

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

In the Matter of	)	
	)	
Uniradio Corporation	)	File Number: EB-05-SD-010
	)	
San Diego, California	)	NAL/Acct. No.: 200532940013
	)	FRN: 0010621829

**FORFEITURE ORDER**

**Adopted: September 8, 2006**

**Released: September 12, 2006**

By the Regional Director, Western 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 Uniradio Corporation (“Uniradio”) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).<sup>1</sup> On September 28, 2005, the Enforcement Bureau’s San Diego Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of \$10,000 to Uniradio after determining that Uniradio apparently willfully and repeatedly operated an unlicensed microwave radio station on microwave channels 21225.0 MHz and 22464.75 MHz<sup>2</sup> in San Diego, California. In this *Order*, we consider Uniradio’s argument that Commission staff had assured cross-border microwave operators, and Uniradio, by association, that the Commission would not take enforcement action against them.

**II. BACKGROUND**

2. On December 14, 2004, an agent from the Commission’s San Diego Office was investigating allegations that companies in the San Ysidro area of San Diego were using unauthorized microwave radio stations to communicate with sister companies across the U.S. – Mexico border in Tijuana, Mexico. The agent monitored and measured the transmissions of a microwave radio station operated by Uniradio at an unattended transmitter site at 4630 Border Village Road, San Diego, California. The frequency measurement revealed that this microwave radio station was operating on microwave channel 21225.0 MHz.

3. A review of the Commission’s database revealed that Uniradio has no authorization to operate a point-to-point microwave radio station. However, a pending license application, filed by Uniradio on May 19, 2004 and amended on September 29, 2004, for frequency 22464.75 MHz at the 4630 Border Village Road location was found.<sup>3</sup>

4. On January 25, 2005, the San Diego agent returned to the Uniradio site and found the microwave radio station operating on microwave channel 21225.0 MHz. At this time, the agent conducted an inspection of the radio station with the building management. The information provided by the building management and others confirmed that this transmitter was operated by Uniradio.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 101.147(s).

<sup>3</sup> See File No. 0001742599.

5. On March 11, 2005, the San Diego Office sent a Letter of Inquiry (“LOI”) to Uniradio concerning its operation on an unauthorized frequency of 21225.0 MHz, in violation of Section 301 of the Act. On March 23, 2005, an agent of the Commission’s San Diego Office returned to the Uniradio site at 4630 Border Village Road and found that the station was operating on microwave channel 22464.75 MHz. The San Diego Office received a reply to the LOI on April 19, 2005. In its reply, Uniradio stated that it “never had or applied for an authorization or license to transmit in the U.S. at the 21225 MHz frequency” and that it began operating the station on 21225 MHz in May 2004. It acknowledged that it had a pending application to use 22464.75 MHz. Uniradio indicated that the equipment company that installed the radio transmitter had inadvertently switched the receiver and transmitter frequencies as the station should be operating on 22464.75 MHz. Finally, Uniradio stated that it had applied to the FCC for a special temporary authority and that it had corrected the transmitter frequency error.

6. Agents confirmed that Uniradio did apply for a special temporary authority on March 22, 2005.<sup>4</sup> The pending Uniradio application for a Private Operational Fixed Point-to-Point Microwave radio station on 22464.75 MHz, located at 4630 Border Village Road, San Diego, California, was granted on May 18, 2005 under call sign WQCT284.

7. On September 28, 2005, the San Diego Office issued a *NAL* in the amount of \$10,000 to Uniradio.<sup>5</sup> In the *NAL*, the San Diego Office found that Uniradio apparently willfully and repeatedly violated Section 301 of the Act by operating an unlicensed microwave radio station on microwave channels 21225.0 MHz and 22464.75 MHz<sup>6</sup> in San Diego, California. Uniradio filed a response to the *NAL* on October 28, 2005 (“*Response*”). In this *Response*, Uniradio argues that other potential cross border microwave operators had been assured by staff from the Commission’s International Bureau, in 2001, that the International Bureau would no longer grant special temporary authority (“STA”) to cross-border microwave operators, such as Uniradio, but that no enforcement action would be taken against these operators either. Uniradio argues that its operations in 2004 and 2005, which are the basis of the San Diego Office’s *NAL*, were done in reliance on this advice and therefore the proposed forfeiture should be cancelled. Uniradio attaches affidavits from its counsel and consulting engineer detailing what they were told by International Bureau staff in 2001, along with an STA request filed by its counsel for another 23 GHz cross-border operator in 2001.

### III. DISCUSSION

8. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>7</sup> Section 1.80 of the Rules,<sup>8</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>9</sup> In examining the *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 other such matters as justice may require.<sup>10</sup>

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<sup>4</sup>See File No. 0002094917.

<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532940013 (Enf. Bur., Western Region, San Diego Office, released September 28, 2005).

<sup>6</sup> 47 C.F.R. § 101.147(s).

<sup>7</sup> 47 U.S.C. § 503(b).

<sup>8</sup> 47 C.F.R. § 1.80.

<sup>9</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>10</sup> 47 U.S.C. § 503(b)(2)(D).

9. Section 301 of the Act requires 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.<sup>11</sup> On December 14, 2004, January 25, 2005, and March 23, 2005, measurements made by San Diego agents revealed that Uniradio was operating a microwave radio station on microwave channels 21225.0 MHz and 22464.75 MHz. A review of Commission records indicated that Uniradio had no authorization to operate on 21225.0 MHz. The review also indicated that Uniradio had a pending application, but no authorization, to operate on 22464.75 MHz prior to May 18, 2005. On April 19, 2005, Uniradio acknowledged operating a microwave station on the frequencies of 21225.0 MHz and 22464.75 MHz since May 2004. Uniradio also acknowledged that at that time it had no license, only pending applications, to operate such a station.<sup>12</sup>

10. In its *Response*, Uniradio does not claim that it held a valid authorization to operate its microwave station during the 2004 and 2005 time period detailed in the *NAL*. Indeed, Uniradio does not deny operating repeatedly without a license. Uniradio also does not discuss its May 19, 2004 application. Instead, Uniradio argues that it should not be liable for a forfeiture because it was relying on oral advice given to its counsel by Commission staff in 2001, concerning other potential cross-border situated microwave operators. Uniradio also argues that the Commission should have issued a public notice announcing its intention to enforce Section 301 against cross-border operators in 2005 and by not doing so it placed Uniradio in a “Catch-22 situation by refusing for years to issue STAs or licenses for microwave links in the 23 GHz band and insisting that it would not undertake enforcement actions.”

11. The Commission has consistently held that applicants are responsible for compliance with the Commission’s Rules and that they should not rely on informal oral opinions from Commission staff.<sup>13</sup> Uniradio acknowledges in its *Response* that the advice its counsel received from Commission staff in 2001 was never put into writing. Moreover, we disagree that Uniradio, who commenced unlicensed 23 GHz operations in May of 2004, was placed in a “Catch-22” by the lack of a public notice announcing that the Commission would enforce Section 301 against unauthorized cross-border microwave operators.

12. Assuming *arguendo* that Commission staff did advise Uniradio’s counsel in 2001 that there would be no enforcement actions initiated by field offices regarding unlicensed cross-border 23 GHz systems in 2001, we agree with the San Diego Office’s determination that Uniradio’s reliance on this advice in 2004 and 2005 was misplaced. Uniradio argues that in 2001, and “[u]ntil 2005, the International Bureau’s microwave licensing branch had steadfastly refused to grant applications seeking cross-border 23 GHz links because the licensing authority in Mexico was not then issuing authorizations for parallel links from Mexico to the U.S.” A review of the Commission’s database shows that Uniradio is mistaken. By January 2004, cross-border coordination and licensing by both the FCC and the Mexican Ministry of Communications and Transport (“SCT”) was routinely occurring. Indeed, when Uniradio first filed an application for authority to operate in the 23 GHz band on May 19, 2004, to replace its prior T1 line transmissions, cross-border microwave licensing by the FCC was occurring. Therefore, Uniradio clearly understood that licensing was required for its cross-border operations in 2004 and 2005, the period during which the San Diego Office agents observed and questioned Uniradio’s unauthorized operations. Consequently, we find no merit to Uniradio’s argument.

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<sup>11</sup> 47 U.S.C. § 301.

<sup>12</sup> Pursuant to Sections 101.31(b)(1) and 101.31 (b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. The frequency proposed for use by Uniradio in its applications is not contained in these frequency bands. Also, Uniradio’s proposed station is located approximately 0.64 km from the Mexican border.

<sup>13</sup> *Texas Media Group, Inc.* 5 FCC Rcd 2851, 2852 (1990) *aff’d sub nom. Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

13. We have examined the *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 Uniradio willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted.

#### IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Uniradio Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willfully and repeatedly violating Section 301 of the Act.<sup>14</sup>

15. 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.<sup>15</sup> 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: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>16</sup>

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Uniradio Corporation, at its address of record, and its counsel of record, Frederick J. Day, Esquire.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>14</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> See 47 C.F.R. § 1.1914.