

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

In the Matter of)	
)	File No. EB-06-SE-080
Gilmore Broadcasting Corporation)	NAL/Acct. No. 200632100014
Evansville, Indiana)	FRN # 0002062396
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 1, 2006

Released: June 5, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Gilmore Broadcasting Corporation (“Gilmore”), licensee of satellite earth station, E950187, Evansville, Indiana, apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000) for operating its earth station without Commission authority and for failing to timely file a renewal application. Gilmore acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 25.102(a) and 25.121(e) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. Gilmore was granted a license for its fixed-satellite service earth station, E950187, on April 7, 1995, with an expiration date of April 7, 2005. On February 17, 2006, Gilmore filed with the Commission’s International Bureau an application for a new earth station license. On February 21, 2006, Gilmore filed a request for special temporary authority (“STA”) to continue operating its earth station pending Commission action on the license application. The International Bureau granted Gilmore’s STA on February 27, 2006,³ and granted Gilmore a new earth station license, call sign E950187, on April 3, 2006.⁴

3. Because it appeared that Gilmore may have operated the earth station after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On March 8, 2006, the Enforcement Bureau’s Spectrum Enforcement

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a) and 25.121(e).

³ See File No. SES-STA-20060224-00306 (granted February 27, 2006).

⁴ See File No. SES-LIC-20060221-00283 (granted April 3, 2006). The new license for earth station E950187 was granted by the International Bureau without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

Division issued a letter of inquiry (“LOI”)⁵ to Gilmore.

4. In its April 19, 2006 response to the LOI,⁶ Gilmore stated that it first became aware that its earth station license E950187 had expired on January 10, 2006.⁷ Citing “a licensing error” as the basis for its failure to timely renew its license,⁸ Gilmore explained that once it discovered the expiration of its license, it immediately contacted its counsel who began work on an application to re-license the earth station and a request for Special Temporary Authority (“STA”) to continue operating the earth station for a 60-day period.⁹ Further, Gilmore admitted that it continued to operate its earth station beyond the license expiration date without Commission authorization.¹⁰ Specifically, Gilmore explained that between the period of April 7, 2005 and January 10, 2006, its staff used the earth station for typical television news gathering on numerous occasions until they were instructed to “discontinue use ... pending grant of the STA.”¹¹

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under, and in accordance with a Commission granted authorization. Additionally, Section 25.121(e) of the Rules requires that licensees file renewal applications for earth stations “no earlier than 90 days, and no later than 30 days, before the expiration of the license.”¹² Absent a timely filed renewal application, an earth station license automatically terminates.¹³

6. As a Commission licensee, Gilmore was required to maintain its authorization in order to operate its earth station. Based upon the information before us, Gilmore operated the earth station without Commission authority from the station’s license expiration date of April 7, 2005, until January 10, 2006. By operating its earth station for approximately nine months without an instrument of authorization, Gilmore apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Gilmore also acted in apparent violation of Section 25.121(e) of the Rules by allowing its license to lapse without renewal.

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Martha Heller, Esq., Counsel for Gilmore Broadcasting Corporation (March 8, 2006).

⁶ See Letter from Martha E. Heller, Esq., to Jacqueline Johnson, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 19, 2006).

⁷ *Id.* at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 1 and 2.

¹² 47 C.F.R. § 25.121(e).

¹³ 47 C.F.R. § 25.161(b).

7. Section 503(b) of the Act,¹⁴ and Section 1.80(a) of the Rules,¹⁵ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s rules, and “repeatedly” means more than once.¹⁶ Based upon the record before us, it appears that Gilmore’s violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(D) of the Act directs us to consider factors, such as “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.”¹⁷ Having considered the statutory factors, as explained below, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$6,500 to \$4,000 based upon Gilmore’s voluntary disclosure of its violations and its history of compliance.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of three thousand dollars (\$3,000) for failure to file required forms or information and ten thousand dollars (\$10,000) for operation of a station without Commission authority.¹⁸ Consistent with precedent,¹⁹ we propose a \$1,500 forfeiture for Gilmore’s failure to file the renewal application for its earth station within the time period specified in Section 25.121(e) of the Rules. Additionally, we propose a \$5,000 forfeiture for Gilmore’s continued operation of its earth station beyond April 7, 2005. In proposing a \$5,000 forfeiture for Gilmore’s unauthorized operations, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁰ Thus, we propose an aggregate forfeiture of \$6,500.

10. As a Commission licensee, Gilmore is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules, including the requirement to timely

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80(a).

¹⁶ See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *WCS Communications, Inc.*, 13 FCC Rcd 6691 (WTB, Enf. and Consumer Info. Div., 1998) (finding that a licensee’s inadvertent failure to file timely renewal applications constitutes a repeated violation that continues until the date the license is renewed).

¹⁷ 47 U.S.C. § 503(b)(2)(D). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

¹⁸ 47 C.F.R. 1.80(b).

¹⁹ See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Shared Data Networks, LLC*, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”); *Journal Broadcast Corporation*, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *National Weather Networks, Inc.*, DA-06-841 at ¶¶ 9-10 (Enf. Bur., Spectrum Enf. Div., April 14, 2006) (“*NWN*”); *Criswell College*, DA 06-996 at ¶¶ 11-12 (Enf. Bur., Spectrum Enf. Div., May 11, 2006).

²⁰ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); see also *SDN*, 20 FCC Rcd at 18186-87; *Journal Broadcast*, 20 FCC Rcd at 18213; *NWN*, DA 06-841 at ¶¶ 9-10; *Criswell College*, DA 06-996 at ¶¶ 11-12.

renew the authorization for its earth station.²¹ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$4,000 is warranted because Gilmore made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations, *but* prior to any Commission inquiry or initiation of enforcement action and because of Gilmore's history of overall compliance.²²

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act²³ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁴ Gilmore **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand (\$4,000) for the willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁵ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Gilmore **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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. A request for full payment under an installment plan should be sent to: Associate Managing Director-Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁶

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

15. 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; 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.

²¹ See *Discussion Radio*, 19 FCC Rcd at 7437; see also *SDN*, 20 FCC Rcd at 18187; *Journal Broadcast*, 20 FCC Rcd at 18214; *NWN*, DA 06-841 at ¶ 12; *Criswell College*, DA 06-996 at ¶ 12.

²² See *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); see also *SDN*, 20 FCC Rcd at 18187; *Journal Broadcast*, 20 FCC Rcd at 18214; *NWN*, DA 06-841 at ¶ 11; *Criswell College*, DA 06-996 at ¶ 12.

²³ 47 U.S.C. § 503(b).

²⁴ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

²⁵ 47 C.F.R. § 1.80.

²⁶ See 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to counsel for Gilmore Broadcasting Corporation, Martha E. Heller, Esq., Wiley Rein & Fielding LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau