

Appendix 1A

FCC Penalizes Marketer of Ham-Band Drone Audio-Visual Transmitters

12/19/2017

The FCC has imposed a \$180,000 civil penalty on a Sarasota, Florida, company that had been marketing noncompliant audio-visual transmitters intended for use on drones in violation of the Commission's Amateur Service and marketing rules. In an [*Order*](#) released on December 19, the FCC explained that Lumenier Holdco LLC (formerly known as FPV Manuals LLC) was advertising and marketing uncertified AV transmitters capable of operating on both amateur and non-amateur frequencies, including bands reserved for federal government use. Some of the transmitters also exceeded the 1-W power limit for Amateur Radio transmitters used on model craft, the FCC said.

“Moreover, entities that rely on amateur frequencies in operating compliant AV transmitters must have an amateur license and otherwise comply with all applicable laws for such operation,” the FCC said in the *Order*. The FCC said that while it generally has not required amateur equipment to be certified if it operates solely on Amateur Radio frequencies, certification is required if a device can operate outside of the ham bands.

Last January, in what it called an “[extremely urgent complaint](#)” to the FCC, ARRL targeted the interference potential of a series of audio/video transmitters used on unmanned aircraft and marketed as Amateur Radio equipment. ARRL General Counsel Chris Imlay, W3KD, said those transmitters used frequencies intended for navigational aids, air traffic control radar, air route surveillance radars, and global positioning systems.

In addition to paying a civil penalty, Lumenier, which has admitted to marketing the noncompliant AV transmitters, will enter into a *Consent Decree* with the FCC to settle the enforcement proceeding and terminate the investigation.

The case stemmed from complaints received by the Enforcement Bureau's Spectrum Enforcement Division. “The investigation revealed that some of the AV transmitters marketed by Lumenier were capable of being operated outside of the authorized Amateur Radio Service bands, including on frequencies reserved in whole or in part for federal agencies, but were not certified or otherwise compliant with the rules,” the FCC said in its *Order*. “These AV transmitters are considered intentional radiators and must comply with the Commission's Equipment Authorization and Marketing rules.

The FCC said that Lumenier ceased marketing the noncompliant transmitters after receiving a *Letter of Inquiry* from the FCC last April. The *Consent Decree* accompanying the FCC *Order* requires Lumenier to admit that it violated equipment authorization and marketing rules and establish a compliance plan to ensure that the company complies with FCC rules in the future.

Appendix 1B

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Lumenier Holdco LLC
f/k/a FPV Manuals LLC
File No.: EB-SED-17-00023764
Acct. No.: 201832100003
FRN: 0027053776

ORDER

Adopted: December 18, 2017

Released: December 19, 2017

By the Acting Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Lumenier Holdco LLC f/k/a FPV Manuals LLC (Lumenier or Company) advertised and sold noncompliant audio/visual transmitters (AV transmitters) intended for use with remotely piloted aircraft (drones) on its various websites in violation of the Commission's equipment marketing and amateur radio operator rules.1 These laws ensure that radio frequency devices comply with the Commission's technical requirements and do not interfere with authorized communications. The noncompliant AV transmitters could operate in bands that are reserved for Federal government and other important operations, including Federal Aviation Administration airport operations and satellite communications. Some of the AV transmitters also operated at power levels that exceeded limits set by the Commission's rules. Accordingly, these AV transmitters must not be marketed and should not be operated by anyone. Moreover, entities that rely on amateur frequencies in operating compliant AV transmitters must have an amateur license and otherwise comply with all applicable laws for such operation.2 Failure to do so could result in enforcement actions. To settle this matter, Lumenier admits that it marketed the noncompliant AV transmitters, will implement a compliance plan, and will pay a \$180,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Lumenier's compliance with Section 302(b) of the Communications Act of 1934, as amended (Act), and Parts 2, 15, and 97 of the Commission's rules.3

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Lumenier's basic qualifications to hold or obtain any Commission license or authorization.4

4. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Act5 and the authority delegated by Sections 0.111 and 0.311 of the Rules,6 the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 Lumenier is the successor to FPV Holdings LLC, which was also known as FPV Manuals LLC.

2 See e.g., 47 CFR § 97.215.

3 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.5, 15.19, 15.21, 15.201, 15.205, 15.247, 97.215(c).

4 See 47 CFR § 1.93(b).

5 47 U.S.C. § 154(i).

6 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.
6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Nancy J. Victory, Esq., DLA Piper LLP (US), 500 Eighth Street, NW, Washington, DC, 20004.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Acting Deputy Chief
Enforcement Bureau

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Lumenier Holdco LLC)	File No.: EB-SED-17-00023764
f/k/a FPV Manuals LLC)	Acct. No.: 201832100003
)	FRN: 0027053776

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Lumenier Holdco LLC f/k/a FPV Manuals LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Lumenier violated Section 302(b) of the Communications Act of 1934, as amended (Act), and Parts 2, 15, and 97 of the Commission's rules¹ in connection with the Company's marketing of radio frequency devices.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Lumenier is subject by virtue of its business activities, including but not limited to the Equipment Authorization and Marketing Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (g) "Covered Employees" means all employees and agents of Lumenier who perform, or supervise, oversee, or manage the performance of, duties that relate to Lumenier's responsibilities under the Communications Laws, including the Equipment Authorization and Marketing Rules.
 - (h) "Effective Date" means the date by which both the Bureau and Lumenier have signed the Consent Decree.
 - (i) "Equipment Authorization and Marketing Rules" means Section 302(b) the Act;³ Sections 2.803, 15.201, 15.205 of the Commission's rules;⁴ and other provisions of

¹ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.5, 15.19, 15.21, 15.201, 15.205, 15.247, 97.215(c).

² 47 U.S.C. § 151 *et seq.*

³ 47 U.S.C. § 302a(b).

⁴ 47 CFR §§ 2.803, 15.201, 15.205.

the Act, the Rules, and Commission orders related to the authorization of radio frequency devices and the marketing of such devices.

- (j) “Investigation” means the investigation commenced by the Bureau’s April 17, 2017 Letter of Inquiry regarding whether the marketing of certain radio frequency devices by Lumenier complied with the Equipment Authorization and Marketing Rules.⁵
- (k) “Lumenier” or “Company” means Lumenier Holdco LLC and its affiliates, subsidiaries, predecessors-in-interest, including FPV Manuals LLC, and successors-in-interest.⁶
- (l) “Operating Procedures” means the internal operating procedures and compliance policies established by Lumenier to implement the Compliance Plan.
- (m) “Parties” means Lumenier and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 302 of the Act authorizes the Commission to promulgate reasonable regulations to minimize harmful interference by equipment that emits radio frequency energy.⁷ 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.”⁸ The purpose of Section 302 of the Act is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market.

4. The Commission carries out its responsibilities under Section 302 of the Act in two ways. First, the Commission establishes technical requirements for transmitters and other equipment to minimize their potential for causing interference to authorized radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market in the United States complies with the technical and administrative requirements set forth in the Rules. The equipment authorization program requires, among other things, that radio frequency devices must be tested for compliance with the applicable technical requirements prior to marketing.⁹ In that regard, Section 2.803(b) of the Rules prohibits the marketing of radio frequency devices unless the device has first been properly authorized, identified, and labeled in accordance with the Rules, with limited exceptions.¹⁰ The Commission has generally not required amateur equipment to be certified if it operates solely in the amateur frequencies; however, certification is required if a device can operate outside of the authorized amateur radio service bands.¹¹

⁵ See Letter from Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Tim Nilson, Founder and President, FPV Manuals LLC (Apr. 17, 2017) (LOI) (on file in EB-SED-17-00023764).

⁶ Lumenier is the successor to FPV Holdings LLC, which was also known as FPV Manuals LLC.

⁷ 47 U.S.C. § 302a.

⁸ *Id.* § 302a(b).

⁹ The term “marketing” is defined in the Rules and includes the “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.” 47 CFR § 2.803(a).

¹⁰ See *id.* §§ 2.803(b), (c).

¹¹ *New Generation Hobbies*, Citation, 26 FCC Rcd 9468, 9471 n.23 (EB 2011) (“while amateur radio service equipment is exempt from the FCC’s equipment certification requirement, it is a violation of the Commission’s regulations to market in the United States a transmitter that is designed or intended to operate on frequencies outside

5. Lumenier is a privately-held limited liability company that, through various websites, advertises and sells fully assembled remotely piloted aircraft (drones), as well as various parts and accessories to the hobbyist community for use in various applications, including drone racing. On April 17, 2017, after reviewing complaints, the Bureau's Spectrum Enforcement Division issued a Letter of Inquiry (LOI) to Lumenier, directing it to submit a sworn written response to a series of questions relating to its marketing of audio/visual transmitters (AV transmitters) in the United States.¹² The investigation revealed that some of the AV transmitters marketed by Lumenier were capable of being operated outside of the authorized amateur radio service bands, including on frequencies reserved in whole or in part for Federal agencies, but were not certified or otherwise compliant with the Rules.¹³ These AV transmitters are considered intentional radiators and must comply with the Commission's Equipment Authorization and Marketing Rules.¹⁴ Additionally, some of the AV transmitters exceeded the authorized power limit for amateur operation of model craft.¹⁵ After receiving the LOI, Lumenier stopped marketing the noncompliant AV transmitters.¹⁶

6. The Bureau and Lumenier negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided herein.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Lumenier agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Lumenier agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date,

(Continued from previous page) _____

of the authorized amateur radio service bands if such equipment has not been issued a grant of equipment certification"); *Pilot Travel Centers, LLC*, Notice of Apparent Liability, 19 FCC Rcd 23113, 23114 (2004) ("[R]adio transmitting equipment that transmits *solely* on Amateur Radio Service ('ARS') frequencies is not subject to equipment authorization requirements prior to manufacture or marketing.") (emphasis added).

¹² See *supra* note 5.

¹³ Certification of Tim Nilson, Founder and President, FPV Manuals, LLC (May 17, 2017); Letter and attachment from Nancy J. Victory, DLA Piper LLP (US), to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Jennifer Burton, Spectrum Enforcement Division, FCC Enforcement Bureau (May 17, 2017) (collectively LOI Response) (on file in EB-SED-17-00023764); Letter and attachment from Nancy J. Victory, DLA Piper LLP (US), to Marlene H. Dortch, Secretary, Federal Communications Commission, Attn: Jennifer Burton, Spectrum Enforcement Division, FCC Enforcement Bureau (July 18, 2017) (Second LOI Response) (on file in EB-SED-17-00023764).

¹⁴ 47 CFR §§ 2.803, 15.201. Various models of the AV transmitters marketed by Lumenier could operate on frequencies 1010, 1040, 1080, 1120, 1160, 1200, 1320, 1360, 2370, 2470, 2490, 2510, 5645, and/or 5945 MHz, all of which are outside of the authorized amateur radio service bands. See Second LOI Response attachment; see also 47 CFR § 97.301(a) (listing amateur frequencies).

¹⁵ *Id.* § 97.215(c) (limiting transmitter power to 1 W).

¹⁶ LOI Response at 8.

or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Lumenier concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Lumenier's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁷

11. **Admission of Liability.** Lumenier admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10, herein, that its actions described in paragraph 5, herein, violated the Equipment Authorization and Marketing Rules.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Lumenier shall designate a senior corporate officer or principal with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Lumenier complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Authorization and Marketing Rules prior to assuming his or her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Lumenier agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Authorization and Marketing Rules, Lumenier will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Lumenier shall establish Operating Procedures that all Covered Employees must follow to help ensure Lumenier's compliance with the Equipment Authorization and Marketing Rules. Lumenier's Operating Procedures shall include internal procedures and policies specifically designed to ensure that, prior to the initiation of marketing radio frequency devices, all radio frequency devices to be marketed by Lumenier are properly authorized and compliant with the applicable technical and administrative standards and requirements.¹⁸
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Authorization and Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Lumenier's compliance with those Rules. Lumenier shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Lumenier shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Lumenier shall establish and implement a Compliance Training Program to ensure compliance with the Equipment Authorization and Marketing Rules and the Operating Procedures. As part of the

¹⁷ See 47 CFR § 1.93(b).

¹⁸ See *supra* note 9 and accompanying text.

Compliance Training Program, Covered Employees shall be advised of Lumenier's obligation to report any noncompliance with the Equipment Authorization and Marketing Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Lumenier shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Lumenier shall report any noncompliance with the Equipment Authorization and Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include an explanation of: (i) each instance of noncompliance; (ii) the steps that Lumenier has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Lumenier has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 3-C366, Washington, DC 20554, with copies submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

15. **Compliance Reports.** Lumenier shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Lumenier's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Authorization and Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Lumenier, stating that the Compliance Officer has personal knowledge that Lumenier: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining that his/her personal knowledge is the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Lumenier, shall provide the Commission with an explanation of the reason(s) why and describe: (i) each instance of noncompliance; (ii) the steps that Lumenier has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Lumenier has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

¹⁹ 47 CFR § 1.16.

- (d) All Compliance Reports shall be submitted to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 3-C366, Washington, DC 20554, with copies submitted electronically to Jason Koslofsky at Jason.Koslofsky@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Lumenier will pay a civil penalty to the United States Treasury in the amount of one hundred and eighty thousand dollars (\$180,000). Such payment shall be made in three installments (each an Installment Payment). The first Installment Payment in the amount of sixty thousand dollars (\$60,000) is due within thirty (30) calendar days of the Effective Date. The second Installment Payment in the amount of sixty thousand dollars (\$60,000) shall be paid within six (6) months of the Effective Date. The third and final Installment Payment in the amount of sixty thousand dollars (\$60,000) shall be paid within twelve (12) months of the Effective Date. Lumenier acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²⁰ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Lumenier shall send electronic notification of payment to Jason Koslofsky at Jason.Koslofsky@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Samantha.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the Federal Communications Commission. Such payments (along with the completed FCC Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed FCC Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the form to authorize the credit card payment. The completed FCC Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

18. **Event of Default.** Lumenier agrees that an Event of Default shall occur upon the failure by Lumenier to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

19. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Lumenier.

20. **Waivers.** As of the Effective Date, Lumenier waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Lumenier shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Lumenier nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Lumenier shall waive any statutory right to a trial *de novo*. Lumenier hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²² relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Lumenier does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors and Assigns.** Lumenier agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

²² See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Christopher L. Killion
Acting Deputy Chief
Enforcement Bureau

Date

Tim Nilson
Chief Executive Officer
Lumenier Holdco LLC

Date

Appendix 2A

FCC Proposes \$25,000 Fine for Breaking Now-Voluntary Labeling Rules

12/13/2017

The FCC has proposed fining Acuity Brands Inc. of Atlanta, Georgia, \$25,000 for apparently marketing radio frequency devices that were not labeled in accordance with Commission Part 18 rules at the time. The FCC issued a *Notice of Apparent Liability* ([NAL](#)) on November 21. Compliance with the particular rule at issue now is voluntary.

“Specifically, Acuity marketed three models of consumer-grade electronic fluorescent lighting ballasts — two since 2006 and one since 2009 — that did not have the FCC logo affixed to them,” the FCC said in the *NAL*. Application of the FCC logo, which the FCC no longer requires, was to inform purchasers that a device had undergone compliance testing. The FCC also said Acuity continued to market two models of the ballasts at issue for approximately 6 months after being notified, causing the Commission to up the penalty.

“We take this action today as part of our duty to ensure that radio frequency devices are marketed in accordance with the Commission’s rules,” the FCC said. “Consistent with this goal, we find it necessary to enforce the rules requiring that devices subject to equipment authorization are properly labeled to inform a consumer that such devices have been tested for compliance under the Commission’s technical rules, because those devices could easily cause interference if they do not conform to those rules.

In January 2016, the Office of Engineering and Technology (OET) conducted tests on Acuity’s AccuPro Model AP-RC-432IP-120-1 fluorescent lighting ballast after receiving complaints of interference said to have been caused by the ballasts. The matter was referred to the FCC Enforcement Bureau, to determine whether Acuity marketed the model at issue before receiving equipment authorization. In a *Letter of Inquiry*, the Bureau directed Acuity to submit a sworn written response to questions regarding its “marketing of potentially non-compliant fluorescent lighting ballasts.”

A footnote in the *NAL* points out that the use of the FCC logo became voluntary on November 2, but Acuity’s alleged violations occurred before that. The FCC adopted a rule that allows the FCC logo to be physically placed on a device at the discretion of the responsible party consistent with §18.209, but “only if [the] device complies with the applicable equipment authorization rules.” Presence of the logo “will not obviate the need to provide required compliance information or maintain pertinent records related to device testing,” the FCC said in adopting the change.

Acuity submitted test reports showing that the two types of fluorescent lighting ballasts it markets did comply with relevant technical requirements, but the company conceded that three models of its consumer-grade lighting ballasts did not have an FCC logo affixed for nearly 10 years.

After receiving the *LOI*, the FCC said, Acuity “took preliminary steps to bring the labeling of the subject ballasts into compliance.”

ARRL has in the past — and without response — complained to the FCC regarding the marketing and sale of interference-causing lighting ballasts, as well as about a lack of required compliance notifications.

Appendix 2B

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Acuity Brands, Inc.)	File No.: EB-SED-16-00021597
)	NAL/Acct. No.: 201832100002
)	FRN: 0023988462

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 21, 2017

Released: November 21, 2017

By the Acting Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$25,000 against Acuity Brands, Inc. (Acuity or Company) for apparently marketing radio frequency devices that were not labeled in accordance with the Commission's rules. Specifically, Acuity marketed three models of consumer-grade electronic fluorescent lighting ballasts—two since 2006 and one since 2009—that did not have the FCC logo affixed to them. Moreover, after becoming aware of these apparent violations, Acuity continued to market two models of the ballasts at issue for approximately six months, thus warranting an increased penalty.

2. As discussed below, Acuity apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.² We take this action today as part of our duty to ensure that radio frequency devices are marketed in accordance with the Commission's rules. Consistent with this goal, we find it necessary to enforce the rules requiring that devices subject to equipment authorization are properly labeled to inform a consumer that such devices have been tested for compliance under the Commission's technical rules because those devices could easily cause interference if they do not conform to those rules.

II. BACKGROUND

3. Acuity is a publicly-traded company that provides lighting and building management solutions for commercial and residential uses throughout North America, and in Europe and Asia. In January 2016, the Office of Engineering and Technology (OET) conducted tests on Acuity's AccuPro Model AP-RC-432IP-120-1 fluorescent lighting ballast after receiving complaints of interference reportedly caused by the Company's ballasts. In April 2016, OET referred the matter to the Enforcement Bureau (Bureau) for investigation and possible enforcement action on whether Acuity marketed the AccuPro Model AP-RC-432IP-120-1 prior to receiving the appropriate equipment authorization under the Commission's rules. On June 22, 2016, the Bureau's Spectrum Enforcement Division (SED) issued a Letter of Inquiry (LOI) to Acuity which directed the Company to submit a sworn written response to

¹ 47 U.S.C. § 302a(b).

² 47 CFR §§ 2.803(b)(2), 18.209(b). We note that, in an order released on July 14, 2017, the requirement under Section 18.209(b) of the Commission's rules was modified so that use of the FCC logo became voluntary on November 2, 2017, as published in the Federal Register. *See Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization of Radiofrequency Equipment*, First Report and Order, FCC 17-93, ET Docket No. 15-170 (rel. July 14, 2017). Because the violations at issue occurred while Section 18.209(b) was in effect, the modification of the rule has no bearing on the current matter.

questions about its marketing of potentially non-compliant fluorescent lighting ballasts.³ Acuity responded on August 22, 2016 (LOI Response).⁴

4. Under the Commission's equipment authorization procedures, consumer-grade ballasts are subject to either the Declaration of Conformity or certification procedure, and non-consumer-grade (i.e., non-residential) ballasts are subject to the verification procedure.⁵ These procedures require responsible parties to ensure that certain radio frequency devices, such as Acuity's lighting ballasts, adhere to the applicable technical and labeling requirements prior to being marketed.⁶

5. In its LOI Response, Acuity states that it markets consumer-grade and non-consumer-grade lighting ballasts.⁷ Additionally, Acuity submitted test reports which showed that the two types of fluorescent lighting ballasts it markets are compliant with the relevant technical requirements.⁸ However, Acuity admitted that three models of its consumer-grade lighting ballasts did not have the FCC logo affixed to them, despite acknowledging the applicability of this labeling requirement for those models under Section 18.209(b) of the Commission's rules.⁹ Additionally, Acuity provided that it had been marketing two of these non-compliant models since 2006 and one since 2009.¹⁰ The Company ceased marketing one of the models in July 2016, but continued marketing the other two models without appropriate labeling until February 2017.¹¹

III. DISCUSSION

A. Acuity Apparently Violated Section 302(b) of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's Rules

6. We find that Acuity apparently willfully and repeatedly violated Section 302(b) of the Act¹² and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.¹³ Section 302(b) of the Act prohibits the marketing of radio frequency devices which do not comply with the Commission's rules.¹⁴ Section 2.803(b)(2) of the Commission's rules provides that radio frequency devices that are subject to verification or Declaration of Conformity procedures may not be marketed unless the device complies

³ See Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Vernon J. Nagel, Chairman, President, and Chief Executive Officer, Acuity Brands, Inc. (June 22, 2016) (on file in EB-SED-16-00021597).

⁴ See Letter from David H. Solomon, Esq. and Timothy J. Cooney, Esq., Counsel for Acuity Brands, Inc., to Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 22, 2016) (LOI Response) (on file in EB-SED-16-00021597). The Spectrum Enforcement Division had previously granted Acuity's request for an extension of time to file its response. See E-mail from Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to David H. Solomon, Esq., Counsel for Acuity Brands, Inc. (July 8, 2016, 13:35 ET) (on file in EB-SED-16-00021597).

⁵ See 47 CFR § 18.203.

⁶ See 47 CFR §§ 2.803, 2.909.

⁷ See LOI Response at 5.

⁸ 47 CFR § 18.307(c).

⁹ See LOI Response at 10.

¹⁰ See LOI Response at 6.

¹¹ See E-mail from Timothy Cooney, Esq., Counsel to Acuity Brands, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 21, 2017, 14:19 ET) (on file in EB-SED-16-00021597) (Mar. 21, 2017 E-mail).

¹² 47 U.S.C. § 302a(b).

¹³ 47 CFR §§ 2.803(b)(2), 18.209(b).

¹⁴ 47 U.S.C. § 302a(b).

with all applicable technical, labeling, identification and administrative requirements.¹⁵ Section 18.209(b) requires that devices authorized under the Declaration of Conformity procedure be labeled with the FCC logo.¹⁶

7. In its LOI response, Acuity admitted that it marketed three models of its fluorescent lighting ballasts, including the AccuPro Model AP-RC-432IP-120-1, without the FCC logo affixed to them, in violation of Section 18.209(b) of the Commission's rules. Moreover, Acuity had been marketing these models for at least eight years with a considerable market presence; for instance, the Company sold hundreds of thousands of units of these models from January 2016 to July 2016.¹⁷ After receiving the LOI, Acuity took preliminary steps to bring the labeling of the subject ballasts into compliance. In mid-February 2017, the Company informed SED that the three ballast models were in compliance with the labeling requirements.¹⁸ Between receiving the LOI and coming into compliance, however, and after becoming aware of the violations, the Company continued to market two models of the subject ballasts without the appropriate labeling.¹⁹ Accordingly, we find that Acuity apparently violated Section 302(b) of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.

B. Proposed Forfeiture

8. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission."²⁰ In exercising our forfeiture authority, we must consider 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."²¹ In addition, the Commission has established forfeiture guidelines, which provide base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.²² Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.²³

¹⁵ 47 CFR § 2.803(b)(2).

¹⁶ 47 CFR § 18.209(b).

¹⁷ See LOI Response at Attachment No. 7.

¹⁸ See Mar. 21, 2017 E-mail.

¹⁹ See E-mail from Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Timothy Cooney, Esq., Counsel to Acuity Brands, Inc. (Jan. 10, 2017, 14:38 ET) and Reply E-mail from Timothy Cooney, Esq., Counsel to Acuity Brands, Inc., to Paul Noone, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 10, 2017, 14:44 ET) (on file in EB-SED-16-00021597).

²⁰ 47 U.S.C. § 503(b).

²¹ *Id.* § 503(b)(2)(E). See 47 CFR § 1.80(b)(8); *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, 17100–01, para. 27 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²² 47 CFR § 1.80(b)(8); *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22.

²³ 47 CFR § 1.80(b), Note to paragraph (b)(8). See *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, para. 22 (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").

9. Under the *Forfeiture Policy Statement*²⁴ and Section 1.80 of the Commission's rules,²⁵ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000 per model. In similar cases involving the marketing of improperly labeled equipment, the Bureau used a \$7,000 per model approach as a starting point, using the base forfeiture amount for unauthorized equipment marketing.²⁶ Indeed, Section 2.803(b)(2) specifically prohibits the marketing of a radio frequency device unless "the device complies with all applicable technical, *labeling*, *identification* and administrative requirements."²⁷ We find this base forfeiture amount applicable in this case since it too involves a labeling violation. Accordingly, we propose a total base forfeiture of \$14,000, using the \$7,000 per model approach for each of the two instances in which Acuity marketed lighting ballasts without the required labeling.

10. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that upward adjustments of the proposed forfeiture amount are warranted for the intentional nature of the violations, the duration of the violations, and the Company's ability to pay. First, we find that an upward adjustment is merited for Acuity's apparent intentional violation of the Act and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules, based on the Company's decision to continue marketing two models of the subject ballasts without the appropriate labeling for approximately six months after becoming aware of, and acknowledging, the violations.²⁸ Second, we find that an upward adjustment is warranted based on the extended duration of Acuity's violations,²⁹ as evidenced by the fact that it marketed three models of improperly labeled lighting ballasts for at least eight years; specifically, two models since 2006 and one model since 2009.³⁰ Third, we find an upward adjustment is warranted for the Company's ability to pay. In the *Forfeiture Policy Statement*, the Commission determined that large or highly profitable companies should expect to pay a higher forfeiture for violations of the Act and the Commission's rules.³¹ In this regard, we recognize Acuity's global presence, as well as its net sales and gross profits in 2016—approximately \$3.2 billion and \$1.4 billion respectively.³² We therefore apply an upward adjustment of the base forfeiture amount for these three

²⁴ *Forfeiture Policy Statement*, 12 FCC Rcd at 17113.

²⁵ 47 CFR § 1.80.

²⁶ See, e.g., *Cellphone-Mate, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 8988, 8990, para 5 (EB 2010) (forfeiture paid); *Wireless Extenders, Inc.*, 25 FCC Rcd 8983, 8985-86, para. 5 (EB 2010) (forfeiture paid).

²⁷ 47 CFR § 2.803(b)(2) (emphasis added). See 47 CFR § 18.209(b) ("Devices authorized under the Declaration of Conformity procedure shall be labelled with the logo shown below. . . . It shall be permanently affixed to the product and shall be readily visible to the purchaser at the time of purchase.").

²⁸ See *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28, para. 22 (2006) (*Behringer*) (upward adjustment for, among other things, Behringer's continued marketing of unauthorized devices despite knowing that it was in violation), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid).

²⁹ See *Behringer*, 21 FCC Rcd at 1827-28, para. 22 (2006) (upward adjustment for, among other things, extended duration of the violations); *Union Oil Co. of Cal.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810-11, paras. 10-11 (2012) (upward adjustment of the base forfeiture because of extended duration of the violation); *Midessa Television Ltd. P'ship*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247, 13250-51, para. 11 (2014) (forfeiture paid) (same). Although one violation is not actionable due to the expiration of the statute of limitations period, the Commission may consider facts arising before the expiration date in determining an appropriate forfeiture amount for acts that occurred inside of the statute of limitations period. See *Enserch Corp.*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 11 (2000).

³⁰ See LOI Response at 6.

³¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, para. 24 (1997).

³² In its Form 10-K, the Company also disclosed that it earned \$290 million in net income in 2016. See Acuity Brands, Inc., 2016 Annual Report (Form 10-K) at 23 (filed Oct. 27, 2016), available at http://media.corporate-ir.net/media_files/IROL/13/130194/AR2016/pdf/Acuity_201610-K.pdf.

factors.³³ Taken together, we propose a total upward adjustment of \$11,000, which will protect the interests of consumers and serve as a deterrent against future violations of the Commission's rules.

11. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. In coming to this conclusion, we recognize that in the past the Bureau has lowered the proposed forfeiture amount in most cases where the device at issue is improperly labeled or lacks the appropriate information disclosure requirements but is otherwise compliant with the technical rules, as is the case here.³⁴ In those cases, the Bureau rationalized that, since marketing an improperly labeled device is not as significant a violation as marketing an unauthorized or technically non-complaint device, a downward adjustment is warranted.³⁵ We find this reasoning unpersuasive to justify a downward adjustment in this case.

12. Reducing the base forfeiture amount in this case would diminish the deterrent effect of the proposed forfeiture. The fact that Acuity continued to market the improperly labeled ballasts for six months after learning of the violation highlights the importance of establishing a forfeiture that serves as a sufficient incentive to comply with the rules.³⁶ We are also mindful that the equipment marketing rules have been in place for almost two decades³⁷ and that Acuity, a publicly-traded corporation established in 2001, had more than sufficient opportunity to create a compliance program, scaled to the size of the company, to ensure that it conformed to our rules.³⁸ Acuity has not provided a reason as to why it

³³ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

³⁴ See, e.g., *J.J. Mackay Canada Ltd.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5043, 5047-48, para. 11 (EB 2014) (forfeiture paid); *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para. 5; *Proxim Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1145, 1149, para. 12 (EB 2009) (forfeiture paid); *Multi-Tech Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 17824, 17827-28, para. 8 (EB 2008) (forfeiture paid).

³⁵ See, e.g., *Proxim Wireless Corporation*, 24 FCC Rcd at 1149, para. 12; *Multi-Tech Systems, Inc.*, 23 FCC Rcd at 17827-28, para. 8; *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, n.22 (citing to *Proxim Wireless Corporation*, 24 FCC Rcd at 1149). The Bureau also noted that the \$7,000 base forfeiture is typically imposed for the marketing of devices that are not in compliance with applicable technical requirements or are not authorized by an equipment authorization. See, e.g., *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para. 5.

³⁶ In other cases, the Bureau has declined to apply downward adjustments established by precedent, citing, as reasons for such action, the duration of the violation, and the lack of incentive for parties to comply with the Commission's rules, among other things. See, e.g., *South Bay Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 972, 974, para. 7 (EB 2011) (In declining to follow precedent to lower the forfeiture amount, noting that the unlicensed operation violation had been ongoing for several years and that the reduced forfeiture amounts applied in past cases did not appear to create sufficient incentives for licensees to comply with the Commission's rules), *forfeiture ordered*, 27 FCC Rcd 3013 (EB 2012) (forfeiture paid); *DTG Operations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17144, 17146, para. 8 (EB 2010) (Declining to lower forfeiture amount, citing that the unlicensed operation was ongoing for 11 years and that such action posed significant public safety risk), *forfeiture ordered*, 27 FCC Rcd 3252 (EB 2012) (forfeiture paid).

³⁷ See generally *Amendment of Parts 2 & 15 of the Commission's Rules to Deregulate the Equip. Authorization Requirements for Digital Devices*, 11 FCC Rcd 17915 (1996) (Adopting Sections 2.906, Declaration of Conformity, and 2.909, Responsible Parties), *recon. granted in part*, 12 FCC Rcd 10623 (1997); *Amendment of Parts 2, 15, 18 & Other Parts of the Commission's Rules to Simplify & Streamline the Equip. Authorization Process for Radio Frequency Equip.*, 13 FCC Rcd 11415 (1998) (Revising Section 18.209, Identification of Authorized Equipment); *Revision of Part 2 of the Commission's Rules Relating to the Mktg. & Authorization of Radio Frequency Devices*, 12 FCC Rcd 43 (1997) (Amending Section 2.803 to incorporate Declaration of Conformity procedure). We also observe that the equipment authorization rules have been in existence almost twice as long as in the earlier cases involving labeling violations. See, e.g., *Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para 5; *Wireless Extenders, Inc.*, 25 FCC Rcd at 8985-86, para. 5.

³⁸ See *LOI Response* at 1. Additionally, and as noted above, promoting compliance with the labeling requirement of this rule is necessary to inform consumers that a radio frequency device is compliant with the Commission's rules to

(continued...)

marketed three models of its fluorescent lighting ballasts without the FCC logo affixed to them, nor are we independently aware of any mitigating reason.³⁹ Thus, under the totality of the evidence, we find no basis to make any downward adjustment of the proposed forfeiture.

13. The enforcement of our rules is crucial to ensuring that parties comply with them even when faced with a business decision, particularly when the violation involves a rule articulating an express and unambiguous requirement. Therefore, after applying the *Forfeiture Policy Statement*, Section 1.80 of the Commission's rules, and the upward adjustments discussed above, we propose a total forfeiture of \$25,000, which is the aggregate of \$14,000 (total base forfeiture) plus \$11,000 (total upward adjustment), for which Acuity is apparently liable.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act⁴⁰ and Sections 1.80 of the Commission's rules,⁴¹ Acuity Brands, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violations of Section 302(b) of the Act⁴² and Sections 2.803(b)(2) and 18.209(b) of the Commission's rules.⁴³

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁴⁴ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Acuity Brands, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 18 below.

16. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Acuity Brands, Inc. shall send electronic notification of payment to Paul Noone at Paul.Noone@fcc.gov, Leslie Barnes at Leslie.Barnes@fcc.gov, and Samantha Peoples at Samantha.Peoples@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁴⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call

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avoid harmful interference. This policy goal is especially important given the evolution of the wireless marketplace since 2010, when the last decision involving solely a labeling violation with a forfeiture reduction was released. *See, e.g., Cellphone-Mate, Inc.*, 25 FCC Rcd at 8990, para 5. Since then, there has been a steady increase of radio frequency devices in the wireless marketplace, reflecting the essential and ubiquitous role wireless services has played in Americans' daily lives. *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 17-69, Twentieth Report, FCC 17-126, 2, 12 (rel. Sept. 27, 2017) (CTIA estimates that the number of mobile wireless connections has grown from 296.3 million in 2010 to 395.9 million in 2016.). Such change over the course of seven years has also compelled us to adjust our approach to ensure that our enforcement actions continue to be consistent with this policy goal.

³⁹ Indeed, Acuity appears to understand our equipment authorization rules to some degree, as evidenced by the Company's submission of test reports in response to the LOI, which showed that the two types of fluorescent lighting ballasts it markets are compliant with the relevant technical rules.

⁴⁰ 47 U.S.C. § 503(b).

⁴¹ 47 CFR § 1.80.

⁴² 47 U.S.C. § 302a(b).

⁴³ 47 CFR §§ 2.803(b)(2), 18.209(b).

⁴⁴ 47 CFR § 1.80.

⁴⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

17. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.⁴⁶ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Commission’s rules.⁴⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Paul Noone at Paul.Noone@fcc.gov, Leslie Barnes at Leslie.Barnes@fcc.gov, and Samantha Peoples at Samantha.Peoples@fcc.gov.

19. 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.

⁴⁶ See 47 CFR § 1.1914.

⁴⁷ 47 CFR §§ 1.16, 1.80(f)(3).

20. **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 Vernon J. Nagel, Chairman of the Board, President and Chief Executive Officer, Acuity Brands, Inc., 1170 Peachtree Street NE, Suite 2300, Atlanta, Georgia 30309, and to David H. Solomon, Esq. and Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, 1800 M Street NW, Suite 800N, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Acting Deputy Chief
Enforcement Bureau