

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

In the Matter of)
)
Global Microwave Systems, Inc.) File No. EB-07-SE-060
)

MEMORANDUM OPINION AND ORDER

Adopted: March 6, 2008

Released: March 7, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we admonish Global Microwave Systems, Inc. (“GMS”) for marketing in the United States unauthorized radio frequency devices, specifically, uncertified 4.9 GHz aeronautical transmitting equipment (“4.9 GHz equipment”), in violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a)(1) and 90.203 of the Commission’s rules (“rules”).²

II. BACKGROUND

2. GMS manufactures and markets microwave radio systems and other devices. On January 10, 2007, the Commission’s Office of Engineering and Technology (“OET”) sent a letter to GMS in response to allegations that it may be manufacturing and marketing uncertified 4.9 GHz equipment.³ In its response to OET’s letter, GMS acknowledged that it sold a 4.9 GHz band device to a municipality to be used for aerial video coverage.⁴ OET referred this matter to the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau for investigation. In August 2007, the Division issued a letter of inquiry (“LOI”) to GMS.⁵ On September 5, 2007, GMS submitted a response to the LOI acknowledging that it had sold one microwave radio system for use in an aeronautical application capable of operation in the 4.9 GHz band.⁶ Specifically, GMS stated that it had sold one microwave radio system to a municipality in December 2005, after receiving verification from the municipality that it had obtained a license authorizing its aeronautical operation in the 4.9 GHz band. GMS admitted that its product was not

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a)(1), 90.203.

³ Letter from Ray LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology, to Global Microwave Systems, Inc. (January 10, 2007).

⁴ Letter from Sam Nasiri, President, Global Microwave Systems, Inc, to Ray LaForge, Chief, Auditing and Compliance Branch, Office of Engineering and Technology (February 6, 2007).

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Sam Nasiri, President, Global Microwave Systems, Inc. (August 7, 2007) (“LOI”).

⁶ See Letter from Sam Nasiri, President, to Brett Greenwalt, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 5, 2007), at 1 (“LOI Response”).

authorized in accordance with the Commission's certification process.

III. DISCUSSION

3. 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 rules provides that:

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 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.”⁷

4. GMS admitted that its microwave radio system is not certified for use in an aeronautical application in the 4.9 GHz band.⁸ GMS also admitted that it sold one of these systems in December 2005.⁹ Although GMS asserts that the municipality told GMS that it had a license authorizing its aeronautical operation in the 4.9 GHz band,¹⁰ the fact that it believed that the municipality had a license to operate the equipment does not obviate the need for GMS to obtain an equipment certification prior to marketing the equipment. As noted above, Section 90.203 provides that each transmitter utilized for licensed Part 90 operations must be certified. Accordingly, it appears that GMS has violated Section 302(b) of the Act and Sections 2.803(a)(1) and 90.203 of the rules by marketing uncertified 4.9 GHz equipment.

5. Although we believe that a monetary forfeiture would be warranted for this violation, there is no evidence in the record that GMS marketed these devices after 2005. The statute of limitations for issuing a Notice of Apparent Liability for Forfeiture in this case is one year from the date of violation.¹¹ Accordingly, based upon our review of the facts and circumstances in this case, and because we are barred by the one-year statute of limitations from issuing a Notice of Apparent Liability for Forfeiture, we admonish GMS for marketing uncertified equipment in violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 90.203 of the rules. Finally, we caution GMS that future violations may result in additional enforcement action, including monetary forfeitures.

⁷ 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).

⁸LOI response at 1.

⁹ *Id.*

¹⁰ GMS indicated that it subsequently learned that the municipality is not using the system because it was not able to obtain a license to operate in the 4.9 GHz band. *Id.*

¹¹ *See* 47 U.S.C. § 503(b)(6); 47 C.F.R. § 1.80(c)(3).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that Global Microwave Systems, Inc. **IS ADMONISHED** for marketing uncertified radio frequency devices in violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 90.203 of the Rules.

7. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order* shall be sent by Certified Mail, Return Receipt Requested, to Sam Nasiri, President, Global Microwave Systems, Inc., 1916 Palomar Oaks Way Suit 100, Carlsbad, CA 92008-5523.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau