

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

In the Matter of)	
)	
MULTIMEDIA DEVELOPMENT)	NALs 918TV0002-918TV0005
CORPORATION)	
)	
Notices of Apparent Liability for Forfeiture for)	
Unauthorized Operation of Transmitters in the)	
Greenfield, New Mexico Area)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 12, 2002

Released: November 15, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 30, 1998, the Chief of the Commission’s former Mass Media Bureau issued four Notices of Apparent Liability (NALs) for Forfeiture against Multimedia Development Corporation (Multimedia) in the amount of \$20,000 each, for a total of \$80,000.¹ Multimedia and the Stonehill Group, L.L.P. (Stonehill) request that we eliminate or substantially reduce the forfeitures. For the reasons stated below, we shall rescind the NALs.²

II. BACKGROUND

2. Multimedia is the licensee of several Multipoint Distribution Service (MDS) stations, including Station KFK32, Albuquerque, New Mexico. Multimedia had an excess capacity lease agreement with the licensees of four Instructional Television Fixed Service (ITFS) stations at Greenfield, New Mexico, in the Roswell, New Mexico Basic Trading Area (BTA). The stations are ITFS Stations WNC-446, licensed to Hagerman Municipal Schools, WNC-447, licensed to Hagerman High School, WNC-473, licensed to Dexter Junior High School, and WLX-925, licensed to Portales High School (collectively, “The Stations”). The Stations are authorized to operate at a site at 33°12'22" north latitude, 104°12'30" west longitude.³ Multimedia constructed the Stations’ facilities at a site approximately twenty-seven

¹ *Notices of Apparent Liability for Forfeiture*, NAL/Acct. Nos. 918TV0002-918TV0005 (MMB rel. Oct. 30, 1998).

² Effective March 25, 2002, the Commission transferred regulatory functions for the Instructional Television Fixed Service and the Multipoint Distribution Service/Multichannel Multipoint Distribution Service from the Mass Media Bureau to the Wireless Telecommunications Bureau (Bureau). Radio Services Are Transferred From Mass-Media Bureau to Wireless Telecommunications Bureau, *Public Notice*, 17 FCC Red 5077 (2002). Accordingly, the Bureau’s Public Safety and Private Wireless Division assumed all regulatory duties associated with these services effective March 25, 2002. *Id.*

³ *See* Licenses for Stations WNC446, WNC447, WNC473, and WLX925.

miles away from the authorized site. In February 1996, Multimedia filed with the Commission certifications of completion of construction, each signed by the relevant licensee, indicating that the facilities had been constructed as authorized.⁴

3. In November 1996, Multimedia filed requests for special temporary authorization (STA) to construct and operate Multipoint Distribution Service (MDS) facilities on the E and F channel groups. In these requests, Multimedia again stated that the ITFS stations had been constructed as authorized.⁵ After a petition to deny was filed against Multimedia's STA requests, in January, Multimedia acknowledged that it constructed the Stations' facilities at a site other than the authorized site. Operation continued from the unauthorized site until November 7, 1997.

4. The former Mass Media Bureau issued the NALs because Multimedia violated section 301 of the Communications Act of 1934 (Act), as amended,⁶ by constructing and operating radio facilities from an unauthorized location. On December 18, 1998, Multimedia requested that the Mass Media Bureau eliminate or substantially reduce the forfeitures.⁷

5. In 1999, Multimedia began to pursue the sale of its assets. Although an agreement to sell its stock was reached in February 2000, the sale was never consummated due to the buyer's inability to close.⁸ Additional negotiations proved fruitless, and Multimedia defaulted on its loan obligations to its principal creditor, Wells Fargo Bank Minnesota, NA, f/k/a Norwest Bank Minnesota, NA.⁹ As a result of this default, on April 17, 2001, Stonehill was appointed as a receiver of Multimedia's assets. In that capacity, Stonehill was given full authority to operate the company, to preserve and protect the value of Multimedia's assets in order to satisfy Multimedia's indebtedness to its creditors.¹⁰ Multimedia's majority shareholders were removed from their positions as officers and directors of Multimedia, in order that Stonehill may exercise all management and control over Multimedia's business and assets pursuant to Stonehill's role as receiver. On July 12, 2002, Stonehill supplemented Multimedia's response. On May 28, 2002, an application was filed seeking the Commission's consent to assign Multimedia's licenses to

⁴ See Certifications of Completion of Construction for Stations WNC446, WNC447, WNC473, and WLX925.

⁵ See Requests for Special Temporary Authority filed by Multimedia on November 4, 1996.

⁶ 47 U.S.C. § 301.

⁷ Consolidated Response of Multimedia Development Corporation to Notice of Apparent Liability for a Forfeiture, filed Dec. 18, 1998 (Response).

⁸ Supplement to Consolidated Response of Multimedia Development Corporation to Notice of Apparent Liability for A Forfeiture, filed July 12, 2002 (Supplemental Response) at 2.

⁹ *Id.*

¹⁰ *Wells Fargo Bank Minnesota, National Association v. Multimedia Development Corp.*, Cause No. CV0200102654 (2d Judicial Dist. Ct., County of Bernalillo, N.M., April 17, 2001) (order appointing receiver); Supplemental Response at 2. On April 29, 2002, the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division granted the application for the Commission's consent to transfer control of Multimedia to Stonehill. See File No. BTCMD-20010521AAE.

People's Choice TV of Albuquerque.¹¹ That application was granted on September 23, 2002¹² but has not yet been consummated.

III. DISCUSSION

6. Section 301 of the Act states:

. . . No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or . . . (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

In this case, Multimedia admits that it violated section 301 of the Act by operating the four transmitters from an unauthorized location from February 1996 until November 7, 1997, when Multimedia ceased its operations from the Roswell site.¹³ Section 503(b) of the Act,¹⁴ as implemented by Section 1.80(a) of the Commission's Rules,¹⁵ states that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Commission's rules shall be liable for a forfeiture penalty. For purposes of section 503(b), the term "willful" means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules.¹⁶ Furthermore, a violation is "repeated" if it lasts more than one day.¹⁷ Because Multimedia operated the Stations' facilities for an extended period, we conclude that it willfully and repeatedly violated section 301 of the Act.

¹¹ FCC File No. BALMD-20020528AAA.

¹² See MDS Public Notice Report No. 762 (rel. Oct. 2, 2002).

¹³ Multimedia "Opposition to Petition to Dismiss or Deny Requests for Special temporary Authorization," filed January 6, 1997; Multimedia "Response to Information Request," filed January 20, 1998. See also Response, *supra* note 7, *passim*.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80(a).

¹⁶ See Southern California Broadcasting Co., *Memorandum Opinion and Order*, 6 FCC Rcd 4387 (1991).

¹⁷ *Id.*

7. Multimedia argues in its Response that a five-fold increase of the \$4,000 base forfeiture amount applicable to the unauthorized operation of an ITFS station is unprecedented, and unwarranted in the present situation.¹⁸ Multimedia further argues that the Commission has reduced base forfeiture amounts after considering mitigating factors.¹⁹ In the present case, Multimedia cites the lack of awareness or participation of its majority shareholders in the unauthorized construction and operation of the ITFS stations, as well as the exemplary history of the majority shareholders as FCC licensees.²⁰ Multimedia states that it cooperated fully with the Commission's fact-finding efforts once Multimedia's violations were brought to light, and that these violations were due to the actions of one individual, whose resignation as an officer and director of Multimedia was demanded and received by the majority shareholders.²¹ Multimedia also contends that its unfavorable financial history supports elimination or substantial reduction of the forfeiture, and submits confidential financial statements to support this position.²²

8. Additionally, Stonehill argues that Multimedia has demonstrated sufficient justification for mitigation. Stonehill contends that Multimedia's continued deteriorating financial situation offers further justification for mitigation or rescission.²³ Citing *Diamond Broadcasting*,²⁴ Stonehill argues that the Commission has recognized that it is appropriate to rescind a forfeiture in circumstances in which demanding payment would serve only to punish innocent creditors of a financially distressed licensee.²⁵

9. In assessing a forfeiture, we are required to take into account a number of factors, including ability to pay and such other matters as justice may require.²⁶ We believe that Multimedia's situation is indistinguishable from other cases where NALs were rescinded because the licensee was in bankruptcy or receivership and the wrongdoers were no longer involved in the operation of the station. For example, in *Diamond Broadcasting, supra*, the Commission rescinded a \$25,000 NAL against a licensee in a situation where a receiver had been appointed to control the licensee's affairs. The Commission wrote:

Thus, the Receiver, who was not involved in the violations, was appointed to operate the stations pending their sale to other parties for the benefit of creditors of Diamond. The appointment of the Receiver removed the violator from involvement in the operation of

¹⁸ Response at 2-3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 4, 6.

²¹ *Id.* at 4-6.

²² *Id.* at 7-8.

²³ Supplemental Response at 2-3.

²⁴ *Diamond Broadcasting of California, Inc., Memorandum Opinion and Order*, 11 FCC Rcd 7388 (1996) (*Diamond Broadcasting*).

²⁵ Supplemental Response at 3.

²⁶ 47 U.S.C. § 503(b)(2)(D).

the stations and sales of the stations to unrelated parties have since been completed. The imposition of a forfeiture in these circumstances would impact only innocent creditors. Therefore, we will rescind the Notice of Apparent Liability issued by the *MO&O*. Other matters raised by the Receiver are thereby rendered moot because we have granted the relief sought by the Receiver, who is not implicated in the violations that resulted in the forfeiture.²⁷

Similarly, in this case, the receiver had no role in the violations at issue. Stonehill is working to sell Multimedia's assets, including its FCC licenses, to a third party. It appears that imposing a forfeiture would only harm creditors who had no role in the violations. This result is also consistent with other cases involving forfeitures for entities that were in bankruptcy or receivership.²⁸ Consequently, we conclude that no forfeiture should be issued in this matter. Since we conclude that *Diamond Broadcasting* supports rescission of the NALs, we need not consider the arguments made by Multimedia in its response.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 503(b), and Section 1.80(f)(4) of the Commission's Rules, 47 C.F.R. § 1.80(f)(4), that the Notices of Apparent Liability issued to Multimedia Development Corporation on October 30, 1998 ARE RESCINDED.

11. IT IS FURTHER ORDERED that a copy of this *Memorandum Opinion and Order* shall be sent by Certified Mail Return Receipt Requested to Steven A. Lancellotta, Esq., Manatt, Phelps & Phillips, 1501 M Street NW – Suite 700, Washington DC 20005 and to Harold K. McCombs, Jr., Esq., Dickstein, Shapiro, Morin & Oshinsky, LLP, 2101 L Street NW, Washington DC 20037.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

²⁷ *Diamond Broadcasting*, 11 FCC Rcd at 7390 ¶ 6.

²⁸ See, e.g., Dennis Elam, Trustee, *Memorandum Opinion and Order*, 11 FCC Rcd 1137 (1996), Interstate Savings, Inc. d/b/a ISI Telecommunications, *Memorandum Opinion and Order*, 12 FCC Rcd 2934 (CCB 1997).