

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

In the Matter of)	File No. EB-08-SE-543
)	
Saga Radio Networks, LLC)	NAL/Acct. No. 200832100063
Satellite Earth Station, Call Sign E872070)	
Grosse Pointe Farms, MI)	FRN: 0009112400

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 28, 2008

Released: July 30, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Saga Radio Networks, LLC (“Saga”), former licensee of satellite earth station, call sign E872070, Grosse Pointe Farms, Michigan, apparently liable for forfeiture in the amount of five thousand, two hundred dollars (\$5,200) for operating its earth station without Commission authority and for failing to file a timely renewal application. Saga acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 25.102(a) and 25.121(e) of the Commission's Rules (“Rules”).²

II. BACKGROUND

2. Saga’s license for its Ku-band fixed satellite service earth station, call sign E872070, expired on August 28, 2007. On May 14, 2008, Saga became aware that its license for the earth station had expired. On May 28, 2008, Saga filed a request for special temporary authority (“STA”) to operate the earth station pending grant of an application for a new earth station license. On July 29, 2008, the International Bureau granted Saga a new license for earth station E872070³ and dismissed the STA request as moot.⁴

3. Because it appeared that Saga may have operated the earth station without authority after expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On June 11, 2008, the Enforcement Bureau's Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to Saga.⁵

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 25.102(a) and 25.121(e).

³ See File No. SES-LIC-20080613-00772.

⁴ See File No. SES-STA-20080528-00682.

⁵ Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Gregory Urbiel, Saga Radio Networks, LLC (June 11, 2008).

4. In its July 11, 2008 response to the LOI,⁶ Saga states that it first became aware on May 14, 2008 that its license for earth station E872070 had expired. On this date, Saga's Business Manager discovered the expired license during a review of Saga's authorizations database.⁷ The Business Manager, upon realizing the error, immediately notified Saga's Director of Engineering who, in turn, promptly contacted the appropriate parties to remedy the situation.⁸ In addition, Saga acknowledges that it has operated earth station E872070 without authority after August 28, 2007.⁹

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.¹⁰ Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.¹¹ Section 25.121(e) of the 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."¹² Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹³

6. As a Commission licensee, Saga was required to maintain and timely renew its authorization in order to operate its earth station. Saga concedes that it has operated earth station E872070 without Commission authority after August 28, 2007.¹⁴ By operating earth station E872070 without Commission authorization, Saga apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Saga also acted in apparent violation of Section 25.121(e) of the rules by failing to file a timely renewal application for the station.

7. Section 503(b) of the Act¹⁵ and Section 1.80(a) of the Rules¹⁶ 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 "repeated" means more than once.¹⁷ Based on the record before us, it appears that Saga's violations of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules were willful and repeated.

⁶ Letter from Gary S. Smithwick, Esq., Counsel for Saga Radio Networks, LLC, to Zachary Rothstein, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 11, 2008) ("LOI Response").

⁷ *Id.* at 2

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

¹¹ 47 C.F.R. § 25.121(c).

¹² 47 C.F.R. § 25.121(e).

¹³ 47 C.F.R. § 25.161.

¹⁴ LOI Response at 2.

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. § 1.80(a).

¹⁷ See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act) ("*Southern California*").

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.”¹⁸ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$5,200.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.¹⁹ As the Commission has held, a licensee’s continued operations without authorization and its failure to timely file a renewal application constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁰ Accordingly, we herein propose separate forfeiture amounts for Saga’s separate violations.

10. Consistent with precedent, we propose a forfeiture in the amount of \$1,500 for Saga’s failure to timely file a renewal application within the time period specified in Section 25.121(e) of the Rules.²¹ Additionally, we propose a forfeiture in the amount of \$5,000 for Saga’s unauthorized operation of earth station E872070 after August 28, 2007. In proposing a forfeiture of \$5,000 for the station’s unauthorized operation, 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.²² Thus, we propose an aggregate forfeiture of \$6,500 (\$1,500 for failure to timely file a renewal application and \$5,000 for unauthorized operation).

11. As a Commission licensee, Saga is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. Concerning Saga’s claim that its failure to timely renew its license was inadvertent, the Commission has long held that a downward adjustment of an assessed forfeiture is not justified where violators claim their actions or omissions were due to inadvertent errors.²³ We do find, however, that a downward adjustment of the proposed aggregate

¹⁸ 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*, 15 FCC Rcd 303 (1999).

¹⁹ 47 C.F.R. § 1.80(b).

²⁰ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”). *See also La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid) (“*La Carpa*”); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (forfeiture paid) (“*Lazer*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

²¹ *See Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$1,500 forfeiture against a broadcaster for failure to timely file its renewal application). *See also La Carpa*, 22 FCC Rcd at 2746 (proposing a \$1,500 forfeiture against an earth station operator for failure to timely file a renewal application); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$1,500 forfeiture against an earth station operator for failure to timely file a renewal application).

²² *See Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture for operating a broadcast station for 14 months beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture for operating an earth station for three years after the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture for operating an earth station for one year after the expiration of its license).

²³ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California*, 6 FCC Rcd at 4387 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”).

forfeiture from \$6,500 to \$5,200 is warranted because Saga 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.²⁴

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁶ Saga **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR 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 25.102(a) and 25.121(e) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,²⁷ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Saga **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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Saga will also send electronic notification on the date said payment is made to Kathy Berthot at Kathy.Berthot@fcc.gov.

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.

²⁴ See *Petracom of Texarkana, LLC*, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004); *Lazer*, 21 FCC Rcd at 8712.

²⁵ 47 U.S.C. § 503(b).

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

²⁷ 47 C.F.R. § 1.80.

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 Gary S. Smithwick, Esq., Counsel for Saga Radio Networks, LLC, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, NW, Washington, DC 20016 and Mr. Gregory Urbiel, Saga Radio Networks, LLC, 73 Kercheval Avenue, Grosse Pointe Farms, MI 48236.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau