

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

In the Matter of	)	File No. EB-06-SE-330
General Growth Properties	)	NAL/Acct. No. 200732100021
Waterbury, Connecticut	)	FRN # 0005261128
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 29, 2007**

**Released: April 2, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find General Growth Properties (“GGP”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WPPT427, in Waterbury, Connecticut, apparently liable for a forfeiture in the amount of nine thousand, two hundred dollars (\$9,200) for operating a PLMRS station without Commission authority, failing to file a timely renewal application for the station and failing to respond to directives of the Enforcement Bureau (“Bureau”) to provide certain information and documents. GGP 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 and 1.949(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. GGP was granted a PLMRS station license under call sign WPPT427 on April 3, 2000, with an expiration date of April 3, 2005. GGP’s license to operate station WPPT427 expired on April 3, 2005, because it failed to file a renewal application. On April 17, 2006 – over a year after its authorization expired – GGP filed a request for Special Temporary Authorization (“STA”) to operate the station until action was taken on its application for a new license. On April 18, 2006, the Wireless Telecommunications Bureau granted GGP STA to continue operating the station under call sign WQEU522 without prejudice to any enforcement action for unauthorized operations.<sup>3</sup> On May 9, 2006, GGP filed an application for a new PLMRS station license, which the Wireless Telecommunications Bureau granted on May 11, 2006 (call sign WQEX620).<sup>4</sup>

3. Because it appeared that GGP may have operated the PLMRS station after the expiration of its license under call sign WPPT427, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On September 27, 2006, the

---

<sup>1</sup> 47 U.S.C. § 301.

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

<sup>3</sup> File No. 0002571373.

<sup>4</sup> File No. 0002604311.

Bureau's Spectrum Enforcement Division ("Division") issued a letter of inquiry ("LOI") to GGP.<sup>5</sup> The LOI directed GGP to submit a response within 30 business days. The LOI also explained that failure to appropriately respond may constitute a violation of the Communications Act and Rules. GGP did not respond within the applicable time period. On December 14, 2006, the Division issued a second LOI to GGP.<sup>6</sup> On December 18, 2006, Mr. James P. Grace, III ("Mr. Grace") contacted Division staff by telephone to discuss the second LOI. He stated that although he renewed the license, he did not think that he was the one that should answer the inquiry. Division staff explained that Mr. Grace could respond, or, alternatively, send the letter to someone in his organization who could answer the letter.<sup>7</sup> GGP did not respond to the second LOI.

### III. DISCUSSION

4. Section 301 of the Act and Section 1.903 of the Rules prohibit the use or operation of any apparatus for the transmission of energy, 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 licensees to 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." Absent a timely filed renewal application, a wireless radio station license automatically terminates.<sup>8</sup>

5. As a Commission licensee, GGP is required to maintain a current authorization to operate its station.<sup>9</sup> GGP apparently operated the station without authorization for over a year — from April 3, 2005 to April 17, 2006. By operating its station without authorization, GGP apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903 of the Rules. GGP also acted in apparent violation of Section 1.949(a) of the Rules by failing to file a timely renewal application for the station.

6. Sections 4(i), 4(j), and 403 of the Act afford the Commission broad authority to investigate the entities it regulates.<sup>10</sup> Section 4(i) authorizes the Commission to "issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions," and section 4(j) states that "the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch business and to the ends of justice." Section 403 likewise grants the Commission "full authority and power ... to institute an inquiry, on its own motion ... relating to the enforcement of any of the provisions of this Act." Pursuant to that authority, the Bureau twice ordered GGP to submit a timely written response to its LOIs and to provide the information and documents requested. Twice GGP failed to respond as directed. It is well settled that a party cannot ignore the directives in a Bureau letter of inquiry.<sup>11</sup>

---

<sup>5</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to James P. Grace III, General Growth Properties (September 27, 2006).

<sup>6</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to James P. Grace III, General Growth Properties (December 14, 2006).

<sup>7</sup> In accordance with 47 C.F.R. § 1.5, the first and second LOIs were directed to Mr. Grace because he was listed as the contact on GGP's most recent application.

<sup>8</sup> 47 C.F.R. § 1.955(a)(1).

<sup>9</sup> See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) (licensee is responsible for compliance with all Commission rules).

<sup>10</sup> 47 U.S.C. § 4(i), 4(j) and 403.

<sup>11</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002) (Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to a Bureau

7. Section 503(b) of the Act,<sup>12</sup> and Section 1.80 of the Rules,<sup>13</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>14</sup> Based upon the record before us, it appears that GGP’s violations of Section 301 of the Act and Sections 1.903 and 1.949(a) were willful and repeated. It also appears that GGP willfully and repeatedly failed to respond to a Bureau order.

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>15</sup> Having considered the statutory factors, as explained below, we propose an aggregate forfeiture in the amount of \$9,200.

9. Section 1.80(b) of the Rules<sup>16</sup> 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. 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.<sup>17</sup> Accordingly, we propose separate forfeiture amounts for GGP’s separate violations.

10. Consistent with precedent,<sup>18</sup> we propose a \$1,500 forfeiture for GGP’s failure to file the

---

letter of inquiry, stating: “[T]he order here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.”); *see also World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004) (\$10,000 forfeiture assessed for submitting a jurisdictional objection in lieu of a response to a Bureau inquiry letter); *In re Richard E. LaPierre*, Forfeiture Order, 15 FCC Rcd 23525 (Enf. Bur. 2000) (\$4,000 forfeiture assessed for repeated failure to respond to written Commission inquiries).

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. § 1.80(a).

<sup>14</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992); *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).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E); *see also The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>16</sup> 47 C.F.R. § 1.80(b).

<sup>17</sup> *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”) (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).

<sup>18</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 Lazer Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006); *Criswell College*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 5106, 5109 (Enf. Bur., Spectrum Enf. Div., 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div., 2006) (“*NWN*”); *Journal Broadcast Corporation*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18213 (Enf. Bur., Spectrum Enf. Div., 2005) (“*Journal Broadcast*”); *Shared Data Networks, LLC*, Notice

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 GGP's continued operation of its PLMRS station after the expiration of its license on April 3, 2005.<sup>19</sup> In proposing a \$5,000 forfeiture for GGP'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>20</sup> Thus, we propose an aggregate forfeiture of \$6,500 (\$1,500 for failure to timely file a renewal application and \$5,000 for unauthorized operations).

11. Pursuant to the *Forfeiture Policy Statement*<sup>21</sup> and Section 1.80 of the Rules,<sup>22</sup> the base forfeiture amount for failure to respond to a Commission communication is \$4,000. We find that GGP's willful and repeated failure to respond to a Bureau order warrants a proposed forfeiture. Misconduct of this type exhibits a disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that GGP is apparently liable for a forfeiture in the amount of \$4,000 for failing to respond to the Bureau's letters of inquiry.<sup>23</sup> Thus, we propose an aggregate forfeiture of \$10,500 for GGP's apparent willful and repeated violations of Section 301 of the Act and Sections 1.903 and 1.949(a) of the Rules and GGP's apparent willful and repeated failure to respond to a Bureau order.

12. As a Commission licensee, GGP 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 \$10,500 to \$9,200 is warranted because GGP made voluntary disclosures to Commission staff concerning its late-filed license renewal and unauthorized operation and

---

of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div., 2005) ("*Shared Data*").

<sup>19</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 GGP'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 Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, 10 FCC 2d 37, 37-38 (1967), *recon. denied*, Memorandum Opinion and Order, 11 FCC 2d 193 (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 GGP's apparent violations that have occurred within the past year.

<sup>20</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 *Criswell College*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3925; *Journal Broadcast*, 20 FCC Rcd at 18213; *Shared Data*, 20 FCC Rcd at 18187.

<sup>21</sup> *Forfeiture Policy Statement*, 12 FCC Rcd 17087.

<sup>22</sup> 47 C.F.R. § 1.80.

<sup>23</sup> See *Shenzhen Ruidian Communication Co. Ltd.*, Forfeiture Order, 21 FCC Rcd 2177 (Enf. Bur., Spectrum Enf. Div., 2006) (assessing a \$4,000 forfeiture for willfully and repeatedly failing to respond to a directive of the Bureau to provide certain information and documents).

<sup>24</sup> See *Discussion Radio*, 19 FCC Rcd at 7437 (licensee duty to timely seek renewal of its license to maintain operating authority); see also *Criswell College*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *Shared Data*, 20 FCC Rcd at 18187.

undertook corrective actions prior to any Commission inquiry or initiation of enforcement action.<sup>25</sup>

#### IV. ORDERING CLAUSES

13. 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> General Growth Properties **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of \$9,200 for willful and repeated violation of Section 301 of the Act and Sections 1.903 and 1.949(a) of the Rules and for willful and repeated failure to respond to a Bureau order.

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

15. 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>28</sup>

16. 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.

17. 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.

---

<sup>25</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004) (forfeiture reduced for voluntarily disclosure and initiating corrective action prior to Commission inspection); see also *Criswell College*, 21 FCC Rcd at 5109; *NWN*, 21 FCC Rcd at 3926; *Journal Broadcast*, 20 FCC Rcd at 18214; *Shared Data*, 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> See 47 C.F.R. § 1.1914.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail Return Receipt Requested to Mr. James P. Grace, III, General Growth Properties, Brass Mill Center, 495 Union Street, Suite 139, Waterbury, CT 06706 and Bernard John Bucksbaum, CEO and Director, General Growth Properties, 110 N. Wacker Drive, Chicago, IL 60606.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau