

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

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| In the Matter of |) | |
| |) | |
| Saga Radio Networks, LLC |) | File No. EB-08-SE-543 |
| Satellite Earth Station call sign E872070 |) | NAL/Acct. No. 200832100063 |
| |) | FRN: 0009112400 |

FORFEITURE ORDER

Adopted: March 30, 2009

Released: April 1, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand two hundred dollars (\$5,200) against Saga Radio Networks, LLC (“Saga”) for the willful and repeated violation of Section 301 of the Communications Act of 1934 (“Act”), as amended¹ and Section 25.102(a) of the Commission’s Rules (“Rules”), and for the willful violation of Section 25.121(e) of the Rules.² The noted violations involve Saga’s operation of its earth station without Commission authority, and its failure to file a timely renewal application.

II. BACKGROUND

2. On August 28, 2007, Saga was granted a license to operate a Ku-band fixed satellite earth station under call sign E872070. Under the terms of its license, Saga’s authorization for its earth station expired on August 28, 2007.³ On May 14, 2008, Saga became aware that the license for its earth station had expired.⁴ On May 28, 2008, Saga filed a request with the International Bureau (“IB”) requesting special temporary authority (“STA”) to operate the earth station pending grant of an application for a new earth station license.⁵ On June 13, 2008, Saga submitted a new license application,

¹ 47 U.S.C. § 301.

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

³ See File No. SES-RWL-19970806-01078.

⁴ 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”).

⁵ See File No. SES-STA-20080528-00682.

and on July 29, 2008, the IB granted Saga a new license for earth station E872070⁶ and dismissed the STA request as moot.

3. Because it appeared that Saga may have operated its earth station without authority after the expiration of its license, the IB 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.⁷

4. In its July 11, 2008 response to the LOI, Saga states that it first became aware on May 14, 2008 that its license for earth station E872070 had expired.⁸ On this date, Saga's Business Manager discovered the expired license during a review of Saga's authorizations database.⁹ 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.¹⁰ In addition, Saga acknowledges that it operated earth station E872070 without authority after August 28, 2007.¹¹

5. On July 30, 2008, the Division released a *Notice of Apparent Liability for Forfeiture* ("NAL"), finding that Saga operated its earth station without Commission authority and in apparent willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.¹² The NAL proposed a forfeiture amount of five thousand two hundred dollars (\$5,200) for the apparent violations.¹³

6. On August 27, 2008, the Division received Saga's response to the NAL.¹⁴ In response to the NAL, Saga does not dispute that it failed to file a timely renewal application, and additionally does not dispute that it operated earth station E872070 without a license. Instead, Saga argues that its failure to file a timely renewal application was neither willful nor repeated, and that imposing a forfeiture would be inconsistent with actions previously taken by the Commission. In addition, Saga argues that imposing the proposed forfeiture for operation of its earth station without a license would be contrary to the public interest. Saga argues that these reasons warrant a cancellation or reduction of the proposed forfeiture.

⁶ See File No. SES-LIC-20080613-00772.

⁷ Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. Gregory Urbiel, Saga Radio Networks, LLC (June 11, 2008).

⁸ "LOI Response" at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Saga Radio Networks, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11273 (Enf. Bur., Spectrum Enf. Div. 2008) ("NAL").

¹³ *Id.* at 11275-76.

¹⁴ Letter from Gary S. Smithwick, Esq., counsel for Saga Radio Networks, LLC, to Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 27, 2008) ("NAL Response").

III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,¹⁵ Section 1.80 of the Rules,¹⁶ and the Commission's *Forfeiture Policy Statement*.¹⁷ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we 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 such other matters as justice may require.¹⁸

8. Section 301 of the Act provides that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.”¹⁹ Section 25.102(a) of the Rules prohibits the use or operation of an apparatus for the transmission of communications by earth stations without appropriate authorization from the Commission.²⁰ Section 25.121(e) of the Rules requires that applications for the renewal of earth station licenses must be submitted to the Commission no earlier than 90 days, and no later than 30 days, prior to the expiration date of the license.²¹

9. In response to the *NAL*, Saga does not dispute that it violated Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules when it failed to file a timely renewal application, and when it operated earth station E872070 after its license expired on August 28, 2007. Saga argues, however, that its failure to renew its license was not willful or repeated, that imposing a forfeiture for its failure to file a timely renewal application is inconsistent with actions previously taken by the Commission, and that public policy bars the imposition of a forfeiture for Saga's operation of its earth station without Commission authority.

10. Saga first argues that in order to impose a forfeiture for its failure to file a timely renewal application, the Commission should have to establish *scienter* as an element of the willfulness of its violation. We disagree. Section 312(f)(1) of the Act,²² provides that “the term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission.”²³ Indeed, it is well established that, in the context of forfeiture actions,

¹⁵ 47 U.S.C. § 503(b).

¹⁶ 47 C.F.R. § 1.80.

¹⁷ *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 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁹ 47 U.S.C. § 301.

²⁰ *See* 47 C.F.R. § 15.102(a).

²¹ *See* 47 C.F.R. § 25.121(e).

²² 47 U.S.C. § 312(f)(1).

²³ The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

“willful” does not require a finding that the rule violation was intentional or that the violator was aware that it was committing a rule violation. Rather, the term “willful” simply requires that the violator knew it was taking or failing to take the action in question, irrespective of any intent to violate the Commission’s rules.²⁴

11. Saga also argues that the proposed forfeiture of one thousand five hundred dollars (\$1,500) for its failure to file a timely renewal application is inconsistent with other actions in which the Media Bureau proposed or assessed forfeitures of two hundred and fifty dollars (\$250) for closely-related conduct. Specifically, Saga cites several NALs and Forfeiture Orders issued by the Media Bureau for violation of Section 73.3539 of the Rules.²⁵ The cases cited by Saga are, however, distinguishable from the instant case because in each of those cases, the renewal application was filed late, but prior to the expiration of the license term.²⁶ In contrast, Saga filed its STA more than nine months after its license expired.

12. Saga further argues that the proposed \$5,000 forfeiture for its unauthorized operation of the earth station should be cancelled on public interest grounds. According to Saga, in its response to the LOI, it demonstrated that it was critical both to Saga’s business, and to the members of the public who listen to Saga radio stations in Michigan, Illinois, Ohio, Missouri and Ontario, Canada, that its earth station be permitted to continue to operate. The fact that the earth station was critical to Saga’s business does not, however, justify its operation beyond the expiration of its license, nor is it a mitigating factor warranting reduction or cancellation of the proposed forfeiture.²⁷

13. Accordingly, we conclude that Saga willfully and repeatedly violated Section 301 of the Act and Section 25.102(a) of the Rules and willfully violated Section 25.121(e) of the Rules and find that no mitigating factors have been presented that warrant cancellation or reduction of the proposed \$5,200 forfeiture.

²⁴ See *Southern California*, 6 FCC Rcd at 4387-88 (stating that “inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance” and applying the definitions of willful in Section 312(f)(1) to forfeiture cases). See also *Abocom Systems, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7448, 7451 (Enf. Bur. 2007) (rejecting Abocom’s argument that it was only “inadvertently noncompliant” and that “its actions were not deliberate or intended to violate the rules”); *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651-52 (Enf. Bur., Spectrum Enf. Div. 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee’s administrative error); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (Enf. Bur., Spectrum Enf. Div. 2006) (“*Domtar Industries*”) (same); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (Enf. Bur., Spectrum Enf. Div. 2006) (same). As we find that Saga’s failure to file was willful, we need not reach the issue here of whether its violation was also repeated.

²⁵ See *Bible Broadcasting Network, Inc.*, 23 FCC Rcd 8743 (2008) (“*Bible Broadcasting I*”); *Good News Translator Assoc.*, 22 FCC Rcd 20922 (Media Bur. 2007) (“*Good News*”); and *Bible Broadcasting Network, Inc.*, 22 FCC Rcd 11445 (Media Bur. 2007) (“*Bible Broadcasting I*”).

²⁶ See *Bible Broadcasting II*, 23 FCC Rcd at 8743 (application filed more than two months prior to expiration date); *Good News*, 22 FCC Rcd at 20922-923 (application filed two and one-half months prior to expiration); *Bible Broadcasting I*, 22 FCC Rcd at 11445 (application filed one day prior to expiration).

²⁷ See, e.g., *Domtar Industries*, 21 FCC Rcd at 13817 (rejecting a licensee’s argument that a forfeiture for unauthorized operation was not appropriate because the operation of its private land mobile radio system was critical to the licensee’s business).

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁸ Saga Radio Networks, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules and willful violation of Section 25.121(e) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days of the release of this *Order*.²⁹ 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.³⁰ 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 Radio Networks, LLC will also send electronic notification on the date said payment is made to Deborah Broderson at Deborah.Broderson@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class 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 to 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

²⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁹ 47 C.F.R. § 1.80.

³⁰ 47 U.S.C. § 504(a).