

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

<b>In the Matter of</b>	)	
	)	<b>File No.: EB-00-SJ-075</b>
<b>Santiago Varela</b>	)	
Hormigonera Chaparro, Inc.	)	
P.O. Box 818	)	
	)	<b>NAL/Acct. No.: X3268-002</b>
Aguada, PR 00620	)	

**FORFEITURE ORDER**

**Adopted: January 3, 2001**

**Released: January 4, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) against Hormigonera Chaparro, Inc. (“HCI”) for willfully violating Section 301 of the Communications Act of 1934, as amended (“the Act”).<sup>1</sup> The noted violation involves HCI’s operation of a two-way radio station without Commission authorization.

2. On September 26, 2000, the Commission’s San Juan Resident Agent Office (“San Juan Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of five thousand dollars (\$5,000) to HCI for the noted violation.<sup>2</sup> HCI responded to the NAL on October 17, 2000.

**II. BACKGROUND**

3. HCI formerly held the license for Land Mobile Station WPIK940. HCI did not respond to Commission correspondence asking whether it constructed and placed Station WPIK940 in operation by the required date. As a result, the Commission notified HCI, by letter dated January 26, 1998 (“800H letter”), that its license for Station WPIK940 had automatically cancelled.<sup>3</sup>

4. On August 15, 2000, an agent from the San Juan Office (“the agent”) received a report of possible unlicensed operation on the frequency pair 464.425 MHz/469.425 MHz, which formerly was assigned to Station WPIK940. On August 18, 2000, the agent telephonically notified both HCI’s communications representative, Mr. Luis Rosario, and HCI’s owner, Mr. Santiago Varela, that HCI’s station was unlicensed. On the same date, the agent sent a Notice of Unlicensed Radio Operation (“NURO”) to HCI by facsimile and by mail.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. X3268-002 (Enf. Bur., San Juan Office, released September 26, 2000).

<sup>3</sup> The NAL uses the date August 26, 1998, which is the date the Wireless Telecommunications Bureau deleted the license for Station WPIK940 from the Commission’s license records.

5. As of September 7, 2000, the agent had received a certified mail receipt indicating that HCI received the NURO but had not received a reply to the NURO. On that date the agent monitored transmissions on the frequency pair 464.425 MHz/469.425 MHz. Using a mobile automatic direction finding vehicle, the agent traced the transmissions to an antenna installed at RD 411, Km 0.4, Aguada, PR. An inspection confirmed that HCI was operating an unlicensed station from that location.

6. Based on the above, on September 26, 2000, the San Juan Office issued a NAL in the amount of five thousand dollars (\$5,000) to HCI for violation of Section 301 of the Act.

7. In response to the NAL, Mr. Varela requests rescission of the proposed monetary forfeiture but does not deny that HCI engaged in unlicensed operation. Mr. Varela indicates that -- prior to the monitoring on September 7, 2000 -- he instructed his communications provider to terminate the unlicensed operation immediately but, for unknown reasons, the communications provider did not do so. Additionally, Mr. Varela states that he acquired HCI in September 1998 and that no one brought the license cancellation to his attention.<sup>4</sup>

### III. DISCUSSION

8. As the NAL explicitly states, the San Juan Office assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that, in examining Mr. Varela's response, the Commission take into account 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 other such matters as justice may require.<sup>7</sup>

9. Section 301 of the Act prohibits radio operation "except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."

10. Mr. Varela does not deny the violation alleged in the NAL. In view of the facts set forth above, we conclude that HCI operated without authorization on frequency pair 464.425 MHz/469.425 MHz on September 26, 2000, in willful violation of Section 301 of the Act.

11. Mr. Varela should have taken whatever steps were needed to terminate the unlicensed operation rather than simply relying on his communications provider to follow instructions. The San Juan Office took Mr. Varela's unsuccessful attempt to terminate the unlicensed operation into account when it set the proposed forfeiture amount at \$5,000, a reduction from the base amount of \$10,000 specified by the *Policy Statement* for unlicensed operation. No further reduction is warranted.

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<sup>4</sup> Mr. Varela requested copies of the 800H letter and the certified mail receipt for that letter. 800H letters instruct recipients to return those letters to the Commission with their responses. Since HCI did not return its 800H letter to the Commission, we do not have a copy of that letter. We will mail a copy of the certified mail receipt concurrently.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

12. We have examined Mr. Varela's response to the NAL in light of the above statutory factors and the factors set forth in the *Policy Statement*. Taking all of these factors into account, we conclude that neither cancellation nor mitigation of the proposed forfeiture is justified and that the proper forfeiture amount is \$5,000.

#### IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>8</sup> Hormigonera Chaparro, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,000 for willful violation of the provisions of Section 301 of the Act.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this 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>9</sup> Payment may be made 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 the NAL/Acct. No. 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>10</sup>

15. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail -- Return Receipt Requested, to Mr. Santiago Varela, Hormigonera Chaparro, Inc., P.O. Box 818, Aguada, PR 00602.

#### FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>8</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>9</sup> 47 U.S.C. § 504(a).

<sup>10</sup> See 47 C.F.R. § 1.1914.