

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

In the Matter of	)	
	)	
Datel Design and Development, Inc.	)	File No. EB-03-SE-193
Clearwater, Florida	)	NAL/Acct. No. 200432100007
	)	FRN 0010120269
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 31, 2003**

**Released: January 2, 2004**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Datel Design and Development, Inc. (“Datel”) apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Datel’s importing and marketing of approximately 15,000 thousand units of the Datel Talknet USB Headset, Model Number DUS0049, that do not comply with the radiated emission limits set forth in Part 15 of the Rules.

**II. BACKGROUND**

2. The Talknet USB Headsets involved in this case were manufactured outside the United States. Datel imported and marketed the headsets in the United States. The Talknet USB Headsets involved in this case are classified as digital devices.<sup>3</sup> Digital devices such as those involved in this case are Class B digital devices. A Class B digital device is defined as “[a] digital device that is marketed for use in a residential environment notwithstanding use in commercial, business and industrial

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> Section 15.3(k) of the Rules, 47 C.F.R. § 15.3(k), defines a digital device as “An unintentional radiator (device or system) that generates and uses timing signals or pulses at a rate in excess of 9,000 pulses (cycles) per second and uses digital techniques; inclusive of telephone equipment that uses digital techniques or any device or system that generates and uses radio frequency energy for the purpose of performing data processing functions, such as electronic computations, operations, transformations, recording, filing, sorting, storage, retrieval, or transfer.”

environments.”<sup>4</sup> Class B digital devices are required to comply with the radiated emission limits specified by Section 15.109(a) of the Rules.<sup>5</sup>

3. On August 6, 2003, the Enforcement Bureau’s Spectrum Enforcement Division received a complaint about the Datel Talknet USB Headset. The complaint alleged that Datel’s Talknet USB Headset was being marketed in the United States but did not comply with the radiated emission limits prescribed by Section 15.109(a) of the Rules for Class B digital devices. The complaint further alleged that because of the excessive radiated emissions, the Talknet USB Headset could not have been verified as complying with the Commission’s technical standards, and therefore, importation into the United States was in violation of the Commission’s rules. Moreover, the complaint alleged that the Talknet USB Headset does not bear a FCC certification or verification label in violation of Section 15.19 of the Rules.<sup>6</sup> Finally, the complaint alleged that the Talknet manual does not contain an FCC Part 15 statement as is required by Section 15.105(b) of the Rules.<sup>7</sup> On August 27, 2003, the Enforcement Bureau sent Datel a letter of inquiry (“LOI”).

4. In its initial response dated September 10, 2003, Datel stated that it was solely a distributor of the Talknet USB Headset, and that it did not manufacture or design the device, although it did import and market the device in the United States. Datel also stated that upon assurances from the manufacturer and its observations of competitive products, it believed that the Talknet USB Headset met or exceeded relevant FCC requirements. Datel further stated that it had imported approximately 15,000 units for sale in the United States and since July, 2003, had shipped 12,000 units to customer distribution warehouses. Datel also stated that it had halted further shipments of the Talknet USB Headset until this matter was resolved. Finally, Datel stated that it would send a supplemental response to answer other questions posed by the LOI once it received information from its manufacturer.

5. On September 18, 2003, Datel supplemented its response. In the supplement, Datel stated that inquiries were made in Europe regarding whether FCC compliance was necessary for the Talknet USB Headset and it concluded that because the device was a USB device, it was not necessary to have the device independently tested. Nevertheless, Datel stated that it had decided to have the Talknet USB Headset independently tested in the United States for FCC compliance as a Class B device.

6. Subsequently, Datel submitted a test report completed for the Talknet USB Headset from an independent test lab. The test report indicated that the Talknet USB Headset initially did not comply with the radiated emission limits set forth in Section 15.109(a) of the Rules, but complied with these limits after certain modifications were made to the device.

7. On December 12, 2003, the FCC’s Office of Engineering and Technology Laboratory (“OET Lab”) conducted emissions tests on a Talknet USB Headset, Model DUS0049, purchased by the

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<sup>4</sup> Section 15.3(i) of the Rules, 47 C.F.R. § 15.3(i).

<sup>5</sup> 47 C.F.R. § 15.109(a).

<sup>6</sup> See 47 C.F.R. § 15.19 (requires labeling of devices subject to FCC certification or verification).

<sup>7</sup> See 47 C.F.R. § 15.105(b) (requires that the instructions furnished to the user of a Class B device include certain language placed in a prominent location in the text of the user’s manual).

Enforcement Bureau. The OET Lab's test results indicated that the Talknet USB Headset significantly exceeded the radiated emission limits in Section 15.109(a) of the Rules.

### III. DISCUSSION

8. 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)(2) of the Rules 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 not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter.

9. Datel admits that it imported and marketed the Talknet USB Headset. As the importer and seller, Datel is the party responsible under Section 2.909(b) of the Rules<sup>8</sup> for the compliance of these devices with the applicable technical standards. Datel had independent emissions tests conducted during which it was determined that modifications were required to achieve positive test results. Moreover, the OET Lab tested the Talknet USB Headset and determined that it significantly exceeded the radiated emissions limits in Section 15.109(a) of the Rules. We conclude that, by importing and marketing noncompliant devices, Datel apparently violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules willfully<sup>9</sup> and repeatedly.<sup>10</sup>

10. 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.<sup>11</sup> In exercising such authority, we are required to take into account “the nature, circumstances, extent,

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<sup>8</sup> 47 C.F.R. § 2.909(b).

<sup>9</sup> Section 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’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . . .” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

<sup>10</sup> Section 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).

<sup>11</sup> 47 U.S.C. § 503(b).

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.”<sup>12</sup>

11. 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*”)<sup>13</sup> and Section 1.80 of the Rules,<sup>14</sup> the base forfeiture amount for the importation or marketing of noncompliant equipment is \$7,000. This would be the appropriate base forfeiture amount for a single importation or sale. In this case, Datel imported 15,000 units and sold 12,000 units. Given the number of units involved, we find that an increase in the base forfeiture amount is apparently warranted. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Datel is apparently liable for a \$10,000 forfeiture.

12. Further, pursuant to Section 403 of the Act,<sup>15</sup> we direct Datel to submit a report to the Enforcement Bureau within 30 days of the release of this *NAL* which identifies all retailers and other entities to which it distributed the non-compliant Talknet USB Headsets, provides a contact person and address for each such retailer or entity, states the total number of Talknet USB Headsets sold to each such retailer or entity, and describes what steps, if any, Datel intends to take to remove the non-compliant devices from the marketplace and to ensure that similar violations do not occur in the future. In addition, the report must specify whether Datel has begun shipping modified Talknet USB Headsets and, if so, indicate how the modified devices are uniquely identified pursuant to Section 2.1074 of the Rules<sup>16</sup> so that they are readily distinguishable from the non-compliant devices. The report must also specify whether instruction manuals which include the requisite Section 15.105(b) language is currently being included inside the packaging of the Talknet USB Headsets and whether the modified devices bear the required FCC labeling of Section 15.19 of the Rules.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>17</sup> Datel Design and Development, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act, Datel must submit the report described in Paragraph 13 within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture* to Federal Communications Commission, Enforcement Bureau,

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<sup>12</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>13</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>14</sup> 47 C.F.R. § 1.80.

<sup>15</sup> 47 U.S.C. § 403.

<sup>16</sup> 47 C.F.R. § 2.1074.

<sup>17</sup> 47 C.F.R. § 0.111, 0.311 and 1.80.

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Spectrum Enforcement Division, 445 12th Street, S.W., Room 7-A728, Washington, D.C. 20554, Attention: Jacqueline Ellington, Esq.

15. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this *Notice of Apparent Liability for Forfeiture*, Datel Design and Development, Inc. **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 may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

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.

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.<sup>18</sup>

20. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Enforcement Bureau – Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>18</sup> See 47 C.F.R. § 1.1914.

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 Ken Tarolla, Senior Vice President and General Manager, Datel Design and Development, Inc., 15500 Lightwave Drive, Suite 101, Clearwater, Florida 33760

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

Attachment A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization,  
a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – <b>Small Cable Company</b> has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

**Note:** With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years	
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	

Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard -
900 MHz Specialized Mobile Radio	<b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	<b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for

	the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b><i>Miscellaneous</i></b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)