

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

In the Matter of)	File No. EB-03-SD-007
)	
Global Radio, Inc.)	NAL/Acct. No. 200332940003
1275 First Avenue, No. 125)	
New York, New York 10021)	FRN No. 000-869-2170

FORFEITURE ORDER

Adopted: September 20, 2004

Released: September 22, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand eight hundred dollars (\$10,800) to Global Radio, Inc. (“*Global*”) for willful violations of Section 301 of the Communications Act of 1934, as amended, (“*Act*”),¹ and Section 74.103(c) of the Commission’s Rules (“*Rules*”).² The noted violations involve *Global*’s operation of radio transmitting equipment on the unauthorized frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz.

2. On March 8, 2003, the Commission’s San Diego, California District Office (“*San Diego Office*”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to *Global* for a forfeiture in the amount of twelve thousand dollars (\$12,000).³ *Global* filed a response to the *NAL* on May 8, 2003.

II. BACKGROUND

3. On January 10, 2003, *Global* filed an application with the Media Bureau proposing to conduct tests of a special event broadcasting station in conjunction with the National Football League’s Super Bowl XXXVII in San Diego, California. *Global* requested use of six frequencies: 89.1 MHz, 92.9 MHz, 93.7 MHz, 96.9 MHz, 104.1 MHz, and 106.9 MHz.

4. On January 23, 2003, *Global* received an experimental license from the Media Bureau authorizing operation on two frequencies, 93.7 MHz and 96.9 MHz, under the call sign WN3XFL for a limited time from Qualcomm Stadium, the site of Super Bowl XXXVII. The Media Bureau, at that time, specifically denied *Global*’s request for permission to operate on four additional channels, 89.1 MHz, 92.9 MHz, 104.1 MHz, and 106.9 MHz, due to the possibility that such operation could cause interference with existing broadcast stations in Mexico and the United States.⁴

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 74.103(c).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332940003 (Enf. Bur., San Diego Office, released March 8, 2003).

⁴ Letter from Brian J. Butler, Supervisory Engineer, Audio Division of Commission's Media Bureau, to Gregg Baldinger, President, Global Radio, Inc., at 1, dated January 23, 2002.

5. On January 26, 2003, an agent from the San Diego Office observed that special event broadcast station WN3XFL was active and operating, without license, on frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz, in addition to its operation pursuant to its experimental license on frequencies 93.7 MHz and 96.9 MHz. The agent used direction finding techniques, and determined that the signals originated at Qualcomm Stadium. A subsequent search of Commission records revealed no authority issued by the Media Bureau to Global approving operation on any additional FM broadcast radio frequencies.

6. On March 28, 2003, the San Diego Office issued the subject *NAL* to Global for operation of radio transmitting equipment on the unauthorized frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz in apparent willful violation of the noted sections of the Act and the Rules. On May 8, 2003, Global, after obtaining an extension, responded to the *NAL* requesting cancellation of the forfeiture, citing a history of overall compliance and an inability to pay. In its response, Global acknowledged its unauthorized operation on 89.1 MHz,⁵ 104.1 MHz, and 106.9 MHz.⁶ Global characterized its operation on the additional channels as an experiment intended to “explore the role of Part 15” and “provide the FCC with reliable data” as further justification for cancellation.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),⁷ Section 1.80 of the Rules,⁸ 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 Global’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.⁹

8. 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.”¹⁰ Part 74 of the Rules describes the circumstances under which the Commission may grant an experimental broadcast license.¹¹ An experimental broadcast station is a particular type of station licensed specifically for developmental transmission of telecommunication services.¹² The Commission licenses experimental stations to encourage the development of new broadcast technology.¹³ Section 74.103(c) of the Rules states: “[f]requencies best suited to the purpose of the experimentation and on

⁵ The *NAL* does not allege that Global operated on 89.1 MHz, rather, it alleges that Global operated on the unauthorized frequency 88.98 MHz. Global made no reference to the unauthorized operation on 88.98 MHz in its response to the *NAL*, but it concedes that it operated without authorization on 89.1 MHz. For the purposes of clarity in this *Order*, we will refer to the frequency as 88.98 MHz.

⁶ Global also admitted unauthorized operation on 92.9 MHz. However, since the *NAL* does not address operation on this unauthorized frequency, we will not address it in this *Order*.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 74 *et. seq.*

¹² *See* 47 C.F.R. § 74.101.

¹³ *See* 47 C.F.R. § 74.102.

which there appears to be the least likelihood of interference to established stations shall be selected.”¹⁴

9. Using Section 74.103(c) as a guideline, the Media Bureau selected frequencies 93.7 MHz and 96.9 MHz only, due to the likelihood that operation on other requested frequencies would cause harmful interference with existing, licensed stations.¹⁵ Global does not dispute that it operated on the unauthorized frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz, or claim that it was authorized to operate on those additional frequencies; instead, Global argues that it attempted operation on those channels in an effort to experiment with the boundaries of Part 15.¹⁶ Part 15 describes the regulations under which an intentional or unintentional radiator may be operated without an individual license.¹⁷ The operation of an intentional or unintentional radiator not in accordance with Part 15 must be licensed pursuant to the provisions of Section 301 of the Act.¹⁸ Section 15.239(b) of the Rules requires that the field strength of any emissions within the permitted frequencies 88 MHz through 108 MHz, shall not exceed 250 microvolts/meter at 3 meters.¹⁹ The unauthorized frequencies, 88.98 MHz, 104.1 MHz, and 106.9 MHz, at which Global operated on January 26, 2003, from Qualcomm Stadium, resided wholly within the FM band. The San Diego Office agent who observed the transmissions on frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz near Qualcomm Stadium, on January 26, 2003, from 12:30 p.m. PST until 2:00 p.m. PST, noted that, based on the distance the signals were heard and the comparable signal strengths of the unauthorized stations to those that were authorized, the signals exceeded the specific limits of Section 15.239(b) of the Rules, and were, consequently, not Part 15 radio stations. Global’s operation of radio transmitting equipment on frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz, therefore, required licensing pursuant to Section 301 of the Act.

10. Global’s claim, that its intent was to remain within the confined boundaries set out in Part 15, does not persuade us that the violation was not willful. Global’s violation of the parameters of Part 15 need not be intentional in order to hold Global liable for a violation of Section 301 of the Act or Section 74.103(c) of the Rules.²⁰ All that is necessary is that Global intended to commit the act that violated these provisions.²¹ Here, Global intended to operate on the unauthorized frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz; accordingly, we conclude that Global willfully²² violated Section 301 of the Act, and Section 74.103(c) of the Rules.

11. In its response, Global requested cancellation of the forfeiture, due to an inability to pay,

¹⁴ 47 C.F.R. § 74.103(c).

¹⁵ Additionally the Media Bureau noted that its study indicated that based on interference protection ratios in the US-Mexican working agreement, Global’s request would cause interference to Mexican FM stations. *See fn 4, supra*.

¹⁶ 47 C.F.R. § 15 *et. seq.*

¹⁷ *See* 47 C.F.R. § 15.1(a).

¹⁸ *See* 47 C.F.R. § 15.1(b).

¹⁹ 47 C.F.R. § 15.239(b).

²⁰ *See Rev. Yvon Louis*, 18 FCC Rcd 16187, 16189 (Enf. Bur., 2003) (holding an individual liable for a \$10,000 forfeiture for operating on unlicensed frequencies, even though he believed he operated his communications equipment within the parameters of Part 15 and, as a result, required no license).

²¹ 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” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991) (forfeiture to an AM radio station for willful violation of sponsorship identification, even though the AM radio station did not know its actions violated any rule or law), *recon. denied*, 7 FCC Rcd 3454 (1992).

²² *Id.*

stating that, “the proposed forfeiture would be disproportionate to the company’s resources and would severely hinder the [company’s] efforts to work with the FCC.” Global, however, submitted no evidence that would support a cancellation or reduction of the forfeiture based on an inability to pay.²³

12. Global stated, in its response, that it used a field intensity meter prior to its operation on the unauthorized frequencies 88.98 MHz, 104.1 MHz, 106.9 MHz, and determined that there were no “listenable” radio signals operating near Qualcomm Stadium in San Diego, California, on those frequencies. By this statement, Global appears to imply that its violations of Section 301 of the Act and Section 74.103(c) of the Rules were minor in nature. We disagree. Even given the probable lack of interference actually caused to other stations and the relatively short duration of Global’s operation on these frequencies, we find, given the nature of the violation, and due to the fact that Global is a Commission licensee familiar with Commission regulations, and because Global acted in direct contradiction to a Media Bureau order prohibiting operation on frequencies 88.98 MHz, 104.1 MHz, and 106.9 MHz, that these violations were not minor, and no cancellation or reduction of the forfeiture for minor violations is warranted.²⁴

13. Global, in its response, requested we note that it has a “spotless” record before the Commission. We have checked Commission records concerning Global’s performance as an experimental broadcast licensee and concur that it has a history of overall compliance.²⁵ Accordingly, we reduce the forfeiture amount to \$10,800.

14. We have examined Global’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 Global willfully violated Section 301 of the Communications Act of 1934, as amended, and Section 74.103(c) of the Rules. We find no basis for rescinding or canceling the forfeiture due to an inability to pay, or for any other reason.

IV. ORDERING CLAUSES

15. 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,²⁶ Global Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand eight hundred dollars (\$10,800) for its willful violations of Section 301 of the Act and Section 74.103(c) of the Rules.

²³ See *NAL* at ¶ 12 (stating that “The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (‘GAAP’); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.”); see also *Commonwealth License Subsidiary, LLC*, 18 FCC Rcd 20483, 20486 (2003) (rejecting a station’s claim of inability to pay due to the radio station’s failure to provide proper documentation); *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (finding that gross receipts are a “very useful yardstick” in analyzing a company’s financial condition for forfeiture purposes).

²⁴ See *AGM Nevada LLC*, 18 FCC Rcd 1476, 1478-1479 (Enf. Bur. 2003) (concluding that “the absence of interference or any showing of harm to the public interest does not entitle AGM to a reduction of the proposed forfeiture”); see also *Application of Liberty Cable Co., Inc.*, 16 FCC Rcd 16105, 16112 (2001) (concluding that “unlicensed radio operation is a serious violation of the Act”); *KNFL, Inc.*, 15 FCC Rcd 10286, 10289 (Enf. Bur. 2000) (concluding that KNFL’s operation of a radio station without a license after receiving a warning regarding the illegality of such operation was not a minor violation), *recon. denied*, 15 FCC Rcd 25527 (Enf. Bur. 2000).

²⁵ See *Coffee County Broadcasting, Inc.*, 19 FCC Rcd 2942, 2943 (Enf. Bur. 2004) (“Coffee County states that it has never had any major FCC violations, which we interpret to be a claim of history of overall compliance”).

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

16. 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.²⁷ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or 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. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, Illinois 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. 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. 20554.²⁸

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via First Class Mail and Certified Mail, Return Receipt Requested, to Global Radio, Inc., 1275 First Avenue, No. 125, New York, New York, 10021.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

²⁷ 47 U.S.C. § 504(a).

²⁸ See 47 C.F.R. § 1.1914.