

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

)	File No.: EB-SED-12-00003614
In the Matter of)	
)	NAL/Acct. No. 201332100014
Remel, Inc., and its corporate parent)	
Thermo Fisher Scientific, Inc.)	FRN: 0021854872
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 13, 2013

Released: June 13, 2013

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find Remel, Inc. (Remel) and its corporate parent, Thermo Fisher Scientific, Inc. (Thermo Fisher), apparently liable for a forfeiture in the amount of thirty thousand dollars (\$30,000) for their apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act),¹ and Sections 1.903(a) and 95.3 of the Commission's rules (Rules).² The apparent violation involves the unlawful operation of radio frequency devices on a General Mobile Radio Service (GMRS) frequency for more than nine years without Commission authority.³

II. BACKGROUND

2. Thermo Fisher is a global supplier of analytical instruments, laboratory and diagnostic equipment, chemicals and reagents, and related products and services for the health care, environmental, and process control industries.⁴ Remel, an indirect, wholly-owned subsidiary of Thermo Fisher, is a manufacturer and supplier of microbiology products for clinical, industrial, and research laboratories.⁵

3. On June 21, 2012, Thermo Fisher filed an application for a new Public Land Mobile Radio Service (PLMRS) license with the Commission's Wireless Telecommunications Bureau (Wireless Bureau).⁶ On July 2, 2012, Thermo Fisher filed a request for Special Temporary Authority (STA) to permit the operation of certain handheld radio transmitting equipment pending the grant of its PLMRS

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a), 95.3.

³ The GMRS is a "land mobile radio service available to persons for short-distance two-way communications to facilitate the activities of licensees and their immediate family members." The party responsible for any GMRS station must obtain a license prior to transmitting on any channel authorized in the GMRS, and only individuals are currently eligible to obtain, renew, and modify GMRS systems.

⁴ See About Thermo Fisher Scientific, <http://www.thermofisher.com/global/en/about/home.asp> (last visited Mar. 12, 2013).

⁵ See About Remel, <http://www.remel.com/About.aspx> (last visited Mar. 8, 2013).

⁶ See ULS File No. 0005272133, filed by Thermo Fisher Scientific (June 21, 2012).

license.⁷ In its STA Request, Thermo Fisher indicated that its handheld radios were used in connection with manufacturing certain products used by the Center for Disease Control and other health care facilities, and that the radios were “an essential communications link” for its factory operations and for the safety and security of its personnel.⁸ Thermo Fisher further indicated that it had operated the handheld radio transmitters “for a number of years” and that it discontinued their operation on June 14, 2012, as soon as it became aware that the radios were not properly licensed.⁹ The STA was granted on July 9, 2012 under call sign WQPN622. Thermo Fisher’s application for a new PLMRS license was granted on August 30, 2012 under call sign WQPW523.¹⁰

4. Because it appeared that Thermo Fisher had operated its handheld radio transmitting equipment without authorization, the Wireless Bureau referred this matter to the Enforcement Bureau for investigation and possible enforcement action. On January 30, 2013, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (LOI) to Thermo Fisher, directing the company to submit a sworn written response to a series of questions relating to the unauthorized operation of the radio transmitting equipment.¹¹ Thermo Fisher responded to the LOI on February 27, 2013.¹² In its LOI Response, Thermo Fisher indicated that Remel began operating the radio transmitting equipment in approximately October 2002.¹³

III. DISCUSSION

5. Section 301 of the Act¹⁴ and Section 1.903(a) of the Rules¹⁵ prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with a Commission-granted authorization. Thermo Fisher and Remel (collectively, the Companies) were therefore required to obtain all necessary authorizations prior to commencing operation of their repeater station and associated handheld radio transmitters. The spectrum on which the Companies operated their unlicensed base repeater station, 462.575 MHz, is allocated to GMRS

⁷ See ULS File No. 0005275020, filed by Thermo Fisher Scientific (July 2, 2012) (STA Request).

⁸ See *id.*

⁹ *Id.* We note that Thermo Fisher was issued a Warning Letter following an inspection by the Enforcement Bureau’s Kansas City Field Office on June 14, 2012, for its operation of an unlicensed base station repeater on 462.575 MHz at its facility in Lenexa, Kansas. See Thermo Fisher Scientific, Warning Of Unauthorized Radio Operation & Interference to Authorized Radio Stations (Enf. Bur., Kansas City Field Office, June 14, 2012) (on file in EB-SED-12-00003614) (Warning Letter). In its response to the Warning Letter, Thermo Fisher stated that the base station repeater and the 49 associated handheld radio transmitters were used at Remel’s Lenexa, Kansas facility, and that Thermo Fisher was advised by its equipment supplier that the operation of that equipment did not require a Commission license. See Letter from Colin Booth, Global Director of Quality and Regulatory Affairs, Microbiology Division, Thermo Fisher Scientific, Inc., to Ronald Ramage, District Director, FCC Enforcement Bureau (June 22, 2012) at 1 (on file in EB-SED-12-00003614).

¹⁰ On November 28, 2012, Remel filed an application to modify the WQPW523 station license to specify Remel as the station licensee. See ULS File No. 0005518636, filed by Remel, Inc. (Nov. 28, 2012).

¹¹ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Perry Means, Thermo Fisher Scientific, d/b/a Remel, Inc. (Jan. 30, 2013) (on file in EB-SED-12-00003614).

¹² See Letter from Scott Kendall, Senior Manager RA, Americas, MBD US Atlanta, Thermo Fisher Scientific, Inc., to Samantha Peoples, Spectrum Enforcement Division, FCC Enforcement Bureau (Feb. 27, 2013) (on file in EB-SED-12-00003614) (LOI Response).

¹³ *Id.* at 2.

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 C.F.R. § 1.903(a).

operations.¹⁶ Section 95.3 of the Rules requires Commission authorization prior to operation on GMRS frequencies.¹⁷ Pursuant to Section 95.5 of the Rules, however, only *individuals* may obtain or renew a license for a GMRS station.¹⁸ Entities primarily engaged in communications associated with commercial activity, such as the Companies, must instead apply for Commission authorization under the Industrial/Business Pool of the PLMRS.¹⁹ Thermo Fisher admits that the Companies operated their radio transmitting equipment without Commission authorization and that the unauthorized operation commenced in approximately October 2002 and continued for more than nine years, until June 14, 2012.²⁰ Accordingly, we find that the Companies apparently violated Section 301 of the Act²¹ and Sections 1.903(a) and 95.3 of the Rules²² by failing to obtain Commission authority to operate their radio transmitting equipment.

6. Section 503(b)(1)(B) of the Act²³ and Section 1.80(a) of the Rules²⁴ 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 Rules, and “repeated” means more than once or for more than one day.²⁵ Based on the record before us, the Companies’ apparent violations of Section 301 of the Act and Sections 1.903(a) and 95.3 of the Rules are both willful and repeated.

7. 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.”²⁶ Section 1.80(b) of the Rules sets a base forfeiture amount of

¹⁶ *Id.* § 95.29(a). The General Mobile Radio Service is in the 462 - 467 MHz spectrum range. The most common use of GMRS spectrum is short-distance, two-way communications using small, portable hand-held devices that function similar to walkie-talkies.

¹⁷ *See id.* § 95.3 (“Before any station transmits on any channel authorized in the GMRS from any *point* (a geographical location) within or over the territorial limits of any area where radio services are regulated by the FCC, the responsible party must obtain a *license* (a written authorization from the FCC for a GMRS system).”) (emphasis in original).

¹⁸ *See id.* § 95.5(a) (“An *individual* (one man or one woman) is eligible to obtain, renew, and have modified a GMRS system license if that individual is 18 years of age or older and is not a representative of a foreign government.”) (emphasis in original); *see also id.* § 95.5(b) (“A *non-individual* (an entity other than an individual) is ineligible to obtain a new GMRS system license or make a major modification to an existing GMRS system license”) (emphasis in original).

¹⁹ *See id.* § 90.35(a).

²⁰ *See* LOI Response at 2 (“Remel began operating station WQPN622 approximately in October 2002....Remel suspended it[s] unlicensed operation on June 14, 2012.”).

²¹ 47 U.S.C. § 301.

²² 47 C.F.R. §§ 1.903(a), 95.3.

²³ 47 U.S.C. § 503(b)(1)(B).

²⁴ 47 C.F.R. § 1.80(a).

²⁵ *See* 47 U.S.C. § 312(f)(1), (2); *see also Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991) (stating that the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act) (*Southern California*), *recon. denied*, 7 FCC Rcd 3454 (1992).

²⁶ 47 U.S.C. § 503(b)(2)(E); *see also* 47 C.F.R. § 1.80(b)(8), Note to paragraph (b)(8): Guidelines for Assessing Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17100, para. 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

\$10,000 for operation of a station without Commission authority.²⁷ Accordingly, we start our calculation with a base forfeiture amount of \$10,000 for the Companies' operation of their radio equipment without a Commission license.

8. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that a significant upward adjustment of the base forfeiture is warranted. In this regard, we are particularly mindful that the apparent unlawful operation in this case continued for more than nine years—from October 2002 until June 14, 2012, the date that the Companies ceased the unauthorized operation of their radio transmitting equipment.²⁸ In fact, the duration of the unauthorized operation is almost double the relevant five-year license term, and under current rules, the Companies were not even eligible to obtain a GMRS license.²⁹ We also take into consideration Thermo Fisher's status as a multi-billion dollar global enterprise.³⁰ 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 Thermo Fisher should expect the assessment of higher forfeitures for violations.³¹

²⁷ 47 C.F.R. § 1.80(b); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17098–99, para. 22 (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”).

²⁸ The Commission has upwardly adjusted the base forfeiture in cases where the unauthorized operation continued for an extended period of time, in order to avoid creating perverse incentives and to encourage PLMRS and other operators to monitor their license expiration dates and to timely seek renewal or otherwise take appropriate steps to quickly come into compliance with FCC rules. See *Union Oil Company of California*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13810, para. 10 (2012) (unauthorized operation of six years in one case and nearly eight years in the other); see also *Emigrant Storage*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920–21, para. 9 (Enf. Bur. 2012) (more than nine years of unauthorized operation); *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303–04, para. 11 (Enf. Bur. 2010) (five years of unauthorized operation); *Shubat Transportation*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 3782, 3786, para. 13 (Spectrum Enf. Div. 2011) (six years of unauthorized operation); *Call Mobile*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74, 77, para. 12 (Spectrum Enf. Div. 2011) (two and one-half years of unauthorized operation).

²⁹ While Section 503(b)(6) of the Act generally bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that the misconduct in this case occurred over an extended period to place “the violations in context, thus establishing the licensee’s degree of culpability and the continuing nature of the violations.” *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671–72, para. 8 (2000); see also *BASF Corporation*, 25 FCC Rcd at 17302, para. 9, n.24; *Call Mobile*, 26 FCC Rcd at 76, para. 10, n.23. The apparent unlawful operation in this case ran from October 2002 through June 14, 2012. Therefore, the forfeiture amount we propose herein relates to the Companies’ apparent continuing violations that ceased during the past year.

³⁰ Thermo Fisher reported revenue of over \$12.5 billion for the fiscal year ending December 31, 2012, and has 39,000 employees. See Thermo Fisher Scientific, Inc. SEC Form 10-K at 3, 27 (filed Feb. 27, 2013) (2012 Annual Report).

³¹ As to Remel, the wholly-owned Thermo Fisher subsidiary, it is well-established Commission policy to consider the revenues of a violator’s parent company in determining the appropriate forfeiture amount. See, e.g., *Tesla Exploration, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 9808, 9811, para. 10 & n.20 (2012); *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–100, paras. 23–24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator’s ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount); *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. 2012) (upwardly adjusting the base forfeiture due to the deliberate nature of the violation and the company’s gross revenues); *America Movil, S.A.B. de C.V., Parent of*

9. We also decline to downwardly adjust the forfeiture on the grounds that the violations resulted from the Companies' lack of knowledge that operation of the radio transmitting equipment required a Commission license.³² The Commission has consistently held that lack of knowledge or erroneous belief does not warrant a downward adjustment of the forfeiture.³³ Similarly, we are not persuaded that the Companies' reliance on incorrect information from their equipment supplier as to the need to obtain Commission authorization warrants favorable consideration.³⁴ The Commission has made clear that mitigation of a forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements, even in cases where the error or misapprehension of the requirements arise from the violator's reliance on the advice of an ostensibly knowledgeable third party.³⁵ Based upon all the factors and evidence, including the extended duration of the violations and ability to pay, we propose an aggregate forfeiture in the amount of \$30,000.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,³⁶ and Sections 0.111, 0.311 and 1.80 of the Commission's rules,³⁷ Remel, Inc. and Thermo Fisher Scientific, Inc. **ARE** hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A**

Puerto Rico Telephone Company, Inc., Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (doubling the base forfeiture due to the company's size and gross revenues); *Fox Television Stations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (Enf. Bur. 2010) (upwardly adjusting the base forfeiture based on the egregiousness of the violation and the company's substantial revenues).

³² See *supra* note 9.

³³ See *Emigrant Storage*, 27 FCC Rcd at 8920–21, para. 9 (declining to downwardly adjust where the violation resulted from oversight and a change in personnel); *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846, 2846, para. 5 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law [is not] a mitigating factor”); *Southern California*, 6 FCC Rcd at 4387, para. 3 (stating that “‘inadvertence’ ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”); *Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted unfamiliarity with the station identification requirements, stating that licensees are expected “to know and conform their conduct to the requirements of our Rules”); *Kenneth Paul Harris, Sr.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 12933, 12935–36, para. 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broad. Group, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 784, 784, para. 2 (Mass Med. Bur. 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of “inadverten[ce], due to inexperience and ignorance of the rules ... are not reasons to mitigate a forfeiture” for violation of the advertisement restrictions).

³⁴ See *supra* note 9.

³⁵ See, e.g., *Triad Broadcasting Company*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1242–43, para. 21 (1984) (rejecting violator's argument that its reliance on the erroneous advice of its attorney/engineer could serve as a mitigating factor that warranted reduction or elimination of forfeiture assessed for unauthorized station operations and related regulatory violations); *Corr Wireless Communications, LLC*, Forfeiture Order, 27 FCC Rcd 7386, 7391–92, para. 12 (Enf. Bur. 2012) (rejecting violator's argument that it was entitled to rely on erroneous advice from a handset manufacturer's representative that a handset may achieve hearing aid compatibility via an external attachment, stating that “[t]he Commission has long held that mitigation of a forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors or unfamiliarity with the statutory or regulatory requirements”).

³⁶ 47 U.S.C. § 503(b).

³⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

FORFEITURE in the amount of thirty thousand dollars (\$30,000) for their willful and repeated violation of Section 301 of the Communications Act of 1934, as amended,³⁸ and Sections 1.903(a) and 95.3 of the Commission's rules.³⁹

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules,⁴⁰ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Remel, Inc. and Thermo Fisher Scientific, Inc. **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 14 below.

12. 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. Remel, Inc. and Thermo Fisher Scientific, Inc. shall send electronic notification of payment to Kevin Pittman at Kevin.Pittman@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and to Samantha Peoples at Sam.Peoples@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.⁴¹ 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 you should follow based on the form of payment you select:

- 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.

13. Any request to make full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554. If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e mail, ARINQUIRIES@fcc.gov.

14. 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

³⁸ 47 U.S.C. § 301.

³⁹ 47 C.F.R. §§ 1.903(a), 95.3.

⁴⁰ *Id.* § 1.80.

⁴¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Sections 1.80(f)(3) and 1.16 of the Rules.⁴² The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Kevin Pittman at Kevin.Pittman@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov. 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.

15. **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 Seth Hoogasian, General Counsel, Thermo Fisher Scientific, Inc., 81 Wyman Street, Waltham, MA 02454, and to Perry Means, Remel, Inc., 12076 Santa Fe Trail Drive, Lenexa, KS 66215.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴² 47 C.F.R. §§ 1.80(f)(3), 1.16.