

**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)	

FORFEITURE ORDER

Adopted: February 13, 2001

Released: February 15, 2001

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

I. Introduction

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of \$6,000 to Commercial Radio Service Corp. (“Commercial Radio”) for violating Section 301 of the Communications Act of 1934 (“Act”)¹, as amended, and Section 1.903(a) of the Commission’s Rules (“Rules”).² The noted violations involve the operation of eleven 800 MHz Conventional Specialized Mobile Radio (SMR) stations without Commission authorization.

2. On December 11, 2000, the Technical and Public Safety Division (“TPSD”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of six thousand dollars (\$6,000).³ Commercial Radio filed its response on January 10, 2001.

II. Background

2. Commercial Radio’s authorizations for the captioned 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 those stations and requested the waiver of Section

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200132100009 (Enf. Bur., Technical and Public Safety Division, released December 11, 2000).

1.949 of the Commissions Rules.⁴ Commercial Radio's waiver request indicates that it operated the captioned SMR stations without authorization between October, 1999 and March 24, 2000.⁵

3. In its response to the NAL, Commercial Radio argues that it is entitled to cancellation or mitigation of the proposed forfeiture on the basis of its "history of overall compliance" and because the violations resulted from an administrative error by its agent. Commercial Radio also argues that the period of misconduct for which the Commission may assess a forfeiture runs from December 1999 (one year before the issuance of the NAL)⁶ to March 24, 2000, and that the unauthorized operation of the captioned stations during that period does not warrant a \$6,000 forfeiture.

II. Discussion

4. As the NAL explicitly states, TPSD assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Act,⁷ Section 1.80 of the Rules,⁸ 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 Act⁹ requires that, in examining Commercial Radio'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.¹⁰

5. 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.

6. Commercial Radio concedes it operated its 11 SMR stations without valid licenses between October, 1999 and March 24, 2000. We conclude that Commercial Radio's unauthorized operation between October, 1999 and March 24, 2000, was in willful and repeated violation of Section 301 of the Communications Act and Section 1.903(a) of the Rules.

⁴ 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. . . ."

⁵ On August 8, 2000, the Commission granted Commercial Radio's March 24, 2000, waiver request and reinstated its authority to operate the above mentioned SMR stations.

⁶ See Section 503(b)(6)(B) of the Act, 47 U.S.C. § 503(b)(6)(B), which provides, in pertinent part, that no forfeiture shall be imposed if the violation charged occurred more than one year before the issuance of the NAL.

⁷ 47 U.S.C. § 503.

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 503(b)(2)(D).

7. We reject Commercial Radio's arguments for mitigation or cancellation of the proposed monetary forfeiture. First, Commercial Radio's operation of eleven stations for five months without authorization precludes finding that Commercial Radio has a "history of overall compliance." Second, Commercial Radio is fully responsible for the administrative errors of its agent. Finally, the violations occurring between December 1999 and March 24, 2000, alone, fully justify a \$6,000 forfeiture. In other recent cases we imposed a \$5,000 forfeiture for unlicensed operation resulting from the late filing of a renewal application.¹¹ In this case, however, \$6,000 is justified because of the large number of stations involved (11).

8. We conclude that there is no basis for rescission or mitigation of the proposed monetary forfeiture and that \$6,000 is the proper amount.

III. Ordering Clauses

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹³ Commercial Radio **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,000 for repeatedly violating the provisions of Section 301 of Act and Section 1.903 of the Rules, which prohibit operation of a station without authorization from the Commission.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹⁴ 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.¹⁵ 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, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note "NAL/Acct. No. 200132100009" 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. 20554.¹⁶

¹¹ See, e.g., *Carmelita T. Gossard d/b/a AA Beep*, 15 FCC Rcd 19808 (Enf. Bur. 2000); *Forfeiture Order*, NAL Acct. No. X3210003 (Enf. Bur. released January 22, 2001).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁴ 47 C.F.R. § 1.80.

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED THAT** a copy of this Forfeiture Order shall be sent, by Certified Mail – Return Receipt Requested, to Commercial Radio Service Corp., 6210 Virginia Beach Boulevard, Norfolk, Virginia 23502, and to its counsel, Lukas, Nace, Gutierrez & Sachs, Attention: Pamela Gaary, 1111 19th Street, NW, Suite 1200, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

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