

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

In the Matter of)	
)	
National Weather Networks, Inc.)	File No. EB-06-SE-051
Ku-Band FSS Earth Station, Call Sign E910651)	NAL/Acct. No. 200632100008
Jackson, Mississippi)	FRN # 0014509491
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 12, 2006

Released: April 14, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find National Weather Networks, Inc. (“NWN”), licensee of Ku-Band FSS earth station, E910651 (or “earth station”), Jackson, Mississippi, apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000) for operating without Commission authority in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and Section 25.102(a) of the Commission’s Rules (“Rules”),² and failing to file a timely renewal application for its earth station in apparent willful and repeated violation of Section 25.121(e) of the Rules.³

II. BACKGROUND

2. NWN provides customized local weather reports via satellite uplink to television stations in small and mid-sized markets nationally. NWN’s earth station authorization specified a license term that commenced on November 8, 1991, and expired on November 8, 2001.⁴ On January 10, 2006, NWN notified the International Bureau of its failure to timely renew its earth station license and submitted an Application for Earth Station Special Temporary Authority (“STA Request”) in order to continue operations.⁵ The International Bureau granted the STA Request the next day.⁶ Also on January 10,

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102(a).

³ 47 C.F.R. § 25.121(e).

⁴ See File No. SES-LIC-19910919-00663.

⁵ See File No. SES-STA-20060110-00025 (January 10, 2006).

⁶ The International Bureau granted the STA Request for sixty (60) days, without prejudice to any future enforcement action against the company in connection with unauthorized operation of its radio facilities. See Grant of Authority for Application for Earth Station Special Temporary Authority, File No. SES-STA-20060110-00025.

2006, NWN submitted an Application for Earth Station Authorizations (“license application”) in place of a license renewal form, requesting permission to replace the earth station’s former authorization.⁷ The International Bureau granted NWN a new earth station license on February 21, 2006.⁸

3. The International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. The Enforcement Bureau’s Spectrum Enforcement Division issued NWN a letter of inquiry (“LOI”) on February 15, 2006.⁹

4. In its March 1, 2006, response to the LOI (“Response”), NWN admitted that it failed to timely renew its earth station license.¹⁰ NWN also previously acknowledged in its STA Request that it had continuously operated its earth station without Commission authority since November 8, 2001 (the expiration date of the earth station license).¹¹ NWN requested that the Commission take the following mitigating factors into account in determining whether to issue a forfeiture. First, NWN stated that in January of 2006 when it first became aware that its earth station license had expired, it immediately instructed counsel to contact the International Bureau staff to disclose that it was operating without Commission authority and to “file the necessary applications to bring NWN’s earth station into full compliance with the FCC’s rules.”¹² NWN also claimed that (a) it had a history of compliance; (b) the violation was “negligent but not willful” because NWN’s administrator was not aware that the license needed to be renewed and the President was not aware that NWN had failed to file a renewal application; (c) it was not aware of any instance where NWN’s “use of the earth station violated the FCC’s safety rules, caused interference or disrupted other users”; and (d) it was a small company “without great financial resources.”¹³

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. Section 25.121(c) provides that the license term for an earth station is specified in the instrument of authorization.¹⁴ Section 25.121(e) of the

⁷ In its license application, NWN sought, among other things, to transmit digital video, audio and data services on two separate frequency bands (11700 – 12200 MHz and 14000 – 14500 MHz). See File No. SES-LIC-20060110-00024. The application was placed on public notice on January 18, 2006. See *Public Notice*, Report No. SES-0075 (Jan. 18, 2006).

⁸ See File No. SES-LIC-20060110-00024 (granted February 21, 2006).

⁹ See Letter from Kathryn Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Arthur V. Belendiuk, Esq., Counsel for Mr. Edward St. Pe', President, National Weather Networks, Inc. (February 15, 2006).

¹⁰ See Letter from Arthur V. Belendiuk, Esq., to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 1, 2006) (“Response”).

¹¹ See STA Request, Attachment 1.

¹² See Declaration of Mr. St. Pe'.

¹³ See Response at 2.

¹⁴ 47 C.F.R. § 25.121(c).

Rules requires the licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.”¹⁵ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹⁶

6. As stated previously, NWN’s authorization specified that the license term would expire on November 8, 2001. NWN admitted that it had failed to timely file its renewal application. Moreover, NWN admitted that it continued to operate the earth station for over four years without Commission authority – from November 8, 2001 to January 11, 2006. Thus, it appears that NWN violated Section 25.121(e) of the Rules by failing to timely file a renewal application, and violated Section 301 of the Act and Section 25.102(a) of the Rules by continuing to operate its station without Commission authority.

7. Section 503(b) of the Act,¹⁷ and Section 1.80(a) of the Rules,¹⁸ 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.¹⁹ Based upon the record before us, it appears that NWN’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.”²⁰ Having considered the statutory factors as well as NWN’s Response, we find it appropriate to downwardly adjust the proposed aggregate forfeiture from \$7,500 to \$5,000 – as discussed below – based on NWN’s history of compliance and prompt and voluntary disclosure of its violations.

¹⁵ 47 C.F.R. § 25.121(e).

¹⁶ 47 C.F.R. § 25.161.

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See, e.g., Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 n.5 (1991) (“*Southern California*”), *recon. denied*, 7 FCC Rcd 3454, 3455 (1992). The term “repeated” means that the act was committed or omitted more than once, or lasts more than one day. *Callais Cablevision, Inc.*, 16 FCC Rcd 1359, 1362 n.9 (2001); *Southern California*, 6 FCC Rcd at 4388 n.5.

²⁰ 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*, 15 FCC Rcd. 303 (1999).

9. Section 1.80(b) of the Rules²¹ sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file the required forms or information (e.g., failure to timely file a renewal application).²² As the Commission recently held, a licensee's failure to timely file a renewal application and its continued operation without authorization constitute separate violations of the Act and the rules and warrant the assessment of separate forfeitures.²³ Accordingly, we herein propose separate forfeiture amounts for NWN's separate violations.

10. We propose a forfeiture of \$6,000 for NWN's continued operation of its earth station beyond November 8, 2001. In proposing \$6,000 for the station'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 adjusts the \$10,000 base forfeiture amount accordingly.²⁴ Consistent with recent precedent,²⁵ the proposed \$6,000 forfeiture amount takes into account the fact that NWN's unauthorized operations spanned over four years – from November 8, 2001 to January 22, 2006. The \$6,000 forfeiture relates to NWN's apparent violations that occurred within the past year, but takes into account that those apparent violations were continuous in nature.²⁶ Additionally, consistent with precedent,²⁷ we propose a \$1,500 forfeiture for NWN's failure to

²¹ 47 C.F.R. § 1.80(b).

²² 47 C.F.R. 1.80(b).

²³ See *Discussion Radio, Inc.*, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (assessing a proposed forfeiture 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).

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); *Shared Data Networks, LLC*, 20 FCC Rcd 18184, 18186-18187 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Shared Data*”) (proposing an \$18,000 forfeiture – \$6,000 per earth station – for unauthorized operation over a period of 5 years); *Journal Broadcast Corporation*, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”) (proposing a \$5,000 forfeiture for unauthorized operation for 1 year).

²⁵ See *Shared Data*, 20 FCC Rcd at 18187 (proposing an aggregate forfeiture amount of \$18,000 for operating 3 earth stations for almost 5 years without Commission authority (\$6,000 each)).

²⁶ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See, e.g., *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 ¶ 23 (2003); *Roadrunner Transportation, Inc.*, 15 FCC Rcd 9669, 9671-72 ¶ 8 (2000); *Cate Communications Corp.*, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 ¶ 3 (1967), *recon. denied*, 11 FCC 2d 193, 195 ¶ 9 (1967); *Bureau D'Electronique Appliquee, Inc.*, 20 FCC Rcd 3445, 3447-48 ¶¶ 8-9 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

²⁷ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture for failure to timely file a renewal application for a broadcast station); *Shared Data*, 20 FCC Rcd at 18187 (proposing an aggregate forfeiture amount of \$4,500 for failure to timely file renewal applications for 3 earth stations); *Journal Broadcast*, 20 FCC Rcd at 18213 (proposing a \$1,500 forfeiture for failure to timely file a renewal application for an earth station); *Self Communications, Inc.*, 15 FCC Rcd 18661, 18664-65 (WTB, Public Safety and Private Wireless Div., 2000) (proposing a \$1,500 forfeiture for failure to timely file a renewal application for a 218-219 MHz service); *Vincent Communications, Inc.*, 15 FCC Rcd 8432 (WTB, Enf. and Consumer Info. Div., 1999) (proposing an aggregate

file a renewal application for its station within the time period specified in Section 25.121(e) of the Rules. Thus, we propose an aggregate forfeiture of \$7,500 (\$6,000 for unauthorized operations and \$1,500 for failure to timely file a renewal application).

11. In its Response, NWN sets forth a number of mitigating factors in support of reduction of the forfeiture amount. NWN asserts, and a search of Commission records confirms, that the company has a history of compliance with the rules.²⁸ We also find that NWN voluntarily disclosed to International Bureau staff that it was operating without Commission authority and took corrective measures to comply with the rules without undue delay, after learning of its violation, but prior to any Commission inquiry or initiation of enforcement action.²⁹ Accordingly, we downwardly adjust the proposed aggregate forfeiture amount to \$5,000.

12. NWN also contends that its violation of the Commission's rules was "negligent but not willful." In support, NWN explains that its administrator was not aware that the license needed to be renewed and the President was not aware that NWN failed to file a renewal application. As an initial matter, negligence does not mitigate a Commission rule violation. It is well-settled that neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³⁰ As a Commission licensee, NWN is charged with the responsibility for knowing and complying with the terms of its authorizations, the Act and the rules, including the requirement to timely renew the authorization and maintain operating authority for its earth station.³¹ Moreover, as previously discussed, in the context of a forfeiture setting, "willful" does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation.³² Rather, the term "willful" simply requires that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission's rules. Accordingly, NWN willfully violated Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

\$4,500 forfeiture for failure to timely file renewal applications for 3 paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000).

²⁸ See Response at 2.

²⁹ See, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003); *Emery Telephone*, 13 FCC Rcd 23854, 23858 (1998), *recon. denied*, 15 FCC Rcd 7181 (1999); *Shared Data*, 20 FCC Rcd at 18187; *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-98 ¶¶ 5-6 (Enf. Bur. 2004); *American Family Association*, 17 FCC Rcd 18135, 18137 (Enf. Bur. 2002), *recon. denied*, 18 FCC Rcd 2413 (Enf. Bur. 2003); *but see Journal Broadcast*, 20 FCC Rcd at 18213 (mitigating effect of voluntary disclosure was abrogated by licensee delay); *American Paging, Inc.*, 12 FCC Rcd 10417, 10420 (WTB, Enf. and Consumer Info. Div., 1997) (mitigating effect of voluntary disclosure was abrogated by licensee delay).

³⁰ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

³¹ See *Discussion Radio*, 19 FCC Rcd at 7437; *Shared Data*, 20 FCC Rcd at 18187-88; *Journal Broadcast*, 20 FCC Rcd at 18214; *William S. Mills*, 15 FCC Rcd 20071, 20072 (Enf. Bur. 2000); see also *Peacock's Radio and Wild's Computer Service, Inc.*, 16 FCC Rcd 15016, 15017 (2001).

³² See n.18, *supra*.

13. NWN additionally purports that it was not aware of any instance where its “use of the earth station violated the FCC’s safety rules, caused interference or disrupted other users.” It is well established that the absence of public harm is not considered a mitigating factor of a rule violation and does not warrant a downward adjustment of a forfeiture.³³

14. Finally, NWN asserts that it is a small company “without great financial resources.”³⁴ To the extent that it claims an inability to pay a forfeiture, we note that NWN did not submit any supporting financial documentation (*i.e.*, federal tax returns, financial statements, or other reliable, objective information reflecting financial status).³⁵ Accordingly, we have no basis by which to evaluate NWN’s inability to pay claim.

IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,³⁷ NWN **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for its apparent willful and repeated violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁸ within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, NWN **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. 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 payment of the full amount of the NAL under an installment

³³ *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 ¶ 4 (1975) (rejecting a broadcaster’s claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, stating that “[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference”); *AGM-Nevada, LLC*, 18 FCC Rcd 1476, 1478-79 ¶ 8 (Enf. Bur. 2003) (rejecting a licensee’s claim that the forfeiture should be downwardly adjusted because even though it operated booster stations at unauthorized sites with excessive power levels, its operations did not result in interference).

³⁴ See Response at 2.

³⁵ See *infra*, para. 19.

³⁶ 47 U.S.C. § 503(b).

³⁷ 47 C.F.R. § 0.111, 0.311 and 1.80.

³⁸ 47 C.F.R. § 1.80.

plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³⁹

18. 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.

19. 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.

20. **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 Edward St. Pe, President, National Weather Networks, Inc., 916 Foley Street, Jackson, Mississippi 39202 and to counsel for National Weather Networks, Inc., Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, PC, 5028 Wisconsin Ave, NW, Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

³⁹ See 47 C.F.R. § 1.1914.