

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

In the Matter of	)	
	)	
Falcon Radio, Inc.	)	File No. EB-00-TS-002
Trunked Business Station	)	
Denver, CO	)	NAL/Acct. No. 915DV0005
	)	
and	)	
	)	
Falcon Radio, Inc.	)	File No. EB-00-TS-009
Trunked Business Station	)	
Denver, CO	)	NAL/Acct. No. 915DV0006

**MEMORANDUM OPINION AND ORDER  
AND FORFEITURE ORDER**

**Adopted: July 30, 2001**

**Released: August 1, 2001**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order and Forfeiture Order* (“*Order*”), we consolidate the above-captioned proceedings involving Falcon Radio, Inc. (“Falcon”) because they raise overlapping issues. For the reasons that follow, we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Falcon for its unlicensed operation of a 900 MHz business radio system at Thorodin Mountain in Wondervu, Colorado, in willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“the Act”).<sup>1</sup> In addition, we rescind a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) issued to Falcon for its unlicensed operation of a 900 MHz business radio system at Squaw Mountain in Idaho Springs, Colorado, in willful and repeated violation of Section 301 of the Act.

**II. BACKGROUND**

2. In 1998, after receiving complaints and information regarding non-compliant operation and use of the 800 MHz and 900 MHz frequency bands in the Denver area, the FCC’s Denver, Colorado Field Office (“Denver Office”) initiated an investigation. As part of this investigation, on September 23, 1998, agents from the Denver Office inspected a trunked radio system located at Squaw Mountain in Idaho Springs, Colorado. The system was composed of five transmitters, all of which were in operation. Measurements taken by the agents indicated that the radio equipment was transmitting on frequencies 939.3875 MHz, 939.4000 MHz, 939.4125 MHz, 939.4250 MHz, and 939.4375 MHz. At the time of the inspection, the system was being managed and operated by Falcon, a subsidiary of High Voltage, Inc. (“High Voltage”). Jack Spillman, Falcon’s service manager, told the agents that the five channels at the

---

<sup>1</sup> 47 U.S.C. § 301.

Squaw Mountain site were part of a ten channel station licensed to High Voltage at Squaw Mountain under the call sign WPIZ573. Mr. Spillman stated that High Voltage had received Special Temporary Authority (“STA”) from the Commission to construct and operate the other five channels at Thorodin Mountain in Wondervu, Colorado.

3. On September 28, 1998, agents from the Denver Office inspected the Thorodin Mountain site. The agents observed a trunked radio system composed of five transmitters, all of which were in operation. Measurements taken by the agents indicated that the radio equipment was transmitting on frequencies 939.4500 MHz, 939.4625 MHz, 939.4750 MHz, 939.4875 MHz, and 939.5000 MHz. Mr. Spillman was also present at this inspection. He repeated that High Voltage had received STA from the Commission to construct and operate the five channels at the Thorodin Mountain site rather than at the authorized Squaw Mountain site and provided a copy of a request for extension of the STA as authorization for the operation at the Thorodin Mountain site.

4. In reviewing Commission records, the Denver Office discovered that the Wireless Telecommunications Bureau (“Wireless Bureau”) had deleted the license for Station WPIZ573 from its database on March 24, 1998, based on a failure to construct Station WPIZ573 and to respond to an “800H letter,” the third and final of three form letters routinely sent out by the Wireless Bureau to request the construction status of a particular station. Review of Commission records showed no other authorization for operation at the Squaw Mountain site. Moreover, while review of Commission records revealed that High Voltage had obtained STA to construct and operate five channels at the Thorodin Mountain site for a 180-day period from December 4, 1996, to June 4, 1997, there was no record of any extension of this STA or any other authorization for operation at the Thorodin Mountain site.

5. Based on its finding that the license for Station WPIZ573 had been cancelled, on September 15, 1999, the Denver Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of twenty thousand dollars (\$20,000) to Falcon for unlicensed operation of a 900 MHz business radio system at Squaw Mountain in Idaho Springs, Colorado (“*Squaw Mountain NAL*”).<sup>2</sup> On that same date, the Denver Office also issued an NAL in the amount of twenty thousand dollars (\$20,000) to Falcon for unlicensed operation of a 900 MHz business radio system at Thorodin Mountain in Wondervu, Colorado (“*Thorodin Mountain NAL*”).<sup>3</sup> Falcon filed a response to the *Thorodin Mountain NAL* on October 14, 1999,<sup>4</sup> but did not file a timely response to the *Squaw Mountain NAL*. The Enforcement Bureau issued a *Forfeiture Order* affirming the *Squaw Mountain NAL* on December 21, 1999.<sup>5</sup> On December 20, 1999, Falcon filed a letter requesting that its October 14, 1999 response to the *Thorodin Mountain NAL* also be treated as a response to the *Squaw Mountain NAL*. Falcon stated that it had not received a copy of the *Squaw Mountain NAL* at the time it was issued and that it had only recently become aware of the *Squaw Mountain NAL*. Falcon’s December 20, 1999 pleading was an untimely response to the *Squaw Mountain NAL*<sup>6</sup> and was submitted too late to receive consideration prior to issuance

---

<sup>2</sup> *Notice of Apparent Liability*, NAL/Acct. No. 915DV0005 (released September 15, 1999).

<sup>3</sup> *Notice of Apparent Liability*, NAL/Acct. No. 915DV0006 (released September 15, 1999).

<sup>4</sup> This pleading was styled as a “Petition for Reconsideration” of the *Thorodin Mountain NAL*. Pursuant to Section 1.80(f)(3) of the Rules, 47 C.F.R. § 1.80(f)(3), we will treat this pleading as a response to the NAL.

<sup>5</sup> *Falcon Radio, Inc.*, DA 99-2961 (Enf. Bur., released December 21, 1999).

<sup>6</sup> Pursuant to Section 1.80(f)(3) of the Rules, the subject of an NAL generally has 30 days from the date of the

of the *Forfeiture Order*. Nevertheless, we will treat this pleading as a petition for reconsideration of the *Forfeiture Order* pursuant to Section 1.106 of the Commission's Rules.<sup>7</sup>

6. Falcon argues that the license for Station WPIZ573 was incorrectly cancelled because Station WPIZ573 was constructed and placed into operation in a timely manner. Falcon states that five of the ten channels licensed to Station WPIZ573 were constructed and placed into operation at the authorized Squaw Mountain site within the one-year construction period. Falcon further states that on December 4, 1996, the Wireless Bureau granted High Voltage STA to construct and operate the remaining five channels at the Thorodin Mountain site for a 180-day period ending June 4, 1997. Although Falcon admits that the request for extension of the STA was never filed with the Commission, it maintains that the failure to file the extension request was the result of an administrative error. Falcon avers that it continued to operate the five channels at the Thorodin Mountain site under the mistaken belief that the STA had been extended pending the filing of an application to modify the license for Station WPIZ573 to permanently relocate the five channels to the Thorodin Mountain site. High Voltage filed a modification application for Station WPIZ573 on June 1, 1998. This application was returned to High Voltage by the frequency coordinator on November 11, 1998, because the call sign WPIZ573 had been deleted from the Commission database on March 24, 1998.

7. Falcon also asserts that High Voltage never received the Wireless Bureau's 800H letter or any other request from the Commission for information about the status of the construction of Station WPIZ573. However, Falcon maintains that the Wireless Bureau was notified in the STA request granted on December 4, 1996, that five of the ten channels had been constructed and placed into operation at the authorized Squaw Mountain site. Additionally, Falcon asserts that High Voltage was not notified that the license for Station WPIZ573 had been cancelled until late September 1998, when FCC agents from the Denver Office inspected the Squaw and Thorodin Mountain sites. Falcon concedes that High Voltage was unsuccessful in achieving total compliance with the Commission's rules, but argues that the forfeitures should be rescinded or substantially reduced in light of High Voltage's good faith in attempting to comply with the Commission's rules. Finally, Falcon requests that the license for Station WPIZ573 be reinstated for the five channels at the Squaw Mountain site.<sup>8</sup>

### III. DISCUSSION

8. 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."<sup>9</sup> We find that Falcon operated the 900 MHz trunked radio system without a valid license in willful and repeated violation of

---

NAL to file a response. 47 C.F.R. § 1.80(f)(3).

<sup>7</sup> 47 C.F.R. § 1.106. Falcon filed a petition for reconsideration of the *Forfeiture Order* on January 24, 2000, again requesting that we associate its response to the *Thorodin Mountain NAL* with the *Squaw Mountain NAL*. Because this petition was filed more than 30 days after the release of the *Forfeiture Order*, it is untimely and therefore will not be considered. See 47 U.S.C. § 405; 47 C.F.R. § 1.106(f). Nevertheless, we note that the substantive arguments advanced by Falcon in this petition were included in the December 20, 1999 pleading, which we are considering here.

<sup>8</sup> Falcon does not seek reinstatement of the five channels at the Thorodin Mountain site, four of which have been relicensed to another entity.

<sup>9</sup> 47 U.S.C. § 301.

Section 301 of the Act. Nevertheless, we agree with Falcon that the circumstances presented here justify a substantial reduction of the forfeitures assessed or proposed in this proceeding. We note in particular that since Falcon's STA request, granted on December 4, 1996, indicated construction of the Squaw Mountain site more than a year before the license for that facility was cancelled, and since Falcon did not receive notice of the cancellation, Falcon may have reasonably – albeit mistakenly – believed that the facility was duly authorized. Thus, a \$20,000 forfeiture for unauthorized operation is unwarranted and we rescind the \$20,000 forfeiture issued to Falcon for its unlicensed operation of a 900 MHz trunked radio system at Squaw Mountain. In addition, we reduce the forfeiture amount for Falcon's unlicensed operation of a 900 MHz trunked radio system at Thorodin Mountain from \$20,000 to \$5,000. Finally, we caution Falcon to exercise greater diligence in submitting all appropriate filings to the Commission on a timely basis.

9. Regarding Falcon's request for reinstatement of the license for Station WPIZ573 for the five channels at the Squaw Mountain site, a forfeiture proceeding is not an appropriate vehicle for seeking reinstatement of a cancelled license. If Falcon wishes to seek reinstatement of the license, it should file a request for reinstatement with the Wireless Telecommunications Bureau.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>10</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>11</sup> Falcon Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand dollars (\$5,000) for unauthorized operation of a radio station in willful and repeated violation of Section 301 of the Act.

11. **IT IS FURTHER ORDERED** that the forfeiture in the amount of twenty thousand dollars (\$20,000) issued to Falcon Radio, Inc., NAL/Acct. No. 915DV0005, **IS RESCINDED**.

12. **IT IS FURTHER ORDERED** that the December 20, 1999 petition for reconsideration of the *Forfeiture Order* filed by Falcon Radio, Inc. **IS GRANTED TO THE EXTENT INDICATED HEREIN**.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 405 of the Act and Section 1.106(f) of the Rules, the January 24, 2000 petition for reconsideration of the *Forfeiture Order* filed by Falcon Radio, Inc. **IS DISMISSED** as untimely.

14. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules<sup>12</sup> 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>13</sup> Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should

---

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</sup> 47 U.S.C. § 504(a).

---

note NAL/Acct. No. 915DV0006. 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>14</sup>

15. **IT IS FURTHER ORDERED** that, a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested to Falcon Radio, Inc. at 7340 South Alton Way, Suite 2, Englewood, Colorado 80112 and by first class mail to Benjamin J. Aron, Esq., Schwaninger & Associates, P.C., 1835 K Street, N.W., Suite 650, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

---

<sup>14</sup> See 47 C.F.R. § 1.1914.