

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	File No. EB-SED-13-00012123
)	
Constellium Rolled Products Ravenswood, LLC, an indirect, wholly-owned subsidiary of Constellium N.V.)	NAL/Acct. No. 201432100020
)	FRN: 0005812789

To: Office of the Secretary
ATTN: Enforcement Bureau – Spectrum Enforcement Division

**COMMENTS IN SUPPORT OF
STATEMENT SEEKING REDUCTION OF PROPOSED FORFEITURE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”) respectfully submits its comments in support of the June 27, 2014 filing from Constellium Rolled Products Ravenswood, LLC (“Constellium” or “Company”) in which the Company has requested a reduction of the proposed forfeiture in the above-identified enforcement proceeding (“Forfeiture Reduction Statement”). The Alliance urges the Federal Communications Commission (“FCC” or “Commission”) to reconsider its proposed forfeiture in light of the issues raised by Constellium and to reduce the forfeiture substantially.

EWA is a national trade association representing the interests of business enterprise users, as well as communications service providers, radio dealers and technology manufacturers. A substantial number of the Alliance’s members are not engaged in the provision of communications services but use wireless facilities in private, internal systems to improve the productivity of their businesses and enhance their operations. Constellium is not a member of

EWA. However, because the FCC's Notice of Apparent Liability for Forfeiture¹ in this matter could have a profound precedential impact on Alliance members, EWA wishes to offer its perspective on the NAL.

In addition to its trade association activities, the Alliance is an FCC-certified Frequency Advisory Committee ("FAC") that processes thousands of Private Land Mobile Radio Service ("PLMRS") applications for frequency coordination each year. Moreover, it has entered into a Memorandum of Understanding² with the Enforcement Bureau ("EB") pursuant to which EWA works to resolve disputes between PLMRS licensees without compensation, thereby saving valuable FCC resources. As a FAC and in its role as an informal mediator of PLMRS disputes, the Alliance is highly sensitive to the importance of compliance with FCC requirements. It routinely reminds its members of their FCC obligations, including by notifying them of EB decisions related to PLMRS licenses, in an effort to promote compliance.³

EWA does not dispute that the Company's activities were violations of the Commission's rules or that a forfeiture is appropriate. But, like Constellium, the Alliance questions whether the FCC has given appropriate weight to factors that would justify a substantial reduction in the proposed fine. Moreover, it agrees with the Company that continued operation after a license has expired should not constitute two separate violations, one for operating without a license and another for failure to file a required form. The Alliance also shares Constellium's concern that the analysis underpinning this forfeiture may deter other PLMRS licensees from voluntarily

¹ *Constellium Rolled Products Ravenswood, LLC, an indirect, wholly-owned subsidiary of Constellium N.V.*, Notice of Apparent Liability for Forfeiture, FCC 14-68 (rel. May 29, 2014) ("NAL").

² See FCC Report No. CI 98-7 entitled "FCC Joint Agreement for the Resolution of Interference Complaints in the Land Mobile Communications Industry" released April 29, 1998. The Memorandum of Understanding was executed by the FCC's Compliance and Information Bureau (CIB), working in conjunction with the Wireless Telecommunications Bureau, and the Industrial Telecommunications Association, now the Enterprise Wireless Alliance.

³ EWA routinely publishes articles in its bi-weekly e-newsletter *Insider* that inform readers of relevant FCC enforcement activities. EWA invites all land mobile licensees who are experiencing interference issues on Part 90 frequencies to seek assistance from EWA. See www.enterprisewireless.org/Services/Interference.

disclosing similar violations and, instead, will encourage them to simply relicense their facilities as new systems. Finally, EWA will be hard-pressed to explain to its members an FCC forfeiture policy that results in a fine for violations that did not affect the operations of any other licensee in an amount more than ten times greater than the forfeiture assessed against a person who deliberately disrupted first responder communications.

The Alliance fully appreciates that all licensees, whether broadcasting conglomerates, nationwide wireless providers, major cable operators, or PLMRS entities that use radios to support their primary activities rather than as their core business, need to abide by FCC requirements. Nonetheless, for the reasons described in the Forfeiture Reduction Statement, EWA agrees that the difference between a company actively engaged in the provision of some type of communications service and a PLMRS licensee that uses radios to enhance its business efficiency is a factor that properly could be considered in quantifying the “degree of culpability” and other matters “as justice may require,”⁴ and thus constitutes the basis for a downward adjustment.⁵ This is particularly the case when, as in this instance, the infractions did not adversely affect any other licensee and were disclosed to the FCC voluntarily.

The Alliance also has been troubled by the relatively recent Commission practice of treating continued operation after the expiration of a license as constituting two separate violations. This practice creates the perverse situation described by the Company whereby an entity that operates without ever having secured a license is subject to a lesser fine than one that

⁴ 47 C.F.R. § 1.80(b)(8).

⁵ Assessing fines based on the number of FCC call signs involved uniquely disadvantages PLMRS licensees that typically operate on frequencies the FCC authorizes on a site- and frequency-specific basis, as opposed to geographic licenses where individual transmitter sites and frequencies are not separately licensed and typically require a very small number of call signs. And the Alliance must respectfully clarify the NAL’s statement that “Section 90.35 of the Rules does not limit the number of locations and frequencies that can be combined into a single authorization.” NAL at ¶ 14. While that is accurate, the FCC’s Universal Licensing System limits the number of fixed transmitter sites that may be authorized under any call sign to six. A PLMRS licensee that needs a seventh site must obtain a second license with a separate call sign.

obtained a license and then allowed it to expire. That does not, to the Alliance, appear to be an appropriate way of calculating FCC forfeitures or an approach that is needed to serve the public interest.

The Forfeiture Reduction Statement also cautions that the denial of any downward adjustment because the Company's voluntary disclosure, in the EB's opinion, was not sufficiently timely may discourage other PLMRS licensees from making a disclosure and seeking Special Temporary Authority in similar situations. A very significant number of PLMRS licenses can be recreated quickly and at relatively nominal cost by securing the necessary frequency coordination and filing an application for a "new" authorization. Under conditional licensing rules, subject to certain limitations an applicant may commence operation on Part 90 frequencies in the 150-470 MHz bands on the tenth day following application certification and submittal to the Commission by an FCC-certified FAC.⁶ The magnitude of the forfeiture in this case and the rejection of any downward adjustment for the Company's voluntary disclosure already is a topic of discussion in the PLMRS community. While the Alliance will continue to encourage its members to seek STAs when they discover prior violations, that effort will be even more challenging in light of this NAL.

Finally, EWA cannot help but be struck by what to most persons would seem to be the anomalous outcomes of this matter and the enforcement proceeding involving a Mr. Drew Buckley.⁷ Constellium continued operating after certain licenses had expired and consummated

⁶ See 47 C.F.R. §90.159. The FCC is currently investigating expansion of the applicability of the conditional licensing rules to both Industrial/Business and Public Safety applicants for frequencies in the Part 90 470-512 MHz, 800 MHz and 900 MHz bands. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Land Mobile Communications Council Petition for Rulemaking Regarding Conditional Licensing Authority above 470 MHz, and Deny Request for Extension of Temporary Waiver, *Public Notice*, DA 14-867 (rel. June 23, 2014).

⁷ In the Matter of Drew Buckley, Bay Shore, New York, *Notice of Apparent Liability for Forfeiture*, DA 14-880, (rel. June 26, 2014) ("Buckley NALF").

a transfer of control without prior FCC approval. The Alliance does not condone and the Company does not seek amnesty for those violations. But its failure to comply with those FCC licensing requirements did not adversely impact any other licensee. It did not cause interference to another party and, as its licenses all were for shared use of frequencies, it did not prevent other qualified applicants from obtaining the right to use those same frequencies at any location. Constellium's proposed forfeiture is \$294,000.00.

By contrast, according to the Buckley NALF, Mr. Buckley "intentionally and maliciously interfered with frequencies used by [the Melville Fire District of New York] to communicate during fire emergencies," thereby demonstrating "a deliberate disregard for public safety and the Commission's authority and rules....."⁸ Needless to say, Mr. Buckley did not turn himself in to the FCC. Instead, Commission resources were used to track the interfering transmissions to Mr. Buckley's home.⁹ The FCC reported that his actions were sufficiently serious to cause him to be arrested for Obstruction of Governmental Administration in the Second Degree, a Class A misdemeanor under Section 195.05 of the New York Penal Law.¹⁰ Mr. Buckley's proposed forfeiture is \$25,000.00.

EWA recognizes that ability to pay is one factor considered by the FCC in determining the size of a fine. Nonetheless, it is at a loss to understand how the public interest is served by a forfeiture policy that, on a relative basis, allocates very little consequence to actions like Mr. Buckley's that strike at the very heart of the Commission's statutory obligation to promote the

⁸ *Id.* at ¶ 1.

⁹ *Id.* at ¶ 5.

¹⁰ *Id.* at n. 7.

safety of life and property through its regulation of radio while assessing the Company an extraordinarily large forfeiture for licensing deficiencies with no impact on other parties.

Respectfully submitted,
Enterprise Wireless Alliance

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Its Attorneys

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