

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

In the Matter of)	
)	
Skybeam Acquisition Corporation)	File No: EB-FIELDWR-12-00002769
)	NAL/Acct. No.: 201232800009
Englewood, Colorado)	FRN: 0021775820
)	

FORFEITURE ORDER

Adopted: February 7, 2014

Released: February 7, 2014

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Skybeam Acquisition Corporation (Skybeam), operator of an Unlicensed National Information Infrastructure (U-NII) transmission system in Parker, Colorado, for willful and repeated violation of Sections 301 and 302(b) of the Communications Act of 1934, as amended, (Act)¹ and Sections 15.1(b) and 15.1(c) of the Commission's rules (Rules).² The violations involved Skybeam's operation of an intentional radiator not in accordance with Part 15 of the Rules³ and the device's Equipment Authorization.⁴

II. BACKGROUND

2. As discussed in detail in the Notice of Apparent Liability for Forfeiture and Order in this case,⁵ on September 29, 2011, while searching for the source of interference to the Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) serving the Denver International Airport, agents from Enforcement Bureau's Denver Office (Denver Office) used direction-finding techniques to determine that radio emissions on frequency 5610 MHz were emanating from the Hilltop Tower communications site in Parker, Colorado.

3. On September 30, 2011, the agents used those same techniques in combination with an on/off test to confirm that the interference was emanating from the U-NII transmission system operated by Skybeam and determined that Skybeam's U-NII system utilized a transceiver module (a Motorola Canopy 5700BH20), which is an intentional radiator.⁶ The FCC Equipment Authorization for the Motorola

¹ 47 U.S.C. §§ 301, 302a(b).

² 47 C.F.R. § 15.1(b), (c).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ 47 C.F.R. §§ 15.1, 15.407.

⁵ *Skybeam Acquisition Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Red 11337, 11338–11339 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁶ The device was a Motorola Canopy model # BH5700BH20, FCC ID ABZ89FC5804 (Model 5700xx Canopy radio (Wireless Ethernet)). On June 4, 2003, Motorola Solutions, Inc. received a Grant of Equipment Authorization for

Canopy 5700BH20 transceiver limits the device to operations within a frequency range of 5735 MHz to 5840 MHz.⁷ The agents determined that the transceiver had been operating on 5610 MHz and that the device also was not operating with Dynamic Frequency Selection (DFS), a functionality which allows U-NII transmitters operating in the 5.25-5.35 GHz and 5.47-5.725 GHz bands to detect the presence of FAA radar systems and avoid co-channel operations with radar systems. In addition, the agents determined that Skybeam had adjusted the transceiver's operating frequency to the frequency 5875 MHz – a frequency also outside the transceiver's authorized frequency range - in an effort to cease any interference with the Denver TDWR installation.⁸

4. On September 27, 2012, the Denver Office issued the *NAL* to Skybeam for its operation of an U-NII device on a frequency for which the device was not authorized and without a license. Skybeam submitted a response to the *NAL* requesting rescission or reduction of the proposed \$15,000 forfeiture,⁹ because Skybeam deactivated the device the day after it was notified by the Denver agents;¹⁰ the device cannot operate on the frequency 5875 MHz and therefore the *NAL* is incorrect;¹¹ and its history of no prior offenses.¹²

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹³ Section 1.80 of the Rules,¹⁴ and the *Forfeiture Policy Statement*.¹⁵ In examining Skybeam's response, Section 503(b)(2)(E) of the Act requires that the Commission 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 other such matters as justice may require.¹⁶ As discussed below, we have considered Skybeam's response in light of these statutory factors, and find that a reduction of the forfeiture based on its history of compliance is justified.

the Motorola 5700xx Canopy radio from Elite Electronic Engineering, Inc. under the authority of the FCC.

⁷ The Equipment Authorization for the Motorola Canopy 5700BH20 transceiver states that the device is certified for use pursuant to Part 15, Subpart C of the Rules (Intentional Radiators).

⁸ The interference to the Denver TDWR ceased as a result of Skybeam's adjustment to the transceiver's operating frequency.

⁹ Response of Skybeam Acquisition Corporation and LP Broadband (Oct. 26, 2012) (on file in EB-FIELDWR-12-00002769) (*NAL Response*). We note that Skybeam does not object to, and has complied with, the directive in the *NAL* ordering submission of a written statement, under penalty of perjury, stating that the U-NII system is operating in compliance with FCC rules and applicable authorizations. See *NAL*, 27 FCC Rcd at 11341, and *NAL Response* at 3 and 5. LP Broadband, Inc., a corporation affiliated with Skybeam, holds numerous FCC licenses, including Common Carrier Fixed Point to Point Microwave (149 call signs), Microwave Industrial/Business Pool (five call signs), Industrial/Business Pool, Conventional (two call signs), Millimeter Wave 70/80/90 GHz Service (one call sign), and 3650-3700 MHz (three call signs).

¹⁰ See *NAL Response* at 2.

¹¹ See *id.* at 2–3.

¹² See *id.* at 3–4.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ *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 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁶ 47 U.S.C. § 503(b)(2)(E).

6. We find that the evidence supports the Denver Office's findings that, on September 29 and September 30, 2011, Skybeam operated its Motorola Canopy 5700BH20 transceiver on frequencies for which that device was not certified, and without DFS functionality. Skybeam argues that it corrected the violation the day after it was notified by the Denver agents and that it should have received a warning rather than the *NAL*.¹⁷ We find no merit in Skybeam's argument. As licensees,¹⁸ Skybeam and its affiliated companies are expected to comply with the Rules,¹⁹ and, in any event, the Commission is under no obligation to warn any entity, whether a licensee or not, that it is operating without a license as required under Section 301 of the Act, and then wait until the entity violates the Act again before proposing a forfeiture against that entity.²⁰ Corrective action taken to come into compliance with the Act or Rules is expected and does not mitigate forfeitures assessed or proposed for violations of the Act or Rules.²¹

7. Skybeam also argues that the Motorola Canopy 5700BH20 transceiver was not capable of operating on frequencies above 5850 MHz and that the *NAL* is therefore factually inaccurate.²² We disagree. Although Skybeam attaches to its *NAL Response* a screenshot entitled "Device Information" showing the device's channel selections, ranging from "5600" to "5850," we find that this information is not dispositive.²³ On September 30, 2011, the Denver agents captured on FCC equipment screenshots that showed Skybeam operating on the frequency 5870/5875 MHz.²⁴ In addition, on that same day,

¹⁷ *NAL Response* at 2. Skybeam also alleges that "LP Broadband employees were prepared to deactivate the U-NII equipment on the same day they received notice from the FCC [but] the FCC's field agents directed LP Broadband's employees not to deactivate the equipment until the following day when additional inspections and testing would occur." *Id.* at 2 n.2. There is no evidence, other than this allegation, that the Denver agents directed Skybeam's illegal operation. Despite repeated attempts, the Denver agents were unable to contact the Skybeam personnel by phone on September 29, 2011, and had to leave them repeated messages about the interference and request for inspection. Skybeam and its associated companies, on the other hand, were obviously in control of the device, had willfully installed the device as a temporary backhaul when a link in their operations had gone down the prior weekend, willfully operated the device on a frequency the device had no authority to operate on, willfully operated on that frequency without notching out the TDWR frequencies, willfully changed the operating frequency of the device to 5875 MHz the day after receiving notice of the interference and on the morning of the scheduled inspection which eliminated the interference to the Denver International Airport TDWR while maintaining service to customers, and willfully changed the operating frequency of the device during the inspection pending replacement of the Motorola device.

¹⁸ *See supra* note 9. Skybeam also alleges that although LP Broadband and Skybeam are affiliated, LP Broadband, not Skybeam, was the actual operator of the U-NII device and, therefore, requests that Skybeam be removed from the proceeding. *NAL Response* at 1 n.1. Because the operator of the device (the Field Infrastructure Supervisor for Northern Colorado) identified himself, with credentials, as being employed by Skybeam, we decline to remove Skybeam from this proceeding. We note that Skybeam and LP Broadband are affiliated, and that according to a recent filing made with the Commission, JAB Wireless, Inc., currently controls 100 percent of each entity. *See FCC Ownership Disclosure Information For The Wireless Telecommunications Services*, File No. 0005696269 (filed March 18, 2013).

¹⁹ *See Discussion Radio Incorporated*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433 (2004) (a Commission licensee is charged with knowledge of the full range of its obligations pursuant to the Act, the Rules and its authorization).

²⁰ *See* Section 1.80(d) of the Rules, 47 C.F.R. § 1.80(d) (the Commission is not required to issue a citation prior to the issuance of a *NAL* if the non-licensee "is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required"). *See also* 47 U.S.C. § 503(b)(5).

²¹ *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994) (declining to mitigate a forfeiture based on subsequent compliance efforts).

²² *NAL Response* at 2–3.

²³ *Id.* at Attachment 1.

²⁴ The reference to frequency 5870/5875 MHz refers to the same observation. Frequency 5870 MHz refers to the lower edge to the spectrum capture, while frequency 5875 MHz refers to the center frequency.

Skybeam's Field Infrastructure Supervisor for Northern Colorado performed the on/off tests with the Denver agents and then gave the agents screen captures from his own equipment showing the Motorola Canopy 5700BH20 in operation on frequency 5870/5875 MHz as well as on frequency 5610 MHz. Given that Skybeam's own contemporaneous evidence contradicts the statements in its *NAL Response*, we find no merit to Skybeam's argument.

8. Skybeam also requests that the proposed forfeiture be reduced based on its history of compliance with the Rules.²⁵ We note that prior to this violation, Skybeam had no violations of the Act or the Rules and, therefore, consistent with the adjustment factors,²⁶ we find that reduction of the forfeiture based on Skybeam's history of compliance with the Rules is warranted and reduce the forfeiture by \$3,000.²⁷ Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$12,000 is warranted.²⁸

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Skybeam Acquisition Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Sections 301 and 302(b) of the Communications Act and Section 15.1(b) and 15.1(c) of the Commission's rules.²⁹

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.³⁰ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.³¹ Skybeam Acquisition Corporation shall send electronic notification of payment to WR-Response@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 NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed

²⁵ *NAL Response* at 3–4.

²⁶ 47 C.F.R. § 1.80(b)(5), Note: Guidelines for Assessing Forfeitures, Section II, Adjustment Criteria for Section 503 Forfeitures (for forfeitures proposed and assessed under Section 503(b) of the Act, as this one is, the adjustment factors included by the Commission in its downward adjustment criteria in Section 1.80 are: (1) minor violation; (2) good faith or voluntary disclosure; (3) history of compliance; and (4) inability to pay).

²⁷ We note that both JAB Wireless, Inc., and LP Broadband also have a history of compliance with the Act and the Rules as well. *See supra* note 18.

²⁸ We note that subsequent to the release of this *NAL*, the Enforcement Bureau released a Notice of Apparent Liability for Forfeiture and Order to Directlink, LLC, in the amount of \$25,000, for operation of an intentional radiator without a license and for operation inconsistent with Part 15 of the Rules, when the operation resulted in interference to a TDWR installation. *See Directlink, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 37 (Enf. Bur. 2013). The Commission then issued a Notice of Apparent Liability for Forfeiture and Order in the amount of \$202,000 to Towerstream Corporation for operating radio transmitters without a license and causing harmful interference to TDWR installations. *See Towerstream Corporation*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013). With these sanctions, the Commission and the Bureau have emphasized the critical nature of these violations and have put U-NII operators on notice that operation that deviates from the requirements of the Rules and results in interference to TDWR installations will result in forfeitures of at least \$25,000.

²⁹ 47 U.S.C. §§ 301, 302a(b), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 15.1(b), 15.1(c).

³⁰ 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 504(a).

FCC Form 159 (Remittance Advice) must be submitted.³² 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 you should follow based on the form of payment you select:

- 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.

11. Any request for full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Skybeam Acquisition Corporation, 400 Inverness Parkway, Suite 330, Englewood, Colorado 80112, and to its counsel, K.C. Halm, Esquire, Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, NW, Suite 800, Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

³² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³³ See 47 C.F.R. § 1.1914.