

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

In the Matter of) File No.: EB-02-NY-124
)
Gateway Security Systems, Inc.) NAL/Acct. No. 200232380003
Jamaica, NY)
) FRN 0007-1609-22

FORFEITURE ORDER

Adopted: November 17, 2003

Released: November 19, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand dollars (\$5,000) to Gateway Security Systems, Inc. (“Gateway”) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ The violation involves Gateway’s operation of a repeater station on 464.0375 MHz and portable radio transmitting equipment on 469.0375 MHz without a license.

2. On August 19, 2002, the District Director of the Commission’s New York, New York, Field Office (“New York Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of ten thousand dollars (\$10,000) to Gateway for the noted violation.² Gateway filed a response on September 18, 2002.

II. BACKGROUND

3. On May 23, 2002, the New York Office received a complaint alleging interference to the frequency pair 464.0375/469.0375 MHz. On May 24, 2002, Commission agents from the New York Office, using direction finding techniques, identified the source of the interference as Gateway Security Systems, Inc., at Terminal #4, JFK International Airport, Jamaica, New York (“JFK”). Through their monitoring, the agents determined that Gateway was operating a repeater station on 464.0375 MHz and portable transceivers on 469.0375 MHz without authorization from the Commission. On May 28, 2002, the New York Office contacted Gateway by telephone, informed it of the interference complaint and of the unlicensed operation and directed it to cease transmissions. On May 30, 2002, the New York Office issued a Warning Letter to Gateway formally notifying it that the unlicensed operation violated Section 301 of the Act. Although the letter provided an opportunity for a response, Gateway did not respond. On August 19, 2002, the New York Office issued a *NAL* in the amount of \$10,000 to Gateway for the unlicensed radio operation.

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232380003 (Enf. Bur., New York Office, released August 19, 2002).

4. In its response to the *NAL*, Gateway asserted that in August, 2001, it assumed a contract with the Port Authority of New York (“Port Authority”) to provide security services at JFK, and was required under the contract to use radio equipment owned by the Port Authority. According to Gateway, the contract required immediate action and nothing in the contract alerted Gateway that it was incumbent upon Gateway to secure a license in its own name for operation at JFK. In view of that, Gateway claimed, it began operation immediately upon being awarded the contract.

5. Gateway further stated in its response that upon notification by FCC personnel nine months later, on May 28, 2002, it ceased operation, began an inquiry and found that Spectranguard Company, Gateway’s predecessor, was the authorized licensee. Gateway contacted a frequency coordinator on May 29, 2002, and on the same day applied for a proper license on a new frequency. Gateway correctly noted that filing the application gave it conditional authority to begin operation. The application was granted and Gateway became the licensee of WPVR 278 on August 5, 2002.

6. Additionally, Gateway explained that it did not respond to the Warning Letter because it did not receive the letter until June 15, and that the Commission had already contacted Gateway on June 9, at which time Gateway informed the Commission that the transmissions had ceased May 28.

7. Gateway submitted that it immediately ceased operation upon being informally contacted by the FCC, took action to become properly licensed, and did not operate again until a proper application was filed with the FCC. Gateway did not realize that neither its company name, nor that of the Port Authority, appeared on the license; and posited that it was an inadvertent ministerial error that led to the unlicensed operation. It stated that it has no history of rule violations, and that it reasonably believed that its operations were authorized under a license held by the Port Authority.

8. Gateway contended that in view of its corrective action, a forfeiture is not warranted. Gateway cited instances in which the Commission issued verbal or written warnings, and issued a monetary forfeiture only after operation continued in spite of those warnings.³ Gateway further contended that if a forfeiture is warranted, it should be reduced, citing cases in which the Commission issued forfeitures in lesser amounts for unlicensed operation, or reduced forfeitures issued to licensees based on the short period of unlicensed operation.⁴

III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission’s Forfeiture Policy Statement and*

³ See, *In the Matter of Joseph Frank Ptak*, 13 FCC Rcd 22168 (1998); *In re Jerry Szoka*, CIB Docket No. 98-48, FCC 98D-3 (1998).

⁴ See, *WWC Licensee LLC*, 16 FCC Rcd. 19490 (Enf. Bur. 2001) (“*WWC*”) (\$5,000 forfeiture for unlicensed operation reduced to \$4,000); *Falcon Radio, Inc.*, 16 FCC Rcd. 14830 (Enf. Bur. 2001) (“*Falcon*”) (\$5,000 forfeiture for unlicensed operation of business radio system); *Page-Comm*, 16 FCC Rcd. 6842 (Enf. Bur. 2001) (“*Page-Comm*”) (\$5,000 forfeiture for unlicensed operation of a paging system later reduced to \$3,000); *US Unwired, Inc.*, 15 FCC Rcd 20295 (Enf. Bur. 2000) (“*US Unwired*”) (\$5,000 forfeiture for operating a paging system without a license); *Commercial Radio Service Corp*, 16 FCC Rcd. 3543 (Enf. Bur., Tech. & Pub. Safety Div. 2001) (“*Commercial*”) (forfeiture amount was \$6,000 for operating eleven 800 MHz stations without a license); *Verizon Florida, Inc.*, 16 FCC Rcd. 2590 (Enf. Bur., Tech. & Pub. Safety Div. 2001) (“*Verizon Florida*”) and *Verizon Southwest, Inc.*, 16 FCC Rcd 2247 (Enf. Bur., Tech. & Pub. Safety Div. 2001) (“*Verizon Southwest*”) (forfeitures for unlicensed operation were \$5,000 each).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

Amendments of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“*Forfeiture Policy Statement*”).⁷ In examining Gateway’s response to the *NAL*, Section 503(b) of the Act requires the Commission to 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 such other matters as justice may require.⁸

11. Section 301 of the Act requires a license for radio operation such as that conducted by Gateway. Section 312(f)(1) of the Act⁹ provides that “the term ‘willful’, when used with reference to the commission or omission of any act, means the conscious or 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....” This definition applies to the term “willful” as used in Section 503(b) of the Act. See *Southern Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Gateway’s unlicensed radio operation began in August, 2001, and continued for nine months, until May 28, 2002, when it was contacted by the New York Office. Gateway knew it was operating on the relevant channels. Gateway’s radio operation was, therefore, clearly willful. Moreover, Gateway’s action to become properly licensed was remedial and occurred only after notice from the Commission. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹⁰ Finally, Gateway, having become licensed only after the notification from the Commission, has no history of compliance as a licensee that it can cite in its favor.

12. In regard to Gateway’s contention that a warning should have been sufficient in this matter, and that the forfeiture should be cancelled, we disagree. Neither the Commission nor its agents are obligated to provide a licensee an opportunity to cure a violation prior to issuing a *NAL*.¹¹ To the extent that Gateway argued in the alternative that a lesser sanction is warranted, and cited cases in which the forfeiture amounts were smaller, each of those cases is also distinguishable from the instant case.¹² Nevertheless, we agree that, analogous to the cases cited, a reduction is in order from the \$10,000 base amount. Upon receiving the security contract from the Port Authority, Gateway’s use of radio communications was ancillary to its security responsibilities at the airport. Gateway’s predecessor in

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ See also, *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹¹ See, *AT&T Wireless Services Inc*, 17 FCC Rcd 21866, 21871 n. 20 (2002 (enforcing a forfeiture issued without a Notice of Violation). See also *Missouri RSA*, 18 FCC Rcd 12653 (Enf. Bur. 2003) (“[n]othing in the Communications Act or the Commission’s rules entitles a licensee to an opportunity to correct a violation prior to the issuance of a *NAL*. Licensees cannot expect simply to sit back and await Commission findings of violations before taking appropriate steps to ensure compliance with Commission rules.”). Neither 47 U.S.C. § 503(b) nor 47 C.F.R. §§ 1.80 and 1.89 require the Commission to issue a Notice of Violation prior to the issuance of a *NAL*.

¹² While the proposed forfeiture was indeed smaller in each case cited by Gateway (\$6,000 in *Commercial*, and \$5,000 in *US Unwired*, *Verizon Florida*, *Verizon Southwest* and *Page-Comm*), in all cited instances the recipient of the forfeiture had held a valid license but continued operating after expiration and before filing a renewal application. Moreover, *WWC* had an application on file and mistakenly believed that it allowed conditional operating authority prior to grant; and *Falcon* had filed a request for Special Temporary Authority, unaware of the fact that the licensed had been cancelled a year prior to its filing. Gateway, however, never had a license and had nothing on file with the Commission. Therefore, the facts of this case are not comparable and reduction of the proposed forfeiture is not warranted in this matter.

interest under the Port Authority contract had a license that was not transferred to Gateway when the Port Authority hired it. Furthermore, much of the operation by Gateway occurred during the period after the attack on the World Trade Center, during which every U.S. airport operated under heightened security. In that regard, Gateway focused on its responsibilities under its contract and not upon the ministerial details of the licensing arrangement for radio equipment handed over to it by the Port Authority. Gateway's unlicensed operation was not analogous to the intentional unlicensed operation of a "pirate" station operator who operates its station in flagrant violation of Commission rules. In view of these circumstances, we determine that reduction of the \$10,000 base forfeiture amount to five thousand dollars (\$5,000) is warranted.¹³

IV. ORDERING CLAUSES

13. **ACCORDINGLY, IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules ("Rules"),¹⁴ Gateway **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$5,000 for willfully violating Section 301 of the Act.

14. 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.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. 200232380003 and FRN 0007-1609-22. 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. 20554.¹⁶

15. **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 Gateway, Garret R. Hargrave, Esquire, 1331 H Street, N.W., Suite 500, Washington, DC 20005.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹³ See, *WWC* at 19492.

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

¹⁵ 47 U.S.C. § 504(a).

¹⁶ See 47 C.F.R. § 1.1914.