

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

In the Matter of	)	
	)	
MariTEL Mississippi River, Inc.	)	File No. EB-02-OR-052
	)	NAL/Acct. No. 200232620006
Licensee of Maritime Public Coast Station	)	FRN 0003-4734-51
WPOJ535 near Pointe a la Hache, Louisiana	)	

**FORFEITURE ORDER**

**Adopted: January 30, 2003**

**Released: February 3, 2003**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to MariTEL Mississippi River, Inc. (“MariTEL”), licensee of public coast station WPOJ535, near Pointe a la Hache, Louisiana, for willful and repeated violation of Section 80.90 of the Commission’s Rules (“Rules”).<sup>1</sup> The noted violation involves MariTEL’s failure to suspend transmissions of a transmitter operating under call sign WPOJ535 immediately upon detection of a transmitter malfunction.

2. On July 3, 2002, the Commission’s New Orleans, Louisiana Field Office (“New Orleans Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to MariTEL for a forfeiture in the amount of seven thousand dollars (\$7,000).<sup>2</sup> MariTEL filed a response to the *NAL* on August 2, 2002.

**II. BACKGROUND**

3. On April 2, 2002, the New Orleans Office received a complaint from the U.S. Coast Guard in Gulfport, Mississippi, that a continuous radio signal on VHF marine channel 16 (156.8 MHz) was interfering with its ability to communicate with vessels. VHF marine channel 16 is the international marine safety, distress and calling channel for ship, public coast and private coast stations.<sup>3</sup> Using a radio direction finding vehicle, agents from the New Orleans Office determined that the source of the interfering signal was a malfunctioning transmitter operated by MariTEL under call sign WPOJ535 from an antenna structure located near Pointe a la Hache, Louisiana. The agents contacted Mark Watros of MariTEL by telephone at approximately 6:30 p.m., advised him of the malfunctioning transmitter, and requested that the transmissions be suspended immediately. However, the transmissions from MariTEL’s

<sup>1</sup> 47 C.F.R. § 80.90.

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232620006 (Enf. Bur., New Orleans Office, released July 3, 2002).

<sup>3</sup> *See* 47 C.F.R. § 80.369(e)(3).

transmitter were not suspended until 7:20 a.m. on April 3, 2002, more than 12 hours after MariTEL was notified of the malfunctioning transmitter. During this period, interference was present on the marine safety, distress and calling channel.

4. On April 12, 2002, the New Orleans Office mailed a Notice of Violation (“NOV”) to MariTEL at the address of record for public coast station WPOJ535, citing MariTEL for violation of Section 80.90 of the Rules. On April 26, 2002, the U.S. Postal Service returned the NOV to the New Orleans Office marked “Attempted Not Known.”

5. On April 30, 2002, the New Orleans Office again mailed the NOV to the address of record for MariTEL and to a second address obtained from MariTEL. On May 20, 2002, the U.S. Postal Service returned the copy of the NOV sent to MariTEL at its address of record to the New Orleans Office marked “Attempted Not Known.” The New Orleans Office never received any response to the NOV.

6. On July 3, 2002, the New Orleans Office issued an *NAL* to MariTEL for a \$7,000 forfeiture for failing to ensure that Commission correspondence mailed to the address of record would reach the licensee in willful and repeated violation of Section 1.5 of the Rules<sup>4</sup> and failure to suspend transmissions immediately upon detection of a transmitter malfunction in willful and repeated violation of Section 80.90 of the Rules. In its response to the *NAL*, MariTEL requests cancellation or reduction of the proposed forfeiture. MariTEL acknowledges that the mailing address on its authorization for WPOJ535 was incomplete and that it is unlikely that correspondence directed to MariTEL at that address would reach the desired destination.<sup>5</sup> However, MariTEL notes that Section 1.5 of the Rules states that “unless the licensee advises the Commission to the contrary, the address contained in the licensee’s most recent application will be used by the Commission” for the purpose of serving documents or directing correspondence. MariTEL asserts that the “contact information” section of its most recent application for WPOJ535 contained sufficient information so that correspondence would have been received by its counsel. With respect to the Section 80.90 violation, MariTEL admits that it caused interference to operations on VHF channel 16 and did not suspend operation of the malfunctioning transmitter until more than 12 hours after it was notified of the problem by the FCC. However, MariTEL argues that the *NAL* failed to take into account its response to the NOV issued on April 30, 2002.<sup>6</sup> MariTEL presumes that since the *NAL* indicated that no response to the NOV was received, its alleged failure to respond to the NOV was a factor in the decision to propose a forfeiture for violation of Section 80.90. MariTEL maintains that because it did in fact respond to the *NAL*, the forfeiture should be canceled or reduced. In addition, MariTEL asserts that its response to the NOV explained the circumstances surrounding the violation of Section 80.90. Specifically, MariTEL states that a contractor engaged by MariTEL in connection with its development of a new maritime telecommunications system inadvertently employed VHF channel 16 in order to test an element of the new system and disabled an automatic “time out” feature of the system. MariTEL further states that upon learning of the violation from the FCC, it took all measures necessary to cease the offending transmissions and that it has taken measures to ensure that the

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<sup>4</sup> 47 C.F.R. § 1.5.

<sup>5</sup> The mailing address on MariTEL’s authorization included only the street address for its counsel, without reference to a suite number, the name of its counsel, or the counsel’s law firm.

<sup>6</sup> A copy of MariTEL’s response to the NOV is attached as an exhibit to its response to the *NAL*. The letter, which is dated May 15, 2002, was never received by the New Orleans Office.

violation does not recur. Finally, MariTEL asserts that its overall history of compliance with the Commission's rules warrants reduction or cancellation of the proposed forfeiture.

### III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> 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*"). In examining MariTEL's response, Section 503(b) of the Act requires that 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.<sup>9</sup>

8. After reviewing MariTEL's response to the *NAL* and Commission records, we agree with MariTEL that its most recent application did include a current and complete mailing address. Accordingly, we cancel the \$3,000 forfeiture proposed in the *NAL* for violation of Section 1.5 of the Rules.

9. Section 80.90 of the Rules provides that transmissions authorized under the Part 80 rules must be suspended immediately upon detection of a transmitter malfunction and must remain suspended until the malfunction is corrected. MariTEL does not dispute that its transmitter caused interference to operations on VHF channel 16, the international marine safety, distress and calling channel, and that it did not suspend operation of the transmitter until more than 12 hours after it was notified of the problem by the FCC. Accordingly, we conclude that MariTEL willfully<sup>10</sup> and repeatedly<sup>11</sup> violated Section 80.90 of the Rules. Contrary to MariTEL's suggestion, the fact that the New Orleans Office never received MariTEL's response to the NOV did not factor into the decision to impose a forfeiture for violation of Section 80.90.<sup>12</sup> Rather, the \$4,000 forfeiture proposed in the *NAL* is the base forfeiture amount for

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<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>10</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to forfeitures for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>12</sup> We note that failure to respond to an NOV is a violation of Section 1.89 of the Rules. See 47 C.F.R. § 1.89. The *NAL* did not impose a forfeiture for this violation.

unauthorized emissions.<sup>13</sup> Thus, the fact that MariTEL apparently did respond to the NOV does not warrant cancellation or reduction of the proposed forfeiture.

10. MariTEL also asserts that the violation occurred because its contractor inadvertently employed VHF channel 16 in order to test an element of a new maritime telecommunications system and disabled an automatic “time out” feature of the system. We do not think that this fact justifies any reduction of the forfeiture amount. The Commission has repeatedly held that licensees are responsible for the acts and omissions of their independent contractors.<sup>14</sup> MariTEL further asserts that upon learning of the violation from the FCC, it took all measures necessary to cease the offending transmissions. However, MariTEL offers no explanation as to why it waited more than 12 hours to suspend operation of the transmitter. MariTEL’s failure to suspend operation of the transmitter immediately as required by Section 80.90 is particularly serious given that the transmitter was operating on a marine safety, distress and calling channel. Moreover, while MariTEL states that it has taken steps to ensure that the violation does not recur, the Commission has stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.<sup>15</sup> Nevertheless, we find that MariTEL’s overall history of compliance with the Commission’s rules justifies reduction of the forfeiture proposed for violation of Section 80.90 from \$4,000 to \$3,200.

11. We have examined MariTEL’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that MariTEL willfully and repeatedly violated Section 80.90 of the Rules, but we reduce the forfeiture proposed for this violation from \$4,000 to \$3,200. In addition, we cancel the \$3,000 forfeiture proposed in the *NAL* for violation of Section 1.5 of the Rules.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>16</sup> MariTEL Mississippi River, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for willful and repeated violation of Section 80.90 of the Rules.

13. 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.<sup>17</sup> 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. 200232620006 and FRN

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<sup>13</sup> See *Policy Statement*, 12 FCC Rcd at 17114; see also, 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I.—Base Amounts for Section 503 Forfeitures.

<sup>14</sup> See *Eure Family Limited Partnership*, FCC 02-293 (released November 1, 2002), citing *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991) and *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

<sup>15</sup> See *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

<sup>16</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>17</sup> 47 U.S.C. § 504(a).

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0003-4734-51. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>18</sup>

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail, return receipt requested, to counsel for MariTEL Mississippi River, Inc., Russell H. Fox, Esq., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 701 Pennsylvania Avenue, N.W., Suite 900, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>18</sup> See 47 C.F.R. § 1.1914.