

[Click here for Adobe Acrobat version](#)  
[Click here for Microsoft Word version](#)

\*\*\*\*\*  
NOTICE  
\*\*\*\*\*

This document was converted from Microsoft Word.

Content from the original version of the document such as headers, footers, footnotes, endnotes, graphics, and page numbers will not show up in this text version.

All text attributes such as bold, italic, underlining, etc. from the original document will not show up in this text version.

Features of the original document layout such as columns, tables, line and letter spacing, pagination, and margins will not be preserved in the text version.

If you need the complete document, download the Microsoft Word or Adobe Acrobat version.

\*\*\*\*\*

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

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| In the Matter of                      | ) |                            |
| HST Kierland LLC,                     | ) |                            |
| dba Westin Kierland Resort & Spa,     | ) | File Number: EB-08-SD-0145 |
| Kierland Golf Club, Starwood Vacation | ) | NAL/Acct. No: 200932940001 |
| Ownership Arizona Management          | ) | FRN: 0017995077            |
| Licensee of WPPF349 and WQGX784       | ) |                            |
| Scottsdale, Arizona                   | ) |                            |
|                                       | ) |                            |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 11, 2008

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management (collectively "Westin"), the licensee of private land mobile stations WPPF349 and WQGX784 in Scottsdale, Arizona, apparently willfully and repeatedly violated Section 1.903(a) of the Commission's Rules ("Rules") by operating mobile relay stations on unauthorized frequencies. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), that Westin is apparently liable for a forfeiture in the amount of sixteen thousand dollars (\$16,000).

## II. BACKGROUND

2. On April 25, 2008, the San Diego Office received a complaint from a General Mobile Radio Services ("GMRS") licensee that a business was operating on the Family Radio Service ("FRS") frequency 462.6125 MHz and dispatching shuttle vans for a hotel in the Phoenix area, and that business was the Westin Kierland Resort & Spa in Scottsdale, Arizona. Under Section 95.5(a) of the Rules, only individuals and their immediate family are now eligible to be authorized on frequency 462.6125 MHz. Businesses may continue to operate a GMRS system if they were first authorized before July 31, 1987, as outlined under Section 95.5(c) of the Rules.

3. On June 6, 2008, agents from the San Diego Office were in the Scottsdale, Arizona, area and determined that the signal on frequency 462.6125 MHz was originating from Westin Kierland Resort & Spa at 6902 East Greenway Parkway, Scottsdale, Arizona. The agents determined that 467.6125 MHz and 462.6125 MHz were a repeater pair, with 462.6125 MHz as the repeater output frequency and 467.6125 MHz as the repeater input frequency. Frequency 467.6125 MHz is available only in the FRS pursuant to Section 95.627 of the Rules.

4. On June 8, 2008, a San Diego agent researched FCC databases and determined that Westin was not authorized to operate a radio station on either frequencies of 462.6125 MHz or 467.6125 MHz. The agents returned to the Westin Kierland Resort & Spa at 6902 East Greenway Parkway, Scottsdale, Arizona. The agents again determined that frequencies 467.6125 MHz and 462.6125 MHz were again in use by the hotel complex.

5. On June 9, 2008, the FCC agents returned to the Westin Kierland Resort & Spa and conducted an inspection of the private land mobile radio facilities found at that location. The staff at the Westin Kierland Resort & Spa showed the agents four mobile relay repeater stations that were used at the location, on the following frequency pairs: 461.5125/466.5125 MHz, 462.6125/467.5125 MHz, 463.5125/468.5125 MHz, and 464.8750/469.8750MHz. Equipment found operating on frequency 467.6125 MHz was not FCC certified for FRS and had attached an external antenna which voids both FCC certification of the transmitter and the authority to use this frequency, as outlined under Sections 95.194(b) and 95.194(c) of the Rules.

6. On July 24, 2008, the San Diego Office issued a Letter of Inquiry ("LOI") to Westin asking if Westin had an FCC authorization for the any of the eight frequencies in use during the inspection on June 9, 2008: 461.5125 MHz, 462.6125 MHz, 463.5125 MHz, 464.875 MHz, 466.5125 MHz, 467.6125 MHz, 468.5125 MHz, and 469.875 MHz. The LOI also asked for information concerning any other FCC licenses that Westin might hold at the Scottsdale facility.

7. On August 5, 2008, Westin responded to the LOI and acknowledged that it was operating on the frequencies listed by the San Diego Office. Westin stated that it did not hold a current or expired license for any of the eight frequencies listed in the LOI. Westin further stated that the "four (4) repeaters used at the Resort are intended to support segregated radio communications within and around our property, serving the Security, Engineering, Housekeeping, Stewarding and Guest Services departments." Westin also stated that it did not hold any other licenses under its name, however, "the affiliated, but separate, entities of the Kierland Golf Club (WPPF349) and Starwood Vacation Ownership (SVO) Arizona Management (d/b/a Kierland Villas, WQGX784) are indeed licensed." A review of those licenses revealed that none of the frequency pairs utilized by the four mobile relay stations in operation at the Westin Kierland Resort & Spa were authorized by either license.

### III. DISCUSSION

8. 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.

9. 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. On June 6, 8, and 9, 2008, San Diego agents determined that Westin was operating mobile units on the frequency 467.6125 MHz and a mobile relay station on the frequency 462.6125 MHz without a license authorizing use of those frequencies. Westin acknowledged to the San Diego Office that it was operating on those frequencies, as well as three other frequency pairs on four land mobile stations, even though those frequencies were not authorized by the licenses used by Westin and its affiliates. The violation continued for more than one day; therefore, it was repeated. Westin was aware that it was operating on the unauthorized frequencies, therefore, the violation was willful. Based on the evidence before us, we find that Westin apparently willfully and repeatedly violated Section 1.903(a) of the Rules by operating four mobile relay stations utilizing four frequency pairs not authorized by its or its affiliates' licenses.

10. 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 using an unauthorized frequency is \$4,000. 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. As described above, Westin operated four mobile relay stations, utilizing four frequency pairs not authorized by any license held by Westin or its affiliates. Applying the Forfeiture Policy Statement, Section 1.80 of the Rules, and the statutory factors, we conclude that a \$16,000 forfeiture is warranted.

### 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, 0.311 and 1.80 of the Commission's Rules, HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of sixteen thousand dollars (\$16,000) for violation of Section 1.903(a) of the Rules.

12. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management 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 check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/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. 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. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner St, Suite 370, San Diego, California 92111 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-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.

16. 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 HST Kierland LLC d/b/a Westin Kierland Resort & Spa, Kierland Golf Club, and Starwood Vacation Ownership Arizona Management at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.

District Director

San Diego Office

Western Region

Enforcement Bureau

47 C.F.R. S: 1.903(a).

47 U.S.C. S: 503(b).

47 C.F.R. S: 95.5(a).

47 C.F.R. S: 95.5(c).

47 C.F.R. S: 95.627.

47 C.F.R. S: 95.194(b) & (c).

On August 1, 2008, subsequent to the investigation by the San Diego Office, and the receipt of the LOI, Westin was granted a special temporary authority ("STA), call sign WQJD615, from the Commission, to operate on 461.5125 MHz, 463.5125 MHz, 464.875 MHz, 466.5125 MHz, 468.5125 MHz, and 469.875 MHz, as well as other frequencies, on a secondary non-interference basis. On November 10, 2008, the Commission granted Westin a license, call sign WQJN623, for operation on those frequencies.

Section 312(f)(1) of the Act, 47 U.S.C. S: 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).

12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. S:1.80.

47 U.S.C. S: 503(b)(2)(E).

47 C.F.R. S:S: 0.111, 0.311, 1.80, 1.903(a).

See 47 C.F.R. S: 1.1914.

(...continued from previous page)

(continued....)

Federal Communications Commission

Federal Communications Commission