

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

In the Matter of)	
)	File No. EB-07-SE-132
)	NAL/Acct. No. 200832100072
Leetek America, Inc., a subsidiary of)	FRN No. 0017761271
Lee Technology Korea., Co., Ltd.)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 21, 2008

Released: August 25, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Leetek America, Inc. (“Leetek”) apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for willful and repeated violations 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 violations involve Leetek’s marketing of two unauthorized pager transmitter systems.³

II. BACKGROUND

2. Leetek is the United States subsidiary of Lee Technology Korea Co., Ltd. (“LTK”).⁴ LTK manufactures pager transmitter systems, which are devices used for communicating in, for example, restaurants and hospitals.⁵ LTK established Leetek as its United States subsidiary in September, 2007.⁶ Since then, Leetek has marketed and sold LTK’s pager transmitter systems in the United States via a website, <http://www.leetekorea.com>.⁷ The pager transmitter systems involved in this matter must be authorized by the Commission via the certification process prior to being marketed in, or imported into, the United States.⁸ Further, users of these systems must obtain licenses from the Commission under Part 90 of the Rules to use them on a secondary basis.⁹ Finally, users of these systems may not cause harmful

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ A pager transmitter system is a system licensed under Part 90 of the Rules for low power, secondary use, including paging, in the frequency range 450-470 MHz. See 47 C.F.R. §§ 90.35, 90.261, and 90.267.

⁴ See <http://www.leetekorea.com/contact/contact.php> (last visited July 29, 2008).

⁵ See <http://www.leetekorea.com/index.php> (last visited July 29, 2008).

⁶ See <http://www.leetekorea.com/company/history.php> (last visited July 29, 2008).

⁷ Although the website <http://www.leetek.org> is listed on Leetek’s correspondence with the Commission as Leetek’s website, this site links directly to the website for LTK, <http://www.leetekorea.com/>.

⁸ 47 C.F.R. § 2.803(a)(1).

⁹ See 47 C.F.R. § 90.267. See also *supra* note 3.

interference to operations authorized on a primary basis and are not protected from interference from those primary operations.¹⁰

3. In April 2007, the Enforcement Bureau's Spectrum Enforcement Division ("Division") received a complaint alleging that a pager transmitter system manufactured by LTK, model LTK-1100, does not conform to the Commission's rules regarding out of band emissions attenuation,¹¹ causing interference to primary licensed operators. On November 5, 2007, Division personnel observed that the leetek.org website advertised the sale of pager transmitter systems, including models identified on the website as LTK-1400S and LTK-1700CT, which did not appear to hold grants of equipment authorization from the Commission.¹² The Division issued a Letter of Inquiry ("LOI") to Leetek on January 25, 2008, requesting, *inter alia*, the following information regarding each model of pager transmitter system marketed by Leetek: a copy of the grant of equipment authorization, the date on which Leetek began marketing each model, the number of units distributed, the dates of distribution, test information, and other information regarding the certification and labeling of these units.¹³

4. In its LOI Response, Leetek states that it has been in the business of marketing, importing, and selling LTK's pager transmitter systems since it was established as a subsidiary of LTK in September, 2007.¹⁴ Leetek states that it imported three units of model LTK1700-CT on September 22, 2007, but acknowledges that the Commission authorization was not received until January 3, 2008.¹⁵ However, Leetek stated that it has neither imported nor distributed the model LTK-1100 pager transmitter system that formed the basis for the complaint.¹⁶ In addition, Leetek states that it has imported the following quantities of LTK's pager transmitter systems between September 4, 2007 and January 21, 2008: model LTK-1100H (2); model LTK-1100L (1); model LTK-1300H (9); model LTK-1400AH (30); model LTK-1600T (79); and model LTK-SCT (3).¹⁷ Further, Leetek has distributed 20 model LTK-1400AH and 13 model LTK-1600T pager transmitter systems in the United States.¹⁸ Finally, Leetek states that LTK has not produced the model LTK-1400S pager transmitter system.¹⁹ Leetek states that it has, since September, 2007, informed its customers that a license under Part 90 of the Rules is required to operate LTK's pager transmitter systems.²⁰

¹⁰ 47 C.F.R. §§ 90.261(a), 90.7.

¹¹ See 47 C.F.R. § 90.210.

¹² See http://www.leetekorea.com/shopping/product.php?Ct_1=transmitter (last visited July 29, 2008). We note that the model 1400S is no longer displayed on LTK's website.

¹³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., Jan. 25, 2008 ("LOI").

¹⁴ See Letter from Sungsoo Lee, Chief Executive Officer, Leetek America, Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Jan. 30, 2008 at 1-2 ("LOI Response").

¹⁵ *Id.*

¹⁶ *Id.* We note that the model LTK-1100 pager transmitter system that formed the basis of the complaint in this case had been taken out of service by March 31, 2007. Thus, any violation of Section 90.210 (emission masking) of the Rules occurred outside the applicable statute of limitations, *i.e.*, one year prior to the release of this *NAL*.

¹⁷ *Id.* at 2-3. See also *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*

III. DISCUSSION

A. Marketing of Unauthorized Devices

5. 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.”²¹ Section 2.803(a)(1) of the Commission’s implementing regulations provides in pertinent part 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 radiofrequency device²² 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.

6. Under Section 2.803(c) of the Rules, a manufacturer is allowed, in limited circumstances, to market devices prior to receiving equipment authorization from the Commission. Specifically, devices may be

advertised or displayed, *e.g.*, at a trade show or exhibition, prior to equipment authorization . . . *provided* that the advertising contains, and the display is accompanied by, a conspicuous [disclaimer] notice worded as follows: This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.²³

Under this exception, a manufacturer may also advertise radio frequency devices on the internet, prior to authorization, provided the website includes the required disclaimer notice.²⁴

7. In addition, radio frequency devices may be operated, but not marketed, prior to authorization under the following conditions: (i) compliance testing; (ii) demonstration at trade show, at a business, commercial, industrial, scientific, or medical location; or (iii) evaluation of product performance and determination of customer acceptability at a business, commercial, industrial, scientific, or medical user’s location.²⁵ The required disclaimer notice must be included in all cases, except compliance testing.²⁶

8. Leetek has marketed for sale, via advertising on its website, the pager transmitter systems model LTK-1400S and model LTK-1700CT since at least November 5, 2007.²⁷ Leetek indicates that it imported three units of the model LTK-1700CT for “display in office and test market[ing]” purposes.²⁸

²¹ 47 U.S.C. § 302(b).

²² 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.”

²³ 47 C.F.R. § 2.803(c).

²⁴ See *ACR Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 22293, 22299 (2004); *forfeiture ordered*, 21 FCC Rcd 3698 (2006).

²⁵ See 47 C.F.R. § 2.803(e).

²⁶ *Id.*

²⁷ See http://www.leetekorea.com/shopping/product.php?Ct_1=transmitter (last visited July 29, 2008).

²⁸ See LOI Response at 2.

However, its website did not contain the disclaimer notice required by Section 2.803(c).²⁹ Therefore, Leetek's marketing of these units prior to authorization is not permitted under either Section 2.803(c) or 2.803(e) of the Rules. In addition, Leetek states that it has not imported the model LTK-1400S pager transmitter system and that LTK has not manufactured any units of this model.³⁰ Nonetheless, this uncertified model of pager transmitter system was marketed in the United States via the company's website within the past year in violation of the Rules.³¹ We conclude, therefore, that the model LTK-1700CT pager transmitter system was improperly marketed prior to its authorization by the Commission on January 3, 2008 and that the model LTK-1400S pager transmitter system was marketed without being properly authorized by the Commission.

B. Proposed Forfeiture

9. Section 503(b) of the Act³² 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. 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."³³

10. Section 503(b)(6) of the Act³⁴ 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 Leetek'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.³⁵ Thus, while we may consider the fact that Leetek's conduct has continued over a period that began during 2007, the forfeiture amount we propose herein relates only to Leetek's apparent violations that have occurred within the past year.³⁶

²⁹ See http://www.leetekorea.com/shopping/product.php?Ct_1=transmitter (last visited July 29, 2008). See also 47 C.F.R. § 2.803(c).

³⁰ See LOI Response at 3.

³¹ See *supra* paragraph 3.

³² 47 U.S.C. § 503(b).

³³ 47 U.S.C. § 503(b)(2)(E).

³⁴ 47 U.S.C. § 503(b)(6).

³⁵ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 1820, 1825(2006), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd. 1051 (2007); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (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. den.*, 11 FCC 2d 193 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability, 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) ("*Bureau D'Electronique Appliquee*").

³⁶ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the issuance of the *NAL*, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and (continued...)

11. Section 1.80(b) of the Rules sets a base forfeiture amount of \$7,000 for marketing unauthorized equipment.³⁷ In this case, Leetek marketed two models of unauthorized pager transmitter systems. Leetek's marketing of each of these unauthorized models is a separate, continuing violation.³⁸ Based on the record of this proceeding and application of the statutory factors listed above, we propose a forfeiture of \$14,000 for Leetek's unauthorized marketing of the model LTK-1400S and the model LTK-1700CT pager transmitter systems.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,³⁹ Leetek America, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for marketing two pager transmitter systems that were unauthorized, in willful violation of Section 302(a) of the Act and Section 2.803(a) of the Rules.

13. **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, Leetek America, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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. Leetek will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Ricardo.Durham@fcc.gov.

15. 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.

(Continued from previous page) _____
Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (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*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005).

³⁷ 47 C.F.R. § 1.80(b).

³⁸ See *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, 19 FCC Rcd 24542 (2004).

³⁹ 47 C.F.R. § 0.111, 0.311 and 1.80.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **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 Mr. Sungsoo Lee, Chief Executive Officer, Leetek America, Inc., 6040 Unity Drive, Suite L, Norcross, GA 30071.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau