

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

In the Matter of)	
)	
Directlink, LLC)	File No: EB-FIELDWR-12-00002815
)	NAL/Acct. No.: 201332800001
Parker, Colorado)	FRN: 0020233508
)	

FORFEITURE ORDER

Adopted: February 20, 2014

Released: February 21, 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 twenty thousand dollars (\$20,000) to Directlink, LLC¹ (Directlink), operator of an Unlicensed National Information Infrastructure (U-NII) transmission system in Elizabeth, Colorado, for willful and repeated violation of Sections 301 and 302(b) of the Communications Act of 1934, as amended, (Act)² and Sections 15.1(b) and 15.1(c) of the Commission's rules (Rules).³ The violations involved Directlink's operation of an intentional radiator without a license and in a manner inconsistent with Part 15 of the Rules⁴ and the device's equipment authorization.⁵

II. BACKGROUND

2. On January 4, 2013, the Enforcement Bureau's Denver Office (Denver Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)⁶ to Directlink for its operation of a U-NII device on a frequency for which the device was not authorized and without a license. As discussed in detail in the NAL in this case,⁷ on January 10, 2012, while searching for the source of interference to the Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) serving the Denver International Airport, Denver Office agents used direction-finding techniques to determine that radio emissions on frequency 5630 MHz were emanating from the Red Fox Circle communications site in

¹ Directlink, LLC, holds three FCC licenses for microwave operations (call signs WQPL428, WQPL429, and WQPL430).

² 47 U.S.C. §§ 301, 302a(b).

³ 47 C.F.R. § 15.1(b), (c).

⁴ 47 C.F.R. §§ 15.1 *et seq.*

⁵ 47 C.F.R. §§ 15.1, 15.407.

⁶ *Directlink, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 37 (Enf. Bur. 2013) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

⁷ See 28 FCC Rcd at 38–40, paras 2–4.

Elizabeth, Colorado.⁸ On January 12, 2012, the agents used those same techniques in combination with Directlink's involvement to confirm that the interference was emanating from the U-NII transmission system operated by Directlink.⁹ On January 12, 2012, an FCC agent's telephone call to the FAA confirmed that the U-NII interference had ceased when Directlink changed its center frequency from 5630 MHz to 5785 MHz during the Denver Office investigation. The U-NII system utilized a transceiver module, model Rocket M5, an intentional radiator manufactured by Ubiquiti Networks, Inc.¹⁰ The FCC Equipment Authorization for the Ubiquiti Rocket M5 transceiver limits the device to operations within a frequency range of 5745 MHz to 5825 MHz.¹¹ During the inspection, however, the FCC agents observed that the transceiver was operating on a center frequency of 5630 MHz, which is outside the authorized frequency range of the device. Subsequently, Directlink remotely adjusted the device's operating frequency from 5630 MHz to 5785 MHz which ceased the interference impacting the Denver TDWR installation.¹²

3. In order to avoid interference to the FAA's TDWR installations, the Commission requires that U-NII devices operating in the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz bands have Dynamic Frequency Selection (DFS) radar detection functionality, which allows them to detect the presence of radar systems and avoid co-channel operations with radar systems.¹³ As the inspection continued on January 12, 2012, FCC agents also observed and were advised by Directlink's representative that the transceiver was not operating with DFS functionality.

4. Directlink submitted a response to the *NAL* requesting cancellation or reduction of the proposed \$25,000 forfeiture,¹⁴ asserting that it was entitled to a citation or warning prior to the *NAL*,¹⁵ that there were no aggravating factors that required an upward adjustment of the forfeiture,¹⁶ that the

⁸ The unauthorized emissions on frequency 5630 MHz impacted the Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) system that serves the Denver International Airport. TDWR installations exist at 45 major airports in the United States and Puerto Rico. These radar installations assist air traffic controllers in detecting low-altitude wind shear that can pose a risk to aircraft. See MIT Lincoln Laboratories, <http://www.ll.mit.edu/mission/aviation/faawxsystems/tdwr.html> (last visited June 15, 2012).

⁹ 47 C.F.R. § 15.403(s) (defining U-NII devices as “[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions”). Although Directlink's device was not authorized to operate in the U-NII bands, it was subject to the U-NII rules (47 C.F.R. 15.401-15.407) because Directlink operated it as a U-NII device.

¹⁰ The device was a Ubiquiti model Rocket M5, FCC ID SWX-M5. Ubiquiti Networks, Inc., was issued a Grant of Equipment Authorization for the Rocket M5 by MET Laboratories, Inc., under the authority of the FCC, on August 14, 2009.

¹¹ The Equipment Authorization for the Ubiquiti Rocket M5 transceiver states that the device is certified for use pursuant to Part 15, Subpart C of the Rules (Intentional Radiators). The datasheet published by Ubiquiti for the Rocket M5 states that the device can operate in the 5470-5825 MHz band, noting that “[o]nly 5745 - 5825 MHz is supported in the USA” and that “[i]t is the installers responsibility to follow local country regulations including operation within legal frequency channels, output power, and Dynamic Frequency Selection (DFS) requirements.” Ubiquiti Networks Rocket M Datasheet, 2011, at 7 and 10 (Rocket M Datasheet).

¹² Directlink changed the operating frequency of this system from 5630 MHz to 5785 MHz during the FCC investigation on January 12, 2012. As noted above, the Ubiquiti Rocket M5 transceiver is authorized to operate only within a frequency range of 5745 MHz to 5825 MHz.

¹³ See 47 C.F.R. § 15.407(h)(2).

¹⁴ Response of Directlink, LLC, (Feb. 15, 2013) (on file in EB-FIELDWR-12-00002815) (*NAL Response*).

¹⁵ *Id.* at 5–7.

¹⁶ *Id.* at 7–8.

downward adjustment factors were not applied to the proposed forfeiture;¹⁷ and that the proposed forfeiture was not consistent with actions taken against similarly situated violators.¹⁸

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁹ Section 1.80 of the Rules,²⁰ and the *Forfeiture Policy Statement*.²¹ In examining Directlink'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.²² As discussed below, we have considered Directlink's response in light of these statutory factors, and find that a reduction of the forfeiture based on its history of compliance is justified.

6. We find that the evidence supports the Denver Office's findings that, on January 10 and January 12, 2012, Directlink operated its Ubiquiti Rocket M5 transceiver on a frequency for which that device was not certified, and without DFS functionality. Directlink first argues that it should have received a warning or citation pursuant to Section 1.80(d) of the Rules, because Directlink was operating in "unlicensed" spectrum.²³ Directlink is incorrect. The preliminary procedure required under Section 1.80(d) is not applicable if the subject "is engaged in (and the violation relates to) activities for which a license, permit certificate or other authorization is required"²⁴ Directlink does not dispute that it was operating its Ubiquiti Rocket M5 transceiver on a frequency for which the device was not certified and, therefore, in violation of the Part 15 Rules.²⁵ Pursuant to Section 15.1(b) of the Rules, the operation of a Part 15 device in a manner that is inconsistent with the Part 15 Rules requires a license pursuant to Section 301 of the Act.²⁶ Therefore, Directlink was engaged in activities for which a license was required and, consequently, is not eligible for the preliminary procedure outlined in section 1.80(d).²⁷

¹⁷ *Id.* at 9–15.

¹⁸ *Id.* at 15–20.

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80.

²¹ *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*).

²² 47 U.S.C. § 503(b)(2)(E).

²³ *NAL Response* at 5 – 6. Section 1.80(d) of the Rule states: "*Preliminary procedure in some cases*; citations. No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person: (1) Is sent a citation reciting the violation charged; (2) is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and (3) subsequently engages in conduct of the type described in the citation. However, a forfeiture penalty may be imposed, if such person is engaged in (and the violation relates to) activities for which a license, permit, certificate, or other authorization is required or if such person is a cable television operator, or in the case of violations of section 303(q), if the person involved is a nonlicensee tower owner who has previously received notice of the obligations imposed by section 303(q) from the Commission or the permittee or licensee who uses that tower." 47 C.F.R. § 1.80(d).

²⁴ 47 C.F.R. § 1.80(d). *See also* 47 U.S.C. § 503(b)(5).

²⁵ *See NAL*, 28 FCC Rcd at 39 – 40, paras. 6–8.

²⁶ 47 C.F.R. § 15.1(b). *See NAL*, 28 FCC Rcd at 37 – 38, para. 2.

²⁷ *See NAL*, 28 FCC Rcd at 39 – 40, paras. 6–8. We note Directlink became a Commission licensee on June 19,

7. Directlink also argues that there were no “aggravating circumstances” pursuant to the Commission’s adjustment factors and again suggests that a warning letter should have been issued.²⁸ We disagree. The Denver Office determined that Directlink’s unauthorized operation of an unauthorized system created interference to the FAA’s TDWR radar system at the Denver International Airport, creating grave public safety risks.²⁹ Contrary to Directlink’s assertions,³⁰ there is no requirement that the Commission issue warnings or Notices of Unlicensed Operations (NOUOs) to violators, particularly those causing interference to FAA radar installations.³¹

8. We also disagree with Directlink’s contention that none of the upward adjustment criteria in the Rules were met by Directlink’s violation and that the forfeiture should be reduced for that reason.³² Directlink does not deny the violations and the Denver Office determined that the unauthorized operation caused interference to FAA TDWR radar, which, given the obvious public safety concern, meets the criteria of substantial harm.³³ Because that factor was present, we find no error in the upward adjustment to the proposed forfeiture made by the Denver Office.

9. Directlink further argues that it is entitled to a reduction or cancellation of the proposed forfeiture under the downward adjustment criteria in the Rules.³⁴ Directlink claims that its violation was minor, and it should have received a NOUO, like various other violators have.³⁵ We first note that the issuance of a NOUO does not mean that a violation is minor. Instead, it puts the subject on notice of its violation of Section 301 of the Act. Of the NOUOs cited to by Directlink, most were issued in the early stages of enforcement against illegal U-NII operations.³⁶ On July 27, 2010, the FCC’s Enforcement

2012. *See, e.g.*, File No. 0005172027, granted June 19, 2012 (call sign WQPL428). *See supra* note 1; *see also NAL*, 28 FCC Rcd at 43 n.1.

²⁸ *NAL Response* at 7–8. Directlink cites to a Citation that was issued to a vendor of non-certified equipment that caused interference to TDWR systems equipment. A citation was required by Section 1.80(d) of the Rules, however, because the vendor was not a Commission licensee and was not engaging in conduct that required an FCC license, permit or authorization. *See SECURITY-CAMERAS-CCTV.COM*, Citation, 28 FCC Rcd 205 (Enf. Bur. 2013) (citation issued to non-licensee who engaged in the illegal marketing of unauthorized radio frequency devices).

²⁹ *NAL* 28 FCC Rcd at 41, para 10.

³⁰ *NAL Response* at 7 (arguing a warning would be appropriate because this was a first-time violation by the company).

³¹ The Commission has found that a policy of providing a warning for all first-time violations is unworkable, stating that “an approach whereby, except in cases of harm to others or safety of life, we would always issue a warning to first-time violators would greatly undermine the credibility and effectiveness of our overall compliance efforts. Licensees must strive to comply with rules. Such an approach could invite some licensees to commit first-time violations with impunity.” *Forfeiture Policy Statement*, 12 FCC Rcd at 17102, para. 31.

³² *NAL Response* at 7–8. *See* 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, the adjustment factors included by the Commission in its upward adjustment criteria in Section 1.80 are: (1) Egregious misconduct; (2) Ability to pay/relative disincentive; (3) Intentional violation; (4) Substantial harm; (5) Prior violations of any FCC requirements; (6) Substantial economic gain; and (7) Repeated or continuous violation. *Id.*

³³ *NAL* 28 FCC Rcd at 41, para 10.

³⁴ *NAL Response* at 8–15. *See* 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).

³⁵ *NAL Response* at 9–13.

³⁶ *See, e.g. Aeronet Wireless*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office, rel. Apr. 20, 2009); *Sling*

Bureau and Office of Engineering and Technology issued a Memorandum to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment, like Directlink, concerning the interference caused to TDWR by U-NII systems and devices.³⁷ The OET/EB Memo notified wireless internet service providers, like Directlink, that operate within the vicinity of TDWR installations or line-of-sight of TDWR installations, of the potential for interference to TDWR installations.³⁸ In particular, providers operating within 35 kilometers were encouraged to operate 30 MHz away from the TDWR frequency in use.³⁹ Because complaints from the FAA concerning interference to TDWR operations continued after the release of the OET/EB Memo, the Enforcement Bureau determined in 2011 that stronger enforcement action was necessary, including upward adjustments in forfeiture amounts where appropriate.⁴⁰

Broadband, LLC, Notice of Unlicensed Operation (Enf. Bur., Miami Office, rel. Jul. 20, 2010) (*Sling Broadband NOUO*); *NSN Wireless, LP*, Notice of Unlicensed Operation (Enf. Bur., Houston Office, rel. Aug. 13, 2010); *Wireless Metro LLC*, Notice of Unlicensed Operation (Enf. Bur., Houston Office, rel. Aug. 13, 2010).

³⁷ See Memorandum from Julius Knapp, Chief, Office of Engineering and Technology, FCC, and P. Michele Ellison, Chief, Enforcement Bureau, FCC, to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment Re: Elimination of Interference to Terminal Doppler Weather Radar (TDWR) (dated July 27, 2010), available at <http://transition.fcc.gov/eb/uniitdwr.pdf> (last visited Jan. 24, 2014) (OET/EB Memo). NOUOs cited to by Directlink that were issued after the release of the OET/EB Memo were typically issued to new entrants, see, e.g., *Crucito Marrero dba CMARR*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office, rel. Jun. 2, 2011); *David Robles dba dmwireless*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office, rel. Mar. 13, 2012); *The WIFI Store*, Notice of Unlicensed Operation (Enf. Bur., San Juan Office, rel. Mar. 13, 2012); or where the interference was truly inadvertent because it was caused by a malfunctioning security camera, see *ExtraSpace Storage*, Notice of Unlicensed Operation (Enf. Bur., Los Angeles Office, rel. Dec. 20, 2011).

³⁸ OET/EB Memo at 1–2.

³⁹ OET/EB Memo at 2. The OET/EB Memo also listed the locations of the TDWR installations along with the frequencies in use, including the frequency used by the Denver, Colorado, TDWR of 5615 MHz. OET/EB Memo at 3. Directlink operated its transceiver within 31 kilometers of the Denver, Colorado, TDWR, and operated without authority on 5630 MHz, within 15 MHz of the Denver, Colorado, TDWR.

⁴⁰ See *Utah Broadband*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 1419 (Enf. Bur. 2011) (\$25,000 forfeiture proposed for violations of Sections 301 and Section 302(b) of the Act, utilizing a Ubiquiti Xtreme Range 5 transceiver with DFS functionality disabled with upward adjustment for public safety harm) (forfeiture paid) (*Utah Broadband NAL*); *AT&T*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 1894 (Enf. Bur. 2011) (\$25,000 forfeiture proposed for violations of Sections 301 and Section 302(b) of the Act, utilizing a Motorola Canopy device without DFS functionality with upward adjustment for public safety harm and revenue of company) (*AT&T NAL forfeiture assessed in Forfeiture Order*, 27 FCC Rcd 10803 (Enf. Bur. 2012) (noting that even if AT&T did not cause interference to the TDWR operations, it was operating in violation of Section 301 and a \$25,000 forfeiture was appropriate for a company of its size) (*AT&T Forfeiture Order*); *Rapidwave*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10678 (Enf. Bur. 2011) (\$25,000 forfeiture proposed for violations of Sections 301 and Section 302(b) of the Act, utilizing a Ubiquiti Xtreme Range 5 transceiver without its DFS functionality with upward adjustment for public safety harm) (*Rapidwave NAL forfeiture assessed in Forfeiture Order*, DA 14-139, 2014 WL 495195 (Enf. Bur. Feb 7, 2014) (assessing a forfeiture of \$20,000 when taking into the account subject's history of compliance with the Commission's rules); *Ayustar*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10693 (Enf. Bur. 2011) (\$25,000 forfeiture proposed for violations of Sections 301 and Section 302(b) of the Act, utilizing a Motorola Canopy device without DFS functionality with upward adjustment for egregious conduct because Ayustar had previously been issued sanctions for the same violations) *consent decree issued in Order*, DA 13-2080, 2013 WL 6069461 (Enf. Bur. Nov. 18, 2013); *Insight Consulting Group of Kansas City, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10699 (Enf. Bur. 2011) (\$17,000 forfeiture proposed for violations of Section 301 of the Act with upward adjustment for causing hazard to air safety) *forfeiture assessed in Forfeiture Order*, 27 FCC Rcd 2792 (Enf. Bur. 2012) (assessing a forfeiture of \$16,000 when taking into the account subject's ability to pay the forfeiture); *Sling Broadband, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10686 (Enf. Bur. 2011); (\$20,000 forfeiture proposed for violations of Section 301 of the Act with upward adjustment because Sling Broadband had previously been warned of violations) (*Sling Broadband NAL forfeiture assessed in Forfeiture Order*, 26 FCC Rcd 13062 (Enf. Bur. 2011) (\$20,000 forfeiture assessed when Sling Broadband, LLC, failed to respond to NAL); *Argos Net, Inc.*,

10. In 2013, the Commission issued a Notice of Apparent Liability for Forfeiture in the amount of \$202,000 against a U-NII operator.⁴¹ In the *Towerstream NAL*, the Commission specifically stated that the interference created by unauthorized U-NII systems (such as the one operated by Directlink) creates interference that “poses a clear hazard to air traffic safety and requires aggressive enforcement.”⁴² The Commission also stated that for these violations, including operating without authorization and causing interference, the Communications Act authorizes monetary forfeitures of up to \$16,000 for each violation.⁴³ Given the concerns raised and actions taken by the Enforcement Bureau in 2010 and 2011 concerning the interference from illegal U-NII operations, we find that Directlink’s 2012 violation cannot be considered minor nor can it be dismissed with a warning.

11. We also disagree with Directlink’s contention that it is being treated differently than other similarly situated violators.⁴⁴ According to its website, Directlink was “[f]ounded in 2002, [and] is one of the leading fixed wireless broadband providers in Colorado.”⁴⁵ Beginning in 2011, the Enforcement Bureau put wireless internet service providers on notice that operating illegally on U-NII frequencies and causing interference to TDWR installations would result in a notice of apparent liability for forfeiture, and not a warning, for the first violation.⁴⁶ In particular, prior to Directlink’s violations, two other wireless internet service providers were issued notices of apparent liability for forfeiture for operating devices illegally on U-NII frequencies, in violation of Section 301 of the Act, and for not activating or intentionally disabling the available DFS on Ubiquiti transceivers, in violation of Section 302(b) of the Act.⁴⁷ Both of these operators received proposed forfeiture amounts of \$25,000, the same

Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2786 (Enf. Bur. 2012) (\$25,000 forfeiture proposed for violations of Section 301 of the Act with upward adjustment for continuing violation after receiving warning) *forfeiture assessed in* Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013) (\$20,000 forfeiture assessed after taking into consideration Argos Net, Inc.’s history of compliance) *affirmed in part in* Memorandum Opinion and Order, DA 14-137, 2014 WL 495194 (Enf. Bur. Feb 7, 2014) (affirming the finding of violation by the subject but reducing the forfeiture to \$12,000 for a demonstrated inability to pay); *VPNet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2879 (Enf. Bur. 2012) (\$15,000 forfeiture proposed for violations of Sections 301 and 302(b) of the Act, including utilizing an incorrect external antenna on device) *consent decree issued in* Order, DA 13-2099, 2013 WL 6145557 (Enf. Bur. Nov. 21, 2013); *Skybeam Acquisition Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 11337 (Enf. Bur. 2012) (\$15,000 forfeiture proposed for violations of Section 301 and 302(b) of the Act including operating a Motorola Canopy device without DFS functionality) *forfeiture assessed in* Forfeiture Order, DA 14-161, 2014 WL 495206 (Enf. Bur. Feb 7, 2013) (assessing a forfeiture of \$12,000 when taking into account the subject’s history of compliance with the Commission’s rules).

⁴¹ *Towerstream Corporation*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 11604 (2013) (\$202,000 forfeiture proposed for violations of Sections 301 and 333 of the Act for operating U-NII devices without a license and causing harmful interference) (*Towerstream NAL*).

⁴² *Towerstream NAL*, 28 FCC Rcd at 11606, para 5.

⁴³ *Towerstream NAL*, 28 FCC Rcd at 11613, para 28. See 47 U.S.C. § 503(b).

⁴⁴ *NAL Response* at 15–20.

⁴⁵ <http://www.mydl.com/company> (last visited Jan 23, 2014).

⁴⁶ See *supra*, n.40; see also *Utah Broadband NAL*, 26 FCC Rcd at 1422–25, paras 7–18 (no warning prior to issuance of NAL to company that operated a Ubiquiti transceiver with DFS functionality disabled on October 5, 2010, causing interference to Salt Lake City International Airport TDWR installation); *AT&T NAL*, 26 FCC Rcd at 1895–97, paras. 7–13 (no warning prior to issuance of NAL to company that operated a Motorola Canopy device without DFS functionality on December 8, 2010, causing interference to San Juan International Airport TDWR installation); *Rapidwave NAL*, 26 FCC Rcd at 19680–83, paras. 7–17 (no warning prior to issuance of NAL to company that operated a Ubiquiti transceiver without its DFS functionality enabled on October 28, 2010, causing interference to the Denver International Airport TDWR installation).

⁴⁷ See *Utah Broadband NAL*, 26 FCC Rcd at 1420–21, para. 5 (during the inspection, Utah Broadband personnel acknowledged that the required DFS functionality of each of the Ubiquiti transceivers was disabled); *Rapidwave*

amount proposed to Directlink for the same violations.⁴⁸ Given its advertised long term status as a commercial wireless internet services provider, we see no reason not to treat Directlink as other providers, who were aware they were operating equipment on unauthorized frequencies and were not operating the device with the required, and available, functionality to avoid interference with TDWR radar.⁴⁹

12. Directlink also argues that the remedial measures it took to correct its violations after working with the Denver Office agents evidences its good faith,⁵⁰ however, the Commission will not reduce forfeiture amounts for remedial efforts taken after Commission involvement.⁵¹ We have also reviewed the tax records provided by Directlink and find that they do not justify a reduction based on inability to pay. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.⁵² While the Commission has in a few limited cases looked to other factors, including profits and losses, to determine ability to pay, those cases involved licensees in severe financial distress.⁵³ Directlink has failed to demonstrate that it is experiencing a level of financial distress that would qualify for an exception to our

NAL, 26 FCC Rcd at 10679–80, para. 5 (during the inspection, Rapidwave representatives acknowledged that the required DFS functionality of Ubiquiti transceiver was not enabled).

⁴⁸ See *Utah Broadband NAL*, 26 FCC Rcd at 1424, para. 16; *Rapidwave NAL*, 26 FCC Rcd at 10683, para. 16.

⁴⁹ Directlink also contends that it should receive a significantly smaller forfeiture amount than AT&T received because AT&T is “a multi-billion dollar international carrier” and the \$25,000 forfeiture, while significant to Directlink is *de minimis* to AT&T. See *NAL Response* at 16 – 19. The Enforcement Bureau acknowledged AT&T's size when proposing and assessing the \$25,000 forfeiture for its violations, noting that “[a]lthough we could impose larger upward adjustments for AT&T's apparent violations, we decline to do so, based on the particular circumstances of this case. We caution AT&T and other U-NII service providers, however, that we may do so in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent.” *AT&T NAL*, 26 FCC Rcd at 1897, para. 13. The Bureau also noted AT&T's size when assessing the \$25,000 forfeiture against the company, stating that even if the Bureau reconsidered its finding that AT&T caused interference, AT&T violated “Section 301 of the Act [and an] upward adjustment of \$10,000 is reasonable given AT&T's substantial gross revenues.” *AT&T Forfeiture Order*, 27 FCC Rcd at 10807, para. 11. We also note that Directlink's argument that it should receive a forfeiture of \$789, because it would be, as a percentage of gross revenue, equivalent to AT&T's forfeiture, is inconsistent with the Commission's base forfeiture amounts, as outlined in 47 C.F.R. § 1.80(b)(5), Note: Guidelines for Assessing Forfeitures, Section I, Base Amounts for Section 503 Forfeitures. Further, Directlink argues that it should be treated less harshly than Sling Broadband, which received a NOUO and then a NAL for \$20,000. See *NAL Response* at 16–19. As explained above, Sling Broadband received a NOUO during the initial U-NII enforcement phase. See *infra* n.36. The issuance of the *Sling Broadband NOUO*, however, was taken into account in the *Sling Broadband NAL*, and was part of the basis of the upward adjustment of the proposed forfeiture from \$10,000 to \$20,000, because unlike Directlink, Sling Broadband was found to have violated only Section 301 of the Act, not Sections 301 and 302(b) of the Act. See *Sling Broadband NAL*, 26 FCC Rcd at 10690, para. 12.

⁵⁰ *NAL Response* at 13.

⁵¹ *LawMate Technology Co.*, Forfeiture Order, 27 FCC Rcd 15159, 15161, para. 6 (Enf. Bur. 2012); *Behringer USA, Inc.*, Forfeiture Order, 22 FCC Rcd 10451, 10459, para. 19 (2007).

⁵² See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (Enf. Bur. 2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

⁵³ See *Martin Broadcasting, Inc.*, Forfeiture Order, 28 FCC Rcd 1923 (Enf. Bur. 2013) (three years of an operating loss or no taxable income does not qualify as severe financial distress).

gross revenues policy. Based on our review of the financial documents provided by Directlink, we decline to reduce on inability to pay grounds.⁵⁴

13. Directlink also requests that the proposed forfeiture be reduced based on its history of compliance with the Rules.⁵⁵ Prior to this violation, Directlink had no violations of the Act or the Rules and, therefore, consistent with the adjustment factors,⁵⁶ we find that reduction of the forfeiture based on Directlink's history of compliance with the Rules is warranted and reduce the forfeiture by \$5,000. Therefore, after consideration of the entire record and the factors listed above, we find that a forfeiture in the amount of \$20,000 is warranted.

IV. ORDERING CLAUSES

14. 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, Directlink, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) 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.⁵⁷

15. 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.⁵⁸ 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.⁵⁹ Directlink, LLC, 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 FCC Form 159 (Remittance Advice) must be submitted.⁶⁰ 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

⁵⁴ The \$25,000 forfeiture falls within the percentage range that the Commission has previously found acceptable. The \$5,000 reduction based on history of compliance with the Rules also reduces the financial penalty imposed against Directlink.

⁵⁵ *NAL Response* at 3–4.

⁵⁶ 47 C.F.R. § 1.80(b)(5), Note: Guidelines for Assessing Forfeitures, Section II, Adjustment Criteria for Section 503 Forfeitures. *See infra* n.34.

⁵⁷ 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).

⁵⁸ 47 C.F.R. § 1.80.

⁵⁹ 47 U.S.C. § 504(a).

⁶⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

16. 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. 20554.⁶¹ 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.

17. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Directlink, LLC, 43217 London Drive, Parker, Colorado, 80138, and to its counsel, Eric J. Cecil, Esquire, Sourcelaw, PC, 9769 W. 119th Dr., Suite 32, Broomfield, Colorado, 80021.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

⁶¹ See 47 C.F.R. § 1.1914.