

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

In the Matter of)	
)	
)	File No. EB-06-SE-329
Domtar Industries, Inc.)	NAL/Acct No. 200732100006
)	FRN # 0008789893

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 28, 2006

Released: November 30, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture (“NAL”), we propose a forfeiture of fourteen thousand dollars (\$14,000) against Domtar Industries, Inc. (“Domtar”) for its operation of a Private Land Mobile Radio (“PLMR”) system without Commission authorization in apparent willful and repeated violation of Section 301 of the Communications Act of 1934 as amended (“Act”)¹ and Section 1.903(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. In filings with the Wireless Telecommunications Bureau (“WTB”),³ Domtar acknowledged that it has been operating a 900 MHz trunked radio communications system under call sign WPIQ461 without Commission authorization since August of 2001. Domtar explained that the license for WPIQ461 was previously held by Georgia Pacific Corporation (“GPC”), and used in conjunction with its paper mill operations in Ashdown, Arkansas.⁴ According to Domtar, it acquired the Ashdown paper mill from GPC on August 1, 2001, and although “the radio equipment and FCC licenses were not specifically listed as assets [to the transaction] ... the parties understood and agreed that all assets (both tangible and intangible) necessary for the continued operations of the paper mill” were being transferred.⁵ However, Domtar acknowledged that GPC’s Contract and Procurement Manager, responsible for the maintenance of FCC authorizations at the time, did not renew and did not transfer the license for WPIQ461 in accordance with Commission requirements.⁶

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

³ See Request for Waiver of the Freeze on 900 MHz Applications, File No. 0002364245 (filed October 31, 2005, pending) (“Waiver Request”); Request for Special Temporary Authority, File No. 0002324265 (filed September 22, 2005, amended October 26, 2005, dismissed October 27, 2005) (“STA Request”).

⁴ *Id.*

⁵ Waiver Request at 1; STA Request at 1.

⁶ *Id.*

3. Domtar sought Commission authorization to continue operating WPIQ461 by filing an application for special temporary authority, which was dismissed,⁷ and an involuntary pro forma assignment application, which was returned as unprocessable.⁸ Domtar also filed an application for a new license and a request for waiver of the current freeze on applications for new PLMR licenses in the 900 MHz frequency band, which are pending.⁹

4. Commission records reflect that GPC's license for WPIQ461 was granted on October 13, 1995, that the license was not renewed, and that the license expired on October 13, 2000. Commission records further reflect that GPC did not seek reinstatement of its license. Accordingly, GPC's authorization lapsed prior to Domtar's acquisition of the Ashdown paper mill.

5. The WTB referred this case to the Enforcement Bureau ("Bureau") for investigation and possible enforcement action. The Bureau's Spectrum Enforcement Division issued Domtar a letter of inquiry ("LOI") on September 8, 2006.¹⁰

6. In its response to the LOI, Domtar stated that it is in the business of operating paper mills, not communications concerns, and has "no expertise" in the Commission's licensing requirements.¹¹ Domtar further stated that it believed it had contracted for and was authorized to operate the PLMR system, that upon learning of the "problems associated with WPIQ461" in January 2005, it retained communications counsel and voluntarily disclosed to Commission staff that its operation violated Commission requirements, that it has sought authority to continue operating the PLMR system through its filings with the WTB, and that its efforts to come into compliance are continuing.¹² Domtar also stated that continued operation of the PLMR system "is critical to both emergency and daily operation of the paper mill"¹³ that occupies over 70 acres¹⁴ and employs approximately 1,245

⁷ See *supra* n. 3.

⁸ See Involuntary Pro Forma Assignment Application, File No. 0002665692 (filed June 22, 2006, returned as unprocessable June 29, 2006, because the assignment occurred in 2001 -- more than 30 days prior to the filing -- and thus required a waiver request).

⁹ See *supra* n. 3; see also *Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band*, Public Notice, 19 FCC Rcd 18277 n. 8 (WTB 2004), *recon. denied, Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 20 FCC Rcd 3814, 3836 ¶¶ 66-68 (2005), *comment period extended*, 20 FCC Rcd 8035 (2005) (instituting a freeze on new 900 MHz applications following the Commission's consolidation of the Business and Industrial Land Transportation Pools of PLMR licensees during the 800 MHz frequency band reconfiguration process designed to resolve interference to public safety communications).

¹⁰ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Stephen Harris, Domtar Industries, Inc. (September 8, 2006).

¹¹ See Letter from Tamara Davis-Brown, Counsel to Domtar Industries, Inc. to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 3, 2006) ("Response") at 2.

¹² Domtar added that it "anticipated that the FCC would act on its pending application (and the 900 MHz proceeding) shortly since the freeze on acceptance of new applications had been in effect since 2004" Response at 3. See *supra* n. 9 and accompanying text.

¹³ Response at 3.

¹⁴ Waiver Request at 2.

employees.¹⁵ Finally, Domtar stated that it “has a small, fiscally tight operating budget,” that its 900 MHz equipment “currently cannot technically operate at bands below 900 MHz,” and that it “does not have excess funds in which to invest in purchasing a new PLMRS system.”¹⁶

III. DISCUSSION

7. Under Section 503(b)(1)(B) of the Act and Section 1.80(a)(1) of the Rules, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹⁹

8. Section 301 of the Act and Section 1.903(a) of the Rules require that wireless stations be used and operated under a valid license granted by the Commission. Section 1.949(a) of the Rules requires that applications for renewal of wireless licenses be filed “no later than the expiration date” and “no sooner than 90 days prior to the expiration” of the authorization for which renewal is sought.²⁰ Absent a timely filed renewal application, a wireless license automatically terminates at the end of the authorization period.²¹ As stated previously, GPC did not file a renewal application for WPIQ461 and thus its license automatically terminated on October 13, 2000, before Domtar acquired the Ashdown paper mill.

9. Under Section 310(d) of the Act, no station license or underlying rights shall be transferred or assigned without application to the Commission and a finding by the Commission that the public interest, convenience, and necessity will be served by the grant of the application. GPC did not file an application with the Commission to assign WPIQ461 to Domtar. Indeed, had GPC filed an assignment application, it would have been dismissed because an expired authorization cannot be assigned or transferred.²² Unless and until the Commission grants an application for a new authorization

¹⁵*Id.* Citing 29 C.F.R. § 1910.165, Domtar asserted that the radio alert system is consistent and in compliance with the Occupational Safety and Health Administration (“OSHA”) regulations. *See* Letter from Tamara Davis-Brown, Counsel to Domtar Industries, Inc. to Ava Holly Berland, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 12, 2006).

¹⁶ Response at 3.

¹⁷ 47 U.S.C. § 503(b)(1)(B) and 47 C.F.R. § 1.80(a)(1).

¹⁸ *See* 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

¹⁹ *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

²⁰ 47 C.F.R. § 1.949(a).

²¹ *See* 47 C.F.R. § 1.955(a)(1).

²¹ 47 C.F.R. § 1.949(a).

²² *See James A. Kay, Jr.*, 16 FCC Rcd 20183 (WTB, Commercial Wireless Div., 2001), *rev. denied*, 18 FCC Rcd 7585, 7587 ¶ 5 (2003), *recon. dismissed*, 19 FCC Rcd 2938 (WTB, Mobility Div. 2004), *rev. dismissed*, 20 FCC Rcd 12228 (2005); *see also Peacock’s Radio and Wild’s Computer Service, Inc., 21st Century Wireless Group, Inc.*, 16 FCC Rcd 15016 (2001); *Robert D. Ryan*, 17 FCC Rcd 15530, 15532 ¶ 8 (WTB, Public Safety and Private Wireless Div., 2002).

or assignment of an existing authorization, a party, such as Domtar, has no legal rights or standing with respect to the station.²³

10. Based on the foregoing, we find, and Domtar acknowledges, that since August 2001 the company has operated and continues to operate PLMR system WPIQ461, in apparent willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules.

11. Under Section 503(b) of the Act²⁴ and Section 1.80(a) of the Rules,²⁵ any person who willfully or repeatedly violated provisions of the Act or the Rules shall be liable for a forfeiture penalty. In this context, “willful” means that the violator knew that it was taking the action, irrespective of any intent to violate the Commission’s requirements, and “repeated” means that the action occurred more than once.²⁶

12. Under Section 503(b)(2)(C) of the Act,²⁷ the Commission is authorized to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, by a non-common carrier or other entity not specifically designated in Section 503(b)(2), up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²⁸ Under Section 1.80(b)(4) of the Rules,²⁹ the Commission specifically established a base forfeiture amount of \$10,000 for operation of a station without Commission authorization.

13. In addition to the applicable statutory maximum forfeiture established for the violator and the base forfeiture amount established for the particular violation, Section 503(b)(2)(D) of the Act³⁰ directs us to consider factors, such as “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” in determining the appropriate forfeiture amount to assess. Having considered the above, and as explained below, we propose an adjusted forfeiture in the amount of \$14,000.

14. Specifically, we find that Domtar’s unauthorized operation of PLMR system WPIQ461 warrants a higher forfeiture than the \$10,000 base forfeiture amount because its violation has been repeated and continuous. Under Section 503(b)(6) of the Act,³¹ we are prohibited from assessing a

²³ See *Transit Mix Concrete and Material Company*, 16 FCC Rcd 15005, 15007 ¶ 5 (2001) (finding that a proposed assignee of a station authorization “has no legal right with regard to the station, including applying for a reinstatement or renewal of license,” until the Commission “acts favorably on an assignment application”).

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80(a).

²⁶ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

²⁷ 47 U.S.C. § 503(b)(2)(C).

²⁸ In 2004, the Commission amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500); see also 47 C.F.R. § 1.80(c).

²⁹ 47 C.F.R. § 1.80(b)(4).

³⁰ 47 U.S.C. § 503(b)(2)(D).

³¹ 47 U.S.C. § 503(b)(6).

forfeiture for a violation that occurred more than a year before the issuance of a NAL. Section 503(b)(6), however, does not bar us from considering Domtar's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.³² As required under Section 503(b)(6), our proposed forfeiture amount relates only to Domtar's unauthorized operations that have occurred within the past year, but as permitted it also takes into account Domtar's prior conduct. Given that Domtar's apparent violations spanned over a five-year period, we find it appropriate to upwardly adjust the \$10,000 base forfeiture amount to \$14,000.

15. We find that Domtar's voluntary disclosures to Commission staff and its efforts to come into compliance with Commission requirements do not entitle the company to any downward adjustment of the proposed \$14,000 forfeiture. Although Domtar's disclosures and compliance efforts preceded any Commission investigation or initiation of enforcement action, we find the company's actions were dilatory. As Domtar acknowledged, it learned of its violation in January 2005, but waited until September 2005 – approximately eight months – to notify Commission staff and seek authority to operate the station. Moreover, Domtar has continued to operate the system without authorization for more than a year since the WTB dismissed its STA request in October 2005. Under the circumstances, and consistent with precedent,³³ we find that no reduction of the proposed forfeiture for voluntary disclosure or good faith efforts to comply is warranted.

16. We also find that Domtar's unfamiliarity with Commission licensing requirements does not entitle the company to a downward adjustment.³⁴ It is well established that ignorance of or unfamiliarity with the Commission's requirements is not a mitigating factor and does not warrant a forfeiture reduction.³⁵ In addition, we find that Domtar's statement regarding its small fiscal operating budget does not entitle the company to any downward adjustment.

³² See *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9660, 9671 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967); *Bureau D' Electronique Applique, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

³³ See *Local Phone Services, Inc.*, 21 FCC Rcd 9974 ¶¶ 17-18 (2006) (finding that although a downward adjustment generally is appropriate where a violator makes voluntary disclosures prior to Commission investigation or enforcement action, such credit was unwarranted where the violator made no attempt to come into compliance until 12 months after disclosure); *Sutro Corporation*, 18 FCC Rcd 20529, 20531 ¶¶ 9-10, *forfeiture ordered* 19 FCC Rcd 15274, 15275-76 (2004) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator's attempts to come into compliance were dilatory and evidenced a lack of diligence); *American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after having various conversations with Commission staff regarding an STA and that a downward adjustment for good faith attempts to comply was unwarranted where the violator continued to operate the station without authorization after its STA request was denied).

³⁴ Although Domtar claims to be unfamiliar with Commission licensing requirements, Commission records reflect that, prior to notifying Commission staff and submitting filings regarding WPIQ461, the company had filed a notification of consummation regarding the assignment of other PLMR stations from GPC on May 12, 2003. See File No. 0001315677. Commission records further reflect that Domtar filed a renewal application for one of those acquired GPC stations on March 24, 2005. See File No. 0002097930.

³⁵ See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4387 ¶ 3; see also *San Jose Navigation, Inc.*, 21 FCC Rcd 2873, 2877 ¶ 16 (2006), *response pending*; *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993), *cancelled on other grounds*, 12 FCC Rcd 14999 (1997); *Bureau D' Electronique Applique, Inc.*, 20 FCC Rcd at 17897 ¶ 12; *Michael S. Selvanto*, 19 FCC Rcd 15337, 38-39 ¶ 9 (Enf. Bur. 2004).

IV. CONCLUSION

17. We find that Domtar apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating PLMR system WPIQ461 without Commission authorization. For its violations, we propose a \$14,000 forfeiture.

V. ORDERING CLAUSES

18. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Domtar Industries, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$14,000 for willful and repeated violations of Section 301 of the Act and Section 1.903(a) of the Rules.

19. **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, Domtar Industries, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

20. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁶ 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 FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁷

21. 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.

22. 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 principles; 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.³⁸

23. **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 Stephen Harris,

³⁶ 47 U.S.C. § 504(a).

³⁷ See 47 C.F.R. § 1.1914.

³⁸ *Id.*

Domtar Industries, Inc., 285 Highway 71 South, Ashdown, Arkansas, and to Tamara Davis-Brown, Esq.,
Lukas, Nace, Gutierrez & Sachs, 1650 Tysons Blvd., Suite 1500, McLean, Virginia 22102.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau