

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

In the matter of)	
)	File No.: EB-09-SE-130
Call Mobile, Inc.)	NAL/Acct. No.: 201132100021
Former Licensee of Station WPKM300)	FRN: 0003780590

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 4, 2011

Released: January 4, 2011

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

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Call Mobile, Inc. (“Call Mobile”), former licensee of Industrial/Business Pool Radio station¹ WPKM300, in Lexington, Kentucky, apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for apparent willful and repeated violation of section 301 of the Communications Act of 1934, as amended (“Act”)² and section 1.903(a) of the Commission’s rules (“Rules”),³ and for apparent willful violation of section 1.949(a) of the Rules.⁴ The noted apparent violations involve Call Mobile’s operation of station WPKM300 without Commission authority and its failure to timely file a renewal application for the station for more than two and a half years.

II. BACKGROUND

2. On April 16, 1997, Call Mobile was granted a license to operate station WPKM300 until the license expiration date of April 16, 2007. On January 22, 2007, the Commission sent Call Mobile a renewal reminder notice, indicating that a failure to file a timely renewal application would lead to automatic expiration of the license.⁵ Call Mobile did not submit a renewal application for station WPKM300 prior to the license expiration date. In the absence of such filing, Call Mobile’s license for station WPKM300 automatically terminated on the expiration date.⁶

3. On January 5, 2010, following receipt of a complaint alleging that Call Mobile may have operated station WPKM300 after the expiration of its license, the Spectrum Enforcement Division

¹ Industrial/Business Pool Radio stations are part of the Private Land Mobile Radio Service (“PLMRS”).

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a).

⁴ 47 C.F.R. § 1.949(a).

⁵ See Automated Renewal Reminder Letter from the Wireless Telecommunications Bureau, Federal Communications Commission, to Call Mobile Inc., Reference No. 4390744 (January 22, 2007).

⁶ See 47 C.F.R. § 1.955(a)(1) (stating that “[a]uthorizations automatically terminate, without specific Commission action, on the expiration date specified therein, unless a timely application for renewal is filed”). Commission records were updated to reflect the cancellation of the terminated license on June 3, 2007. See <http://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=1785311>.

(“Division”) of the Enforcement Bureau of the Federal Communications Commission issued a letter of inquiry (“LOI”) to Call Mobile.⁷

4. In its response to the LOI dated January 27, 2010 and received by the Commission on January 29, 2010,⁸ Call Mobile stated that it first became aware of the expiration of its license to operate station WPKM300 on January 5, 2010, when it received the LOI by facsimile.⁹ Call Mobile admitted that prior to the receipt of the LOI, it continued to operate station WPKM300 after its April 16, 2007 license expiration date, with the belief that the license was current.¹⁰ Call Mobile explained that because its other stations have licenses that expire in 2013, and because it had consolidated several underlying licenses under the WPKM300 call sign, it mistakenly disregarded the renewal notification received for station WPKM300 as being for an inactive call sign.¹¹ Call Mobile states that at first it believed the LOI was sent as a result of a mistake. However, upon discovering that the LOI correctly noted the expiration of its license, Call Mobile stated that “the very next day” after receiving the LOI, it “took action and had the coordination and FCC application [to reauthorize the station license] expedited.”¹²

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.¹³ Additionally, section 1.949(a) of the Rules requires that licensees file renewal applications 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, a wireless radio station license automatically terminates.¹⁵

6. As a Commission licensee, Call Mobile was required to maintain its authorization in order to operate station WPKM300. Call Mobile admitted that it continued to operate its radio station without Commission authority for more than two and a half years after the expiration of its license,¹⁶ a situation that Call Mobile did not seek to remedy until January 6, 2010, the day after it learned of its alleged violation from the Division LOI. By operating station WPKM300 after the station’s license expiration date of April 16, 2007, Call Mobile apparently violated section 301 of the Act and section 1.903(a) of the Rules. Call Mobile also acted in apparent violation of section 1.949(a) of the Rules by failing to timely file a renewal application for station WPKM300.

⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Christopher Dunbar, President, Call Mobile (January 5, 2010).

⁸ See Declaration from Christopher Dunbar, President, Call Mobile, to Katherine Power, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 29, 2010) (“LOI Response”).

⁹ LOI Response at 1.

¹⁰ LOI Response at 2.

¹¹ LOI Response at 3.

¹² *Id.* See E-Mail correspondence from Becky Ott, FCC Licensing, Enterprise Wireless Alliance, Gettysburg, Pennsylvania, to Christopher Dunbar, President, Call Mobile (Jan. 6, 2010). Call Mobile filed for license reinstatement on January 15, 2010, and its application was granted on January 27, 2010, under call sign WQLI256. See File No. 0004093644.

¹³ 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

¹⁴ 47 C.F.R. § 1.949(a).

¹⁵ 47 C.F.R. § 1.955(a)(1).

¹⁶ LOI Response at 2.

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 Rules, and “repeated” means more than once.¹⁹ Based on the record before us, it appears that Call Mobile’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 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and a base forfeiture amount of \$3,000 for failure to file required forms or information.²¹ The Commission has held that a licensee’s continued operation 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.²² Accordingly, we herein propose separate forfeiture amounts for Call Mobile’s separate violations.

10. We propose a base forfeiture in the amount of \$10,000 for Call Mobile’s continued operation of station WPKM300 after the expiration of its license on April 16, 2007, and in addition, we propose the base forfeiture amount of \$3,000 for Call Mobile’s failure to file the renewal application for its radio station within the time period specified in section 1.949(a) of the Rules, for a total base forfeiture of \$13,000.²³

11. This base forfeiture amount, however, is subject to adjustment, either upward or downward. Here, we find no basis for a downward adjustment. Once Call Mobile’s license expired, it lacked the

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) (“*Southern California*”).

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; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²¹ 47 C.F.R. § 1.80(b). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

²² See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7438 (2004) (“*Discussion Radio*”).

²³ 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 Call Mobile’s 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, 9671-71 (2000); see also *BASF Corporation*, Notice of Apparent Liability for Forfeiture, DA 10-2347 ¶ 9 (Enf. Bur., Rel. Dec. 17, 2010) (“*BASF Corporation*”). The forfeiture amount we propose herein relates only to Call Mobile’s apparent violations that have occurred within the past year.

required authority to operate station WPKM300 but continued to do so. The Commission has emphasized that “[a]ll licensees are responsible for knowing the terms of their licenses and for filing a timely renewal application if they seek to operate beyond that term.”²⁴ It is well established that administrative oversight or inadvertence is not a mitigating factor warranting a downward adjustment of a forfeiture.²⁵ Likewise, a violator’s lack of knowledge or erroneous beliefs is not a mitigating factor warranting reduction of a forfeiture.²⁶ Call Mobile’s actions to remedy its situation when it learned of its error from the Commission,²⁷ while laudable, do not negate its liability for the instant violations, nor do these post-investigation remedial efforts warrant reduction of the forfeiture.²⁸ Indeed, we are mindful of the fact that the reduced forfeiture amounts applied in past cases do not appear to be creating sufficient incentives for all PLMRS licensees to monitor their license expiration dates and timely seek renewal.²⁹

12. Given the totality of the circumstances and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the \$13,000 base forfeiture is warranted.³⁰ In this

²⁴ See *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027, 21071 ¶ 96 (1998) (noting that the renewal reminder letter is a “convenience to licensees [and] does not in any way absolve licensees from timely filing their renewal applications”).

²⁵ 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”).

²⁶ See, e.g., *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its “prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed . . . ignorance of the law is [not] a mitigating factor”); *Lakewood Broadcasting Service, Inc.*, 37 FCC 2d 437, 438 ¶ 6 (1972) (denying a mitigation claim of a broadcast licensee who asserted an unfamiliarity with the station identification requirements, stating that licensees are expected “to know and conform their conduct to the requirements of our rules”); *Kenneth Paul Harris, Sr.*, 15 FCC Rcd 12933, 12935 ¶ 7 (Enf. Bur. 2000) (denying a mitigation claim of a broadcast licensee, stating that its ignorance of the law did not excuse the unauthorized transfer of the station); *Maxwell Broadcasting Group, Inc.*, 8 FCC Rcd 784, 784 ¶ 2 (Mass Med. Bur. 1993) (denying a mitigation claim of a noncommercial broadcast licensee, stating that the excuse of “inadverten[ce], due to inexperience and ignorance of the rules . . . are not reasons to mitigate a forfeiture” for violation of the advertisement restrictions).

²⁷ See *supra* note 8 and accompanying text.

²⁸ 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).

²⁹ See e.g., *Mathews Readymix LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12828, 12831 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$6,200 forfeiture for unauthorized operation of a PLMRS station and for failure to file a timely license renewal application). We also note that the instant case is distinguishable from *Discussion Radio* which turned on its particular facts. See *supra* note 22. In *Discussion Radio*, the Commission imposed a forfeiture against a broadcast licensee for 14 months of unauthorized operation, observing that the licensee’s conduct in that case was not comparable to “pirate” radio operations. See *id.* at 7438. In reducing the forfeiture amount in *Discussion Radio* from \$10,000 to \$5,000, the Commission particularly noted that the broadcast license renewal packet that would have facilitated timely renewal filing was misdirected to an incorrect address. *Id.* The Commission further limited its decision, stating that it would be “disinclined to propose reductions in future cases based on alleged errors in mailing license renewal materials.” *Id.* at n.20.

³⁰ See *BASF Corporation*, ¶ 11.

regard, we take into account the fact that Call Mobile's unlawful operation continued for more than two and a half years.³¹ Thus, based on all the factors and evidence, including the extended period of unauthorized operation, we conclude that a proposed aggregate forfeiture of \$15,000 is appropriate.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act³² and sections 0.111, 0.311, and 1.80 of the Rules,³³ Call Mobile **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for the willful and repeated violation of section 301 of the Act and section 1.903(a) of the Rules and the willful violation of section 1.949(a) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Call Mobile **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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, 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. Call Mobile must also send electronic notification to Katherine.Power@fcc.gov and Ricardo.Durham@fcc.gov on the date said payment is made.

16. 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.³⁴ 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 must also be emailed to Katherine Power at Katherine.Power@fcc.gov and Ricardo Durham at Ricardo.Durham@fcc.gov.

17. 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.

³¹ See 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section II. Adjustment Criteria for Section 503 Forfeitures* (establishing "repeated or continuous violation" as an upward adjustment factor).

³² 47 U.S.C. § 503(b).

³³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

³⁴ 47 C.F.R. §§ 1.80(f)(3), 1.16.

18. **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 Christopher C. Dunbar, President, Call Mobile, Inc., 3010 Duncan Machinery Drive, Suite 100, Lexington, Kentucky 40504.

FEDERAL COMMUNICATIONS COMMISSION

Ricardo M. Durham
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau