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

In the Matter of	)	
	)	File No. EB-06-SE-340
Kimberly Clark Corporation	)	NAL/Acct. No. 200732100031
Dallas, Texas	)	FRN # 0002720746
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 16, 2007 **Released: May 18, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Kimberly Clark Corporation ("Kimberly Clark"), former licensee of Private Land Mobile Radio Service ("PLMRS") station WPKW900, apparently liable for a forfeiture in the amount of fifteen thousand dollars ($15,000) for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Kimberly Clark acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, ("Act")[1] and Sections 1.903(a) and 1.949(a) of the Commission's Rules ("Rules").[2]

II. BACKGROUND

2. On November 13, 2001, an application was filed with the Commission's Wireless Telecommunications Bureau ("Wireless Bureau") to assign the license for PLMRS station WPKW900 from HK Systems to Kimberly Clark.[3] The license for WPKW900 had an expiration date of August 22, 2002.[4] On July 19, 2006, Kimberly Clark filed with the Wireless Bureau a request for Special Temporary Authority ("STA") to operate WPKW900 until December 31, 2006, at which time the company would cease operations using the frequencies associated with the call sign. On July 28, 2006, the Wireless Bureau granted Kimberly Clark its requested STA to operate the station under call sign WQFJ386 until January 24, 2007.[5]

3. Because it appeared that Kimberly Clark may have operated WPKW900 after the expiration of its license, the Wireless Bureau referred this case to the Enforcement Bureau for

[1] 47 U.S.C. § 301.

[2] 47 C.F.R. §§ 1.903(a) and 1.949(a).

[3] *See* FCC File No. 0000668073. The Commission consented to the license assignment of WPKW900 from HK Systems to Kimberly Clark on December 12, 2001. Kimberly Clark used the frequencies associated with WPKW900 in the operation of automated guided vehicles in Kimberly Clark's Paris, TX facility.

[4] Commission records indicate that an automatic renewal reminder letter was sent to Kimberly Clark on August 22, 2002. No renewal application was filed, and consequently, the license was cancelled on December 12, 2002.

[5] *See* FCC File No. 0002687374 (granted July 28, 2006). The STA for WQFJ386 was granted on a secondary non-interference basis without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

investigation and possible enforcement action. On November 2, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")[6] to Kimberly Clark.

4. On December 18, 2006, Kimberly Clark filed its response to the LOI ("*LOI Response*"),[7] requesting "confidential treatment of this Response in accordance with Section 0.459 of the Commission's Rules..."[8] On February 23, 2007, the Spectrum Enforcement Division denied the request as overly broad and not compliant with Section 0.459 of the Rules.[9] Kimberly Clark did not file an application for review; thus, the *LOI Response* material is considered and used in this *Notice of Apparent Liability for Forfeiture*.

5. Kimberly Clark stated in its *LOI Response* that it became aware of the expiration of its license to operate station WPKW900 in May 2006, although a company employee was previously notified on August 7, 2004 of the license expiration.[10] According to Kimberly Clark, "a miscommunication" led the employee to believe that the frequencies associated with WPKW900 "were not being utilized, thus making the license unnecessary."[11] Kimberly Clark further explained that in May 2006, the company took corrective measures regarding the expired license, including working with counsel to disclose the matter to the Commission and to file the STA request on July 19, 2006.[12] Kimberly Clark also admitted to operating WPKW900 "nearly continuously" without Commission authorization between August 22, 2002, and July 28, 2006.[13]

III. DISCUSSION

6. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."[14] Absent a timely filed renewal application, a wireless radio station license automatically terminates.[15]

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[6] *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Terence N. Assink, Vice President, Management Information Systems, Kimberly Clark Corporation (November 2, 2006).

[7] *See* Letter from Michelle W. Cohen, Counsel to Kimberly Clark Corporation to Karen Mercer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 18, 2006).

[8] *Id.* at 1.

[9] *See Kimberly Clark Corporation,* Order, 22 FCC Rcd 3703, 3704 (Enf. Bur., Spectrum Enf. Div., February 23, 2007).

[10] *LOI Response* at 1.

[11] *Id.*

[12] *Id.* at 2-3.

[13] *Id*. at 2.

[14] 47 C.F.R. § 1.949(a).

[15] 47 C.F.R. § 1.955(a)(1).

7. As a Commission licensee, Kimberly Clark was required to maintain its authorization in order to operate its PLMRS station. Kimberly Clark admitted that it operated station WPKW900 without Commission authority from the station's license expiration date of August 22, 2002, until the STA grant date of July 28, 2006. By operating its PLMRS station for almost four years without authorization, Kimberly Clark apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Kimberly Clark also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

8. Section 503(b) of the Act,[16] and Section 1.80(a) of the Rules,[17] provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and "repeatedly" means more than once.[18] Based upon the record before us, it appears that Kimberly Clark's violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules were willful and repeated.

9. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as "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."[19] Having considered the statutory factors, as explained below, we propose a total forfeiture of $15,000.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of ten thousand dollars ($10,000) for operation of a station without Commission authority and three thousand dollars ($3,000) for failure to file required forms or information.[20] As the Commission recently held, a licensee's continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.[21] Accordingly, we herein propose separate forfeiture amounts for Kimberly Clark's separate violations.

11. We propose a $6,000 forfeiture for Kimberly Clark's continued operation of its PLMRS

[16] 47 U.S.C. § 503(b).

[17] 47 C.F.R. § 1.80(a).

[18] *See Southern California Broadcasting Co.,* Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied,* 7 FCC Rcd 3454 (1992); *see also Domtar Industries, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div., 2006) (*"Domtar"*); *National Weather Networks, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) ("*NWN")* (willful is any conscious or deliberate act and does not require intention to violate the Act or Rules and repeated means more than once).

[19] 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *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, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement")*.

[20] 47 C.F.R. § 1.80(b).

[21] *See Discussion Radio, Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (proposing forfeitures of $5,000 and $1,500 against a broadcaster who operated its station for 14 months without Commission authority and failed to timely file its renewal application) (*"Discussion Radio")*.

station after the expiration of its license on August 22, 2002.[22] In proposing a $6,000 forfeiture for the station's unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the $10,000 base forfeiture amount accordingly.[23] Consistent with recent precedent, the proposed $6,000 forfeiture takes into account that Kimberly Clark's unauthorized operations spanned almost four years from the license's expiration date.[24] In addition, we propose a $1,500 forfeiture for Kimberly Clark's failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the Rules.[25] Thus, we propose an aggregate forfeiture of $7,500.

12. The $7,500 base forfeiture amount is subject to adjustment, however. In this regard, we consider Kimberly Clark's size and ability to pay a forfeiture.[26] To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as Kimberly Clark, could expect the assessment of higher forfeitures for violations.[27] Given Kimberly Clark's size and ability to pay a forfeiture, we conclude that an upward adjustment of the base amount to $15,000 is appropriate.

13. We find that Kimberly Clark's voluntary disclosures to Commission staff and its efforts

[22] Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. *See, e.g., Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Compass, Inc. D/B/A Compass Global,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 15132, 15138 (2006); *Roadrunner Transportation, Inc.,* Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.,* Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.,* Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied,* 11 FCC 2d 193, 195 (1967); *NWN,* 21 FCC Rcd at 3925.

[23] *See Discussion Radio,* 19 FCC Rcd at 7438 (proposing a $5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *see also Lazer Broadcasting Corporation,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8711 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Lazer Broadcasting*"); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Criswell*"); *NWN,* 21 FCC Rcd at 3925; *Journal Broadcast Corporation,* Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (*"Journal Broadcast"); Shared Data Networks, LLC,* Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) ("*SDN*").

[24] *See Mitchell Electric Membership Cooperative,* Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5539 (Enf. Bur., Spectrum Enf. Div., March 29, 2007 (proposing a $6,000 forfeiture for operating a PLMRS station for almost five years without Commission authority) ("*Mitchell Electric*"). *See also SDN,* 20 FCC Rcd at 18187 (proposing an aggregate forfeiture amount of $18,000 for operating three earth stations for almost five years without Commission authority ($6,000 each)).

[25] *See Discussion Radio*, 19 FCC Rcd at 7437; *see also Hare Planting Co., Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div., 2006), *forfeiture ordered*, DA 07-1812 (Enf. Bur., Spectrum Enf. Div., April 25, 2007) ("*Hare*"); *Twin Cities Public Television, Inc.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13428, 13430 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Twin Cities*"); *Lazer Broadcasting,* 21 FCC Rcd at 8711; *Gilmore Broadcasting Corp.,* Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-6287 (Enf. Bur., Spectrum Enf. Div., 2006) ("*Gilmore")*; *Criswell*, 21 FCC Rcd at 5109; *NWN,* 21 FCC Rcd at 3926; *Journal Broadcast,* 20 FCC Rcd at 18214*; SDN,* 20 FCC Rcd at 18187.

[26] Kimberly Clark reported revenues of $16.7 billion in its annual report for 2006. *See* www.kimberly-clark.com/investors/annual_reports.aspx/about us/financial.

[27] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

to come into compliance with Commission requirements do not entitle the company to any downward adjustment of the proposed $15,000 forfeiture. Although Kimberly Clark's disclosures and compliance efforts preceded any Commission investigation or initiation of enforcement action, we find the company's actions were dilatory as it took no immediate action to notify Commission staff and come into compliance with our rules after learning of the violation. Under the circumstances, and consistent with precedent,[28] we find that no reduction of the proposed forfeiture for voluntary disclosure or good faith efforts to comply is warranted.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act[29] and Sections 0.111, 0.311 and 1.80 of the Rules,[30] Kimberly Clark **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars ($15,000) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,[31] within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Kimberly Clark **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[32]

17. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement

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[28] *See Mitchell Electric*, 22 FCC Rcd at 5540 (finding that a downward adjustment was unwarranted where the violator waited six months after becoming aware of the violation to notify Commission staff and seek authority to operate the station); *Domtar*, 21 FCC Rcd at 13813 (finding that although Domtar's disclosures and compliance efforts preceded Commission investigation or initiation of enforcement action, a downward adjustment was unwarranted because Domtar's actions were dilatory); *Sutro Corporation,* Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20529, 20531, *forfeiture ordered*, 19 FCC Rcd 15274, 15275-76 (2004) (finding that a downward adjustment for voluntary disclosure or good faith efforts to comply was unwarranted where the violator's attempts to come into compliance were dilatory and evidenced a lack of diligence); *American Paging, Inc.,* Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after having various conversations with Commission staff regarding an STA and that a downward adjustment for good faith attempts to comply was unwarranted where the violator continued to operate the station without authorization after its STA request was denied).

[29] 47 U.S.C. § 503(b).

[30] 47 C.F.R. §§ 0.111, 0.311 and 1.80.

[31] 47 C.F.R. § 1.80.

Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

18. 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 submitted.

19. **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 Terence N. Assink, Kimberly Clark Corporation, Post Office Box 61900, Dallas, Texas 75261, and Michelle W. Cohen, Esquire, Thompson Hine LLP, 1920 N Street, Northwest, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau