

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

In the Matter of)	
)	File No. EB-07-SE-324
Miller Breweries East, Inc.)	NAL/Acct. No. 200832100011
Trenton, Ohio)	FRN # 0016100273
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 08, 2008

Released: January 10, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture*, we find Miller Breweries East, Inc. (“Miller”), former licensee of Private Land Mobile Radio Service (“PLMRS”) station WPIM837 apparently liable for a forfeiture in the amount of six thousand five hundred (\$6,500) for operating a PLMRS station without Commission authority and for failing to file a timely renewal application for the station. Miller acted in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, (“Act”)¹ and Sections 1.903(a) and 1.949(a) of the Commission’s rules (“rules”).²

II. BACKGROUND

2. On July 26, 2000, Miller was granted a renewal of its PLMRS station license under call sign WPIM837, with an expiration date of October 12, 2005. Miller did not file a renewal application, and consequently its license to operate station WPIM837 expired on October 12, 2005. On August 16, 2007, Miller filed with the Wireless Telecommunications Bureau (“WTB”) a request for Special Temporary Authority (“STA”) to operate WPIM837. On August 28, 2007, WTB granted Miller’s STA request under call sign WQHL302.³

3. Because it appeared that Miller may have operated WPIM837 after the expiration of its license, WTB referred this case to the Enforcement Bureau for investigation and possible enforcement action. On October 18, 2007, the Enforcement Bureau’s Spectrum Enforcement Division issued a letter of inquiry (“LOI”)⁴ to Miller.

4. In its November 16, 2007 response to the LOI,⁵ Miller stated that it believes it first

¹ 47 U.S.C. § 301.

² 47 C.F.R. §§ 1.903(a) and 1.949(a).

³ See File No. 0003140158. The STA was granted for a six-month period and expires February 24, 2008.

⁴ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mark Koch, Miller Breweries East, Inc. (October 18, 2007).

⁵ See Letter from Michelle W. Cohen, Counsel to Miller Products Company, to Kevin M. Pittman, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 16, 2007) (“Response”). The Response includes the declaration of Michael T. Jones, Vice President and Secretary, Miller Breweries East, Inc.

became aware of the expiration of its license for station WPIM837 on or about January 27, 2007.⁶ Miller stated that upon confirming the expiration of its license, it initially worked with an outside vendor to prepare an application to renew the license.⁷ Miller explained that this vendor “did not have experience in this type of expired license situation, and the preparation of the application document was delayed.”⁸ On March 8, 2007, Miller filed its application for a PLMRS station, which was subsequently amended at the request of Commission staff.⁹ Miller stated that, due to concerns with the vendor that assisted with its March application, it ultimately hired a license specialist.¹⁰ Miller submitted a request for STA on August 16, 2007 and submitted an amended application for permanent authority on August 22, 2007.¹¹ WTB granted Miller’s STA request on August 28, 2007.¹²

5. Miller explained that it failed to file a timely license renewal application for station WPIM837 because, due to personnel changes or other oversight, the appropriate personnel did not receive the notice of renewal.¹³ Miller explained that, since discovering the expiration, it took corrective measures including: hiring a new firm to review all Commission-granted licenses, designating staff members to monitor the licenses, and retaining an outside vendor as an additional check on licensing matters.¹⁴ Miller admitted that it operated the station beyond the license expiration date without Commission authorization.¹⁵ Specifically, Miller stated that it continuously operated station WPIM837 from the expiration of its license on October 12, 2005 until the grant of STA to operate under call sign WQHL302 on August 28, 2007, a period of twenty-two months.¹⁶

III. DISCUSSION

6. 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.¹⁷ 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.”¹⁸ Absent a timely filed renewal application, a wireless radio station license automatically

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* After submission of its initial application in March, Miller specifically apprised Commission personnel of the expiration of its license and informally requested STA to continue operation of the station. *See* Letter of Mark Koch, Miller Breweries East, Inc., to Federal Communications Commission, Gettysburg, Pennsylvania (June 14, 2007).

¹⁰ Response at 2.

¹¹ *See* File Nos. 0002940300 and 0003140158, respectively.

¹² *See* File No. 0003140158.

¹³ Response at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁸ 47 C.F.R. § 1.949(a).

terminates.¹⁹

7. As a Commission licensee, Miller was required to maintain its authorization in order to operate its PLMRS station. Miller admitted that it operated the PLMRS station without Commission authority from the station's license expiration date of October 12, 2005 until August 28, 2007.²⁰ By operating its PLMRS station for approximately 22 months without Commission authorization, Miller apparently violated Section 301 of the Act and Section 1.903(a) of the rules. Miller also acted in apparent violation of Section 1.949(a) of the rules by failing to file a timely renewal application for the station.

8. Section 503(b) of the Act,²¹ and Section 1.80(a) of the rules,²² 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.²³ Based upon the record before us, it appears that Miller's violations of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the rules were willful and repeated.

9. 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."²⁴ Having considered the statutory factors, as explained below, we propose a total forfeiture of \$6,500.

10. Section 1.80(b) of the rules sets a base forfeiture amount of ten thousand dollars (\$10,000) for operation of a station without Commission authority and three thousand dollars (\$3,000) for failure to file required forms or information.²⁵ The Commission has 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.²⁶ Accordingly, we herein propose separate forfeiture amounts for Miller's separate violations.

11. We propose a forfeiture amount of five thousand dollars (\$5,000) for Miller's continued operation of its PLMRS station prior to the grant of STA on August 28, 2007.²⁷ In proposing this amount

¹⁹ 47 C.F.R. § 1.955(a)(1).

²⁰ Response at 3.

²¹ 47 U.S.C. § 503(b).

²² 47 C.F.R. § 1.80(a).

²³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

²⁴ 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).

²⁵ 47 C.F.R. 1.80(b).

²⁶ 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 operated its station for 14 months without Commission authority and failed to timely file its renewal application).

²⁷ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior

for Miller'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.²⁸ Consistent with precedent, the proposed \$5,000 forfeiture takes into account that Miller's unauthorized operations spanned twenty-two months from the license's expiration date.²⁹ Additionally, we propose a forfeiture amount of one thousand five hundred dollars (\$1,500) for Miller's failure to file the renewal application for its PLMRS station within the time period specified in Section 1.949(a) of the rules.³⁰ Thus, we propose an aggregate forfeiture of \$6,500.

12. The \$6,500 base forfeiture amount is not subject to downward adjustment for good faith or voluntary disclosure. Although Miller attempted corrective measures prior to any Commission inquiry or initiation of enforcement action, the company failed to act swiftly. Miller waited nearly three months after filing its initial March 2007 application for a license, and five months after discovery of the violations, before it voluntarily disclosed its unauthorized operation of the station to Commission personnel.³¹ Moreover, Miller did not submit a request for STA to continue operating until approximately seven months after discovering that its license had expired. As a Commission licensee, Miller 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.³² Under the circumstances, and consistent with precedent,³³ we find that no reduction of the proposed forfeiture is

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 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *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 Rcd 193 (1967).

²⁸ See *Discussion Radio*, 19 FCC Rcd at 7438; see also *Yellow Cab Leasing Inc., Canton, Ohio*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 12719, 12722 (Enf. Bur., Spectrum Enf. Div., 2007) ("*Yellow Cab*"), *forfeiture ordered*, 22 FCC Rcd 19871 (2007); *Imperial Sugar Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4987 (Enf. Bur., Spectrum Enf. Div., 2007), *forfeiture ordered*, 22 FCC Rcd 17346 (Enf. Bur., Spectrum Enf. Div., 2007) ("*Imperial Sugar*").

²⁹ 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); *Yellow Cab*, 22 FCC Rcd at 12722 (proposing a \$5,000 forfeiture for operating a station for 3½ years beyond the expiration of its license); *Imperial Sugar*, 22 FCC Rcd at 4990 (proposing a \$5,000 forfeiture for operating a station 1½ years beyond the expiration of its license).

³⁰ See *Discussion Radio*, 19 FCC Rcd at 7437-38 (proposing a \$1,500 forfeiture for failure to file a timely renewal); *Hare Planting Co., Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13517, 13519 (Enf. Bur., Spectrum Enf. Div., 2006) (proposing a \$1,500 forfeiture for failure to file a timely renewal), *forfeiture ordered*, 22 FCC Rcd 7530 (Enf. Bur., Spectrum Enf. Div., 2007); *Imperial Sugar*, 22 FCC Rcd at 4988 (proposing a \$1,500 forfeiture for failure to file a timely renewal for PMLRS station).

³¹ See Letter of Mark Koch, Miller Breweries East, Inc., to Federal Communications Commission, Gettysburg, Pennsylvania (June 14, 2007).

³² See *Discussion Radio*, 19 FCC Rcd at 7437; see also *Gilmore Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 6284, 6286-87 (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*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3926 (Enf. Bur., Spectrum Enf. Div., 2006); *Journal Broadcast Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div., 2005); *Shared Data Networks*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187-88 (Enf. Bur., Spectrum Enf. Div., 2005).

³³ See *Mitchell Electric Membership Cooperative*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541 (Enf. Bur., Spectrum Enf. Div., 2006) (finding that a downward adjustment was unwarranted where the

warranted.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act³⁴ and Sections 0.111, 0.311 and 1.80 of the rules,³⁵ Miller **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand five hundred dollars (\$6,500) for the willful and repeated violation of Section 301 of the Act and Sections 1.903(a) and 1.949(a) of the rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the rules,³⁶ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Miller **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. 20554.³⁷

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.

violator waited six months after becoming aware of the violation to notify Commission staff and seek authority to operate the station); *American Paging Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420 (Wireless Telecommunications Bureau, Enf. and Consumer Info. Div., 1997) (finding that a downward adjustment for voluntary disclosure was unwarranted where the violator did not reveal its violation until approximately one 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).

³⁴ 47 U.S.C. § 503(b).

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

³⁶ 47 C.F.R. § 1.80.

³⁷ 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 first class mail and certified mail return receipt requested to Michelle W. Cohen, Counsel to Miller Products Company, Thomson Hine LLP, 1920 N. Street, N.W., Washington, D.C. 20036-1600.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau