

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

In the Matter of
Universal Network Television, LLC
Universal City, CA
File No. EB-04-NY-050
NAL/Acct. No. 200532380001
FRN: 00010 6623 51

FORFEITURE ORDER

Adopted: June 8, 2005

Released: June 10, 2005

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Universal Network Television, LLC ("Universal") for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act"),¹ by operating unlicensed radio transmitting equipment on the frequency 465.63125 MHz in New York, NY.

II. BACKGROUND

2. On March 22, 2004, the Commission's New York Field Office ("New York Office") received a complaint of interference from a licensee in the Public Safety Radio Pool operating on the frequency 465.6250 MHz. The complainant identified Universal, located at Pier 62, West 23rd Street and 12th Avenue, New York, NY, 10011, as the party causing the interference by operation on the frequency 465.63125 MHz. The complainant also stated that Universal was notified of the interference caused by the unlicensed operation on the frequency 465.63125 MHz.

3. On March 23, 2004, a Commission agent, using a mobile direction-finding vehicle monitored the frequency 465.63125 MHz in New York, NY and positively located the source of the transmissions to the area at Pier 62, West 23rd Street and 12th Avenue, New York, NY 10011. The agent observed transmissions from several portable transceivers used by a television production crew. A review of the Commission's databases at that time showed no evidence of an authorization for Universal to operate on the frequency 465.63125 in New York, NY, or anywhere else, and further revealed that Universal did not hold any land mobile licenses.

4. On March 24, 2004, Commission agents monitored the frequency 465.63125 MHz in New York, NY, and heard transmissions of a television production crew. The agents returned to Universal, Pier 62, West 23rd Street and 12th Avenue, New York, NY 10011, and conducted an inspection of the radio equipment with the Assistant Production Coordinator. The agents determined that Universal

147 U.S.C. § 301.

operated Motorola P1225 UHF portable radio transceivers, rated at 4.4 watts, on the frequency 465.63125 MHz. The agents advised the Assistant Production Coordinator that operation on that frequency requires a license and that, based on the agent's review of the Commission's databases, there was no evidence of a Commission authorization for this operation in New York, NY and therefore Universal was operating portable radio transmission equipment without the required FCC license.

5. On October 18, 2004, the Commission's New York Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Universal for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act.² Universal filed a response to the NAL on November 16, 2004. In its response, Universal explains that for many years it used the frequency 465.63125 MHz on its portable transceivers pursuant to a service agreement with a third-party vendor. Universal states that to facilitate more efficient operations, it decided to purchase the portable transceivers from that same third-party vendor and subsequently purchased additional portable transceivers from another third-party vendor. All of the transceivers purchased by Universal were programmed with the 465.63125 MHz frequency that Universal had been using under the service agreement. Universal claims that neither vendor advised Universal that it was required to acquire a license to operate the portable transceivers on the frequency 465.63125 MHz.

III. DISCUSSION

6. The forfeiture amount proposed 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*.⁵ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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.⁶ As discussed below, we have considered Universal's response to the NAL in light of these statutory factors and have found that reduction or cancellation of the proposed forfeiture amount is not warranted.

7. Section 301 of the Act states that no 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 the Act and with a license.⁷ Commission agents determined that Universal operated radio-transmitting equipment on March 23, 2004 and March 24, 2004 without an FCC license. The

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532380001 (Enf. Bur., New York Office, released October 18, 2004).

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

⁶47 U.S.C. § 503(b)(2)(D).

⁷47 U.S.C. § 301.

violation of Section 301 of the Act therefore is repeated.⁸

8. In light of our determination that Universal's violation was repeated, we are not required under the Act to make a determination as to whether the violation was willful. Section 503(b) of the Act gives the Commission the authority to assess a forfeiture penalty against any person if the Commission determines that the person has "willfully or repeatedly" failed to comply with the provisions of the Act or with any rule, regulation or order issued by the Commission. We nevertheless address Universal's claim that its actions were not willful.

9. Universal argues that the forfeiture should be cancelled because it was not aware that a license was necessary for the operation of the radio transmitting equipment and therefore the violation cannot be considered "willful." For a violation to be willful, it must be committed consciously and deliberately, irrespective of any intent to violate the Rules.⁹ Universal does not dispute that it operated the portable transceivers without a license and therefore its actions were willful, as that term is defined in the Act. Furthermore, as the owner and operator of the radio equipment, Universal, not its radio vendor, is responsible for complying with all applicable FCC rules. The Commission has consistently stated that ignorance of the law is not a mitigating factor.¹⁰

10. We also find that cancellation is not warranted based on the remedial actions taken by Universal since it became aware of the unlicensed operation. Universal states that it (1) voluntarily cooperated with efforts to resolve the interference, (2) terminated operations until the necessary applications were submitted, (3) took it upon itself to prepare and submit the necessary FCC applications, and (4) implemented internal compliance procedures. As the Commission has stated, "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

11. We have examined Universal's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Universal willfully and repeatedly violated Section 301 of the Act. We also conclude that neither cancellation nor reduction of the proposed \$10,000 monetary forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections

⁸Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[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."

⁹Section 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', when used with reference to the commission or omission of any act, 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).

¹⁰*Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), citing *Vernon Broadcasting, Inc.*, 60 RR 2d 1275, 1277 (1986) and *Fay Neel Eggleston*, 19 FCC 2d 829 (1969).

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

0.111, 0.311 and 1.80(f)(4) of the Rules¹², Universal Network Television, LLC. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act.

13. 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 Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. 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. 20554.¹³

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Universal Network Television, LLC's address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau

¹²47 C.F.R. §§ 0.111, 0.311, 1.80(f).

¹³See 47 C.F.R. § 1.1914.