

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

In the Matter of	)	File No. EB-08-SE-721
	)	NAL/Acct. No. 201032100020
Lubbock Aero	)	FRN # 0018657619
Lubbock, Texas	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: March 23, 2010**

**Released: March 25, 2010**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Lubbock Aero, in Lubbock, Texas, apparently liable for a forfeiture amount of ten thousand dollars (\$10,000) for operating without authorization in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)<sup>1</sup> and Section 1.903(a) of the Commission’s Rules (“Rules”).<sup>2</sup>

**II. BACKGROUND**

2. In August 2008, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) received a complaint alleging that Lubbock Aero was operating on frequency 123.300 MHz without Commission authorization and could be the source of interference to aviation support stations authorized to transmit on the frequency.<sup>3</sup> The Division reviewed Commission records and found that Lubbock Aero, located at the Lubbock Preston Smith International Airport, was not authorized to operate on frequency 123.300 MHz. On March 31, 2009, the Division issued a letter of inquiry (“LOI”) to Lubbock Aero.<sup>4</sup>

3. On April 8, 2009, the Division received Lubbock Aero’s response to the LOI<sup>5</sup> in which it admits that it “operated radio communications over frequency 123.300 MHz” but stated that it “is ... no longer doing so.”<sup>6</sup> Lubbock Aero states that it used this frequency on numerous dates since January 1, 2008, the time period specified in the LOI, and that each occurrence was “in response to a call by an

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 1.903(a).

<sup>3</sup> Under Commission Rules, the 123.300 MHz frequency is “available for assignment to aviation support stations used for pilot training, coordination of lighter-than-air aircraft operations, or coordination of soaring or free ballooning activities.” 47 C.F.R. § 87.323(b).

<sup>4</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Richard Casler, Manager, Lubbock Aero (March 31, 2009).

<sup>5</sup> Letter from Richard Casler, Vice President/General Manager, Lubbock Aero, to Spectrum Enforcement Division, Federal Communications Commission (April 8, 2009) (“LOI Response”).

<sup>6</sup> *Id.*

inbound or outbound aircraft.”<sup>7</sup> Lubbock Aero states that it did not receive any complaints of interference when operating on 123.300 MHz, and claims it believed it had authority to operate on this frequency through a purchase transaction. Further, Lubbock Aero states it is currently using frequency 129.100 MHz, and submitted an authorization issued by Commission licensee, Aviation Spectrum Resources, Inc. (“ASRI”),<sup>8</sup> for temporary use of call sign KUF6 on frequency 129.100 MHz at the Lubbock Preston Smith International Airport.<sup>9</sup>

4. After reviewing the LOI response, the Division found that Lubbock Aero had not provided sufficient information and that further clarification was required. Subsequently, on October 15, 2009, the Division issued a second LOI (“follow up LOI”)<sup>10</sup> directing Lubbock Aero to provide additional information relating to its use of frequencies 123.300 MHz and 129.100 MHz. In its follow up LOI response,<sup>11</sup> Lubbock Aero states that, beginning January 1, 2008, it operated on frequency 123.300 MHz but it does not have a record of the specific dates or occurrences of such operation. Lubbock Aero states, however, that it “halted use of this frequency immediately upon receipt of the March 31, 2009 LOI.”<sup>12</sup> Lubbock Aero further clarifies that the use of frequency 123.300 MHz during the period in question was in response to aircraft communications that it regarded as “General FBO business.”<sup>13</sup> With respect to its current use of frequency 129.100 MHz, Lubbock Aero explains that it has subsequently been assigned use of this frequency at the Lubbock Preston Smith International Airport from ASRI under call sign WQKI528.<sup>14</sup>

### 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.<sup>15</sup> Section 1.903(a) of the Rules requires that wireless radio services

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<sup>7</sup> *Id.*

<sup>8</sup> ASRI is a communications company for the air transport industry and the successor to Aeronautical Radio, Inc. ASRI is the industry licensee in the aeronautical enroute and fixed services. The Commission granted ASRI a license for an Aeronautical and Fixed Aviation station, under call sign KUF6, on January 1, 2005. The license expires on February 10, 2015.

<sup>9</sup> The temporary authority is dated April 7, 2009 and set to expire 120 days from the date of issue.

<sup>10</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Richard Casler, Vice President/General Manager, Lubbock Aero (October 15, 2009).

<sup>11</sup> Letter from Richard Casler, Vice President/General Manager, Lubbock Aero, to Spectrum Enforcement Division, Federal Communications Commission (October 29, 2009) (“follow up LOI Response”).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* The term FBO means “fixed base operator” or “fixed base of operation” and refers to a provider of services to general aviation aircraft and operators. A fixed base operator may be private, municipal, or state-owned, and is located at, or adjacent to, an airport. Under Commission rules, stations providing such radiocommunication services are considered “aeronautical advisory stations (unicoms)” subject to Part 87 Subpart G of the Rules. *See* 47 C.F.R. §§ 87.5, 87.213 *et. seq.*

<sup>14</sup> *Id.*, Attachment. The Commission granted the license for call sign WQKI528 to ASRI on June 2, 2009, which expires on June 2, 2019.

<sup>15</sup> 47 U.S.C. § 301.

“must be used and operated ... with a valid authorization granted by the Commission.”<sup>16</sup> Section 87.18(a) of the Rules states that stations in the aviation services, with the exception of certain aircraft stations, must be licensed.<sup>17</sup> Under Section 87.323(b) of the Rules, 123.300 MHz is “available for assignment to aviation support stations for pilot training, coordination of lighter-than-air aircraft operations, or coordination of soaring or free ballooning activities.”<sup>18</sup>

6. Lubbock Aero admits that it operated on 123.300 MHz “on numerous dates” between January 1, 2008 and March 31, 2009, and that this frequency was used to provide communication services that “would be regarded as General FBO business” in response to calls by inbound or outbound aircraft. Commission records show, however, that during this period, Lubbock Aero held no license authorizing it to operate as an aeronautical advisory station or to operate on 123.300 MHz, a frequency reserved for aviation support stations. Lubbock Aero’s claim that it thought it was authorized by the Commission to operate on the frequency 123.300 MHz based on its belief “that all licenses held by previous owners were to be transferred at the time of purchase”<sup>19</sup> is unsupported. Lubbock Aero provides no further details, and Commission records show no grant of authority ever issued by the Commission approving an assignment or transfer of control of station licenses concerning this frequency to Lubbock Aero.<sup>20</sup> Thus, it appears that Lubbock Aero violated Section 301 of the Act<sup>21</sup> and Section 1.903(a) of the Rules<sup>22</sup> by operating on frequency 123.300 MHz without Commission authority.

7. Section 503(b) of the Act<sup>23</sup> and Section 1.80(a) of the Rules<sup>24</sup> 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 committing or omitting the action in question, irrespective of any intent to violate the Commission’s Rules, and “repeated” means commission or omission of an act that occurs more than once or continuous action that lasts more than one day.<sup>25</sup> Based on the record before us, it appears that Lubbock Aero’s violation of Section 301 of the Act and Section 1.903(a) of the Rules is willful and repeated.

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<sup>16</sup> 47 C.F.R. § 1.903(a).

<sup>17</sup> 47 C.F.R. § 87.18(a).

<sup>18</sup> 47 C.F.R. § 87.323(b).

<sup>19</sup> LOI Response.

<sup>20</sup> In fact, Commission records show that no licenses have ever been issued for use of frequency 123.300 MHz at Lubbock Preston Smith International Airport, so it is not clear what license authority Lubbock Aero could believe it acquired in a license assignment or transfer. Further, under Section 310(d) of the Act, no station license or underlying rights shall be transferred or assigned without application to the Commission and a finding by the Commission that the public interest, convenience, and necessity will be served by the grant of the application. 47 U.S.C. § 310(d). Commission records do not show any such application was filed seeking to assign or transfer control of licenses to operate on frequency 123.300 MHz to Lubbock Aero.

<sup>21</sup> 47 U.S.C. § 301.

<sup>22</sup> 47 C.F.R. § 1.903(a).

<sup>23</sup> 47 U.S.C. § 503(b).

<sup>24</sup> 47 C.F.R. § 1.80(a).

<sup>25</sup> 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).

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.”<sup>26</sup> As we explain below, having considered the statutory factors, we propose a forfeiture of ten thousand dollars (\$10,000).

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority.<sup>27</sup> Based on the record in this proceeding, we propose a forfeiture of \$10,000 for Lubbock Aero’s unauthorized operations. We do not find that any downward adjustments to this proposed forfeiture amount are appropriate. Although we have made downward adjustments in cases where a licensee has operated under color of authority or under an expired license,<sup>28</sup> we do not find such adjustment appropriate in this case.<sup>29</sup> Lubbock Aero’s unauthorized operation on frequency 123.300 MHz was undertaken without any previous Commission authorization, in violation of the Act and Commission rules.<sup>30</sup> Accordingly, we propose a \$10,000 forfeiture. Consistent with precedent, the proposed \$10,000 forfeiture relates to Lubbock Aero’s violations that occurred within the past year.<sup>31</sup>

10. Based on the foregoing, we find Lubbock Aero in apparent willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules for apparently operating a radio station on frequency 123.300 MHz without Commission authority. Therefore, Lubbock Aero is apparently liable for a forfeiture in the amount of \$10,000.

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<sup>26</sup> 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*”).

<sup>27</sup> 47 C.F.R. § 1.80(b).

<sup>28</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004). See also *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div., 2006) (forfeiture paid); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

<sup>29</sup> We note that Lubbock Aero holds an Aircraft license, call sign 222LA (ULS database, Aircraft – 002358383); however, this license permits radiocommunications from aircraft only, and does not provide authorization for use of frequencies by aeronautical ground stations.

<sup>30</sup> See e.g., *Able Infosat Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 887, 889-90 (Enf. Bur., Spectrum Enf. Div., 2008) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization) (forfeiture paid); *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 13811, 13815-16 (Enf. Bur., Spectrum Enf. Div., 2006) (“*Domtar Industries*”) (proposing the base forfeiture amount of \$10,000 for operating without Commission authorization and an upward adjustment of \$4,000 for unauthorized operations that spanned over a five-year period) (forfeiture paid).

<sup>31</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6) prohibits the assessment of a forfeiture for violations that occurred more than a year prior to the issuance of the NAL, but does not bar us from taking into account the continuous nature of violations in determining the appropriate enforcement action and/or forfeiture amount. See *Mitchell Electric Membership Cooperative*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 5538, 5541 (Enf. Bur., Spectrum Enf. Div., 2007) (forfeiture paid). See also *Domtar Industries*, 21 FCC Rcd at 13816.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>32</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>33</sup> Lubbock Aero **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for the willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>34</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Lubbock Aero **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Lubbock Aero will also send electronic notification to JoAnn Lucanik at [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and to Jacqueline Johnson at [Jacqui.Johnson@fcc.gov](mailto:Jacqui.Johnson@fcc.gov) on the date said payment is made.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3)<sup>35</sup> and 1.16 of the Rules.<sup>36</sup> The written statement 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. The statement should also be emailed to [JoAnn.Lucanik@fcc.gov](mailto:JoAnn.Lucanik@fcc.gov) and to [Jacqui.Johnson@fcc.gov](mailto:Jacqui.Johnson@fcc.gov).

15. 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.

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<sup>32</sup> 47 U.S.C. § 503(b).

<sup>33</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>34</sup> 47 C.F.R. § 1.80.

<sup>35</sup> 47 C.F.R. § 1.80(f)(3).

<sup>36</sup> 47 C.F.R. § 1.16.

16. **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 Richard Casler, Vice President/General Manager for Lubbock Aero, 6304 North Cedar Avenue, Lubbock, Texas 79403-6842.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau