

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

In the Matter of
Lithia Toyota of Grand Forks
Grand Forks, North Dakota
File No.: EB-FIELDWR-16-00021955

CITATION AND ORDER

Lighting Devices Causing Harmful Interference to LTE Communications

Adopted: January 9, 2018

Released: January 9, 2018

By the Regional Director, Region Three, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation) notifies Lithia Toyota of Grand Forks of its obligation to stop operating devices that are causing interference to licensed radio operations and to comply with federal rules and regulations related to radio frequency devices.

2. This is an official Citation issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (Act), to Lithia Toyota of Grand Forks (Lithia or Dealership), an automotive dealership located at 2473 32nd Avenue South, in Grand Forks, ND.

3. Notice of Duty to Comply With Laws: Lithia should take immediate steps to come into compliance with the Commission's rules, including eliminating the interference. Lithia is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Sections 18.111(b) or 18.115(a) of the Commission's rules, it may be subject to civil and criminal penalties, including but not limited to substantial monetary fines (forfeitures).

4. Your Response Required: Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, we also direct Lithia to respond in writing, within thirty (30) calendar days after the release date of this Citation, with specific actions taken to preclude recurrence of the violations.

1 47 U.S.C. § 503(b)(5).

2 47 CFR §§ 18.111(b), 18.115(a).

3 See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (if a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation was sent, the subsequent notice of apparent liability "would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent") (emphasis added).

4 47 U.S.C. §§ 154(i), 154(j), 403.

response must be signed under penalty of perjury.

II. BACKGROUND

5. On April 27, 2016, Verizon Wireless (Verizon) filed a complaint with the FCC⁵ which indicated that radio emissions were causing interference to a Verizon 700 MHz LTE cell site along 32nd Avenue South in Grand Forks, North Dakota. Verizon stated that the “interference appears during the evening hours” and disappeared “at daylight.” Verizon noted that the interference appeared to correspond with the outdoor portal lighting schedule of the nearby Toyota dealership. Verizon made an appointment with a Lithia representative, testing for this correlation during the daytime via an on/off test of the portal lighting that operates from the front of the Dealership. Lithia agreed to leave the portal lighting off that evening, resulting in a “considerable noise floor drop” illustrated by cell site statistics. Verizon contacted the FCC when Lithia failed to take corrective action.

6. On March 22, 2017, in response to Verizon’s continuing complaints that the interference had not been resolved, an agent from the Denver Office conducted an on-scene investigation. Direction finding techniques supported the allegation that Lithia was the source of the interference. Subsequent on-off tests of the portal lighting, with Lithia’s General Manager present, confirmed the portal lighting to be the source of the interference. The lighting is generated by Philips Model Number QL55W/840 induction lighting devices.

7. On March 22, 2017, the Denver Office issued an on-scene warning notice (Warning) to Lithia, in which Lithia was informed that it was in “operation of a radio frequency radiating device” (an unintentional radiator, i.e. the light portal), which was causing harmful interference to radio communications. The letter stated that the RF energy emanating from the device was detected between 776-787 MHz, frequencies reserved for cellular operation. Furthermore, the Warning provided citations to applicable FCC rules and regulations, with which the subject was advised they must comply. Lithia verbally agreed to make a good faith effort to resolve the problem. A conference call with Lithia and Verizon representatives on June 28, 2017, confirmed that the interference had not been resolved.

III. APPLICABLE LAW AND VIOLATIONS

8. The RF lighting devices at issue here are ISM equipment regulated under Part 18 of the Commission's rules. Section 18.111(b) of the Commission’s rules states that “the operator of ISM equipment that causes harmful interference to any authorized radio service shall promptly take whatever steps may be necessary to eliminate the interference.” Similarly, Section 18.115(a) of the Commission’s rules states that the “operator of ISM equipment that causes harmful interference to radio services shall promptly take appropriate measures to correct the problem.” Section 18.107(b) of the Commission’s rules’ definition of harmful interference includes interference that “seriously degrades, obstructs or repeatedly interrupts a radio communication service operating in accordance with this chapter.” Section 18.115(c) of the Commission’s rules states that when “notified by the [Regional Director] that a particular installation is causing harmful interference, the operator or manufacturer shall arrange for an engineer skilled in techniques of interference measurement and control to make an investigation to ensure that the harmful interference has been eliminated.” Section 18.117(a) of the Commission’s rules states that an “interim report on investigation and corrective measures taken pursuant to § 18.115 of this part shall be filed with the Regional Director of the local FCC office within 30 days of notification of harmful interference. The final report shall be filed with the Regional Director within 60 days of notification.”

9. Based on the foregoing evidence, we find that Lithia has violated Sections 18.111(b) and 18.115(a) of the Commission’s rules by failing to promptly eliminate the interference.

⁵ Cellular Telephone Interference Report, Reference CTIX-1461779017. See EBATS Case No. EB-FIELDWR-16-00021955. CellCo Partnership, a wholly-owned subsidiary of Verizon, holds the license for WQJQ691, the C-Block (776-787 MHz) license in the area including Grand Forks, ND. See <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3060318>.

IV. REQUEST FOR INFORMATION

10. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, and 18.117(a) of the Commission's rules, Lithia is directed to provide this office within 30 days of the release of this Citation, with an interim report on the investigations and corrective measures it has taken to eliminate the harmful interference, as well as a timeline for any pending corrective actions. A final report shall be filed with the Regional Director within 60 days of the release date. A failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Lithia to additional sanctions.

V. FUTURE VIOLATIONS

11. If, after receipt of this Citation, Lithia again violates Section 18.111(b) or 18.115(a) of the Commission's rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$122,500 for any single act or failure to act.⁶ Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it. In addition, violations of the Communications Act or the Commission's rules also can result in seizure of equipment through in rem forfeiture actions, as well as criminal sanctions, including imprisonment.⁷

VI. OPPORTUNITY TO RESPOND TO THIS CITATION

12. In addition to the required written information described in paragraphs 4, 8, and 10, above, Lithia may, if it so chooses, respond to this Citation—challenging the factual and legal findings herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

13. If you would like to arrange a teleconference or personal interview, please contact Lark Hadley at (562) 860-7474. The nearest Commission Field Office is located in Denver, Colorado. Such teleconference or interview must take place within thirty calendar (30) days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 13, below.

14. All written communications, including the information requested in paragraphs 4, 8 and 10, above, should be sent to the addresses below.

Federal Communications Commission
Region Three
11331 183rd Street
PMB #365
Cerritos, California 90703
FIELD@FCC.GOV
Re: EB-FIELDWR-16-00021955

⁶ See 47 U.S.C. §§ 401, 501, 503; 47 CFR § 1.80(b)(7). This amount is subject to further adjustment for inflation and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

⁷ See 47 U.S.C. § 510.

15. Reasonable accommodations for people with disabilities are available upon request. If applicable, please include a description of the accommodation you will need, and include as much detail as possible. Also include a telephone number where we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

16. Please be advised that it is a violation of Section 1.17 of the Commission's rules.⁸ for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.

17. Further, the knowing and willful making of any false statement, or the concealment of any material fact, in reply to this Citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

18. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary forfeitures pursuant to Section 503 of the Communications Act.⁹

19. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

VII. ORDERING CLAUSES

20. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, Lithia must provide the written information requested in paragraphs 4, 8 and 10, above. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at Lithia with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

⁸ 47 C.F.R. § 1.17.

⁹ 47 U.S.C. § 503.

21. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Lithia Toyota of Grand Forks at 2473 32nd Ave S, Grand Forks, ND 58201.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley
Regional Director
Region Three
Enforcement Bureau