

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

In the Matter of
Inteligain Corporation, Inc.
Calabasas, California
File No. EB-04-SE-218
NAL/Acct. No. 200532100014
FRN # 0009360082

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 8, 2005

Released: September 12, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Inteligain Corporation, Inc. ("Inteligain") has apparently willfully and repeatedly violated Section 302(b) of the Communications Act of 1934, as amended ("Act"), and Section 2.803(a)(1) of the Commission's Rules ("Rules") by marketing the Inteligain model DBA-819 dual band cellular and Personal Communications Service ("PCS") amplifier, FCC ID # RCUDBA819-807, in a manner inconsistent with a condition in its equipment certification intended to ensure compliance with RF exposure limits. We conclude that Inteligain is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. In July 2004, the Enforcement Bureau's Spectrum Enforcement Division received a complaint alleging that the label on the Inteligain model DBA-819 dual band cellular and PCS amplifier ("DBA-819 amplifier") did not include any FCC identifier, which suggested that the device had not been certified in accordance with the Commission's equipment authorization requirements. Under Section 2.925(a)(1) of the Rules, certified equipment must include a label or nameplate listing the FCC identifier.

3. A review of Commission records revealed that an equipment authorization for the DBA-819 amplifier was granted in January 2003 to Arrista Technologies, Inc. under FCC ID # P35SSG-819-1W2W. This authorization included the following condition intended to ensure compliance with the RF radiation maximum permissible exposure limits set forth in Section 1.1310 of the Rules:

147 U.S.C. § 302a(b).

247 C.F.R. § 2.803(a)(1).

347 C.F.R. § 2.925(a)(1).

447 C.F.R. § 1.1310.

The antenna(s) used for this transmitter must be installed to provide a separation distance of at least 50 cm from all persons and must not be co-located or operating in conjunction with any other antenna or transmitter. Users and installers must be provided with antenna installation instructions and transmitter operating conditions for satisfying RF exposure compliance.

In July 2003, Inteligain filed an application seeking a change in the FCC identifier for the DBA-819 amplifier.⁵ In its application, Inteligain noted that the application “is for a change in the FCC identifier only with no change in the design, circuitry or construction” of the device and specifically requested that the above condition regarding RF exposure compliance be placed on the authorization. The user manual submitted with the application included in the “Warnings” section the following instruction to users: “Directly wired vehicle antennas, mounted a minimum distance of 50 cm (19.5”) away from any person, are recommended.” On July 29, 2003, Inteligain was granted an authorization for the DBA-819 amplifier under FCC ID # RCUSG819-807 which included the same condition regarding RF exposure compliance that was on the original authorization.

4. On September 7, 2004, the Spectrum Enforcement Division sent Inteligain a letter of inquiry (“LOI”).⁶ In its response dated September 29, 2004, Inteligain stated that after receiving an equipment authorization for the DBA-819 amplifier in July 2003 under FCC ID # RCUSG819-707, it delayed bringing the device to market first because of technical problems and then because of a potential patent infringement problem with the device. Inteligain stated that it subsequently entered into an agreement with the patent holder to manufacture the device and began manufacturing the device in May 2004. Inteligain also stated that it had manufactured 3,602 units of the DBA-819 amplifier to date and that each device has a label with an FCC identifier attached to the back at the time of manufacture. Inteligain asserted that “[t]hrough a clerical error, we changed part of the grant code [of the FCC identifier], specifically, the letters SG to DBA, so we would know that these units were produced under the patent royalty Agreement.” Inteligain indicated that since May 2004, it had sold and shipped these devices to ten retailers.

5. Inteligain further asserted that after receiving the LOI, it filed an application to change the FCC identifier of the DBA-819 amplifier from RCUSG819-807 to RCUDBA819-807. Inteligain’s application indicated that other than the change in FCC identifier, “the equipment is electrically and mechanically the same” and requested that the same condition regarding RF exposure compliance that was on the original authorization under FCC ID # P35SSG-819-1W2W and the authorization under FCC ID # RCUSG819-807 be placed on the new authorization. On September 18, 2004, Inteligain was granted an authorization for the DBA-819 amplifier under FCC ID # RCUDBA819-807 which included the condition regarding RF exposure compliance.

6. However, in reviewing Inteligain’s response, the Spectrum Enforcement Division found that the user manual for the DBA-819 amplifier submitted with Inteligain’s response instructs users in the “Warnings” section that “Directly wired vehicle antennas, mounted a minimum distance of *20 cm (7.87 inches)* [emphasis added] away from any person, are recommended.” Thus, the user manual currently being distributed by Inteligain with the DBA-819 amplifier does not comply with the explicit condition regarding

⁵It appears that Arrista assigned its rights to this device to Inteligain.

⁶See Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Inteligain Corporation, Inc. (September 7, 2004).

RF exposure compliance set forth in the authorization.

III. DISCUSSION

7. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

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

Pursuant to Section 2.1091 of the Rules,⁷ certain mobile devices,⁸ such as the DBA-819 amplifier, that operate in the cellular and PCS services are subject to routine environmental evaluation for RF radiation exposure prior to equipment authorization or use.⁹ Applications for equipment authorization of such mobile devices subject to routine environmental evaluation must contain a statement confirming compliance with the maximum permissible exposure limits for occupational/controlled exposure¹⁰ and general population/uncontrolled exposure¹¹ set forth in Section 1.1310 of the Rules. Further, Section 2.1091(d)(3) of the Rules provides that if appropriate, compliance with exposure limits for such mobile devices can be accomplished by the use of warning labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas.

8. The original application for equipment authorization for the DBA-819 amplifier included an RF exposure analysis which demonstrated that the device complies with the maximum permissible exposure limits for occupational/controlled exposure and general population/uncontrolled exposure set forth in Section 1.1310 when the antenna is mounted a minimum distance of 50 cm from all persons. The original equipment certification granted for the DBA-819 amplifier under FCC ID # P35SSG-819-1W2W included the following condition:

⁷47 C.F.R. § 2.1091.

⁸Section 2.1091(b) defines a “mobile device” as “a transmitting device designed to be used in other than fixed locations and to generally be used in such a way that a separation distance of at least 20 centimeters is normally maintained between the transmitter’s radiating structure(s) and the body of the user or nearby persons.”

⁹See 47 C.F.R. § 2.1091(c).

¹⁰The occupational/controlled exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. The limits for occupational/controlled exposure also apply in situations where an individual is transient through a location where the occupational limits apply, provided that he or she is made aware of the potential for exposure. 47 C.F.R. § 1.1310, Note 1 to Table 1.

¹¹The general population/uncontrolled exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure. 47 C.F.R. § 1.1310, Note 1 to Table 1.

The antenna(s) used for this transmitter must be installed to provide a separation distance of at least 50 cm from all persons and must not be co-located or operating in conjunction with any other antenna or transmitter. Users and installers must be provided with antenna installation instructions and transmitter operating conditions for satisfying RF exposure compliance.

Inteligain subsequently filed two applications seeking to change the FCC identifier for the DBA-819 amplifier, first, in July 2003, to FCC ID # RCUSG819-807 and later, in September 2004, to FCC ID # RCUDBA819-807. Both of these applications indicated that there was no change in the design, circuitry and construction of the device and both applications requested that the above condition regarding RF exposure compliance be placed on the authorization. The authorization granted under FCC ID # RCUSG819-807 and the current authorization granted under FCC ID # RCUDBA819-807 both include this condition. However, the user manual which Inteligain is currently distributing with the DBA-819 amplifier instructs users in the “Warnings” section that “Directly wired vehicle antennas, mounted a minimum distance of 20 cm (7.87 inches) [emphasis added] away from any person, are recommended.” Based on the RF exposure analysis provided in the original equipment authorization application for the DBA-819 amplifier, it appears that the DBA-819 amplifier will not comply with applicable RF radiation exposure limits when the antenna is installed only 20 cm away from persons. We conclude that by marketing the DBA-819 amplifier without the proper warning concerning minimum separation distance required by the condition in its equipment authorization, Inteligain apparently violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

9. Section 2.925 of the Rules requires that equipment authorized under the certification procedures bear a nameplate or label listing the FCC identifier. Inteligain’s response indicates that between May 2004 and September 2004, Inteligain manufactured and distributed DBA-819 amplifiers labeled with an incorrect FCC identifier. Inteligain failed to correct this error until after receipt of the Enforcement Bureau’s LOI. We find, therefore, that Inteligain apparently marketed an amplifier that was not compliant with the labeling requirements of Section 2.925.

10. Accordingly, we find that Inteligain apparently willfully¹² and repeatedly¹³ violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

11. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁴ 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.”¹⁵

¹²Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹³Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁴47 U.S.C. § 503(b).

¹⁵47 U.S.C. § 503(b)(2)(D).

12. 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")¹⁶ and Section 1.80 of the Rules,¹⁷ the base forfeiture amount for the importation or marketing of unauthorized equipment is \$7,000. Here, Inteligain marketed, and apparently continues to market, equipment in a manner inconsistent with a condition in its equipment authorized intended to ensure compliance with RF exposure limits. Given the public safety nature of this violation, we believe that a proposed forfeiture is warranted.¹⁸ Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Inteligain is apparently liable for a \$7,000 forfeiture.

13. Finally, pursuant to Section 403 of the Act,¹⁹ we direct Inteligain to submit an affidavit, signed by an officer or director, within 30 days of the release of this *NAL* demonstrating that it taken steps to come into compliance with the condition in its certification for the DBA-819 amplifier with respect to any new DBA-819 amplifiers marketed by Inteligain. We note that failure to submit the affidavit may subject Inteligain to further enforcement action. In addition, we urge Inteligain to take steps to provide existing users of the DBA-819 amplifier with revised manuals detailing the correct antenna installation instructions and transmitter operating conditions for satisfying RF exposure compliance.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Inteligain **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

15. **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*, Inteligain, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. 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.

17. 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.

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

¹⁷47 C.F.R. § 1.80.

¹⁸We are not proposing a separate forfeiture for Inteligain's labeling violation.

¹⁹47 U.S.C. § 403.

18. 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.

19. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁰

20. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act, Inteligain must submit the affidavit described in paragraph 13 above, within 30 days from the release of this *NAL*, to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-C833, Washington, D.C. 20554, Attention: Brett Greenwalt.

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Dana Mitchell President, Inteligain Corporation, Inc., 26500 Agoura Road Suite 102-656, Calabasas, California 91302.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁰See 47 C.F.R. § 1.1914.