

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

In the Matter of )
Bryn Mawr Hospital ) File No.: EB-11-PA-0237
Licensee of Stations WPUT970 and WQCB705 ) NAL/Acct. No.: 201232400009
Bryn Mawr, Pennsylvania ) FRN: 0021972740

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: September 11, 2012

Released: September 11, 2012

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Bryn Mawr Hospital, licensee of Private Land Mobile Stations WPUT970 and WQCB705 in Bryn Mawr, Pennsylvania, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),1 and Sections 1.903(a) and (b) of the Commission’s rules (Rules)2 by operating radio transmitting equipment on unauthorized frequencies. We conclude that Bryn Mawr Hospital is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000). We further direct Bryn Mawr Hospital to submit a written statement signed under penalty of perjury, within thirty (30) calendar days from release of this NAL, stating that it is now operating its radio transmission equipment consistent with Section 301 of the Act and Sections 1.903(a) and (b) of the Commission’s rules.

II. BACKGROUND

2. On October 12, 2011, agents from the Enforcement Bureau’s Philadelphia Office conducted an inspection of Bryn Mawr Hospital’s radio transmitting equipment with several hospital staff members, including the security director and the maintenance director. During the inspection, the agents determined that the hospital’s security department was operating handheld radios on the frequency 469.4875 MHz. The agents also inspected the security department’s repeater station located in the equipment room on the top floor of the hospital and determined that the repeater was operating on the frequency pair 464.4875 MHz/469.4875 MHz. Bryn Mawr Hospital staff provided the agents copies of licenses it holds for two private land mobile stations—WPUT970 and WQCB705.

3. After conducting the inspection on October 12, 2011, the agents searched the Commission’s records and confirmed that Bryn Mawr Hospital holds licenses for Private Land Mobile Stations WPUT970 and WQCB705, which authorizes them to use handheld radios on specific authorized frequencies.3 The records also reflect, however, that the licenses do not include authorization to operate handheld radios on frequency 469.4875, nor repeater stations on 464.4875.

1 47 U.S.C. § 301.

2 47 C.F.R. § 1.903(a) & (b).

3 The Commission’s records show that Bryn Mawr Hospital is authorized under the license for Station WPUT970 to operate mobile radios on the frequencies 457.3125 MHz, 457.7625 MHz, 461.9875 MHz, 464.4875 MHz, 467.2125 (continued....)

4. On October 13, 2011, one of the agents conducted a follow-up inspection of Bryn Mawr Hospital's radio transmission equipment with the maintenance director. The agent confirmed that Bryn Mawr Hospital was still operating handheld radios on unauthorized frequencies. The agent performed a test with the handheld radios and verified that the handheld radios, indeed, were still transmitting on 469.4875 MHz and activating the security department's repeater station on the frequency 464.4875 MHz, also an unauthorized frequency.

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>4</sup> Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>5</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>6</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>7</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>8</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>9</sup>

#### A. Operation on Unauthorized Frequencies

6. The record evidence in this case establishes that Bryn Mawr Hospital operated radio transmitting equipment on two frequencies for which it was not authorized. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license

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MHz, 467.2625 MHz, 467.2875 MHz, 467.3625 MHz, and a repeater station on the frequency pair 461.9875 MHz/466.9875 MHz. The records also show that the license for Station WQCB705 authorizes Bryn Mawr Hospital to operate mobile radios on the frequencies 452.1875 MHz and 451.4875 MHz, a mobile interconnect on the frequency 457.6875, and three repeater stations on the frequency pairs 451.6875 MHz/456.6875 MHz, 452.1875 MHz/457.1875 MHz, and 451.4875 MHz/ 456.4875 MHz.

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 U.S.C. § 312(f)(1).

<sup>6</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) . . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms . . . .").

<sup>7</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

<sup>8</sup> See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

<sup>9</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

issued by the Commission.<sup>10</sup> Section 1.903(a) of the Rules requires that stations in the Wireless Radio Service must be used and operated only in accordance with the rule applicable to their particular service and with a valid authorization granted by the Commission.<sup>11</sup> In addition, Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.<sup>12</sup> During inspections on October 12, 2011 and October 13, 2011, agents found that Bryn Mawr Hospital was operating handheld radios on the frequency 469.4875 MHz and a repeater system on the frequency pair 464.4875 MHz/469.4875 MHz. Bryn Mawr Hospital violated the foregoing sections of the Act and Rules because its FCC licenses for Private Land Mobile Stations WPUT970 and WQCB705 do not authorize operation of handheld radios on the frequency 469.4875 MHz or a repeater system on the frequency pair 464.4875 MHz/469.4875 MHz. Therefore, based on the evidence before us, we find that Bryn Mawr Hospital apparently willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and (b) of the Rules by operating radio transmitting equipment on unauthorized frequencies.

### B. Proposed Forfeiture Amount and Reporting Requirement

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating on an unauthorized frequency is \$4,000.<sup>13</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.<sup>14</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Bryn Mawr Hospital is apparently liable for a forfeiture of \$4,000 for each of the unauthorized frequencies on which it operated, for a total of \$8,000.

8. In addition, we direct Bryn Mawr Hospital to submit a statement, pursuant to Section 1.16 of the Rules,<sup>15</sup> signed under penalty of perjury by an officer or director of Bryn Mawr Hospital, stating that its operation of radio transmission equipment complies with Section 301 of the Act and Sections 1.903(a) and (b) of the Rules. This statement must be provided to the Philadelphia Office at the address listed in paragraph 13, below, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

## IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Bryn Mawr Hospital is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 301 of the Act and Sections 1.903(a) and (b) of the Commission's rules.<sup>16</sup>

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<sup>10</sup> 47 U.S.C. § 301.

<sup>11</sup> 47 C.F.R. § 1.903(a).

<sup>12</sup> 47 C.F.R. § 1.903(b).

<sup>13</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> 47 C.F.R. § 1.16.

<sup>16</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 1.903(a) & (b).

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Bryn Mawr Hospital **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Bryn Mawr Hospital **SHALL SUBMIT** a sworn statement as described in paragraph 8 to the Enforcement Bureau Office listed in paragraph 13 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Bryn Mawr Hospital shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov). Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>17</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.<sup>18</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047. Bryn Mawr Hospital also shall e-mail the written response to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

14. 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 (GAAP); 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.

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<sup>17</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>18</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Bryn Mawr Hospital at 130 South Bryn Mawr Avenue, Bryn Mawr, Pennsylvania 19010.

FEDERAL COMMUNICATIONS COMMISSION

David Dombrowski  
District Director  
Philadelphia District Office  
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