

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

In the Matter of)	
)	
KYS, Inc.)	File No. EB-01-DT-415
d/b/a Sandusky Bay Marine Towing)	NAL/Acct. No. 200232360003
Sandusky, Ohio)	FRN 0006-0042-20
)	

FORFEITURE ORDER

Adopted: March 26, 2002

Released: March 28, 2002

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to KYS, Inc. d/b/a Sandusky Bay Marine Towing (“KYS”) for violation of the Great Lakes Agreement (“GLA”)¹ and Section 80.953(a) and (b) of the Commission’s Rules (“Rules”).² The noted violation involves KYS’s navigation of a towing vessel, the *Recovery*, on the Great Lakes without having obtained the annual GLA inspection and certification of its marine VHF radiotelephone equipment.

2. On December 31, 2001, the Commission’s Detroit, Michigan, Field Office (“Detroit Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to KYS for a forfeiture in the amount of two thousand two hundred dollars (\$2,200).³ KYS filed a response to the *NAL* on January 29, 2002.

II. BACKGROUND

3. The GLA and Section 80.953(a) and (b) of the Rules require, among other things, that all vessels 65 feet or over in length (20 meters), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation when navigating on the Great Lakes. These provisions are intended to promote safety of life and property on the Great Lakes by means of radio and require inspection and certification of the radiotelephone installation at least once every 13 months.

¹ Agreement Between Canada and the United States for the Promotion of Safety on the Great Lakes by Means of Radio, April 26, 1973, U.S.-Canada, 25 UST 935, T.I.A.S. 7837, amended 30 UST 2523, T.I.A.S. 9352.

² 47 C.F.R. § 80.953(a) and (b).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232360003 (Enf. Bur., Detroit Office, released December 31, 2001).

4. On June 29, 2001, an FCC agent from the Detroit Office conducted random inspections in Sandusky, Ohio of vessels subject to the GLA to determine whether the vessels had current GLA safety inspections and certifications.⁴ The agent inspected a vessel owned by KYS, the *Recovery*, and determined that the vessel did not have a current GLA safety inspection and certification for its marine VHF radiotelephone equipment. The agent also determined that the vessel had recently navigated the waters of the Great Lakes as a towing vessel. As a follow-up to the random inspection, the agent requested and received copies of the *Recovery's* ship station logs. Review of these logs revealed that the *Recovery* had navigated the waters of the Great Lakes on at least June 10, 11, 19 and 24, 2001, without a valid inspection and certification.

5. On July 26, 2001, the District Director of the Detroit Office issued an Official Notice of Violation ("NOV") to KYS for failure to have the vessel *Recovery* inspected under the provisions of the GLA. On August 20, 2001, the Detroit Office received a response to the NOV in which KYS admitted to the violation.

6. On December 31, 2001, the Detroit Office issued an *NAL* in the amount of \$2,200 to KYS for navigating a towing vessel on the Great Lakes without having obtained the annual GLA inspection and certification of its marine VHF radiotelephone equipment, in violation of the GLA and Section 80.953(a) and (b) of the Rules. The Detroit Office arrived at the \$2,200 forfeiture amount by multiplying the \$550 maximum statutory per day forfeiture amount for violation of the GLA by four, the number of days on which KYS admitted to navigating the *Recovery* without a valid inspection and certification. In its January 29, 2002, response to the *NAL*, KYS acknowledges that the violation occurred but requests rescission or mitigation of the forfeiture amount. KYS argues that a \$2,200 forfeiture is excessive because the violation was an oversight, the VHF radio was used on only two of the four occasions when the *Recovery* navigated the waters of the Great Lakes, and one of the four occasions was an "errand of mercy" performed on behalf of the local police department when its marine patrol boat ran out of gas. KYS also argues that the *NAL* incorrectly references Section 506(a) of the Communications Act of 1934, as amended ("Act"),⁵ when in fact Section 506(a) of the Act was repealed and renumbered as Section 507(a). Furthermore, KYS asserts that the Act imposes a \$500 per day maximum fine for violations of the GLA, not a \$550 per day maximum fine. Finally, KYS asserts that the Commission should treat the violation as a single, isolated incident, instead of imposing the maximum per day fine for each day the *Recovery* navigated the Great Lakes, because there was no showing that the violation was willful or repeated; that the violation was immediately corrected upon being brought to its attention; and that it has an overall history of compliance and showed good faith by voluntarily disclosing information to the Enforcement Bureau.

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 506(a) of the Act, Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of*

⁴ Although the required annual inspections of radiotelephone installations aboard vessels subject to the provisions of the GLA have been privatized, the FCC conducts spot-check inspections to monitor compliance. *Amendment of the Commission's Rules Concerning the Inspection of Radio Installations of Large Cargo and Small Passenger Ships*, 13 FCC Rcd 13556, 13564 (1998).

⁵ 47 U.S.C. § 507(a).

⁶ 47 C.F.R. § 1.80.

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*”). In examining KYS’s response, Section 1.80(b)(4) of the Rules requires that the Commission take into account certain downward adjustment criteria, including minor violation, good faith or voluntary disclosure, history of overall compliance and inability to pay.⁷

8. KYS admits that it navigated the towing vessel *Recovery* on the Great Lakes on June 10, 11, 19 and 24, 2001, without a current GLA safety inspection and certification. We therefore conclude that KYS violated the GLA and Section 80.953(a) and (b) of the Rules.

9. KYS argues that its violation was an “oversight” in that the *Recovery* was only pressed into service when its other vessel, which is not subject to the provisions of the GLA, developed engine trouble. However, this circumstance does not mitigate KYS’s violation. Navigation without a valid GLA certification increases the risk to safety of life and therefore is a significant violation.⁸ Likewise, the fact that the VHF radio was only used on two of the four occasions when the *Recovery* navigated the waters of the Great Lakes and the fact that one of the four occasions was an “errand of mercy” for a local police department do not mitigate the violation.

10. KYS’s assertion that the *NAL* incorrectly references Section 506(a) of the Act is without merit. In 1980, Congress repealed the former Section 506 of the Act and redesignated Section 507, the statutory provision at issue here, as Section 506.⁹ We note, however, that this provision is still codified at Section 507 of Title 47 of the United States Code. Thus, as indicated in the *NAL*, this provision is properly cited as Section 506 of the Act, but 47 U.S.C. § 507.

11. KYS’s argument that Section 506(a) of the Act imposes a \$500 per day maximum fine, not a \$550 per day maximum fine, is also incorrect. The Debt Collection Improvement Act of 1996,¹⁰ which amends the Federal Civil Penalties Inflation Adjustment Act of 1990,¹¹ requires federal agencies to adjust maximum statutory forfeiture penalties for inflation at least once every four years using a specified formula.¹² Consistent with this statute, the Commission amended Section 1.80(b)(5) of the Rules¹³ in September 2000 to adjust its maximum statutory forfeiture penalties for inflation.¹⁴ This amendment

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ *See Shepler’s, Inc.*, 16 FCC Rcd 14547, 14548 (Enf. Bur. 2001).

⁹ P.L. 96-507, 94 Stat 2747 (1980).

¹⁰ P.L. 104-134, 110 Stat 1321 (1996).

¹¹ P.L. 101-410, 104 Stat 890 (1990).

¹² *See* 28 U.S.C. § 2461. *See also* 47 C.F.R. § 1.80(b)(5).

¹³ *See* 47 C.F.R. § 1.80(b)(5).

¹⁴ *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000).

increased the maximum per day penalty specified in Section 506(a) for violation of the GLA from \$500 to \$550.¹⁵

12. In addition, we disagree with KYS's argument that we should treat the violation in this case as a single, isolated incident, instead of imposing the maximum per day fine for each day the Recovery navigated the Great Lakes, because there was no showing that the violation was willful or repeated. First, we note that there is no requirement that we show that a violation was willful or repeated in order to impose the maximum statutory forfeiture penalty pursuant to Section 506(a) of the Act.¹⁶ Second, as noted above, navigation without a valid GLA certification is a significant violation because it increases the risk to safety of life. Third, contrary to KYS's argument, the violation was repeated in that the Recovery navigated the Great Lakes on at least four separate days without a current GLA inspection and certification. Therefore, we conclude that the *NAL* properly imposed the maximum per day fine for each day the Recovery navigated the Great Lakes.

13. Although KYS asserts that the violation was corrected immediately upon being brought to its attention, we note that corrective action taken after notice of a violation, while commendable, does not mitigate the violation.¹⁷ However, we conclude that KYS's overall history of compliance does justify reduction of the forfeiture amount from \$2,200 to \$1,500.¹⁸

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 506(a) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁹ KYS, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violation of the Great Lakes Agreement and Section 80.953(a) and (b) of the Rules.

15. 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.²⁰ 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 reference NAL/Acct. No. 200232360003 and FRN

¹⁵ *Id.* See 47 C.F.R. § 1.80(b)(5).

¹⁶ See 47 U.S.C. § 507(a). Section 503(b)(1) of the Act provides that certain violations of the Act and the Rules must be willful or repeated in order for the Commission to impose a forfeiture penalty. However, Section 503(b)(1) explicitly states that "this subsection shall not apply to any conduct which is subject to forfeiture under title II, part II or III of title III, or section 506 of this Act." 47 U.S.C. § 503(b)(1).

¹⁷ See *Station KGV L, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁸ See 47 U.S.C. § 504(b); see also 47 C.F.R. § 1.80, Note to paragraph (b)(4): Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors.

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

²⁰ 47 U.S.C. § 504(a).

0006-0042-20. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.²¹

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to KYS, Inc., Sandusky Bay Marine Towing, 603 42nd Street, Sandusky, Ohio 44870, and to its counsel, William H. Smith, Jr., Esq., Smith & Lehrer, Co., L.P.A., 308 West Adams Street, Sandusky, Ohio 44870.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²¹ See 47 C.F.R. § 1.1914.