

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

<b>In the Matter of</b>	)	
	)	
Callcom, Inc.	)	File No. EB-00-TS-015
Trunked Business Station, WPHD876	)	
Denver, CO	)	NAL/Acct. No. 915DV0013

**FORFEITURE ORDER**

**Adopted:** April 21, 2000

**Released:** April 24, 2000

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) against Callcom, Inc. (“Callcom”) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and former Section 90.113 of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Callcom’s installation and operation of a radio transmitter at an unauthorized location in Denver, Colorado.

2. On September 22, 1999, the Commission’s Denver, Colorado, Field Office (“Field Office”), issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Callcom in the amount of six thousand dollars (\$6,000) for the noted violations.<sup>3</sup> Callcom filed a response on October 22, 1999.

**II. BACKGROUND**

3. In late 1998, FCC agents from the Field Office and other Commission field offices investigated complaints regarding noncompliant operation and use of the 800 and 900 MHz frequency bands in the Denver, Colorado, area. On September 23, 1998, Field Office agents met with John Gazzo, Callcom’s owner, and inspected the 900 MHz trunked radio systems that he managed and serviced at Republic Plaza, 370 17<sup>th</sup> Street,

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> Since the violations at issue, the Commission consolidated its licensing rules into a single set of rules for all wireless radio services. *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*, 13 FCC Rcd 21027 (1998). Effective February 12, 1999, the Commission removed Section 90.113, 47 C.F.R. § 90.113, and added Section 1.903, 47 C.F.R. § 1.903, which incorporates the substance of removed Section 90.113. *Id.*

<sup>3</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 915DV0011 (Compl. & Inf. Bur., Denver, Colo. Field Office, rel. Sept. 22, 1999).

Denver, Colorado, and at Eldorado Mountain, near Eldorado Springs, Jefferson County, Colorado.

4. At the Republic Plaza site, the agents inspected one transmitter, for which Mr. Gazzo provided FCC Call Sign WPHD876, operating on 939.6375 MHz. According to Mr. Gazzo, the transmitter operating on 939.6375 MHz (and others that were trunked together with it) had been installed at Republic Plaza in June of 1998. At Eldorado Mountain, the agents did not find a transmitter that operated on 939.6375 MHz.

5. An FCC agent searched the Commission's wireless license database and confirmed that Callcom held a Commission license under Call Sign WPHD876 to operate on 939.6375 MHz. The agent found, however, that the Commission had authorized Callcom to operate on 939.6375 MHz at north latitude 39-54-48 and west longitude 105-17-32 (Eldorado Mountain site) and not at north latitude 39-44-36 and west longitude 104-59-18 (Republic Plaza site), which was approximately twenty miles from the authorized location at Eldorado Mountain

6. As noted above, on September 22, 1999, the Field Office issued a \$6,000 NAL to Callcom for willfully and repeatedly operating a transmitter on 939.6375 MHz at the Republic Plaza site instead of the Commission's authorized location at Republic Plaza. In its response to the NAL, Callcom concedes that "it was using the license it had incorrectly" and admits to the "violation alleged in the NAL."<sup>4</sup> Callcom challenges, on the other hand, the amount of the NAL, and presents several arguments for mitigation or cancellation of the forfeiture: (1) Callcom is licensed to operate on frequency 939.6375 MHz and did not interfere with another licensee's use of 939.6375 MHz; (2) Callcom's operation on 939.6375 MHz from the unauthorized location was "the result of confusion," rather than an intentional act; (3) the NAL impermissibly raised the forfeiture from the \$4,000 base amount specified for operation at an unauthorized location to \$6,000; and (4) Callcom is entitled to a reduction of the forfeiture amount as a "small business" entitled to special treatment under the Small Business Regulatory Enforcement Fairness Act ("SBREFA").

### III. DISCUSSION

7. Callcom concedes that it was operating a transmitter from Republic Plaza without Commission authorization. This is a violation of Section 301 of the Act and former Section 90.113 of the Rules. The Commission has set \$4,000 as the base forfeiture amount for construction or operation at an unauthorized location.<sup>5</sup> The Field Office reviewed the record, the statutory factors set forth in Section 503(b)(2)(D) of the Act,<sup>6</sup> and the *Forfeiture Policy Statement* before deciding upon a \$6,000 forfeiture. The NAL stated that the increased amount of \$6,000 was appropriate "especially in light of the fact that [Callcom] knowingly and deliberately violated the Act and the Rules . . ." As explained below, we agree with Callcom that the forfeiture should be reduced to the \$4,000 base forfeiture amount, but find that Callcom's arguments for reduction below the base forfeiture amount or cancellation of the forfeiture are without merit.

8. The use of the phrase "knowingly and deliberately" in the NAL indicates that the Field Office increased the proposed forfeiture to \$6,000 because of an intentional violation.<sup>7</sup> Callcom, on the other hand,

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<sup>4</sup> Callcom's Opposition to NAL at p. 2; Declaration of John C. Gazzo.

<sup>5</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087, 17114 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b), note to paragraph b(4), Section I.—*Base Amounts for Section 503 Forfeitures*.

<sup>6</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>7</sup> The *Forfeiture Policy Statement* specifies "intentional violation" as an upward adjustment criterion. *Forfeiture Policy*

argues that its violation was inadvertent rather than intentional, stemming from confusion in siting its transmitter.<sup>8</sup> We agree with Callcom that the record is insufficient to show that its violations were intentional. Accordingly, we will reduce the \$6,000 forfeiture to \$4,000, the base forfeiture amount specified for operation at an unauthorized location. Callcom also makes other arguments against increasing the forfeiture from the \$4,000 base forfeiture amount to \$6,000 (i.e., Callcom's culpability, the gravity of its violation, and the Field Office's alleged failure to explain the reasons for increasing the forfeiture from the base forfeiture amount). Because we are reducing the original forfeiture amount to the base forfeiture amount, these arguments are moot and require no further discussion.

9. Although Callcom may not have intended to violate the Act or the Rules, it concedes that it installed the 939.6375 MHz transmitter at Republic Plaza, an unauthorized location, in June 1998 and operated the transmitter from that site as a result of confusion.<sup>9</sup> We, therefore, conclude from the record before us that Callcom's violations of Section 301 of the Act and former Section 90.113 of the Rules were willful and repeated.<sup>10</sup>

10. Callcom's argument that the forfeiture should be mitigated because Callcom is licensed to operate on 939.6375 MHz from another site is unavailing. If Callcom held no license, the base forfeiture amount would have been \$10,000.<sup>11</sup> Thus, by selecting \$4,000 as the base forfeiture amount, we took the fact that Callcom is a licensee into consideration with respect to its unauthorized operation. As to Callcom's claim that it was not causing interference to another licensee's use of 939.6375 MHz, a finding of interference is not a prerequisite to a finding that a licensee's operation from an unauthorized location is a violation of the Act and the Rules. Conversely, a finding of an absence of interference does not entitle Callcom to a reduction of the forfeiture amount pursuant to the Commission's downward adjustment criteria for forfeitures.<sup>12</sup>

11. Callcom avers that, under SBREFA, it qualifies as a small business because it is a "start-up firm, independently owned and operated, and is not dominant in its field of operation."<sup>13</sup> Callcom further argues that its qualification as a small business entity requires the Commission, pursuant to SBREFA, to "provide for

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*Statement*, 12 FCC Rcd at 17116; 47 C.F.R. § 1.80(b), note to paragraph b(4), Section II *Adjustment Criteria for Section 503 Forfeitures*.

<sup>8</sup> See *supra* note 4.

<sup>9</sup> Declaration of John C. Gazzo.

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f), which applies to 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 or by a treaty ratified by the United States." The word "willfully" as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that a licensee knew it was doing the act in question. See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, 47 C.F.R. § 1.80(b), note to paragraph b(4), Section I.—*Base Amounts for Section 503 Forfeitures*.

<sup>12</sup> See *supra* note 7.

<sup>13</sup> See 15 U.S.C. § 632(a)(1).

reduction or waiver of penalties. . . .” The Commission, through its *Forfeiture Policy Statement*, Section 503(b) of the Act, and Section 1.80(b) of the Rules, has already considered its obligations under SBREFA and enunciated the appropriate guidance for upward and downward adjustments to forfeitures, as provided by SBREFA. *See Jerry Szoka*, 14 FCC Rcd 9857, 9866 (1999), *recon. denied* 14 FCC Rcd 20147 (1999). Using this guidance, we do not find that Callcom is entitled to a further reduction or cancellation of the forfeiture amount.<sup>14</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,<sup>15</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,<sup>16</sup> Callcom, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for willfully and repeatedly violating Section 301 of the Act and former Section 90.113 of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,<sup>17</sup> within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>18</sup> Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the “Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 915DV0011 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.<sup>19</sup>

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<sup>14</sup> We note that Callcom does not present any argument related to its ability to pay the forfeiture amount and provides no documentation on this point for our consideration.

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>17</sup> 47 C.F.R. § 1.80.

<sup>18</sup> 47 U.S.C. § 504(a).

<sup>19</sup> *See* 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Russell H. Fox, Esq. and Russ Taylor, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., East Tower, Washington D.C. 20005-3317, and Callcom, Inc., 7000 North Broadway, Building 2, Suite 203, Denver, Colorado 80221.

**FEDERAL COMMUNICATIONS COMMISSION**

David H. Solomon  
Chief, Enforcement Bureau