

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

In the Matter of)	
)	File No. EB-08-SE-722
Texas Soaring Association, Inc.)	NAL/Acct. No. 200932100061
Midlothian, Texas)	FRN # 0004540456

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 4, 2009

Released: June 8, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau

I. INTRODUCTION

1. In this *Notice of Liability for Forfeiture* (“NAL”), we find Texas Soaring Association, Inc. (“TSA”), former licensee of aviation support station (“station”) KSC8, in Midlothian, Texas, apparently liable for a forfeiture in the amount of nine thousand dollars (\$9,000) for apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 1.903(a) of the Commission’s Rules (“Rules”)² and for apparent willful violation of Section 1.949(a) of the Rules.³ The noted apparent violations involve TSA’s operation of an aviation support station without Commission authority and its failure to file a timely renewal application for the station.

II. BACKGROUND

2. On August 25, 2008, TSA filed a complaint with the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) alleging interference with its use of frequency 123.30 MHz from commercial jets inbound to Lubbock, Texas “over the last year.”⁴ In its complaint, TSA states that its glider club is the largest in the United States and has more than 250 members. TSA notes that the club operates from its own airfield on a scheduled basis throughout the year on Thursdays, Saturdays, Sundays, holidays and other week days “when the flying weather is particularly good.”⁵ TSA also notes that its airfield may have more than 20 operations per hour and, when busy, more than 120 take-off and landing operations. TSA asserts that multiple aircraft landings and takeoffs at its airfield, make it critical that a glider or powered towplane notify airport traffic by radio when entering the flight traffic pattern.⁶

3. Upon review of Commission’s records, the Division found that TSA was licensed to

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a)

³ 47 C.F.R. § 1.949(a).

⁴ See Correspondence from Phillip C. Umphres, Attorney at Law for Texas Soaring Association, Inc. to Federal Communications Commission, Attn: Karen Mercer (August 25, 2008). (“Complaint”)

⁵ *Id.*

⁶ See Federal Aviation Administration, Advisory Circular, AC No. 90-66A, Recommended Standard Traffic Patterns and Practices for Aeronautical Operations at Airports Without Operating Control Towers.

operate an aeronautical and fixed aviation support station on frequency 123.30 MHz, under call sign KSC8, on August 11, 1998. The license expired on September 22, 2003 and was cancelled on November 23, 2003.⁷ In addition, the records showed that on June 30, 2003, approximately three months prior to the expiration of TSA's license for station KSC8, the Commission issued a license renewal reminder letter to TSA at its address of record;⁸ however, there is no record that TSA filed a renewal application for station KSC8. On September 5, 2008, Division staff informed TSA that it had no authority to operate an aviation support station.

4. On October 1, 2008, TSA filed an application with the Wireless Telecommunications Bureau ("WTB") for authorization to operate an aviation support station using frequency 123.30 MHz, the same frequency assigned to its previous license under call sign KSC8. On October 2, 2008, the WTB granted TSA's application for license under call sign WQJJ668. The license expires on October 2, 2018.⁹ Commission records show that TSA's address of record for aviation support station WQJJ668 is the same address as that of former aviation support station KSC8.

III. DISCUSSION

5. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio except under, and in accordance with a Commission granted authorization.¹⁰ Section 87.18(a) of the Rules states that stations in the aviation services, with the exception of certain aircraft stations, must be licensed.¹¹ Section 87.25(b) of the Rules requires aviation services to comply with the Commission's general rules of practice and procedure in Part 1, Subpart F of the Rules.¹² Section 1.903(a) of the Rules requires that wireless radio services "must be used and operated ... with a valid authorization granted by the Commission."¹³ Additionally, Section 1.949(a) of the Rules requires a licensee to file a renewal application 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."¹⁴ Absent a timely filed renewal application, an aviation station license automatically terminates at the end of the license period.¹⁵

6. As a Commission licensee, TSA is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules. Commission records show that TSA failed to renew its license for station KSC8 prior to the expiration of its license on September 22, 2003, and that the license was subsequently cancelled on November 23, 2003. Also, the records show that a renewal reminder letter was sent to TSA's address of record for station KSC8 on June 30, 2003, but no renewal application was filed. Further, TSA's August 25, 2008, complaint of interference to its operation on frequency 123.30 MHz, is itself affirmation of its continued operation of station KSC8 without a valid license. TSA's complaint clearly states that "over the last year, ... TSA's ability to use

⁷ See Archived license record for Texas Soaring Association Inc, under call sign KSC8.

⁸ *Id.* Reference No. 2042413: Renewal Reminder Letter dated June 30, 2003.

⁹ See File No. 0003596329 granting a license to Texas Soaring Association, Inc., under call sign WQJJ668.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 C.F.R. § 87.18(a).

¹² 47 C.F.R. § 87.25(b).

¹³ 47 C.F.R. § 1.903(a).

¹⁴ 47 C.F.R. § 1.949(a).

¹⁵ See 47 C.F.R. § 1.955(a)(1)

frequency 123.30 has been impaired from time to time.”¹⁶ By operating station KSC8 without Commission authorization, TSA apparently violated Section 301 of the Act and Section 1.903(a) of the Rules and is apparently liable for a forfeiture. TSA is also apparently liable for a forfeiture for failing to file a timely renewal application for aviation support station KSC8 in apparent violation of Section 1.949(a) of the Rules.

7. Section 503(b) of the Act¹⁷ and Section 1.80(a) of the Rules¹⁸ 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.¹⁹ Based on the record before us, it appears that TSA’s violation of Section 301 of the Act and Section 1.903(a) of the Rules is willful and repeated, and its violation of Section 1.949(a) of the Rules is willful.

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.”²⁰

9. Section 503(b)(6) of the Act²¹ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether TSA’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.²² Thus, while we may consider the fact that TSA’s conduct has continued over a period that began in 2003, the forfeiture amount we propose herein relates only to TSA’s apparent violations that have occurred within the past year.

10. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a

¹⁶ See Complaint.

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 C.F.R. § 1.80(a).

¹⁹ 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).

²⁰ 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) (“*Forfeiture Policy Statement*”).

²¹ 47 U.S.C. § 503(b)(6).

²² See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006), *forfeiture ordered*, 22 FCC Rcd. 1051 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (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 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²³ 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.²⁴ Accordingly, we herein propose separate forfeiture amounts for TSA's separate violations.

11. Consistent with precedent, we propose the full base forfeiture amount of \$3,000 for TSA's failure to timely file required renewal applications for station KSC8 within the time period specified in Section 1.949(a) of the Rules.²⁵ Additionally, we propose a forfeiture in the amount of \$6,000 for TSA's unauthorized operation of station KSC8 after its license had expired on September 22, 2003. In proposing a forfeiture of \$6,000 for the unauthorized operation of station KSC8, 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.²⁶ Consistent with precedent,²⁷ the proposed \$6,000 forfeiture relates to TSA's violations that occurred within the past year, but takes into account the fact that TSA's unauthorized operations spanned almost five years - from September 22, 2003 through October 1, 2008. Thus, we propose an aggregate forfeiture of \$9,000 (\$3,000 for failure to timely file renewal applications and \$6,000 for unauthorized operation of an aviation station).

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁹ Texas Soaring Association, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nine thousand dollars (\$9,000) for the willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules and the

²³ 47 C.F.R. § 1.80(b).

²⁴ 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).

²⁵ See e.g., *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2883 (Enf. Bur., Spectrum Enf. Div., 2009); *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

²⁶ 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).

²⁷ See *Mitchell Electric Membership Cooperative*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541 (Enf. Bur., Spectrum Enf. Div., 2007). See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13816 (Enf. Bur., Spectrum Enf. Div., 2006).

²⁸ 47 U.S.C. § 503(b).

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

willful violation of Section 1.949(a) of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁰ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Texas Soaring Association, Inc. **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. Texas Soaring Association, Inc. will also send electronic notification on the date said payment is made to Jacqui.Johnson@fcc.gov and JoAnn.Lucanik@fcc.gov.

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 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.

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 counsel for Texas Soaring Association, Inc., Phillip C. Umphres, Esq., Burleson, Pate & Gibson, LLP, 2414 Akard Street, Suite 700, Dallas, Texas 75201.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
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³⁰ 47 C.F.R. § 1.80.