

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

In the Matter of)	File No. EB-02-NY-191
)	
Servisair)	NAL/Acct. No. 200332380005
Newark International Airport)	
Newark, New Jersey)	FRN No.: 0007693153

FORFEITURE ORDER

Adopted: July 27, 2004

Released: July 29, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8000) to Servisair for willful and repeated violation of Section 301 of the Communications Act of 1934 (“*Act*”).¹ The noted violation involves Servisair’s operating radio transmitting equipment without a license on the frequency pair 461.050/466.050 MHz.

2. On November 13, 2002, the Commission’s New York District Office (“*New York Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Servisair for a forfeiture in the amount of ten thousand dollars (\$10,000).² Servisair filed a response to the *NAL* on December 11, 2002.

II. BACKGROUND

3. On August 12, 2002, the New York Office received a complaint of interference affecting the frequency pair 461.050/466.050 MHz. On August 23 and 26, 2002, agents from the New York Office, using a mobile direction finding vehicle, monitored the frequency pair in question. The agents determined that Servisair was operating on the frequency pair at the Newark International Airport, Newark, N.J. The agents further determined that Servisair was not licensed for operations on 461.050/466.050 MHz at that location. On August 26 and 27, 2002, a New York Office agent spoke to representatives of Servisair, including a vice president of the company, and informed them of the violation. In addition, the New York Office sent Servisair a Warning Letter on August 27, 2002, by First Class Mail and Certified Mail, Return Receipt Requested, informing Servisair that it was operating without a license, outlining the penalties for such operations (including a fine), and directing Servisair to terminate the unlicensed operation immediately. On August 28, 2002, agents from the New York Office again monitored the frequency pair using a mobile direction finding vehicle, and determined that

¹ 47 U.S.C. § 301.

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380005 (Enf. Bur., New York Office, released November 13, 2002).

Servisair continued its unlicensed operation.

4. Servisair responded to the Warning Letter on September 19, 2002, explaining that the company had just taken over the cleaning contract with Continental Airlines and had purchased its repeater station and portable radio transmitting equipment from the previous contractor. Servisair contends that it was informed that the license transfer would be made on its behalf by a third party. Servisair stated that it has no explanation for operating the purchased equipment on frequencies 461.050/466.050 MHz. Servisair further stated that on September 18, 2002, it reprogrammed its equipment to operate on the frequencies that were originally licensed to its predecessor.³

5. On November 13, 2002, the District Director of the New York Office issued a *NAL* in the amount of ten thousand dollars (\$10,000) for operation of radio transmission equipment without an instrument of authorization in apparent violation of Section 301 of the Act. In its response of December 11, 2002, Servisair repeated the statements it made in response to the Warning Letter. In addition, Servisair requested cancellation of the forfeiture for reasons of financial hardship. In support of its financial hardship claim, Servisair submits financial documentation for 2000 and 2001.⁴ Servisair also noted that neither itself, its parent company nor its sister companies have previously been found in violation of Commission rules or regulations.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁵ Section 1.80 of the Rules,⁶ 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 Servisair’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 such other matters as justice may require.⁷

7. Section 301 of the Act mandates that “[n]o 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 this Act and with a license in that behalf granted under the provisions of this Act.”⁸ An examination of the Commission’s records indicates no license was issued to Servisair for operations at Newark International Airport, nor has Servisair filed an assignment application to obtain such a license.⁹ Nevertheless, Servisair conducted operations at least on August 23, 26, and 28, 2002 on the subject frequency pair. Servisair states that its equipment was not reprogrammed to its predecessor’s frequencies until September 18, 2002, but in any event, Commission records show that Servisair has never had a license to operate at Newark International Airport. Accordingly, we conclude that Servisair

³ Servisair did not provide information regarding the frequencies onto which it reprogrammed its equipment. Commission records do not reflect any license to Servisair at Newark International Airport.

⁴ Servisair’s parent corporation, Servisair USA, Inc., incorporated in 1999; no documents are included for that year.

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ 47 U.S.C. § 301.

⁹ As of the release date of this item, records of the Newark International Airport indicate that Servisair is no longer operating at the Airport.

willfully¹⁰ and repeatedly¹¹ violated Section 301 of the Act.

8. Servisair seeks cancellation of the forfeiture because of losses the parent corporation and subsidiaries sustained in two years of operations.¹² The Commission has determined that, in general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After reviewing the financial data submitted, we find that the proposed forfeiture amount should not be reduced or cancelled on the basis of financial hardship.¹⁴ We find, however, that Servisair, its parent and sister corporations have a history of overall compliance. Accordingly, we find that a reduction in the forfeiture amount from the ten thousand (\$10,000) imposed by the *NAL* to eight thousand (\$8000) is warranted for its compliance history.

9. Commission and Newark International Airport records indicate that Servisair is not licensed to operate at Newark International Airport and is not now operating there. In addition to the forfeiture assessed here, we warn Servisair that any future operation without a license could lead to more severe enforcement action.

IV. ORDERING CLAUSES

10. 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 Rules,¹⁵ Servisair **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its willful and repeated violation of Section 301 of the Act.

11. 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.¹⁶ 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/Act. No. 200332380005 and FRN

¹⁰ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations 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" *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹ As provided by 47 U.S.C. § 312(f)(2), "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). *Southern California Broadcasting Co.*, *supra*.

¹² When assessing the solvency of a licensee for purposes of reducing a forfeiture, the Commission examines the finances of the parent corporation, as well as its subsidiary, to determine how the forfeiture will financially affect the entire corporate position, *Alpha Broadcasting Corporation*, 102 FCC 2d 18 (1984), ¶ 6.

¹³ *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992).

¹⁴ *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.*, 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

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

¹⁶ 47 U.S.C. § 504(a).

0007693153. 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. 20554.¹⁷

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Servisair, 18430 Air Mail Road, Houston, TX 77032.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ See 47 C.F.R. § 1.1914.