

**Federal Communications Commission**

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

In the Matter of )  
 )  
Smart Park Airport Parking ) File Number EB-08-PA-0259  
 )  
Licensee of Station WQAT722 ) NAL/Acct. No. 200932400003  
 )  
Essington, Pennsylvania ) FRN: 0010-72-4557

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: January 22, 2009

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

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Smart Park Airport Parking (“Smart Park”), the licensee of Land Mobile Radio Service station WQAT722 in Essington, Pennsylvania, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's Rules (“Rules”)<sup>1</sup> by failing to operate the station consistent with the terms of the station authorization. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>2</sup> that Smart Park is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

**II. BACKGROUND**

2. Smart Park operates parking facilities near the Philadelphia International Airport and is the licensee of Land Mobile Radio Service station WQAT722, which authorizes the operation of mobile relay stations (FB2) at 900 East 2<sup>nd</sup> Street, Essington, Pennsylvania on the frequencies 464.6375 MHz and 461.5625 MHz.

3. On June 11, 2008, in response to a complaint, agents from the FCC’s Philadelphia Office used direction finding techniques to determine that Smart Park operated the 464.6375 MHz mobile relay station at 1070 Tincum Island Road, Lester, Pennsylvania and the 461.5625 MHz mobile relay station at 940 Eddystone Avenue, Eddystone, Pennsylvania.<sup>3</sup>

4. On July 1, 2008, the Philadelphia Office issued a Letter of Inquiry to Smart Park as a follow-up to the June 11, 2008, inspection. The Philadelphia Office requested further information about the operation of the mobile relay stations at the unauthorized locations. On July 21, 2008, the Philadelphia Office received the response from Smart Park stating that it outsourced the licensing and installation of its radio communications equipment to Radio Communications Service, Inc. Smart Park stated that on February 14, 2004, Radio Communications installed the 464.6375 MHz repeater system at 1070 Tincum Island Road, Lester, Pennsylvania. Smart Park also stated that on June 12, 2004, Radio

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<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> 47 U.S.C. § 503(b).

<sup>3</sup> Smart Park’s facility at 1071 Tincum Island Road in Lester, Pennsylvania operates under the name “Express Park.”

Communications installed the 461.5625 MHz repeater at 940 Eddystone Avenue, Eddystone, Pennsylvania. Smart Park acknowledged that it did not have authorization to operate the mobile relay stations at either location. Smart Park also acknowledged that it was now operating the mobile relay stations at the authorized location of 900 East 2nd Street, Essington, Pennsylvania 19029.

### 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. The term “willful” as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

6. 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. Section 1.903(b) further provides that the “holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.” The authorization for Land Mobile Radio Service station WQAT722 requires Smart Park to operate its mobile relay stations on the frequencies 464.6375 MHz and 461.5625 MHz at 900 East 2<sup>nd</sup> Street, Essington, Pennsylvania. On June 11, 2008, agents determined that Smart Park was operating the 464.6375 MHz mobile relay station at 1070 Tinicum Island Road, Lester, Pennsylvania and the 461.5625 MHz mobile relay station at 940 Eddystone Avenue, Eddystone, Pennsylvania. In the July 21, 2008 Response, Smart Park acknowledged that it had been operating the 464.6375 MHz station at the unauthorized location since February 14, 2004 and the 461.4625 MHz station at the unauthorized location since June 12, 2004. Because the operation on the unauthorized frequency occurred for more than one day, we find that the violation was repeated. Because Smart Park admitted that it had knowingly operated the stations at the unauthorized locations, the violation was willful.

7. Based on the evidence before us, we find that Smart Park apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating mobile relay stations at an unauthorized location and in a manner not consistent with the terms of the station authorization.

8. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”), and Section 1.80 of the Rules, the base forfeiture amount for operation at an unauthorized location is \$4,000.<sup>6</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, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules,

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<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</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.”

<sup>6</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

and the statutory factors to the instant case, we conclude that Smart Park is apparently liable for a (\$4,000) forfeiture.

**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, 0.311, 0.314 and 1.80 of the Commission's Rules, Smart Park Airport Parking is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violation of Section 1.903(a) of the Rules.<sup>8</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Smart Park **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. 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 Federal Reserve Bank of New York, 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.<sup>8</sup> If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). If payment is made, Smart Park will send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov).

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047 and must include the NAL/Acct. No. referenced in the caption.

13. 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>8</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

<sup>8</sup> See 47 C.F.R. § 1.1914.

**Federal Communications Commission**

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14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Smart Park at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Gene J. Stanbro  
District Director  
Philadelphia Office  
Northeast Region  
Enforcement Bureau