

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

In the Matter of)	File No. EB-06-SE-326
RSDC of Michigan, LLC)	NAL/Acct. No. 200732100025
Holt, Michigan)	FRN # 0009600263

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 10, 2007**Released: April 12, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find RSDC of Michigan, LLC ("RSDC"), former licensee of Private Land Mobile Radio Service ("PLMRS") station WPMV711, in Holt, Michigan, 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. RSDC acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act"),¹ and Sections 1.903 and 1.949(a) of the Commission's Rules ("Rules").²

II. BACKGROUND

2. RSDC was granted a PLMRS station license under call sign WPMV711 on January 29, 1999, with an expiration date of January 29, 2004. RSDC's license to operate station WPMV711 expired on January 29, 2004, because it failed to file a renewal application. On June 19, 2006—more than two years after its authorization expired—RSDC filed a request for Special Temporary Authorization ("STA") to operate the station until action was taken on its application for a new license. On June 20, 2006, the Wireless Telecommunications Bureau granted RSDC an STA to continue operating the station under call sign WQFD442 without prejudice to any enforcement action for unauthorized operations.³ On July 10, 2006, RSDC filed an application for a new PLMRS station license, which the Wireless Telecommunications Bureau granted on August 24, 2006 (call sign WQFN581).⁴

3. Because it appeared that RSDC may have operated the PLMRS station after the expiration of its license under call sign WPMV711, the Wireless Telecommunications Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On October 19, 2006, the Bureau's Spectrum Enforcement Division ("Division") issued a letter of inquiry ("LOI") to RSDC directing that it answer questions concerning the Division's investigation into whether RSDC violated Section 1.949 of the Rules by failing to timely file a renewal application for WPMV711, and

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903 and 1.949(a).

³ File No. 0002654371.

⁴ File No. 0002678741.

whether it violated Section 301 of the Act and Section 1.903 of the Rules by continuing to operate the station beyond the expiration of its authorization term.⁵ The LOI directed RSDC 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. RSDC did not respond within the applicable time period. On January 23, 2007, after several attempts by Division staff to contact him, Paul Recher, RSDC's Purchasing Coordinator, informed Division staff that he had turned the matter over to RSDC's Controller, Joseph McDevitt.⁶ On February 21, 2007, the Division issued a second LOI to RSDC seeking a response to the Division's original LOI of October 19, 2006.⁷ RSDC 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.⁸

5. As a Commission licensee, RSDC is required to maintain a current authorization to operate its station.⁹ RSDC apparently operated the station without authorization for over two years — from January 29, 2004 to June 20, 2006. By operating its station without authorization, RSDC apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903 of the Rules. RSDC 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.¹⁰ 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 RSDC to submit a timely written response to its LOIs and to provide the information and documents requested. Twice RSDC failed to respond as directed. It is well settled that a party cannot ignore the directives in a Bureau letter

⁵ Letter from Ricardo M. Durham, Senior Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Paul P. Recher, RSDC of Michigan, LLC (October 19, 2006). The U.S. Postal Service certified mail return receipt shows that RSDC received this letter on October 25, 2006.

⁶ E-mail from Paul Recher, RSDC of Michigan, to Katherine Power, Esquire, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 23, 2007).

⁷ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Joseph McDevitt, RSDC of Michigan, LLC (February 21, 2007). U.S. Postal Service records show that RSDC received this letter on February 26, 2007.

⁸ 47 C.F.R. § 1.955(a)(1).

⁹ 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).

¹⁰ 47 U.S.C. §§ 4(i), 4(j) and 403.

of inquiry.¹¹

7. Section 503(b) of the Act,¹² and Section 1.80 of the Rules,¹³ 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.¹⁴ Based upon the record before us, it appears that RSDC’s violations of Section 301 of the Act and Sections 1.903 and 1.949(a) were willful and repeated. It also appears that RSDC 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.”¹⁵ 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 Rules¹⁶ 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.¹⁷ Accordingly, we propose separate forfeiture amounts for RSDC’s separate violations.

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

¹¹ 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 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); *General Growth Properties*, Notice of Apparent Liability for Forfeiture, DA 07-1548 (Enf. Bur., Spectrum Enf. Div., rel. April 2, 2007) (\$9,200 total forfeiture proposed against a PLMRS licensee for failure to respond to Commission inquiries, failure to renew its PLMRS station license, and operation of its PLMRS station after expiration of the license).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. § 1.80(a).

¹⁴ 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).

¹⁵ 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*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹⁶ 47 C.F.R. § 1.80(b).

¹⁷ 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).

Rules. Additionally, we propose a \$5,000 forfeiture for RSDC's continued operation of its PLMRS station after the expiration of its license on January 29, 2004. In proposing a \$5,000 forfeiture for RSDC'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. 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*¹⁸ and Section 1.80(b) of the Rules,¹⁹ the base forfeiture amount for failure to respond to a Commission communication is \$4,000. We find that RSDC'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 RSDC is apparently liable for a forfeiture in the amount of \$4,000 for failing to respond to the Bureau's letters of inquiry.²⁰ Thus, we propose an aggregate forfeiture of \$10,500 for RSDC's apparent willful and repeated violations of Section 301 of the Act and Sections 1.903 and 1.949(a) of the Rules and RSDC's apparent willful and repeated failure to respond to a Bureau order.

12. As a Commission licensee, RSDC 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.²¹ We do find, however, that a downward adjustment of the proposed aggregate forfeiture from \$10,500 to \$9,200 is warranted because RSDC made voluntary disclosures to Commission staff concerning its failure to file a timely license renewal application and undertook corrective actions prior to any Commission inquiry or initiation of enforcement action.²²

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²³ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁴ RSDC of Michigan, LLC **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.

¹⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at 17114.

¹⁹ 47 C.F.R. § 1.80(b).

²⁰ 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).

²¹ 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.

²² 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.

²³ 47 U.S.C. § 503(b).

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

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*, RSDC of Michigan, LLC **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 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁵

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.

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. Joseph McDevitt, RSDC of Michigan, LLC, 1775 Holloway Drive, Holt, Michigan 48842.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁵ See 47 C.F.R. § 1.1914.