

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

In the Matter of)	
)	File No. EB-06-SE-328
Hare Planting Co., Inc.)	NAL/Acct. No. 200732100003
Newport, Arkansas)	FRN # 0014329353
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 20, 2006

Released: November 22, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Hare Planting Co., Inc. (“Hare Planting”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WNQC202, in Newport, Arkansas, apparently liable for a forfeiture in the amount of five thousand two hundred dollars (\$5,200) for operating a PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Hare Planting acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).²

II. BACKGROUND

2. Hare Planting was granted a PLMRS station license under call sign WNQC202 on May 28, 1999, with an expiration date of August 14, 2004. On November 29, 2005, Hare Planting filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station. The Wireless Telecommunications Bureau granted Hare Planting STA to continue operating the station under call sign WQDY686 on December 1, 2005.³ The STA expired on May 30, 2006. On June 29, 2006, Hare Planting filed another STA request to continue operating its PLMRS station. The Wireless Telecommunications Bureau granted Hare Planting STA to continue operating the station under call sign WQFF365 on June 30, 2006.⁴ On July 17, 2006, Hare Planting filed an application for a new PLMRS station license. The Wireless Telecommunications Bureau granted Hare Planting a new license under call sign WQFH745 on July 19, 2006.⁵

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ STA File No. 002393814 (granted December 1, 2005). The Wireless Telecommunications Bureau granted the STA without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁴ STA File No. 0002667650 (granted June 30, 2006). The Wireless Telecommunications Bureau granted the STA without prejudice to any future FCC enforcement action against the company in connection with unauthorized operation of its radio facilities.

⁵ See License File No. 0002684736 (granted July 19, 2006).

3. Because it appeared that Hare Planting may have operated the PLMRS station after the expiration of its license under call sign WNQC202, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On September 13, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")⁶ to Hare Planting.

4. In its September 21, 2006 response to the LOI,⁷ Hare Planting stated that it first became aware that its license under call sign WNQC202 had expired on or about November 29, 2005.⁸ Citing "ignorance of the expiration date of the license" as the basis for its failure to timely renew its license,⁹ Hare Planting further stated that once it discovered the expiration of its license, it immediately filed a request for STA to continue operating the station.¹⁰ Hare Planting admitted that it continued to operate the station beyond the license expiration date without Commission authorization.¹¹ Specifically, Hare Planting explained that between the period of August 14, 2004 and December 1, 2005, it continued operating the station in its farming business "until it was discovered the license had expired and an STA was in place."¹²

III. DISCUSSION

5. Section 301 of the Act and Section 1.903(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a wireless radio station except under, and in accordance with, a Commission granted authorization. Additionally, Section 1.949(a) of the Rules requires that licensees file renewal applications for wireless radio stations, "no later than the expiration date of the authorization for which renewal is sought, and no sooner than 90 days prior to expiration."¹³ Absent a timely filed renewal application, a wireless radio station license automatically terminates.¹⁴

6. As a Commission licensee, Hare Planting was required to maintain its authorization in order to operate its PLMRS station. Hare Planting admitted that it operated the PLMRS station without Commission authority from the station's license expiration date of August 14, 2004, until November 29, 2005.¹⁵ By operating its PLMRS station for approximately 15 months without an instrument of authorization, Hare Planting apparently violated Section 301 of the Act and Section 1.903(a) of the Rules.

⁶ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Marvin B. Hare, Jr., Hare Planting Co., Inc. (September 13, 2006).

⁷ See Letter from Marvin Hare, Hare Planting Co., Inc. to Jacqueline Johnson, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 21, 2006).

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 1-2.

¹³ 47 C.F.R. § 1.949(a).

¹⁴ 47 C.F.R. § 1.955(a)(1).

¹⁵ It also appears from the record that Hare Planting operated the station without authorization between May 30, 2006, when its first STA expired, and June 29, 2006, when it filed its second STA request.

Hare Planting also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act,¹⁶ and Section 1.80(a) of the Rules,¹⁷ 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.¹⁸ Based upon the record before us, it appears that Hare Planting’s violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) 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.”¹⁹ Having considered the statutory factors, as explained below, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$6,500 to \$5,200 based upon Hare Planting’s voluntary disclosure of its violations.

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.²⁰ As the Commission recently held, a licensee’s failure to timely file a renewal application and its continued operations without authorization constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²¹ Accordingly, we herein propose separate forfeiture amounts for Hare Planting’s separate violations.

10. Consistent with precedent,²² we propose a \$1,500 forfeiture for Hare Planting’s failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 C.F.R. § 1.80(a).

¹⁸ 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).

¹⁹ 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).

²⁰ 47 C.F.R. 1.80(b).

²¹ See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (assessing proposed forfeitures of \$5,000 and \$1,500 against a broadcaster who both operated its station for 14 months without Commission authority and failed to timely file its renewal application) (“*Discussion Radio*”).

²² See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to file a timely renewal application for a broadcast station); see also *Gilmore Broadcasting Corp.*, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Gilmore*”); *Criswell College*, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, 21 FCC Rcd 3922, 3925 (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*”).

the Rules. Additionally, we propose a \$5,000 forfeiture for Hare Planting's continued operation of its PLMRS station after the expiration of its license on August 14, 2004.²³ In proposing a \$5,000 forfeiture for Hare Planting'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.²⁴ Thus, we propose an aggregate forfeiture of \$6,500.

11. As a Commission licensee, Hare Planting is charged with the responsibility of knowing and complying with the terms of its authorization, the Act and the Rules, including the requirement to timely renew the authorization for its PLMRS station.²⁵ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$5,200 is warranted because Hare Planting 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.²⁶

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁸ Hare Planting **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A 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 1.903(a) and 1.949(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁹ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Hare Planting **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

²³ Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a NAL. Section 503(b)(6), however, does not bar us from considering Hare Planting's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9660, 9671 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Hare Planting's apparent violations that have occurred within the past year.

²⁴ *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 at 6285; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *SDN*, 20 FCC Rcd at 18187.

²⁵ *See Discussion Radio*, 19 FCC Rcd at 7437; *see also Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁶ *See Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004); *see also Gilmore*, 21 FCC Rcd at 6286-87; *Criswell*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *SDN*, 20 FCC Rcd at 18187.

²⁷ 47 U.S.C. § 503(b).

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

²⁹ 47 C.F.R. § 1.80.

14. 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. 20554.³⁰

15. 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.

16. 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.

17. **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 Marvin B. Hare, Jr., President, Hare Planting Co., Inc., 2600 Highway 17 South, Newport, Arkansas 72112.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.