ 2.1031 – 2.1060.

<sup>10</sup> Power 7 was granted an equipment certification for the FM Cup Transmitter under FCC ID # TQN-FMCUPB0807 on July 11, 2008.

<sup>11</sup> Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Power 7 Technology Corporation. (July 29, 2008).

<sup>12</sup> Letter from ST Wang, Vice General Manager, Power 7 Technology Corporation., to Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (undated; received August 29, 2008) (“LOI Response”).

<sup>13</sup> LOI Response at 1. Although Power 7 maintains that it was not aware of the requirement that it obtain a certification for the FM Cup Transmitter prior to marketing in the U.S., we note that it holds other FCC certifications and therefore was apparently familiar with the FCC equipment authorization requirements.

<sup>14</sup> *Id.*

<sup>15</sup> 47 C.F.R. § 2.801 defines a radiofrequency device as “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.”

unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter [*emphasis added*].

In addition, Section 15.239(b) of the Rules provides that:

The field strength of any emissions within the permitted 200 kHz band shall not exceed 250 microvolts/meter at 3 meters. The emission limit in this paragraph is based on measurement instrumentation employing an average detector. The provisions in § 15.35 for limiting peak emissions apply.

6. Power 7 admits that it manufactured 66,750 FM Cup Transmitters and shipped them to Macally between March 29, 2007 and April 12, 2008; that those devices were uncertified; and that all FM Cup Transmitters shipped between March and October 2007 were non-compliant with the emissions limit of 15.239(b) of the Rules.

7. We find, therefore, that Power 7 apparently marketed 66,750 FM Cup Transmitters that were uncertified. We also find that the devices marketed prior to November 2007 were non-compliant with the emissions limit of Section 15.239(b) of the Rules.

8. We, accordingly, find that Power apparently marketed<sup>16</sup> uncertified and non-compliant radio frequency devices in willful<sup>17</sup> and repeated<sup>18</sup> violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

## **B. Proposed Forfeiture**

9. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>19</sup> 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.”<sup>20</sup>

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<sup>16</sup> Marketing, as defined in 47 C.F.R. § 2.803(e)(4), “includes 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.”

<sup>17</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ....” See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

<sup>18</sup> Section 312(f)(2) 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, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>19</sup> 47 U.S.C. § 503(b).

<sup>20</sup> 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.

10. Section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a Notice of Apparent Liability.<sup>21</sup> Section 503(b)(6) does not, however, bar the Commission from assessing whether Power 7'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.<sup>22</sup> Thus, while we may consider the fact that Power 7's conduct has continued over a period that began on March 29, 2007, the forfeiture amount we propose herein relates only to Power 7's apparent violations that have occurred within the past year.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement")<sup>23</sup> and Section 1.80 of the Rules,<sup>24</sup> the base forfeiture amount for the marketing of unauthorized or non-compliant equipment is \$7,000. At the time of Power 7's apparent violations, we were authorized under Section 503(b)(2)(D) of the Act<sup>25</sup> to assess an entity that is neither a common carrier, a broadcast licensee nor a cable operator a forfeiture of up to \$11,000 for each violation or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.

12. Based on the record before us, and having considered the statutory factors enumerated above, we conclude that a significant upward adjustment of the \$7,000 base forfeiture amount is warranted in view of the substantial number of uncertified and non-compliant FM Cup Transmitters that Power 7 marketed in the United States and the fact that the violations continued over a 12-month period.<sup>26</sup>

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<sup>21</sup> 47 U.S.C. § 503(b)(6).

<sup>22</sup> 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 1820, 1827, ¶ 20 (2006), *response pending*; *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-71 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Bureau D'Electronique Appliquee*").

<sup>23</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 503(b)(2)(D). The Commission, on three occasions, amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), 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*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *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 from \$11,000/\$87,500 to \$11,000/\$97,500); and *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 from \$11,000/\$97,500 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. Power 7's apparent violations occurred before September 2, 2008, and are therefore subject to the \$11,000/\$97,500 forfeiture limits.

<sup>26</sup> See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 2873, 2877-8, ¶ 15 (2006) (upwardly adjusting a proposed forfeiture based on the volume of non-compliant devices distributed, and the three-year span in which such devices were marketed), *forfeiture ordered*, 22 FCC Rcd 1040 (2007), *recon. pending*; *Abocom Systems, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7448, 7450-1 (Enf. Bur. 2007) (upwardly adjusting a forfeiture based on the large number of non-compliant devices distributed, the 17 month span during

Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Power 7 is apparently liable for a \$25,000 forfeiture.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules,<sup>27</sup> Power 7 Technology Corporation, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of **twenty-five thousand dollars (\$25,000)** for marketing radio frequency devices that were uncertified and non-compliant in willful and repeated violation of Section 302(a) of the Act and Section 2.803(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Power 7 Technology Corporation, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. Power 7 will also send electronic notification on the date said payment is made to Thomas.Fitz-Gibbon@fcc.gov.

16. 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.

17. 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 ("GAAP"); 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.

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which the devices were marketed, and ability to pay); and *Bureau D'Electronique Appliquee*, 20 FCC Rcd at 3448, ¶ 9 (upwardly adjusting a proposed forfeiture based on the volume of unauthorized devices distributed, and the five-year span in which such devices were marketed).

<sup>27</sup> 47 U.S.C. § 503(b), 47 C.F.R. § 1.80.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to S.T. Wang, Vice General Manager, Power 7 Technology Corporation, c/o Part II Research, Inc., 4601 E. Airport Drive, Ontario, CA 91761 and by Federal Express to S.T. Wang, Vice General Manager, Power 7 Technology Corporation, 2F, No. 176 Jian-Yi Rd., Chung Ho City, Taipeh, Taiwan 235.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau