

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

In the Matter of)) HST Kierland LLC,) dba Westin Kierland Resort & Spa,) Kierland Golf Club, Starwood Vacation Ownership) Arizona Management) Licensee of WPPF349 and WQGX784) Scottsdale, Arizona)))))	File Number: EB-08-SD-0145 NAL/Acct. No: 200932940001 FRN: 0017995077
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FORFEITURE ORDER

Adopted: December 8, 2009

Released: December 10, 2009

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand, eight hundred dollars (\$12,800) to HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management (collectively “Westin”), the licensee of private land mobile stations WPPF349 and WQGX784 in Scottsdale, Arizona, for willful and repeated violation of Section 1.903(a) of the Commission's Rules (“Rules”).¹ On December 11, 2008, the Enforcement Bureau’s San Diego Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$16,000 to Westin for operating mobile relay stations on unauthorized frequencies. In this *Order*, we consider Westin’s arguments that the proposed forfeiture amount should be reduced because of its good faith efforts to comply with the rules and its history of compliance with the Rules.

II. BACKGROUND

2. On April 25, 2008, the San Diego Office received a complaint from a General Mobile Radio Services (“GMRS”) licensee that a business was operating on the Family Radio Service (“FRS”) frequency 462.6125 MHz and dispatching shuttle vans for a hotel in the Phoenix area, and that business was the Westin Kierland Resort & Spa in Scottsdale, Arizona. Under Section 95.5(a) of the Rules, only individuals and their immediate family are now eligible to be authorized on frequency 462.6125 MHz.² Businesses may continue to operate a GMRS system if they were first authorized before July 31, 1987, as outlined under Section 95.5(c) of the Rules.³

¹ 47 C.F.R. § 1.903(a).

² 47 C.F.R. § 95.5(a).

³ 47 C.F.R. § 95.5(c).

3. On June 6, 2008, agents from the San Diego Office were in the Scottsdale, Arizona, area and determined that the signal on frequency 462.6125 MHz was originating from Westin Kierland Resort & Spa at 6902 East Greenway Parkway, Scottsdale, Arizona. The agents determined that 467.6125 MHz and 462.6125 MHz were a repeater pair, with 462.6125 MHz as the repeater output frequency and 467.6125 MHz as the repeater input frequency. Frequency 467.6125 MHz is available only in the FRS pursuant to Section 95.627 of the Rules.⁴

4. On June 8, 2008, a San Diego agent researched FCC databases and determined that Westin was not authorized to operate a radio station on either frequencies of 462.6125 MHz or 467.6125 MHz. The agents returned to the Westin Kierland Resort & Spa at 6902 East Greenway Parkway, Scottsdale, Arizona. The agents again determined that frequencies 467.6125 MHz and 462.6125 MHz were again in use by the hotel complex.

5. On June 9, 2008, the FCC agents returned to the Westin Kierland Resort & Spa and conducted an inspection of the private land mobile radio facilities found at that location. The staff at the Westin Kierland Resort & Spa showed the agents four mobile relay repeater stations that were used at the location, on the following frequency pairs: 461.5125/466.5125 MHz, 462.6125/467.5125 MHz, 463.5125/468.5125 MHz, and 464.8750/469.8750MHz. Equipment found operating on frequency 467.6125 MHz was not FCC certified for FRS and had attached an external antenna which voids both FCC certification of the transmitter and the authority to use this frequency, as outlined under Sections 95.194(b) and 95.194(c) of the Rules.⁵

6. On July 24, 2008, the San Diego Office issued a Letter of Inquiry (“LOI”) to Westin asking if Westin had an FCC authorization for the any of the eight frequencies in use during the inspection on June 9, 2008: 461.5125 MHz, 462.6125 MHz, 463.5125 MHz, 464.875 MHz, 466.5125 MHz, 467.6125 MHz, 468.5125 MHz, and 469.875 MHz. The LOI also asked for information concerning any other FCC licenses that Westin might hold at the Scottsdale facility.

7. On August 5, 2008, Westin responded to the LOI and acknowledged that it was operating on the frequencies listed by the San Diego Office. Westin stated that it did not hold a current or expired license for any of the eight frequencies listed in the LOI. Westin further stated that the “four (4) repeaters used at the Resort are intended to support segregated radio communications within and around our property, serving the Security, Engineering, Housekeeping, Stewarding and Guest Services departments.” Westin also stated that it did not hold any other licenses under its name, however, “the affiliated, but separate, entities of the Kierland Golf Club (WPPF349) and Starwood Vacation Ownership (SVO) Arizona Management (d/b/a Kierland Villas, WQGX784) are indeed licensed.” A review of those licenses revealed that none of the frequency pairs utilized by the four mobile relay stations in operation at the Westin Kierland Resort & Spa were authorized by either license.⁶

⁴ 47 C.F.R. § 95.627.

⁵ 47 C.F.R. § 95.194(b) & (c).

⁶ On August 1, 2008, subsequent to the investigation by the San Diego Office, and the receipt of the LOI, Westin was granted a special temporary authority (“STA), call sign WQJD615, from the Commission, to operate on 461.5125 MHz, 463.5125 MHz, 464.875 MHz, 466.5125 MHz, 468.5125 MHz, and 469.875 MHz, as well as other frequencies, on a secondary non-interference basis. On November 10, 2008, the Commission granted Westin a license, call sign WQJN623, for operation on those frequencies.

8. On December 11, 2008, the San Diego Office issued a *NAL* in the amount of \$16,000 to Westin.⁷ In the *NAL*, the San Diego Office found that Westin apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating mobile relay stations on unauthorized frequencies.⁸ Westin filed a response (“*Response*”) to the *NAL* on January 22, 2009.⁹ In its *Response*, Westin argues that the proposed forfeiture amount should be reduced because of its good faith efforts to comply with the Rules and its history of compliance with the Rules.

III. DISCUSSION

9 The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹² In examining the *Response*, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.¹³

10. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. On June 6, 8, and 9, 2008, San Diego agents determined that Westin was operating mobile units on the frequency 467.6125 MHz and a mobile relay station on the frequency 462.6125 MHz without a license authorizing use of those frequencies. Westin acknowledged to the San Diego Office that it was operating on those frequencies, as well as three other frequency pairs on four land mobile stations, even though those frequencies were not authorized by the licenses used by Westin and its affiliates.

11. Westin argue that the forfeiture amount in this case should be reduced because of Westin’s good faith efforts to comply with the Rules by relying on a consultant that it had retained expressly for its expertise in the area of establishing a radio communications program in compliance with all applicable law and regulations. Reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,¹⁴ or that they had established compliance programs in place,¹⁵ prior to the Commission’s involvement. We find that Westin’s efforts concerning attempted compliance, by hiring a consultant to work with them to install their radio system does not rise to the level of a compliance plan, and we find that Westin made no

⁷ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932940001 (Enf. Bur., Western Region, San Diego Office, released December 11, 2008).

⁸ 47 C.F.R. § 1.903(a).

⁹ Westin requested, and received, an extension of time to respond to the *NAL*, from the San Diego Office.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ *See Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹⁵ *See Tidewater Communications, Inc.*, 18 FCC Rcd 5524, 5525 (EB 2003).

effort to correct the violations until notified by the Commission.¹⁶ Therefore, we see no basis for a good faith reduction.

12. We also see no basis for reduction of the forfeiture amount based on the fact that the hired consultant ultimately failed to ensure compliance with Rules. The Commission has long held that “licensees are responsible for the acts and omission of their employees and independent contractors,”¹⁷ and has consistently “refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations.”¹⁸ Westin also states that a new consultant, hired after the inspection by the San Diego agents, effectively assisted Westin in getting into full compliance. We note that this does not provide a basis for a downward adjustment in the proposed forfeiture, as the Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee’s attention and that such correction is not grounds for a downward adjustment in the forfeiture.¹⁹

13. Westin also argues that it has a history of compliance with the Rules. We have reviewed our records and we agree. We therefore reduce the proposed forfeiture to \$12,800.

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Westin willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$12,800 is warranted.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$12,800 for willfully and repeatedly violating Sections 1.903(a) of the Rules.²⁰

16. 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.²¹ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

¹⁶ We note that information provided to the Commission by the complainant in April 2008 indicated that the unauthorized operations on 462.6125 MHz and 467.6125 MHz had previously been brought to the attention of Westin by a private sector FCC licensee.

¹⁷ *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (“*Eure*”); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972); *see also*, *Rama Communications, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 18209, 18211 (EB 2008) (“[W]here lapses in compliance occur, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee’s rule violation.”)

¹⁸ *See Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

¹⁹ *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002); *see supra Rama Communications, Inc.*

²⁰ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

²¹ 47 U.S.C. § 504(a).

Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau