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

	)	
In the Matter of	)	File No.: EB-10-SE-147
	)	
Northeast Utilities Service Company	)	NAL/Acct. No.: 201132100034
	)	
Former Licensee of Station WQFD453	)	FRN: 0003583721

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 1, 2011 **Released: September 1, 2011**

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find Northeast Utilities Service Company ("Northeast Utilities"), former licensee of Private Land Mobile Radio Service ("PLMRS") station WQFD453, Waterbury, Connecticut, apparently liable for a forfeiture in the amount of nineteen thousand dollars ($19,000) 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] The apparent violation involves Northeast Utilities' operation of its PLMRS station for more than three years without Commission authority.

II. BACKGROUND

2. On June 8, 2006, Northeast Utilities filed an application for authority to provide private land mobile communications at a liquefied gas facility in Waterbury, Connecticut. On June 20, 2006, the Commission's Wireless Telecommunications Bureau ("Wireless Bureau") granted that application under call sign WQFD453 until the license expiration date of June 20, 2016.[3] The Commission's records indicate that on June 14, 2007, Northeast Utilities filed an application to cancel the license for station WQFD453,[4] and on June 15, 2007, the Wireless Bureau cancelled the station's license.[5] More than three years later, on September 3, 2010, Northeast Utilities filed with the Wireless Bureau a request for Special Temporary Authority ("STA") to operate on the UHF frequency pair previously authorized by WQFD453 for a period of 180 days or until the company obtained regular authority to operate on that UHF frequency pair.[6] In its STA request, Northeast Utilities stated that it recently became aware that the company's license for WQFD453 was "inadvertently" cancelled in June 2007.[7] Northeast Utilities also

[1] 47 U.S.C. § 301.

[2] 47 C.F.R. § 1.903(a).

[3] *See* File No. 0002643157.

[4] *See* File No. 0003071219.

[5] *See* http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=4026351.

[6] *See* attachment to STA request.

[7] *Id*.

acknowledged that it continued operating station WQFD453 after cancellation of its license.[8] On September 10, 2010, the Wireless Bureau granted the STA request under call sign WQML289,[9] and on September 23, 2010, the Wireless Bureau granted Northeast Utilities a license for a new PLMRS station under call sign WQMM619.[10]

3. Because it appeared that Northeast Utilities may have operated station WQFD453 for three years after cancellation of the station license, the Wireless Bureau referred the matter to the Enforcement Bureau for investigation and possible enforcement action. On April 5, 2011, the Spectrum Enforcement Division of the Enforcement Bureau issued a letter of inquiry to Northeast Utilities.[11]

4. In its May 4, 2011 response to the LOI,[12] Northeast Utilities confirms that it filed an application to cancel its license for station WQFD453 on June 14, 2007.[13] Northeast Utilities further concedes that it continued to operate the station during the three-year period lasting from the time the license was cancelled to the time the STA was granted.[14] Northeast Utilities explains that from late 2005 through early 2006, during the time period that it filed its application for PLMRS station WQFD453, it also submitted several applications to the Commission for authority to operate Digital Supervisory Control and Data Acquisition ("DSCADA") units in the 450-470 MHz band throughout Connecticut.[15] Northeast Utilities asserts that, in canceling the license, it mistakenly believed that WQFD453 was intended for use in DSCADA operations rather than for PLMRS.[16] According to Northeast Utilities, it only became aware of the unauthorized operation in 2010 when a former employee who was familiar with the PLMRS operations at the Waterbury site "returned as a contractor and discovered the cancelled license."[17] Northeast Utilities states that, upon learning of the unauthorized operation, it "immediately advised the Commission that it had recently become aware" that the license for WQFD453 had been canceled and requested both temporary and regular operating authority for its Waterbury land mobile operations.[18] Further, it states that it is developing a process to avoid unauthorized operations in the future.[19]

---

[8] *Id*.

[9] *See* File No. 0004377111.

[10] *See* File No. 0004382096.

[11] *See* Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Mr. Jack Richards, Esq., Keller and Heckman LLP, Counsel for Northeast Utilities Service Company (April 5, 2011) ("LOI").

[12] *See* Letter from Jack Richards and Gregory E. Kunkle, Keller and Heckman LLP, Counsel for Northeast Utilities Service Company, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 4, 2011) ("LOI Response").

[13] *Id* at 2.

[14] *Id*.

[15] *Id*. According to Northeast Utilities, "DSCADA units are used in connection with reclosers and switches to minimize electric utility service outage duration, isolate downed conductors in remote areas, provide automated switching and tagging in areas remote from service areas, and switch critical customers remotely." *Id.* at 2.

[16] Northeast Utilities states that when the company determined that it would not use DSCADA at the Waterbury site, it cancelled the WQFD453 license. *Id*. at 3.

[17] *Id*.

[18] *Id*.

[19] *Id*.

III. DISCUSSION

5. 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 radio except under, and in accordance with, a Commission-granted authorization.[20] As a Commission licensee, Northeast Utilities was required to maintain its authorization in order to operate station WQFD453. Northeast Utilities admitted that it continued to operate its PLMRS station without Commission authority from June 15, 2007 until September 10, 2010, when its STA request was granted. By operating station WQFD453 for a period of more than three years after the license had been cancelled, Northeast Utilities apparently violated section 301 of the Act and section 1.903(a) of the Rules.[21]

6. Section 503(b) of the Act[22] and section 1.80(a) of the Rules[23] 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 Rules, and "repeated" means more than once.[24] Based on the record before us, it appears that Northeast Utilities' apparent violation of section 301 of the Act and section 1.903(a) of the Rules is both willful and repeated.[25]

7. 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."[26]

8. Section 1.80(b)(4) of the Rules[27] sets a base forfeiture amount of $10,000 for operation of a station without Commission authority. We thus begin with the $10,000 base forfeiture amount for Northeast Utilities' continued operation of station WQFD453 after the cancellation of its license on June 15, 2007. While this base is subject to adjustment, either upward or downward, we find no basis for a downward adjustment. Northeast Utilities maintains that the license for station WQFD453 was "inadvertently" cancelled. This characterization, however, is somewhat misleading as Northeast Utilities admits that it intended to cancel the license, but did so under the mistaken impression that the license was

[20] 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

[21] *See Id.*

[22] 47 U.S.C. § 503(b).

[23] 47 C.F.R. § 1.80(a).

[24] *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).

[25] While section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Northeast Utilities' misconduct occurred over an extended period (between 2007 and 2010) to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000); *see also BASF Corporation* ¶ 9*; Call Mobile* ¶ 10. The forfeiture amount we propose herein relates only to Northeast Utilities' apparent violations that have occurred within the past year.

[26] 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; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied,* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

[27] 47 C.F.R. § 1.80(b)(4).

no longer needed for its intended purpose. In any event, Northeast Utilities continued to operate WQFD453 without the required authority after the license was cancelled. The Commission has long established that administrative oversight or inadvertence is not a mitigating factor warranting downward adjustment of a forfeiture.[28] In addition, Northeast Utilities seemingly attempts to mitigate its responsibility for the violation by explaining that a former employee with the most direct knowledge of this license had retired. Even if this were relevant, however, we note that the cancellation occurred prior to this employee's retirement.[29] Moreover, Northeast Utilities' assertion in its LOI Response that it is developing a process to avoid future violations,[30] while laudable, does not negate its liability for the instant violations, nor do any post-investigation remedial efforts warrant reduction of the forfeiture.[31]

9. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the $10,000 base forfeiture is warranted.[32] In this regard, we take into account the fact that Northeast Utilities' unlawful operation continued for more than three years. We also recognize that Northeast Utilities is a company with more than four billion dollars in annual revenue.[33] To ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large or highly-profitable companies, such as Northeast Utilities, should expect the assessment of higher forfeitures for violations.[34] Therefore, based on all the factors and evidence, including the extended period of unauthorized operation and Northeast Utilities' ability to pay a forfeiture, we find that an upward adjustment of the base forfeiture is warranted. Accordingly, we propose a forfeiture of $19,000.[35]

---

[28] *See Southern California,* 6 FCC Rcd at 4387 (stating that "inadvertence … is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

[29] We further note that it would be unreasonable for a company of Northeast Utilities' size to rely on a single employee to monitor its operations and ensure compliance in this regard.

[30] *See* LOI Response at 3.

[31] *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099, 6099 ¶ 7 (1994) (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations); *see also*, *United States Cellular Corp.,* Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16424, 16429 ¶ 14 (2007) (remedial efforts taken after the deadline did not mitigate violation of the Commission's E911 rules and relevant orders); *AT&T Wireless Services, Inc*., Forfeiture Order, 17 FCC Rcd 21866, 21875-6 ¶¶ 26-28 (2002) (remedial action to correct tower painting violation was not a mitigating factor warranting reduction of forfeiture).

[32] *See BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300 ¶ 11; *See also, Call Mobile Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74.

[33] For 2010, Northeast Utilities' revenue was $4.9 billion. *See* http://www.dailymarkets.com/stock/2011/03/11/northeast-utilities-eps-outperforms and http://www.nu.com/investors/reports/PDF/NU-AnnualReport_2010.pdf.

[34] *See Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount).

[35] For entities that are not common carriers, broadcast licensees, or cable operators, section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), provides that "the amount of any forfeiture penalty determined under this section shall not exceed $16,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $112,500 for any single act or failure to act."

IV ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act[36] and sections 0.111, 0.311, and 1.80 of the Rules,[37] Northeast Utilities Service Company **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of nineteen thousand dollars ($19,000) for the willful and repeated violation of section 301 of the Act and section 1.903(a) of the Rules.

11. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,[38] within thirty (30) calendar days after the release date of this *Notice of Apparent Liability for Forfeiture*, Northeast Utilities Service Company **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 13 below.

12. 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 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, DC 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. Northeast Utilities Service Company must also send electronic notification to Neal.McNeil@fcc.gov and Karen.Mercer@fcc.gov on the date said payment is made.

13. 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) and 1.16 of the Rules.[39] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Neal.McNeil@fcc.gov and to Karen.Mercer@fcc.gov. 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.

14. **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 Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270, and to Mr. Jack Richards, Counsel

[36] 47 U.S.C. § 503(b).

[37] 47 C.F.R. §§ 0.111, 0.311, 1.80.

[38] 47 C.F.R. § 1.80.

[39] 47 C.F.R. §§ 1.80(f)(3), 1.16.

for Northeast Utilities Service Company, Keller and Heckman, LLP, 1001 G Street Northwest, Suite 500 West, Washington, D.C. 20001.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau