

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

In the Matter of)	
)	File No. EB-07-SE-061
Microwave Radio Communications LLC)	NAL/Acct. No. 200832100003
N. Billerica, MA)	FRN # 0004267712

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 24, 2007

Released: October 26, 2007

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find Microwave Radio Communications LLC ("MRC") apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),¹ and Sections 2.803(a)(1)² and 90.203³ of the Commission's Rules ("Rules"). The noted apparent violations involve the marketing of uncertified 4.9 GHz aeronautical transmitting equipment ("4.9 GHz equipment").

II. BACKGROUND

2. On January 10, 2007, the Commission's Office of Engineering and Technology ("OET") sent a letter to MRC in response to allegations that it may be manufacturing and marketing uncertified 4.9 GHz equipment.⁴ In its response to OET's letter, MRC acknowledged that it failed to obtain a grant of certification prior to marketing the 4.9 GHz equipment.⁵ MRC stated that after receiving OET's letter, it immediately removed the marketing information from its website and ceased marketing until the equipment was certified.⁶ OET referred this matter to the Spectrum Enforcement Division ("Division")

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ 47 C.F.R. § 90.203. Section 90.203 provides that transmitters utilized for operation in the private land mobile radio services must be certificated.

⁴ Letter from Ray LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology, to Microwave Radio Communications LLC (January 10, 2007).

⁵ Letter from Rollin W. Hughes, Product Line Manager, Public Sector, Microwave Radio Communications LLC, to Ray LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology (April 11, 2007).

⁶ A grant of equipment certification was issued on April 3, 2007 under FCC ID FC3STATXU044T1AK.

of the Enforcement Bureau for investigation.

3. On July 25, 2007, the Division issued a Letter of Inquiry ("LOI") to MRC.⁷ In its LOI response, MRC indicated that it began manufacturing and marketing the 4.9 GHz equipment in early 2004.⁸ MRC also acknowledged that it marketed the equipment prior to receiving a grant of certification.

III. DISCUSSION

4. 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)(1) of the Commission's implementing regulations provides in pertinent part 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 radiofrequency device⁹ unless ... [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.

In addition, Section 90.203 of the Rules provides in pertinent part that "... each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of this chapter must be of a type which has been certificated for use under this part."¹⁰

5. MRC acknowledges that it manufactured and marketed aeronautical transmitting equipment that operates in the 4.9 GHz band between early 2004 and early 2007, when it received OET's letter. MRC also admits that it did not receive a grant of certification for this equipment until to April 3, 2007. Therefore, we find that MRC apparently willfully¹¹ and repeatedly¹² violated Section 302(b) of the

⁷ Letter from Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mr. Anthony Finizio, President, Microwave Radio Communications LLC (July 25, 2007).

⁸ Letter from Mr. Anthony Finizio, President, Microwave Radio Communications LLC, to Celia Lewis, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 27, 2007). Pursuant to Section 0.459 of the Rules, 47 C.F.R. § 0.459, MRC requested confidentiality of certain information in its response concerning the number of units of the device that were distributed and the entities to whom the devices were distributed, asserting that this information constitutes commercial information and trade secrets and that release of this information could cause substantial competitive harm. We grant MRC's request and accord this information confidential treatment.

⁹ 47 C.F.R. § 2.801 defines a radiofrequency device as "any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means."

¹⁰ Although Section 90.1205(c) of the Rules, 47 C.F.R. § 90.1205(c), prohibits aeronautical operation in the 4.9 GHz band, the Wireless Telecommunications Bureau has granted waivers to licensees to use this band for aeronautical use subject to certain conditions. *See e.g.*, File No. 0003100761 (granted November 4, 2003).

¹¹ The term "willful," as used in Section 503(b) of the Act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission's Rules. 47 U.S.C. § 312(f)(1).

¹² A violation is "repeated" within the meaning of Section 503(b) of the Act if it occurs more than once or continues for more than one day. 47 U.S.C. § 312(f)(2).

Act and Sections 2.803(a)(1) and 90.203 of the Rules by marketing 4.9 GHz aeronautical transmitting equipment prior to obtaining certification.

6. Section 503(b)(1) of the Act and Section 1.80(a)(1) of the Rules authorize 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.¹³ In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act 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.”¹⁴

7. Under Section 1.80 of the Rules, the Commission has established a base forfeiture amount of \$7,000 for the marketing of unauthorized equipment.¹⁵ In this case, we note that MRC marketed one model of uncertified 4.9 GHz aeronautical transmitting equipment. We, therefore, find it appropriate and consistent with precedent to propose a forfeiture of \$7,000 for MRC’s marketing of uncertified equipment.¹⁶

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act¹⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁸ Microwave Radio Communications LLC **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Sections 2.803(a)(1) and 90.203 of the Rules.

9. **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*, Microwave Radio Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. 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/LB358340, 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.

¹³ 47 U.S.C. § 503(b)(1); 47 C.F.R. § 1.80(a)(1).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ See e.g., *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28 ¶ 21 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (imposing a base forfeiture of \$7,000 for each model of equipment marketed without authorization).

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

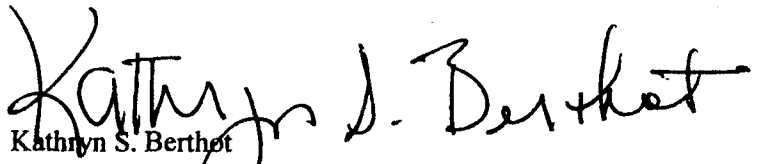
11. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

12. 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 practices; 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.

13. Requests for payment of the full amount of this *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. 20554.¹⁹

14. **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 Mr. Anthony Finizio, President, Microwave Radio Communications LLC, 101 Billerica Avenue, Bldg. 6, N. Billerica, MA 01862-1256.

FEDERAL COMMUNICATIONS COMMISSION


Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.