

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

In the Matter of	)	
	)	File No. EB-06-SE-323
Mitchell Electric Membership Cooperative	)	NAL/Acct. No. 200732100018
Camilla, Georgia	)	FRN # 0006348742
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 27, 2007**

**Released: March 29, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find Mitchell Electric Membership Cooperative (“Mitchell Electric”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WNWZ353 in Camilla, Georgia, apparently liable for a forfeiture in the amount of seven thousand five hundred dollars (\$7,500) for operating its PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Mitchell Electric 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. On June 26, 2006, Mitchell Electric filed a request for Special Temporary Authority (“STA”) to continue operating its PLMRS station WNWZ353 because the station license had expired on August 6, 2001. The Wireless Telecommunications Bureau granted Mitchell Electric STA to continue operating the station under call sign WQFH332 on July 14, 2006.<sup>3</sup> On August 28, 2006, Mitchell Electric filed an application for a permanent license for its PLMRS station. The new license was granted on September 13, 2006, and the station was assigned call sign WQFQ938.<sup>4</sup>

3. Because it appeared that Mitchell Electric may have operated the PLMRS station after the expiration of its license under call sign WNWZ353, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On November 3, 2006, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry

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<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> STA File No. 0002662466 (granted July 14, 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>4</sup> File No. 0002728158 (granted September 13, 2006).

(“LOI”)<sup>5</sup> to Mitchell Electric seeking information regarding its failure to renew the station license, and its operation of the station beyond the license expiration date.

4. In its December 11, 2006 response to the LOI,<sup>6</sup> Mitchell Electric stated that it first became aware that its license under call sign WNWZ353 had expired on or about December 10, 2005.<sup>7</sup> Mitchell cited inadvertence and administrative oversight as the basis for its failure to timely renew its license.<sup>8</sup> Mitchell Electric admitted that it continued to operate the station without Commission authorization because of the nature of the work performed by it,<sup>9</sup> and the concern for personnel and public safety, on a daily basis from August 6, 2001 through July 14, 2006.<sup>10</sup> Mitchell Electric also stated that it took measures to reinstate the license as soon as possible.<sup>11</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>12</sup> Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>13</sup>

6. As a Commission licensee, Mitchell Electric was required to maintain its authorization in order to operate its PLMRS station. Mitchell Electric admitted that it operated the PLMRS station without Commission authority on a daily basis from the station’s license expiration date of August 6, 2001 until July 14, 2006.<sup>14</sup> By operating its PLMRS station for approximately 5 years without an instrument of authorization, Mitchell Electric apparently violated Section 301 of the Act and Section 1.903(a) of the Rules. Mitchell Electric also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

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<sup>5</sup> See Letter from Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to James Clifton, Mitchell Electric Membership Cooperative (November 3, 2006).

<sup>6</sup> See Letter from Jimmy Clifton, Jr., to Jacqueline Ellington, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (December 11, 2006) (“LOI Response”).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> See STA File No. 0002662466, Attachment 1, filed on June 26, 2006.

<sup>9</sup> Mitchell Electric is a not-for-profit consumer-owned electric cooperative that supplies energy to more than 25,000 residences, farms, and businesses in southwest Georgia.

<sup>10</sup> LOI Response at 1.

<sup>11</sup> LOI Response at 1. The measures taken are not detailed in the LOI Response.

<sup>12</sup> 47 C.F.R. § 1.949(a).

<sup>13</sup> 47 C.F.R. § 1.955(a)(1).

<sup>14</sup> LOI Response at 1.

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 Mitchell Electric’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> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$7,500.

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> The Commission has recently held that 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 Mitchell Electric’s separate violations.

10. We propose a forfeiture of \$6,000 for Mitchell Electric’s continued operation of station WNWZ353 beyond August 6, 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 adjust the \$10,000 base forfeiture amount accordingly.<sup>21</sup> Consistent with recent precedent,<sup>22</sup> the proposed \$6,000 forfeiture

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<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 for Forfeiture, 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). See also Sections 312(f)(1) and (2) of the Act, 47 U.S.C. § 312(f)(1) and (2), which apply to violations for which forfeitures are assessed under Section 503(b) of the Act (“[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...” and a continuous violation is “repeated” if it continues for more than one day).

<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 for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (proposing 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 \$5,000 forfeiture for operating a station for 14 months beyond the expiration of its license); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20

amount takes into account the fact that Mitchell Electric's unauthorized operations spanned almost five years – from August 6, 2001 through July 13, 2006. The \$6,000 forfeiture relates to Mitchell Electric's apparent violations that occurred within the past year, but takes into account that those apparent violations were continuous in nature.<sup>23</sup> Additionally, consistent with precedent,<sup>24</sup> we propose a \$1,500 forfeiture for Mitchell Electric's failure to file a renewal application for its station within the time period specified in Section 1.949(a) 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. We find that Mitchell Electric's voluntary disclosures to Commission staff and its efforts to come into compliance with Commission requirements do not entitle the company to any downward adjustment of the proposed \$7,500 forfeiture. Although Mitchell Electric's disclosures and compliance efforts preceded any Commission investigation or initiation of enforcement action, we find the company's actions were dilatory. As Mitchell Electric acknowledged, it learned of its violation in December 2005, but waited until June 2006 – approximately six months – to notify Commission staff and seek authority to operate the station. Under the circumstances, and consistent with precedent,<sup>25</sup> we find that no reduction

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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*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”) (proposing a \$5,000 forfeiture for unauthorized operation for 1 year).

<sup>22</sup> 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)).

<sup>23</sup> 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*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710; *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, 11 FCC 2d 193, 195 (1967); *Bureau D'Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div., 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div., 2005).

<sup>24</sup> 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 \$4,500 forfeiture for failure to timely file renewal applications for 3 paging stations), *forfeiture ordered*, 15 FCC Rcd 18263 (Enf. Bur. 2000).

<sup>25</sup> See *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974 (2006) (finding that although a downward adjustment generally is appropriate where a violator makes voluntary disclosures prior to Commission investigation or enforcement action, such credit was unwarranted where the violator made no attempt to come into compliance until 12 months after disclosure); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13813 (Enf. Bur., Spectrum Enf. Div., 2006) (finding that although Domtar's disclosures and compliance efforts preceded Commission investigation or initiation of enforcement action, a downward adjustment was unwarranted because Domtar's actions were dilatory); *Sutro Corporation*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 20529, 20531, *forfeiture ordered* 19 FCC Rcd 15274, 15275-76 (2004) (finding that a downward adjustment for voluntary disclosure or good faith efforts to comply was unwarranted where the violator's attempts to come into compliance were dilatory and evidenced a lack of diligence); *American Paging, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (WTB, Enf. and

of the proposed forfeiture for voluntary disclosure or good faith efforts to comply is warranted.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, 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> Mitchell Electric **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand five hundred dollars (\$7,500) 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 days of the release date of this *Notice of Apparent Liability for Forfeiture*, Mitchell Electric **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/Act. 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/Act. 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.

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Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately a month after having various conversations with Commission staff regarding an STA and that a downward adjustment for good faith attempts to comply was unwarranted where the violator continued to operate the station without authorization after its STA request was denied).

<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.

<sup>29</sup> See 47 C.F.R. § 1.1914.

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 Jimmy Clifton, Jr., Authorized Representative, Mitchell Electric Membership Cooperative, 475 Cairo Road, Camilla, Georgia 31730.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau