

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

In the Matter of)	
)	File No. EB-06-SE-239
Lazer Broadcasting Corporation)	NAL/Acct. No. 200632100019
Oxnard, California)	FRN # 0005774112
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 1, 2006

Released: August 3, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Lazer Broadcasting Corporation (“Lazer”), former licensee of satellite earth station, call sign E950275, Oxnard, California, apparently liable for forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for operating its earth station without Commission authority and for failing to timely file a renewal application. Lazer 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. Lazer’s license for its Ku-band fixed-satellite service earth station, E950275, expired on May 26, 2005. On May 22, 2006, Lazer Licenses, LLC (“Lazer LLC”), a limited liability company of which Lazer Broadcasting is the sole member, filed an application for a new earth station license. On this same day, Lazer LLC filed a request for special temporary authority (“STA”) to continue operating its earth station pending Commission action on the new license application. The International Bureau granted Lazer LLC’s STA on May 26, 2006³, and granted Lazer LLC a new earth station license under call sign E060180 on July 18, 2006.⁴

3. Because it appeared that Lazer 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 June 6, 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-20060522-00860 (granted May 26, 2006).

⁴ See File No. SES-LIC-20060522-00859 (granted July 18, 2006). The International Bureau granted the new license without prejudice to any future FCC enforcement action against the company in connection with any unauthorized operation of its radio facilities.

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

4. In its July 21, 2006 response to the LOI,⁶ Lazer stated that it first became aware that its earth station license, E950275, had expired on May 15, 2006.⁷ On this date, Lazer’s communications attorney discovered the expired license.⁸ The attorney immediately notified Lazer of the expired license who took immediate action to remedy the situation.⁹

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.”¹⁰ Absent a timely filed renewal application, an earth station license automatically terminates.¹¹

6. As a Commission licensee, Lazer was required to maintain its authorization in order to operate its earth station. Lazer operated its earth station without Commission authority from the license expiration date of May 26, 2005, until May 26, 2006.¹² By operating its earth station for one year without an instrument of authorization, Lazer apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Lazer also acted in apparent violation of Section 25.121(e) of the Rules by allowing its license to lapse without renewal.

7. Section 503(b) of the Act,¹³ and Section 1.80(a) of the Rules,¹⁴ 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.¹⁵ Based upon the record before us, it appears that Lazer’s

⁵ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Alicia H. Miranda, Assistant Secretary, Lazer Broadcasting Corp. (June 6, 2006).

⁶ See Letter from Ann Bavender, Esq., to Brian Tucker, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 21, 2006) (“LOI Response”).

⁷ *Id.* at 2.

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ 47 C.F.R. § 25.121(e).

¹¹ 47 C.F.R. § 25.161(b).

¹² LOI Response at 3.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. § 1.80(a).

¹⁵ 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).

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.”¹⁶

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.¹⁷ Consistent with precedent,¹⁸ we propose forfeiture in the amount of \$1,500 for Lazer’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 forfeiture in the amount of \$5,000 for Lazer’s continued operation of its earth station beyond May 26, 2005. In proposing this forfeiture, 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.¹⁹ Thus, we propose an aggregate forfeiture amount of \$6,500.

10. As a Commission licensee, Lazer 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 renew the authorization for its earth station.²⁰ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$5,200 is warranted because Lazer 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.²¹

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²² and Sections 0.111, 0.311 and 1.80 of the Rules,²³ Lazer **IS** hereby **NOTIFIED** of its **APPARENT**

¹⁶ 47 U.S.C. § 503(b)(2)(D). *See also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17110 (1997), *recon. denied* (1999).

¹⁷ 47 C.F.R. 1.80(b).

¹⁸ *See Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station) (“*Discussion Radio*”); *see also Gilmore Broadcasting Corp.*, 21 FCC Rcd 6284 ¶ 9 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Gilmore*”); *Criswell College*, 21 FCC Rcd 5106 ¶¶ 11-12 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, 21 FCC Rcd 3922 ¶¶ 9-10 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks, LLC*, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*SDN*”).

¹⁹ *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 Gilmore*, 21 FCC Rcd 6284 ¶ 9; *Criswell*, 21 FCC Rcd 5106 ¶¶ 11-12; *NWN*, 21 FCC Rcd 3922 ¶¶ 9-10; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

²⁰ *See Discussion Radio*, 19 FCC Rcd at 7437.

²¹ *See Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004).

²² 47 U.S.C. § 503(b).

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

LIABILITY FOR FORFEITURE in the amount of five thousand, two hundred dollars (\$5,200) 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,²⁴ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Lazer **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. 20554.²⁵

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.

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 Lazer Broadcasting Corporation, Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Arlington, Virginia, 22209.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁴ 47 C.F.R. § 1.80.

²⁵ See 47 C.F.R. § 1.1914.