

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

In the Matter of	)	
	)	
VIA Technologies, Inc.	)	File No. EB-02-TS-701
	)	NAL/Acct. No. 200532100001
	)	FRN # 0011606399
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: October 4, 2004**

**Released: October 6, 2004**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find VIA Technologies, Inc. (“VIA”) apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for importing and marketing in the United States unauthorized radio frequency devices, specifically, its model EPIA-M and EPIA-CL computer central processing unit (“CPU”) boards, in 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>

**II. BACKGROUND**

2. The FCC’s Office of Engineering and Technology referred to the Spectrum Enforcement Division of the Enforcement Bureau a complaint alleging that VIA was importing and marketing in the U.S. CPU boards which include a setup option to disable the board’s spread spectrum clocking (“SSC”) function. The complainant alleged that VIA was importing the boards with the SSC function in the disabled mode, leaving it up to the user to enable the SSC function. The complainant further alleged that its tests demonstrated that the CPU boards do not meet the Commission’s Part 15 emission limits unless the SSC option is enabled. Spectrum Enforcement Division staff subsequently found copies of several VIA CPU board user manuals on VIA’s website which discussed the SSC function<sup>3</sup> and recommended that the end user “leave the [SSC] setting at *Disabled* for optimal system stability and performance.”

3. On November 7, 2003, the Spectrum Enforcement Division issued a letter of inquiry to VIA.<sup>4</sup> VIA submitted a response to the letter of inquiry on December 17, 2003.<sup>5</sup> In its response, VIA

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> The user manuals indicated that the SSC function reduces electromagnetic emissions from the CPU board.

<sup>4</sup> Letter to VIA Technologies, Inc. from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau (November 7, 2003).

acknowledges that two of its EPIA model CPU boards, the model EPIA-M and EPIA-CL CPU boards, were shipped to the U.S. with the SSC function disabled.<sup>6</sup> VIA states that it began importing model EPIA-M boards in November 2002 and model EPIA-CL boards in August/September 2003.<sup>7</sup> VIA asserts that prior to importing and marketing these EPIA models, it authorized the devices in accordance with the Commission's Declaration of Conformity ("DOC") procedures.<sup>8</sup> VIA further asserts that all models of its EPIA CPU boards, including the EPIA-M and EPIA-CL boards, were tested for compliance with the conducted and radiated emission limits for Class B digital devices set forth in Sections 15.107(a) and 15.109(a) of the Rules<sup>9</sup> with the SSC function enabled and that each EPIA model was found to be compliant with the emission limits. VIA concedes that the EPIA CPU boards were not tested for compliance with the Part 15 emission limits with the SSC function disabled.

4. VIA explains that it purchases the EPIA-M and EPIA-CL CPU boards' BIOS<sup>10</sup> from third-party suppliers. These suppliers provide a standard template that includes an option for the manufacturer to manually set the default configuration of the SSC function either as enabled or disabled during production and includes an option for the end user to change the function setting. VIA claims that it manufactured the model EPIA-M and EPIA-CL boards with the SSC function disabled as the default configuration due to an erroneous production procedure at its facility in Taiwan. VIA states that its personnel in the United States were unaware of the disabling of the SSC function when the EPIA-M and EPIA-CL models were shipped to the United States. VIA also acknowledges that the EPIA-M and EPIA-CL models' BIOS permitted the end user to enable or disable the SSC function.

5. Additionally, VIA admits that both the online and paper versions of its user manuals for the EPIA-M and EPIA-CL boards included language instructing end users to leave the SSC function disabled. In this regard, VIA claims that there is a common misperception in the computer industry that is perpetuated by many well-respected websites that disabling the SSC function improves the performance of CPU boards. According to VIA, the tech writer responsible for its user manuals mistakenly made the same assumption. VIA states that it has never been its official or unofficial position that end users disable

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<sup>5</sup> Letter to Brian Butler, Assistant Chief, Spectrum Enforcement Division, Enforcement Bureau, from Douglas L. Povich, Esq. (December 17, 2003).

<sup>6</sup> VIA states that it manufactures eight EPIA CPU boards, but only imports four of these boards into the U.S. Of these four EPIA boards, VIA claims that only the EPIA-M and EPIA-CL were shipped with the SSC function disabled.

<sup>7</sup> Pursuant to Sections 0.457 and 0.459 of the Rules, 47 C.F.R. §§ 0.457 and 0.459, VIA requested confidential treatment of certain information submitted in response to its LOI, including the specific number of EPIA boards shipped to the U.S. VIA asserts that the shipment figures represent market size information and potential sales figures for its EPIA boards, information that would customarily be guarded from competitors, and that disclosure of these figures would result in substantial competitive harm. We agree and will accord confidential treatment of VIA's shipment figures. For purposes of this *NAL*, we need not address VIA's request for confidential treatment of certain other information included in its LOI response.

<sup>8</sup> A Declaration of Conformity is an equipment authorization procedure where the responsible party makes measurements or takes other necessary steps to ensure that the equipment complies with applicable technical standards. 47 C.F.R. § 2.906. See 47 C.F.R. §§ 2.1071 to 2.1077.

<sup>9</sup> 47 C.F.R. §§ 15.107(a) and 15.109(a).

<sup>10</sup> VIA stated that BIOS is the firmware that controls the basic functions of the board.

the SSC function.

6. VIA indicates that following receipt of the Spectrum Enforcement Division's LOI, it took a number of corrective actions. Specifically, VIA states that it initiated an immediate update of the BIOS of all EPIA-M and EPIA-CL models currently in production or still in its control to change their default settings to enable the SSC function and to remove the option in the BIOS for end users to change the default setting. VIA states that this step eliminates the production procedure whereby VIA had to enable the SSC function as the default configuration, which was the cause of the error in the EPIA-M and EPIA-CL models. In addition, VIA asserts that all non-compliant EPIA-M and EPIA-CL models have been pulled from distribution in the U.S. to be updated so that the SSC function is enabled before shipment to end users and to remove the option for end users to change this setting. Moreover, VIA asserts that it will notify its registered users to update their devices' BIOS from a free download from VIA's website, which will enable the SSC function as the default function and remove the option in the BIOS to change the default. VIA also states that it has taken steps to correct both its online and paper user manuals to remove any text describing how to change the SSC function from enabled to disabled. Finally, VIA asserts that it is initiating a company-wide, comprehensive program to ensure future compliance with Part 15 regulations. VIA states that it will distribute an internal policy to all appropriate personnel advising that no EPIA device may be shipped to the U.S. with the SSC function disabled or that otherwise does not meet Part 15 requirements.

### 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)(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.

Pursuant to Section 15.101(a) of the Rules,<sup>11</sup> CPU boards used with Class B personal computers must be authorized prior to marketing in accordance with DOC or certification procedures. VIA asserts in its response to our LOI that it authorized its model EPIA-M and EPIA-CL CPU boards in accordance with the DOC procedures. However, VIA admits that it only tested these CPU boards for compliance with the Part 15 emission limits with the SSC function enabled. Under Section 2.906(b) of the Rules,<sup>12</sup> a DOC attaches only to items subsequently marketed by the responsible party which are identical<sup>13</sup> to the sample

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<sup>11</sup> 47 C.F.R. § 15.101(a).

<sup>12</sup> 47 C.F.R. § 2.906(b).

<sup>13</sup> Under Section 2.907 of the Rules, the term "identical" means identical within the variation that can be expected to arise as a result of quantity production techniques. 47 C.F.R. § 2.907.

tested and found acceptable by the responsible party. Furthermore, under Section 2.1073 of the Rules,<sup>14</sup> the responsible party must warrant that each unit of equipment marketed under a DOC is identical to the unit tested and found acceptable with the standards and that the records maintained by the responsible party continue to reflect the equipment being produced under the DOC within the variation that can be expected due to quantity production and testing on a statistical basis. Thus, VIA's DOC did not attach to the model EPIA-M and EPIA-CL CPU boards which were manufactured with the SSC function disabled. VIA admits that it imported and marketed in the U.S. model EPIA-M CPU boards that had the SSC function disabled between November 2002 and November 2003 and model EPIA-CL CPU boards that had the SSC function disabled between August/September 2003 and November 2003. Accordingly, based on the evidence before us, we conclude that VIA apparently willfully<sup>15</sup> and repeatedly<sup>16</sup> violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules by importing and marketing model EPIA-M and EPIA-CL CPU boards that were not authorized in accordance with the Commission's equipment authorization procedures.

8. VIA claims that it manufactured the model EPIA-M and EPIA-CL boards with the SSC function disabled as the default configuration due to an error at its production facility in Taiwan. However, it is well-settled that Commission licensees and regulatees are responsible for the acts or omissions of their agents and employees.<sup>17</sup> VIA clearly knew that the EPIA boards had been tested for the DOC with the SSC function enabled and it was incumbent upon VIA to ensure that the manufactured boards were identical to the units tested. Likewise, while VIA asserts that the tech writer responsible for its user manuals mistakenly included the language in the user manuals which recommended that end users leave the SSC function disabled, VIA is responsible for the acts of its tech writer. Further, to the extent that VIA claims that its personnel in the U.S. were unaware that the model EPIA-M and EPIA-CL boards were shipped with the SSC function disabled, we think that the language in the user manuals instructing end users to "leave the [SSC] setting at *Disabled* for optimal system stability and performance" should have put VIA personnel on notice that the SSC function had been set at disabled.

9. VIA also notes that it took a number of corrective actions following receipt of our LOI to ensure its future compliance with the Commission's rules. Such remedial actions, while commendable, do not lessen, mitigate, or excuse VIA's violations.<sup>18</sup> Indeed, corrective action taken to come into compliance with Commission rules is expected.<sup>19</sup>

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<sup>14</sup> 47 C.F.R. § 2.1073.

<sup>15</sup>Section 312(f)(1) of the Act, 47 U.S.C. 312(f)(1), which applies to 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 ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>16</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>17</sup>See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361, 361-362 (1972).

<sup>18</sup>See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>19</sup>See *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994).

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>20</sup> In exercising such authority, we are 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.”<sup>21</sup>

11. We note that under Section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that accrued within one year of the date of this *NAL*.<sup>22</sup> Nevertheless, Section 503 does not prohibit us from assessing whether VIA’s conduct prior to that date apparently violated the Act or our rules, and we may consider VIA’s violations prior to that date in determining the appropriate forfeiture amount for those violations within the statute of limitations.<sup>23</sup> VIA imported and marketed the model EPIA-M CPU board between November 2002 and November 2003 and the model EPIA-CL CPU board between August/September 2003 and November 2003. Therefore, although we find that some of VIA’s apparent violations occurred outside the one-year statute of limitations, we propose forfeitures here only for the violations which occurred within the last year.

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*<sup>24</sup> and Section 1.80 of the Rules,<sup>25</sup> the base forfeiture amount for importation or marketing of unauthorized or non-compliant equipment is \$7,000. In this case, VIA imported and marketed two unauthorized models of CPU boards. We find that a forfeiture amount of \$7,000 is warranted for each unauthorized model.<sup>26</sup> Accordingly, we are proposing a total forfeiture in the amount of \$14,000.

#### IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>27</sup> VIA Technologies, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) 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 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, VIA Technologies, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking

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<sup>20</sup> 47 U.S.C. § 503(b).

<sup>21</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>22</sup> 47 U.S.C. § 503(b)(6). *See also* 47 C.F.R. § 1.80(c)(3).

<sup>23</sup> 47 C.F.R. § 1.80(b)(4). *See also* *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 (2003).

<sup>24</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>25</sup> 47 C.F.R. § 1.80.

<sup>26</sup> *See e.g., Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 (2004).

<sup>27</sup> 47 C.F.R. § 0.111, 0.311 and 1.80.

reduction or cancellation of the proposed forfeiture.

15. 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 FCC Registration Number (FRN) referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, IL 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

16. 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.

17. 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.

18. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>28</sup>

19. **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 VIA Technologies, Inc., 940 Mission Court, Fremont, CA 94539, and to its counsel, Douglas L. Povich, Esq., Squire, Sanders & Dempsey L.L.P., 14th Floor, 8000 Towers Crescent Drive, Tysons Corner, VA 22182-2700.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>28</sup> See 47 C.F.R. § 1.1914.