

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

In the Matter of )
Aramark ) File No.: EB-11-PA-0234
Licensee of Station WQFC968 ) NAL/Acct. No.: 201232400006
Wynnewood, Pennsylvania ) FRN: 0021232905

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 4, 2012

Released: June 4, 2012

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Aramark, licensee of Private Land Mobile Station WQFC968 in Wynnewood, Pennsylvania, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission's rules (Rules) by operating radio transmitting equipment on unauthorized frequencies. We conclude that Aramark is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On October 4, 2011, agents in the Enforcement Bureau's Philadelphia Office monitored radio transmissions on the frequency 469.9875 MHz and, using direction finding techniques, determined that the source of the transmissions on 469.9875 MHz was located at Bryn Mawr Hospital, 130 South Bryn Mawr Avenue, Bryn Mawr, Pennsylvania. The agents also monitored an associated repeater station operating on the frequency 464.9875 MHz and heard the repeater station transmit the call sign WQFC968. The source of the transmissions on 464.9875 MHz, however, was not located at Bryn Mawr Hospital.

3. After conducting the monitoring on October 4, 2011, agents searched the FCC database and determined that Aramark held the license for Private Land Mobile Station WQFC968, which authorized operation at nearby Lankenau Hospital. The license, however, did not authorize operation on the frequencies 464.9875 MHz and 469.9875 MHz.

1 47 U.S.C. § 301.

2 47 C.F.R. § 1.903(a).

3 The agents were monitoring 469.9875 MHz as part of an unrelated investigation involving alleged interference to the United States Coast Guard (USCG) in the Bryn Mawr, Pennsylvania area.

4 At the time of the inspection, the license for Station WQFC968 authorized Aramark to operate three repeater systems on the frequency pairs 463.9625 MHz/468.9625 MHz, 464.9625 MHz/469.9625 MHz, and 464.5875 MHz/469.5875 MHz and control stations on the frequencies 468.9625 MHz, 469.9625 MHz and 469.5875 MHz at the Lankenau Hospital, 100 East Lancaster Avenue, Wynnewood, Pennsylvania.

4. On October 6, 2011, agents returned to the Bryn Mawr, Pennsylvania area to locate the source of the transmissions on the frequency 464.9875 MHz. Using direction finding techniques, the agents determined that the repeater station operating on 464.9875 MHz was located at Lankenau Hospital, 100 East Lancaster Avenue, Wynnewood, Pennsylvania. The agents also monitored radio transmissions on the frequency 469.9875 MHz in the Wynnewood, Pennsylvania area and used direction finding techniques to confirm that the source was located at Lankenau Hospital.

5. After conducting the monitoring on October 6, 2011, the agents conducted an inspection of the radio transmitting equipment at Lankenau Hospital and found that Aramark was operating handheld radios on the frequency 469.9875 MHz and a repeater station on the frequency 464.9875 MHz. Aramark reported that it was contracted to provide transportation services at Lankenau Hospital and Bryn Mawr Hospital and used the repeater system so that its employees in the transportation departments at each hospital could communicate with each other. On October 6, 2011, agents also inspected the handheld radios that the valet department operated at Lankenau Hospital and found that the handheld radios transmitted on the frequency 155.355 MHz. Aramark stated that it is contracted to provide valet services at Lankenau Hospital and was using 155.355 MHz as the input frequency to a repeater station that was located at Lankenau Hospital.

6. On October 12, 2011, agents conducted an inspection of the radio transmitting equipment at Bryn Mawr Hospital and found that Aramark was operating a control station on the frequency 469.9875 MHz. Aramark stated that it installed the 469.9875 MHz control station at Bryn Mawr Hospital so that its employees in the transportation department at Bryn Mawr Hospital could communicate with the employees in the transportation department at Lankenau Hospital.

7. At the time of the inspections on October 6, 2011, and October 12, 2011, Aramark could provide no evidence that it was authorized to operate any radio transmitting equipment on the frequencies 464.9875 MHz, 469.9875 MHz, or 155.355 MHz. In an e-mail dated October 18, 2011, a representative from Comlink, Aramark's radio communications service company, reported that the repeater system installed at Lankenau Hospital and operated by Aramark's transportation department should have been operating on the frequency pair 464.9625 MHz and 469.9625 MHz instead of the frequency pair 464.9875 MHz and 469.9875 MHz.<sup>5</sup> The Comlink representative further reported that Aramark is now operating on the authorized frequency pair. In an e-mail dated December 6, 2011, the Comlink representative acknowledged that Aramark's valet department was operating on the unauthorized frequency 155.355 MHz.<sup>6</sup> On February 9, 2012, agents conducted a follow-up inspection and confirmed that Aramark is operating only on authorized frequencies.

### III. DISCUSSION

8. Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>7</sup> 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. 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>8</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>9</sup> and the Commission has so

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<sup>5</sup> Copy of e-mail on file in EB-11-PA-0234.

<sup>6</sup> Copy of e-mail on file in EB-11-PA-0234.

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 U.S.C. § 312(f)(1).

interpreted the term in the Section 503(b) context.<sup>10</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>11</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>12</sup>

#### A. Operation on Unauthorized Frequencies

9. 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 issued by the Commission.<sup>13</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 rules applicable to their particular service and with a valid authorization granted by the Commission.<sup>14</sup> As detailed above, agents found that Aramark operated (1) a repeater system on the unauthorized frequency pair 464.9875 MHz/469.9875 MHz at Lankenau Hospital; (2) a control station on the unauthorized frequency 469.9875 MHz at Bryn Mawr Hospital; and (3) handheld radios at Lankenau Hospital on the unauthorized frequency 155.355 MHz. A representative from Comlink, Aramark’s radio communications service company, confirmed that Aramark did not have authority to operate on any of these frequencies under its license for Station WQFC968 or under any other license. Based on the evidence before us, we find that Aramark apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating radio transmitting equipment on unauthorized frequencies.

#### B. Proposed Forfeiture Amount

10. 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>15</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>16</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules,

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<sup>9</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>10</sup> See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>11</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>12</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.

<sup>13</sup> 47 U.S.C. § 301.

<sup>14</sup> 47 C.F.R. § 1.903(a).

<sup>15</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*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E).

and the statutory factors to the instant case, we conclude that Aramark is apparently liable for a forfeiture of \$4,000 for each of the unauthorized frequencies on which it operated, for a total forfeiture of \$12,000.

#### IV. ORDERING CLAUSES

11. 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, Aramark is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Section 301 of the Act and Section 1.903(a) of the Commission's rules.<sup>17</sup>

12. **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, Aramark **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the 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. Regardless of the form of payment, 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.<sup>18</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or E-mail: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Aramark shall send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

14. 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>19</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. Aramark also shall e-mail the written response to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

15. 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> 47 U.S.C. §§ 503(b), 301; 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 1.903(a).

<sup>18</sup> See 47 C.F.R. § 1.1914.

<sup>19</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Aramark at 1101 Market Street, Philadelphia, Pennsylvania 19107.

FEDERAL COMMUNICATIONS COMMISSION

Kevin Doyle  
Acting District Director  
Philadelphia District Office  
Northeast Region  
Enforcement Bureau