

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

In the Matter of)	File No. EB-02-DV-313
)	
Woodland Communications Corporation)	NAL/Acct. No. 200332800012
Licensee of Station WMF732)	
Montrose, Colorado)	FRN No. 0002-3220-89
Facility ID # 73626)	

FORFEITURE ORDER

Adopted: October 18, 2004

Released: October 20, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to Woodland Communications Corporation (“Woodland”) for willful and repeated violations of Sections 74.551(a)(2), 74.551(a)(3), and 74.561 of the Commission’s Rules (“Rules”).¹ The noted violations involve Woodland’s operation of radio transmitting equipment on an unauthorized frequency and from an unauthorized location.

2. On April 30, 2003, the Commission’s Denver, Colorado District Office (“Denver Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Woodland for a forfeiture in the amount of eight thousand dollars (\$8,000).² Woodland filed a response to the *NAL* on May 29, 2003.

II. BACKGROUND

3. On August 1, 2002, a Denver Office agent inspected broadcast stations KUBC (AM) and KKXX (FM) and determined that the STL transmitter used by KUBC-AM, call sign WMF732 was operating on an unauthorized frequency and from an unauthorized location. The Denver Office agent verified that the STL transmitter was operating on the frequency 948.873 MHz instead of on the authorized frequency of 951.000 MHz. Further, the studio and the STL transmitter were located at 106 Rose Lane, Montrose Colorado instead of at the authorized location of 2018 South Townsend, Montrose, Colorado.

4. On April 30, 2003, the Denver Office issued the subject *NAL* to Woodland for operating the STL transmitter on an unauthorized frequency and from an unauthorized location. The *NAL* found that Woodland did not promptly change the operating frequency to the authorized frequency, and that Woodland did not promptly file an application to change the transmitter location. Woodland filed a response to the *NAL* on May 29, 2003. In its response, Woodland disputed the claim that it did not take immediate action to come into compliance with the noted Rule violations. Woodland claimed that it was delayed by circumstances beyond its control, and that the *NAL* should be cancelled because Woodland

¹ 47 C.F.R. § 74.103(c).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800012 (Enf. Bur., Denver Office, released April 30, 2003).

took action to come into compliance. In the alternative, Woodland requested a reduction of the forfeiture amount because it imposes an economic burden on the licensee. Woodland enclosed its tax returns from 2001 to 2003 in support of its economic burden claim.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, (“Act”),³ Section 1.80 of the Rules,⁴ 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 Woodland’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.⁵

6. Section 74.551(a)(2) of the Rules requires prior Commission approval for a change in operating frequency or channel bandwidth.⁶ In its response, Woodland conceded that it did not file an application to change the operating frequency for the STL transmitter prior to the agent’s inspection. Therefore, we find that Woodland willfully⁷ and repeatedly⁸ violated Section 74.551(a)(2) of the Rules.

7. Section 74.561 of the Rules requires a licensee to maintain the operating frequency of the transmitter within 0.005% of the assigned frequency.⁹ According to the *NAL*, at the time of the inspection WMF732 was transmitting on 948.873 MHz, more than 0.22% from the assigned frequency of 951.000 MHz. In its response, Woodland did not dispute that it was operating on the incorrect frequency. Accordingly, we find that Woodland willfully and repeatedly violated Section 74.561 of the Rules.

8. Section 74.551(a)(3) of the Rules requires prior Commission approval for a change in the location of the transmitter or transmitting antenna, unless relocation of the transmitter occurs within the same building.¹⁰ In its response, Woodland concedes that it did not seek Commission approval when it changed the location of the transmitter. Therefore, we find that Woodland willfully and repeatedly violated Section 74.551(a)(3) of the Rules.

9. The *NAL* found that Woodland failed to come into compliance with the noted sections of the

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 C.F.R. § 74.551(a)(2).

⁷ 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).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues 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). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

⁹ 47 C.F.R. § 74.561

¹⁰ 47 C.F.R. § 74.551(a)(3)

rules in a timely fashion. In response, Woodland claimed that it immediately ordered new equipment to operate on the authorized frequency and promptly filed an application to change the authorized site for WMF732, but was delayed by circumstances beyond its control. Woodland requested cancellation of the *NAL* based on its post investigation attempts to come into compliance. The Commission has been clear that "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."¹¹ Any effort made by Woodland to come into compliance, whether immediate or delayed by extenuating circumstances, does not negate its willful and repeated violations of the Rules. Therefore, we conclude that Woodland's effort to correct the violations after they were discovered by the Commission agent is not a mitigating factor and the forfeiture amount will not be cancelled or reduced on this basis.

10. Further, Woodland requested a reduction in the forfeiture amount because it imposes an economic hardship on the licensee. We will interpret this to be a claim of inability to pay. To assess a claim of inability to pay, the Commission reviews a claimant's gross revenues to determine if it is able to pay the assessed forfeiture.¹² We reviewed the financial information submitted by Woodland and find that it does not provide a basis for cancellation or reduction. The forfeiture is a very small percentage of Woodland's gross revenues, and therefore does not warrant reduction.¹³

IV. ORDERING CLAUSES

11. 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,¹⁴ Woodland Radio, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for its willful and repeated violation of Sections 74.551(a)(2), 74.551(a)(3), and 74.561 of the Rules.

12. 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 of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and *FRN* No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, 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, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. 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

¹¹ *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994)

¹² *See Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17106- 07 (1997), *recon. denied*, 15 FCC Rcd 303 (1999)

¹³ *See Alpha Ambulance, Inc.*, 19 FCC Rcd 2547, 2548 (2004), citing *PJB Communications*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 10023, 10025 (2001) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues). In this case, the \$8,000 proposed forfeiture constitutes less than 1 percent of Woodland's average gross revenues for 2000-2002, which is a significantly lower percentage of gross revenues than in both *Alpha Ambulance*, and *Local Long Distance, Inc.*

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.

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

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau