

**Federal Communications Commission**

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

In the Matter of	)	
	)	
Costco Wholesale Corporation/Costco #737	)	File Number: EB-09-LA-0003
Las Vegas, Nevada	)	
	)	NAL/Acct. No. 201032900002
	)	FRN: 0018778076
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: December 22, 2009

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Costco Wholesale Corporation/Costco #737 ("Costco"), in Las Vegas, Nevada, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act")<sup>1</sup> by operating radio transmitters without a license. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> that Costco is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

**II. BACKGROUND**

2. On May 6, 2009, in response to a complaint of unauthorized use on 154.540 MHz in Las Vegas, Nevada, an agent from the Enforcement Bureau's Los Angeles Office, using radio direction finding techniques, located transmissions on 154.540 MHz to a Costco store at 6555 N. Decatur Boulevard, Las Vegas, Nevada ("Decatur Boulevard Location").

3. On May 7, 2009, the Los Angeles agent, again using radio direction finding techniques, located transmissions on 154.540 MHz to the Costco store at the Decatur Boulevard Location. The Los Angeles agent then spoke with the store manager at the Costco store. The manager was unaware of the requirement to have an authorization to operate on this frequency and could produce no license to verify that an authorization existed to operate on frequency 154.540 MHz. The manager stated that the communications system was installed and put into operation by Costco maintenance staff. The manager stated that Costco would immediately research the possibility of acquiring a license to operate on 154.540 MHz. Review of the Commission databases revealed that Costco Wholesale Corporation has an authorization, WPWT411, to operate at another location in the Las Vegas area, however, its authorization only included frequencies 468.4125, 461.3125, 468.8625, and 469.2875 MHz.

4. On May 15, 2009, the Los Angeles agent received e-mail notification from the manager stating that Costco had applied for a license to operate the radio system.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 U.S.C. § 503(b).

5. On June 8, 2009, Costco was granted an authorization, WQKI861, to operate from the Decatur Boulevard Location on 461.650, 463.350, 466.650, 466.975, and 468.350 MHz.<sup>3</sup> On June 23, 2009, Costco was granted a modification to WQKI861, which changed its authorized operating frequencies to 151.520, 151.745, 159.525, 159.645, and 160.095 MHz.<sup>4</sup>

### III. DISCUSSION

6. 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) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>6</sup>

7. 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... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."<sup>7</sup> On May 6 and May 7, 2009, the Los Angeles agent located transmissions on 154.540 MHz to the Costco store at the Decatur Boulevard Location. The store manager acknowledged to the agent that the store had no license authorizing operations on 154.540 MHz. While Costco has a license to operate at another location in the Las Vegas area, there is no evidence that its license authorized Costco to operate on 154.540 MHz from the Decatur Boulevard Location. The violation occurred on more than one day, therefore, it was repeated. As the holder of multiple FCC licenses, Costco was aware such operations required a license. Therefore, the violation was willful. Based on the evidence before us, we find that Costco apparently willfully and repeatedly violated Section 301 of the Act.

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 without an instrument of authorization is \$10,000.<sup>8</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>9</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Costco's operation is not analogous to a "pirate" station operator, and, consequently, we downwardly adjust the proposed forfeiture amount to

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<sup>3</sup> File No. 0003853269, granted June 8, 2009.

<sup>4</sup> File No. 0003870172, granted June 23, 2009.

<sup>5</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>6</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>7</sup> 47 U.S.C. § 301.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

\$5,000.<sup>10</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Costco is apparently liable for a \$5,000 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, Costco Wholesale Corporation/Costco #737 is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of Section 301 of the Act.<sup>11</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, Costco Wholesale Corporation/Costco #737 **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 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.<sup>12</sup> Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Costco will also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

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>10</sup> See *Gateway Security Systems, Inc.*, 18 FCC Rcd 24026 (EB 2003).

<sup>11</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.903(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.

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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 Costco Wholesale Corporation/Costco #737, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghight  
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