

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

In the Matter of)	
)	File No. EB-04-SE-349
Shenzhen Ruidian Communication Co. Ltd.)	NAL/Acct. No. 200632100003
Shenzhen, China)	FRN # 0011287802
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 25, 2005

Released: November 29, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Shenzhen Ruidian Communication Co. Ltd. (“Shenzhen Ruidian Communication”) apparently violated a Commission order by willfully and repeatedly failing to respond to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that Shenzhen Ruidian Communication is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. In November 2004, the Bureau received a complaint from Global Link Corporation Limited (“Global Link”) alleging that an unidentified manufacturer based in China was marketing the Freetalker two-way radio wrist watch in the United States using an FCC Identifier¹ granted to Global Link for a similar two-way radio device. Subsequent investigation by the Bureau revealed that the Freetalker, a Family Radio Service/General Mobile Radio Service 22-channel two-way radio, had been marketed on at least one U.S.-based website since September 2003.²

3. In February 2005, the Bureau received additional information and documentation concerning this matter from a company that holds the patent rights to the two-way radio device manufactured by Global Link. Specifically, this company indicated that Shenzhen Ruidian Communication was the manufacturer of the Freetalker two-way radio and provided photographs of the Freetalker device labeled with the FCC Identifier granted to Global Link.

4. A search of the Commission’s equipment authorization database revealed that Shenzhen Ruidian Communication was granted an equipment certification for a Family Radio Service/General

¹FCC Identifier # QL2FRSFW13. Pursuant to Section 2.925 of the Commission’s Rules (“Rules”), 47 C.F.R. § 2.925, each radio frequency device that receives a grant of equipment certification from the Commission must be labeled with a unique FCC Identifier.

²Specifically, the Bureau found that the Freetalker was marketed on the www.alibaba.com website beginning in September 2003.

Mobile Radio Service two-way radio wrist watch on September 3, 2004, at least a year after the Freetalker was first marketed in the United States.³ The Bureau subsequently began an investigation to determine whether Shenzhen Ruidian Communication had marketed the Freetalker two-way radio in the United States prior to obtaining an equipment certification in violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”), and Section 2.803(a) of the Rules, and whether Shenzhen Ruidian Communication marketed the Freetalker labeled with Global Link’s FCC Identifier. On March 10, 2005, the Bureau sent a letter of inquiry to Shenzhen Ruidian Communication via international certified mail, return receipt requested, facsimile and email.⁴ The letter directed Shenzhen Ruidian Communication to submit a response to the letter within 20 days. Shenzhen Ruidian Communication did not respond to this letter of inquiry.

5. On June 9, 2005, the Bureau sent a follow-up letter to Shenzhen Ruidian Communication via Federal Express and via facsimile. This follow-up letter directed Shenzhen Ruidian Communication to respond to the March 10, 2005 letter of inquiry within 15 days and warned that failure to respond would constitute a violation of a Commission order, subjecting it to possible enforcement action, including monetary forfeitures. The Federal Express delivery tracking system indicates that the follow-up letter was received by Shenzhen Ruidian Communication on June 13, 2005. To date, the Bureau has not received any response from Shenzhen Ruidian Communication.

III. DISCUSSION

6. Under Section 503(b)(1) of the Act and Section 1.80(a) of the Rules, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁵ In exercising our forfeiture 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.”⁶

³FCC Identifier # SDOFRSD018. *See supra* n. 2.

⁴Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Linda Zhou, President, Shenzhen Ruidian Communications Co. Ltd. (March 10, 2005).

⁵47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). *See also* 47 U.S.C. § 312(f)(1). Section 312(f)(1) defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. Consistent with congressional intent, the Commission has interpreted willful in forfeiture proceedings to mean actions or omissions that are committed knowingly (*i.e.*, that a violator intended to commit the act or omission that was found to have violated a statutory and/or regulatory provision) *See also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Application for Review of Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc.*, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage). “Repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

⁶47 U.S.C. § 503(b)(2)(D).

7. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch business and to the ends of justice.” Section 403 likewise grants the Commission “full authority and power to institute and inquiry, on its own motion...relating to the enforcement of any of the provisions of this Act.”⁷ Pursuant to that authority, the Bureau twice ordered Shenzhen Ruidian Communication to submit a timely written response to its inquiry letter and to provide the information and documents requested. To date, however, Shenzhen Ruidian Communication has not filed the required response. A party cannot ignore the directives in a Bureau inquiry letter.⁸ We therefore conclude that Shenzhen Ruidian Communication apparently willfully and repeatedly failed to respond to a Bureau order.

8. 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*”)⁹ and Section 1.80 of the Rules,¹⁰ the base forfeiture amount for failure to respond to a Commission communication is \$4,000. We find that Shenzhen Ruidian Communication’s willful and repeated failure to respond to a Bureau order warrants a proposed forfeiture. Misconduct of this type exhibits a disregard for the Commission’s authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission’s ability to adequately investigate violations of its rules. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Shenzhen Ruidian Communication is apparently liable for a \$4,000 forfeiture.

9. We also direct Shenzhen Ruidian Communication to respond fully to the March 10, 2005, LOI within thirty days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Shenzhen Ruidian Communication to further penalties, including potentially higher monetary forfeitures.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Shenzhen Ruidian Communication **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Four Thousand Dollars (\$4,000) for willfully and

⁷47 U.S.C. § 403. Section 403 provides, in part: “The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act.” *See also* 47 U.S.C. § 154(i), (j).

⁸*See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589,7591 ¶4 (2002) (“*SBC Communications*”). In *SBC Communications*, the Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to an Enforcement Bureau letter of inquiry. The Commission stated: “[T]he order here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.” *Id.* at ¶ 5. *See also World Communications Satellite Systems, Inc.*, 19 FCC Rcd 2718 (Enf. Bur. 2004) (“*WSSC*”) (\$10,000 forfeiture for submitting a jurisdictional objection in lieu of a response to a Bureau inquiry letter); *American Family Ass’n*, DA 04-2330 (Enf. Bur. rel July 28, 2004); *In re Richard E. LaPierre*, 15 FCC Rcd 23525 (Enf. Bur. 2000) (\$4,000 forfeiture for repeated failure to respond to written Commission inquiries).

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

¹⁰47 C.F.R. § 1.80.

repeatedly failing to fully respond in writing to a Bureau order.

11. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release of this *Notice of Apparent Liability for Forfeiture*, Shenzhen Ruidian Communication **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. 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/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. 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.

14. 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; 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.

15. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹¹

16. **IT IS FURTHER ORDERED**, that pursuant to Section 403 of the Act, Shenzhen Ruidian Communication shall fully respond to the March 10, 2005, Letter of Inquiry sent by the Enforcement Bureau within 30 days of the release of this Order.

¹¹See 47 C.F.R. § 1.1914.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by FedEx International Airbill to Shenzhen Ruidian Communication Co. Ltd., Linda Zhou, President, 3/F No. 1, Linyuan east Rd., Shangmeilin, Shenzhen, China 518049.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau