

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

In the Matter of)
Trimont Land Company, d/b/a Northstar-at-Tahoe) File No.: EB-FIELDWR-16-00022574
Truckee, California) NAL/Acct. No.: 201632960002
) FRN: 0001542091
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NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 28, 2016

Released: September 29, 2016

By the Regional Director, Region Three, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$10,000 against Trimont Land Company, d/b/a Northstar-at-Tahoe (Trimont) for apparently willfully and repeatedly operating radio transmission equipment without a license on 156.800 MHz, an internationally recognized distress, safety and calling channel that functions as a "maritime 911" channel. Commission action in this area is essential because the improper use of 156.800 MHz hinders the ability of the U.S. Coast Guard (USCG) to monitor the channel for distress signals and to respond to vessels in distress.

II. BACKGROUND

2. On June 21, 2016, the Commission's Operations Center received a complaint from the USCG that an unknown operator in the vicinity of Lake Tahoe, Nevada/California was intermittently transmitting digital signals on 156.800 MHz in a manner that impaired the USCG's ability to monitor Lake Tahoe for distress signals. On the following two days, different agents from the San Francisco Field Office (San Francisco Office) traveled to Lake Tahoe to investigate. Although both agents observed the transmissions identified in the USCG's complaint, neither was able to locate the source of the transmissions at that time.

3. Agents from the San Francisco Office returned to Lake Tahoe on June 28, 2016, to resume their search for the source of intermittent transmissions on 156.800 MHz. Using direction finding techniques, agents took measurements of the signal at various locations around Lake Tahoe and, over the course of several days, narrowed their search by eliminating the possibility that the signal might be emanating from the vicinity of the lake and thus turned to the mountain peaks immediately north of Lake Tahoe as the possible location of the source.

4. On July 1, 2016, an agent determined that the source of the unauthorized transmissions on 156.800 MHz was likely located on Mt. Pluto, a peak situated north of Lake Tahoe and south of Truckee, California. The agent contacted various employees of the Northstar Ski Resort to gain access to Mt. Pluto and inquired whether any had recently installed radio equipment that operated on frequencies proximate to 156.800 MHz. The agent eventually learned that on June 21, 2016, Trimont installed a supervisory control and data acquisition (SCADA) system on a pump and water tank system at the summit of Mt. Pluto.

5. Accompanied by a Trimont employee, the agent from the San Francisco Office and a USCG Auxiliariast ascended Mt. Pluto to inspect Trimont's SCADA system. A Trimont employee provided the agent with access to the SCADA system's transmitter, and the agent, using a spectrum analyzer, confirmed that the system was transmitting on 156.800 MHz. At the agent's request, the Trimont employee turned off the SCADA system's transmitter, whereupon the USCG confirmed that the interfering transmission on 156.800 MHz had ceased. The agent then issued a Warning of Interference advising Trimont that its operations were causing interference to the USCG's authorized operations on 156.800 MHz, instructing Trimont to cease operations, and stating that further interference to the USCG's operations could result in additional sanctions or forfeitures by the Commission.¹ Agents consulted the Commission's licensing databases and confirmed that the Commission has not issued Trimont a license to operate a land-based station in the maritime service.²

6. In issuing the Warning of Interference, the agent from the San Francisco Office requested that the Trimont employee determine why the SCADA system had been configured to operate on 156.800 MHz. Several weeks after the issuance of the Warning of Interference, the Trimont employee contacted the San Francisco Office and explained that the configuration was the result of installer error. According to the Trimont employee, the company had intended to operate the SCADA system under the Commission's Part 95 rules for the operation of non-licensed stations in the Multi-Use Radio Service (MURS).³ Trimont asserted that the company it hired to install the SCADA equipment misconfigured the device, resulting in the unauthorized transmissions on 156.800 MHz. In an email statement to the San Francisco Office, Trimont affirmed that it had reconfigured the MURS station to operate on 155.700 MHz at a transmitter power output (TPO) of 1W.⁴

III. DISCUSSION

7. We find that Trimont apparently willfully and repeatedly violated Section 301 of the Act and Section 80.13 of the Rules. 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 without a license granted by the Commission.⁵ Section 80.13 of the Rules states that, except for certain ship stations licensed by rule, stations in the maritime service must be licensed by the FCC either individually or by fleet.⁶ Further, the Rules designate 156.800 MHz as one of several channels for use by mobile maritime stations in distress.⁷

8. As discussed above, between June 22, 2016 and July 1, 2016, multiple agents from the San Francisco Office and representatives of the USCG searched for the source of unauthorized transmissions on 156.800 MHz, which were impairing the USCG's ability to monitor that frequency for

¹ *Northstar California*, Warning of Interference (EB, San Francisco Field Office, July 1, 2016).

² We note, however, that the Commission has issued Trimont various licenses to operate Private Land Mobile Radio stations authorized under Part 90 of the Rules. *See, e.g.*, KGR472, KVB337, WNNK522, *etc.*

³ 47 C.F.R. § 95.1301 *et. seq.*

⁴ While we recognize Trimont's efforts to operate its SCADA system in accordance with the Commission's Part 95 MURS rules (by, for example, reducing the station's TPO to 1W to ensure compliance with the MURS service rules, which limit a MURS station's TPO to 2 W), we caution Trimont that its chosen frequency, 155.700 MHz, is not a frequency that the Commission has authorized for MURS operations. *See* 47 CFR §§ 95.632, 95.639(h). To the extent that Trimont wishes to operate the SCADA devices as a MURS station, it should restrict operations to those frequencies identified in Section 95.632 of the Rules. *See* 47 CFR § 95.632(a) (identifying the following frequencies for MURS operations: 151.820 MHz, 151.880 MHz, 151.940 MHz, 154.570 MHz, and 154.600 MHz).

⁵ 47 U.S.C. § 301.

⁶ 47 CFR § 80.13. By contrast, Part 95 of the Rules authorize eligible entities to operate MURS stations without the need for an individual license issued by the Commission. 47 CFR § 95.1301.

⁷ 47 CFR § 80.313.

distress transmissions from vessels operating on Lake Tahoe. This multi-agency investigation was complicated by (a) the fact that the station was transmitting in a digital mode and did not identify itself, and (b) the mountainous terrain surrounding Lake Tahoe.⁸ Agents determined by radio direction finding and through a visual inspection of the station that Trimont's SCADA system was the source of the intermittent operations on 156.800 MHz. The USCG confirmed that the intermittent unauthorized transmissions ceased immediately when Trimont turned off the transmitter of its SCADA system on Mt. Pluto. Based on the record before us, Trimont's apparent violation of Section 301 of the Act and Section 80.13 is both willful and repeated.

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."⁹ Here, Section 503(b)(2)(E) of the Act authorizes us to assess a forfeiture against Trimont of up to \$18,936 for each day of a continuing violation, up to a statutory maximum of \$142,021 for a single act or failure to act.¹⁰ In exercising our forfeiture authority, we must consider 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."¹¹ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹² Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate

⁸ In mountainous terrain, radio signals can reflect off hillsides. These reflections complicate direction finding, as they cause the apparent location and signal strength to change, sometimes significantly, when the signal is measured from multiple locations.

⁹ 47 U.S.C. § 503(b).

¹⁰ See 47 U.S.C. § 503(b)(2)(D); 47 CFR §§ 1.80(b)(7), (9). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), as further amended by the Federal Reports Elimination Act of 1998, Pub. L. No. 105-362, Sec. 1301, 112 Stat. 3280, and as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note) (the 2015 Inflation Adjustment Act), requires the Commission to adjust its penalties for inflation and publish interim final rules with the initial penalty adjustment amounts by July 1, 2016 and new penalty levels must take effect no later than August 1, 2016. See 28 U.S.C. § 2461 note. The Commission published those interim final rules on June 30, 2016. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 16-644 (EB 2016); see also *Adjustment of Civil Monetary Penalties to Reflect Inflation*, 81 Fed. Reg. 42554 (June 30, 2016) (setting August 1, 2016, as the effective date for the increases). The adjustments to the civil monetary penalties adopted by the Bureau pursuant to 2015 Inflation Adjustment Act will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b). See 28 U.S.C. § 2461 note (6).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² 47 CFR § 1.80(b)(8), Note to paragraph (b)(8); *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, 17098-99, para. 22 (1997) (noting that "[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act") (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

substantial economic gain for the violator.¹³ We may adjust a forfeiture downward for good faith, among other factors.¹⁴

10. Section 1.80(b) of the Rules sets a base forfeiture of \$10,000 for operation of a radio station without an instrument of authorization for each violation or each day of a continuing violation.¹⁵ In exercising our discretion regarding whether to depart from these guidelines, however, we note that Trimont's conduct (operating on an internationally recognized frequency for marine distress calls) had the potential to create significant harm by impairing the USCG's ability to monitor – and to respond to – distress calls from vessels operating on Lake Tahoe. The Commission routinely proposes a significant upward adjustment of the base forfeiture amount in cases involving interference to public safety uses of spectrum.¹⁶ On the other hand, we note that Trimont's immediate and complete cooperation with the agents' requests for assistance in identifying and eliminating the source of interference on 156.800 MHz, coupled with the short duration of the unlicensed operation on that frequency, weighs against proposing an upward adjustment of the base forfeiture amount.¹⁷ Therefore, after applying the Forfeiture Policy Statement, Section 1.80 of the Rules, and the statutory factors, and taking into account the particular facts of this case, we propose a total forfeiture of \$10,000, for which Trimont is apparently liable.

IV. CONCLUSION

11. We have determined that Trimont apparently willfully and repeatedly violated Section 301 of the Act and Section 80.13 of the Rules. As such, Trimont is apparently liable for a forfeiture of \$10,000.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act¹⁸ and Sections 1.80 of the Rules,¹⁹ Trimont Land Company d/b/a Northstar-at-Tahoe is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Ten Thousand Dollars (\$10,000) for willful and repeated violations of Section 301 of the Act²⁰ and Section 80.13 of the Rules.²¹

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Trimont Land Company d/b/a Northstar-at-Tahoe **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 16 below.

¹³ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁴ 47 CFR § 1.80(b)(8), Note to paragraph (b)(8).

¹⁵ 47 CFR § 1.80(b).

¹⁶ See, e.g., *Jason R. Humphreys, Seffner, Florida*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5476, 5480, para. 12 (2014) (proposing to increase the base forfeiture amount where an individual operating a jamming device “interfered with police two-way radios used to ensure officer safety and permit coordination between and among officers on-scene and police dispatch”).

¹⁷ See *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4405, 4416, para. 25 (2012) (noting that “but for T-Mobile's cooperation [in the Commission's investigation] the upward adjustment would have been significantly higher”).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 CFR § 1.80.

²⁰ 47 U.S.C. § 301.

²¹ 47 CFR § 80.13.

²² 47 CFR § 1.80.

14. 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. Trimont Land Company d/b/a Northstar-at-Tahoe shall send electronic notification of payment to Matthew L. Gibson at matthew.gibson@fcc.gov, with copy to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ 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 that should be followed based on the form of payment selected:

- 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.

15. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, DC 20554.²⁴ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. 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.²⁵ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, ATTN: Enforcement Bureau – Field Division, Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Matthew L. Gibson at matthew.gibson@fcc.gov, with copy to WR-Responses@fcc.gov.

17. 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.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 CFR § 1.1914.

²⁵ 47 CFR §§ 1.16, 1.80(f)(3).

18. **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 Steven J. Lucia, Facilities and Engineering Manager, Trimont Land Company d/b/a Northstar-at-Tahoe, c/o Northstar California (Vail Resorts), P.O. Box 129, Truckee, California 96160.

FEDERAL COMMUNICATIONS COMMISSION

Lark Hadley,
Regional Director, Region Three,
Enforcement Bureau