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

In the Matter of	)	
	)	
COMMERCIAL RADIO SERVICE CORP.	)	
Licensee of Specialized Mobile Radio Stations	)	
WPFV467, WPFV649, WPFV705, WPFV707,	)	
WPFV709, WPFV852, WPFV924, WPFV929,	)	
WPFV961, WPFV962 and WPFU496	)	File No. EB-00-TS-232
Various locations in North Carolina and	)	NAL/Acct. No. 200132100009
Virginia	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 7, 2000 **Released:** December 11, 2000

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

I. Introduction

1. In this Notice of Apparent Liability for Forfeiture, we find that Commercial Radio Service Corp. (Commercial Radio), operated 800 MHz Conventional Specialized Mobile Radio (SMR) stations without Commission authorization, in apparent violation of Section 301 of the Communications Act of 1934 ("Act")[1], as amended, and Section 1.903(a) of the Commission's Rules ("Rules").[2] We conclude that Commercial Radio is apparently liable for a forfeiture in the amount of six thousand dollars ($6,000).

II. Background

2. Commercial Radio's authorizations for the SMR stations expired on the dates indicated: WPFV467 (10/18/99), WPFV649 (10/21/99), WPFV705 (10/21/99), WPFV707 (10/21/99), WPFV709 (10/21/99), WPFV852 (10/21/99), WPFV924 (10/19/99), WPFV929 (10/20/99), WPFV961 (10/21/99), WPFV962 (10/21/99) and WPFU496 (10/11/99). On March 24, 2000, Commercial Radio filed applications for renewal of the authorizations for the stations and requested the waiver of Section 1.949 of the Commissions Rules.[3] Commercial Radio's waiver request indicates that Commercial Radio apparently operated SMR stations without authorization between October, 1999 and March 24, 2000. On August 8, 2000, the Commission granted Commercial Radio's waiver request and reinstated its authority to operate the above mentioned SMR stations.

[1] 47 U.S.C. § 301.

[2] 47 C.F.R. § 1.903(a).

[3] 47 C.F.R. § 1.949. This Section provides , in pertinent part, that "Applications for renewal of authorizations in the Wireless Radio Services must be filed no later than the expiration date of the authorization for which renewal is sought. . . ."

II. Discussion

3. Section 301 of the Act sets forth the general mandate that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Section 1.903(a) of the Commission's Rules provides, in pertinent part, that stations in the SMR service must be operated with a valid Commission authorization. We conclude that Commercial Radio operated SMR stations without valid licenses between October, 1999 and March 24, 2000, in apparent willful and repeated violation of Section 301 of the Communications Act and Section 1.903(a) of the Rules.

4. In the *Universal Licensing System Memorandum Opinion and Order on Reconsideration(MO&O)*[4], the Commission noted that the Wireless Telecommunications Bureau, after reviewing the circumstances concerning a late filed renewal application, may, in its discretion, initiate enforcement action against a licensee for unauthorized operation.[5] Moreover, the Commission stated in the *MO&O* that applications for renewal received more than 30 days after the expiration of the license may lead to "more significant fines or forfeitures." In this case, Commercial Radio operated without valid licenses for approximately five months after the licenses expired.

5. The guidelines contained in the Commission's *Forfeiture Policy Statement,* 12 FCC Rcd 17087, 17113 *(1997*), *recon. denied,* 15 FCC Rcd 303 (1999), specify a base forfeiture amount of $10,000 for operation without an instrument of authorization for the service. Section 503(b)(2)(D) of the Act[6] requires the Commission to consider "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." In this case, Commercial Radio failed to file applications for renewal and operated eleven SMR stations for over five months under circumstances where the Commission has envisioned "more significant fines or forfeitures" for violations in excess of 30 days. On the other hand, Commercial Radio had previously been licensed, so this is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately $10,000.[7] Taking into consideration all of the factors required by Section 503(b)(2)(D) of the Act and the *Forfeiture Policy Statement,* we conclude that a forfeiture of $6,000 is warranted.

III. Ordering Clauses

6. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act[8] and Sections

[4] *Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Memorandum Opinion and Order upon reconsideration,* 14 FCC Rcd 11476, 11485-11486 (1999).

[5] The enforcement responsibilities of the Wireless Telecommunications Bureau are now with the Enforcement Bureau. *See* 47 C.F.R. § 0.111.

[6] 47 U.S.C. §503(b)(2)(D).

[7] *See, e.g., Jean R. Jonassaint,* 15 FCC Rcd 10422 (Enf. Bur. 2000).

[8] 47 U.S.C. § 503(b).

0.111, 0.311 and 1.80 of the Rules[9], Commercial Radio is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of $6,000 for violation of Section 301 of the Communications Act of 1934, as amended, and Section 1.903(a) of the Commission's Rules. The amount specified was determined after consideration of the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D) and the guidelines enumerated in the *Forfeiture Policy Statement*.

7. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release of this **NOTICE OF APPARENT LIABILITY**, Commercial Radio **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No.: 200132100009.

9. The response if any must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, SW, Washington, D.C. 20554, Ref: EB-00-TS- 232, NAL/Acct. No.: 20032100009.

10. 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.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, SW, Washington, D.C. 20554.[10]

12. **IT IS FURTHER ORDERED THAT** this notice shall be sent, by certified mail, receipt requested, to counsel for Commercial Radio Service Corp**.,** Lukas, Nace, Gutierrez & Sachs, Attention Marilyn S. Mense, 1111 19th Street, NW, 12th Floor, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

[9] 47 C.F.R. §§ 0.111, 0.311, and 1.80.

[10] *See* 47 C.F.R. § 1.1914