

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

In the Matter of)
)
Elmont Trans Med Corporation) File No. EB-00-TS-221
1305 Hempstead Turnpike)
Elmont, New York 11003)
)
Licensee of Station WIL722)

MEMORANDUM OPINION AND ORDER

Adopted: July 31, 2001

Released: August 2, 2001

By the Chief, Enforcement Bureau:

1. In this Memorandum Opinion and Order ("Order"), we grant in part a petition for reconsideration filed February 22, 2001 by Atlantic Telecommunications ("Atlantic"). Atlantic seeks reconsideration of the January 23, 2001, letter decision of the Deputy Chief, Technical and Public Safety Division, which denied Atlantic's request that a Notice of Violation and Order to Discontinue Unauthorized Operation be issued to Elmont Trans Med Corporation ("Elmont"), licensee of Station WIL722.

2. In a complaint filed March 8, 2000, Atlantic alleged that Elmont did not timely construct its station and was operating at an unauthorized site in violation of Commission rules. The complaint alleged that Elmont's failure to timely construct was verified by monitoring of the shared frequency pair on which Station WIL722 is licensed to operate¹ conducted by New York Radio Service, Inc. ("New York Radio") between January 13, 1996 and February 1, 1997, and by subsequent conversations with Elmont personnel. The complaint further alleged that in December 1998, New York Radio determined through subsequent monitoring that Elmont had placed Station WIL722 into operation, and that in September 1999, New York Radio determined through direction finding techniques that Elmont was operating Station WIL722 at an unauthorized location in the vicinity of Queens Boulevard, Queens, New York. The January 23, 2001, letter decision noted that in March 2000, after Atlantic's complaint was filed, Elmont contacted the FCC's New York Field Office to advise the FCC that its radio equipment associated with Station WIL722 had been inadvertently placed in operation at Queens Boulevard, the location for Elmont's other station, WIL708. The New York Field Office instructed Elmont to move Station WIL722 to its authorized location in order to correct the problem. On August 10, 2000, the New York Field Office verified that Elmont was operating Station WIL722 at its authorized location in North Shore Towers, Queens, New York. Based on this information, the letter decision concluded that no enforcement action was warranted.

¹ Station WIL722 is licensed to operate on frequency pair 472/475.1625 MHz. Atlantic is also licensed to operate on frequency pair 472/475.1625 MHz under call sign WPNS833.

3. In its petition for reconsideration, Atlantic argues that the letter decision incorrectly concluded that no enforcement action was warranted. Atlantic states that it provided extensive evidence that Station WIL722 was not operational for more than a year and that when it did operate it did so at an unauthorized location. Citing Section 90.157 of the Commission's Rules ("Rules"),² Atlantic states that it appears that Station WIL722 permanently discontinued operations and that its associated license cancelled automatically.

4. Section 1.903(a) of the Rules provides, in pertinent part, that stations in the Wireless Radio Services must be used and operated only in accordance with a valid authorization granted by the Commission.³ Elmont admitted that it placed Station WIL722 into operation at Queens Boulevard, rather than its authorized location in North Shore Towers. We admonish Elmont for its operation of Station WIL722 from an unauthorized location in violation of Section 1.903(a).⁴

5. Whether Elmont's license cancelled automatically in 1996 or 1997 due to discontinuance of operation under Section 90.157 of the Rules is a separate licensing issue, which we are hereby referring to the Wireless Telecommunications Bureau. Because we are referring the license cancellation issue to the Wireless Telecommunications Bureau, we conclude that no enforcement action on this issue is warranted at this time.

6. Accordingly, IT IS ORDERED, pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed February 22, 2001, by Atlantic Telecommunications IS GRANTED to the extent indicated herein and IS OTHERWISE DENIED.

7. IT IS FURTHER ORDERED that Elmont Trans Med Corporation IS ADMONISHED for operating Station WIL722 from an unauthorized location in violation of Section 1.903(a) of the Rules.

² Section 90.157 provides that a station that has not operated for more than one year is considered to have permanently discontinued operations and that a station license cancels automatically upon permanent discontinuance of operations. 47 C.F.R. § 90.157.

³ 47 C.F.R. § 1.903(a).

⁴ To the extent that Atlantic seeks imposition of a forfeiture for this violation, we note that the one-year statute of limitations in Section 503(b)(6)(B) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(6)(B), precludes imposition of a forfeiture against Elmont at this time.

8. IT IS FURTHER ORDERED that a copy of this *Order* be sent Certified Mail Return Receipt Requested to counsel for Atlantic Telecommunications, Marilyn S. Mense, Esq., Lukas, Nace, Gutierrez & Sachs, 1111 19th Street, NW, 12th Floor, Washington, D.C. 20036, and to Elmont Trans Med Corporation, 1305 Hempstead Turnpike, Elmont, New York 11003.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau