

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

In the Matter of)

Bravo Mic Communications, LLC)

Licensee of Station WMU297)
Las Cruces, New Mexico)

File Number EB-07-DV-088

NAL/Acct. No. 200732800011
FRN 0011617263

FORFEITURE ORDER

Adopted: March 19, 2008

Released: March 21, 2008

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of two thousand, four hundred dollars (\$2,400) to Bravo Mic Communications, LLC (“Bravo Mic”), licensee of station WMU297 in Las Cruces, New Mexico, for willful and repeated violation of Sections 1.903(a), 1.947(a), and 74.532(e) of the Commission's Rules (“Rules”).¹ On September 25, 2007, the Enforcement Bureau’s Denver Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$4,000 to Bravo Mic for failing to operate station WMU297, an aural studio-transmitter-link (“*STL*”), from its licensed location. In this *Order*, we consider Bravo Mic’s arguments that it made a good faith effort to comply with Rules prior to the inspection by the Denver Office, and that it has a history of compliance with the Commission’s Rules.

II. BACKGROUND

2. On February 5, 2007, an agent from the Enforcement Bureau's Denver Office inspected STL transmitters operating from the Bravo Mic studio at 101 Perkins Drive in Las Cruces, New Mexico (“Perkins Drive Studio”). The coordinates of the Bravo Mic studio are approximately 32° 17' 54" north latitude, 106° 46' 39" west longitude. At the time of the inspection, station WMU297 was operating from these coordinates. According to the WMU297 station authorization, at the time of the inspection, its licensed coordinates were 32° 18' 26.3" north latitude, 106° 46' 22.0" west longitude with a physical street address of 525 E Lohman Drive, in Las Cruces, New Mexico.

3. On February 6, 2007, the Denver agent conducted an inspection of Bravo Mic's broadcast operations at the Perkins Drive Studio. During the inspection, the agent informed the Bravo Mic engineer and general manager of the violations found with the WMU297 station license. The Bravo Mic engineer stated that the WMU297 STL had been relocated from the 525 E. Lohman Drive location to the Perkins Drive main studio location in June of 2006. When the inspection was completed, the agent reviewed the violations with Bravo Mic representatives. The general manager acknowledged the licensing errors and stated to the agent that Bravo Mic would begin the process of correcting the WMU297 authorization accordingly. Later that day, the Denver agent returned to the Perkins Drive Studio and observed station

¹ 47 C.F.R. §§ 1.903(a), 1.947(a), and 74.532(e).

WMU297 continuing to transmit on a center frequency of 946.000 MHz.

4. A review of the Commission's databases revealed that a modification application to change the coordinates and the fixed location address for station WMU297 was filed on April 10, 2007.² An amendment to this application was filed on July 20, 2007. The modification application was granted on July 23, 2007.

5. On September 25, 2007, the Denver Office issued a *NAL* in the amount of \$4,000 to Bravo Mic.³ In the *NAL*, the Denver Office found that Bravo Mic apparently willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules by failing to operate station WMU297 from its licensed location. Bravo Mic filed a response ("*Response*") to the *NAL* on October 25, 2007, and supplemented its response on March 13, 2008. In its *Response*, Bravo Mic argues that it made good faith efforts to comply with the Rules, prior to the Denver Office's inspection. Bravo Mic also argues that it has a history of compliance with the Commission's Rules.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account 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 other such matters as justice may require.⁷

7. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁸ Section 1.947(a) of the Rules requires that all major modifications as defined in Section 1.929 of the Rules require prior Commission approval.⁹ Section 1.929(d)(1)(i) of the Rules defines one of the major actions as "any change in transmit antenna location by more than 5 seconds in latitude or longitude for fixed point-to-point facilities."¹⁰ Section 74.532(e) of the Rules states that each aural broadcast auxiliary station will be licensed at a specified transmitter location to communicate with a specified receiving location, and the direction of the main radiation lobe of the transmitting antenna will be a term of the station authorization.¹¹ At the time of the inspection on February

² See File No. 0002988228.

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732800011 (Enf. Bur., Western Region, Denver Office, released September 25, 2007).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 1.903(a).

⁹ 47 C.F.R. § 1.947(a).

¹⁰ 47 C.F.R. § 1.929(d)(1)(i).

5, 2007, Bravo Mic was found operating radio station WMU297 from a location inconsistent with the station's authorized coordinates and street address. The distance separating the point of operation from that of the license was greater than seven-tenths of a mile (approximately 32 seconds of latitude and approximately 17 seconds of longitude).

8. In its *Response*, Bravo Mic does not dispute the facts recited in the *NAL*. Instead it argues that it had already begun the process to amend the WMU297 license prior to the Denver Office's inspection. Specifically, Bravo Mic engaged the services of a contract engineer in December 2006 to begin work on a modification application for WMU297. Unfortunately, the engineering portions required more time than anticipated and the application was not filed until April 2007; well after the Denver Office inspection. Consequently, Bravo Mic asks that its forfeiture be reduced based on its good faith efforts to comply with the Rules. Reductions based on good faith efforts to comply generally involve situations where violators demonstrated that they initiated measures to correct or remedy violations,¹² or that they had established compliance programs in place,¹³ prior to the Commission's involvement. While Bravo Mic's efforts to amend the WMU297 license to reflect the station's correct location after the February 5, 2007, inspection by the Denver agent do not support a good faith reduction, we find that Bravo Mic's efforts to amend the WMU297 license prior to the inspection do support a good faith reduction. Consequently, we reduce the forfeiture from \$4,000 to \$3,200.

9. Bravo Mic also contends that it has a history of overall compliance with the Commission's Rules. We have reviewed our records and we concur. Consequently, we reduce Bravo Mic's forfeiture amount to \$2,400.

10. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Bravo Mic willfully and repeatedly violated Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$2,400 is warranted.

IV. ORDERING CLAUSES

11. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Bravo Mic Communications, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,400 for willfully and repeatedly violating Sections 1.903(a), 1.947(a), and 74.532(e) of the Rules.¹⁴

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the

¹¹ 47 C.F.R. § 74.532(e).

¹² See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹³ See *Tidewater Communications, Inc.*, 18 FCC Rcd 5524, 5525 (EB 2003).

¹⁴ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.947(a), 74.532(e).

¹⁵ 47 U.S.C. § 504(a).

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.

13. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Bravo Mic Communications, LLC, at its address of record, and Diana P. Cohen, its counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau