

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

In the Matter of	)	
	)	File No. EB-06-SE-325
Imperial Sugar Company	)	NAL/Acct. No. 200732100017
Sugar Land, Texas	)	FRN # 0015230519
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 13, 2007**

**Released: March 15, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Imperial Sugar Company (“Imperial”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WPPD863, in Sugar Land, Texas, 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. Imperial acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)<sup>1</sup> and Sections 1.903(a) and 1.949(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. Imperial was granted a PLMRS station license under call sign WPPD863 on November 4, 1999, with an expiration date of November 4, 2004. Imperial failed to file for renewal of the station’s license and the license expired on its own terms on November 4, 2004.<sup>3</sup> On June 28, 2006, Imperial filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station. The Wireless Telecommunications Bureau granted Imperial STA to continue operating the station under call sign WQFG665 on July 11, 2006.<sup>4</sup> On December 13, 2006, Imperial filed an application for a new PLMRS station license. The Wireless Telecommunications Bureau granted Imperial a new license under call sign WQGD950 on December 19, 2006.<sup>5</sup>

3. Because it appeared that Imperial may have operated the PLMRS station after the

---

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. §§ 1.903(a) and 1.949(a).

<sup>3</sup> “Authorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed.” 47 C.F.R. § 1.955(a)(1).

<sup>4</sup> See STA File No. 0002666571 (granted July 11, 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.

<sup>5</sup> See License File No. 0002848097 (granted December 19, 2006).

expiration of its license under call sign WPPD863, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On October 6, 2006, the Enforcement Bureau's Spectrum Enforcement Division issued a letter of inquiry ("LOI")<sup>6</sup> to Imperial to investigate whether it operated without authority and failed to file a renewal.

4. In its October 30, 2006 response to the LOI,<sup>7</sup> Imperial stated that it first became aware that its license under call sign WPPD863 had expired on June 22, 2006.<sup>8</sup> Imperial explained that it failed to file a timely license renewal application for station WPPD863 because its refinery closed in June 2002, the base station was removed, and there were no contact personnel available at the refinery to receive information for the renewal of the radio license.<sup>9</sup> Imperial admitted that it continued to operate the station beyond the license expiration date without Commission authorization.<sup>10</sup> Specifically, Imperial indicated that between the period of November 14, 2004 and July 11, 2006, it continuously operated 4 of the 10 units originally licensed on a mobile to mobile basis for maintenance communications between the refinery and the corporate office.<sup>11</sup> Imperial further stated that once it discovered the expiration of its license, its legal department immediately contacted the FCC to confirm that its license had expired and began working with a frequency coordinator to file a request for STA to continue operating the station.<sup>12</sup>

### 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."<sup>13</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>14</sup>

6. As a Commission licensee, Imperial was required to maintain its authorization in order to operate its PLMRS station. Imperial admitted that it operated the PLMRS station without Commission authority from the station's license expiration date of November 14, 2004, until July 11, 2006. By operating its PLMRS station for approximately 20 months without an instrument of authorization,

---

<sup>6</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Robert A. Peiser, President and CEO, Imperial Sugar Company (October 6, 2006).

<sup>7</sup> See Letter from William F. Schwer, Senior Vice-President, General Counsel, Imperial Sugar Company to Celia Lewis, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 30, 2006).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 1.949(a).

<sup>14</sup> 47 C.F.R. § 1.955(a)(1).

Imperial apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Imperial 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,<sup>15</sup> and Section 1.80(a) of the Rules,<sup>16</sup> 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.<sup>17</sup> Based upon the record before us, it appears that Imperial’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)(E) 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.”<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> Accordingly, we herein propose separate forfeiture amounts for Imperial’s separate violations.

10. Consistent with precedent,<sup>21</sup> we propose a \$1,500 forfeiture for Imperial’s failure to file

---

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80(a).

<sup>17</sup> See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991); see also *WCS Communications, Inc.*, Notice of Apparent Liability, 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).

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E). 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*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), recon. denied (1999).

<sup>19</sup> 47 C.F.R. 1.80(b).

<sup>20</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 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*”).

<sup>21</sup> 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 *Hare Planting Co., Inc.*, Notice of Apparent Liability, 21 FCC Rcd 13517; *Gilmore Broadcasting Corp.*, Notice of Apparent Liability, 21 FCC Rcd 6284, 6286-87 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Gilmore*”); *Criswell College*, Notice of Apparent Liability, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Criswell*”); *National Weather Networks, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, Notice of Apparent Liability, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005)

the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the Rules. Additionally, we propose a \$5,000 forfeiture for Imperial's continued operation of its PLMRS station after the expiration of its license on November 4, 2004.<sup>22</sup> In proposing a \$5,000 forfeiture for Imperial'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.<sup>23</sup> Thus, we propose an aggregate forfeiture of \$6,500.

11. As a Commission licensee, Imperial 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.<sup>24</sup> We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$6,500 to \$5,200 is warranted because Imperial 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.<sup>25</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act<sup>26</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>27</sup> Imperial **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,<sup>28</sup> within thirty

---

("Journal Broadcast"); *Shared Data Networks, LLC*, Notice of Apparent Liability, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) ("*SDN*").

<sup>22</sup> 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 Imperial'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*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 ¶ 23 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 ¶ 8 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 ¶ 7 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 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 Imperial's apparent violations that have occurred within the past year.

<sup>23</sup> 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.

<sup>24</sup> 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.

<sup>25</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 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.

<sup>26</sup> 47 U.S.C. § 503(b).

<sup>27</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

<sup>28</sup> 47 C.F.R. § 1.80.

days of the release date of this *Notice of Apparent Liability for Forfeiture*, Imperial **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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 12<sup>th</sup> Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>29</sup>

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 William F. Schwer, Senior Vice-President and General Counsel, Imperial Sugar Company, P.O. Box 9, 8016 Highway 90A, Sugar Land, Texas 77487.

#### FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

---

<sup>29</sup> See 47 C.F.R. § 1.1914.