

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

In the Matter of	)	
	)	
South Bay Aviation, Inc.	)	File Number: EB-09-LA-0115
	)	NAL/Acct. No.: 201132900002
Torrance, California	)	FRN: 0019547736
	)	

**FORFEITURE ORDER**

**Adopted: March 29, 2012**

**Released: March 30, 2012**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order, we issue a monetary forfeiture in the amount of three hundred dollars (\$300) to South Bay Aviation, Inc. (South Bay), in Torrance, California, for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),<sup>1</sup> by operating an unlicensed transmitter; and violating Section 1.903(a) of the Commission's rules (Rules),<sup>2</sup> which requires stations in the Wireless Radio Services to operate in accordance with the provisions of the rule that are applicable to their particular service and only with a valid authorization granted by the Commission. The noted violations involved South Bay's operation on frequency 122.950 MHz without Commission authorization.

**II. BACKGROUND**

2. After receiving a complaint that a person or entity was operating on frequency 122.950 MHz at the Torrance Airport in Torrance, California, without a license, an agent from the Enforcement Bureau's Los Angeles Office (Los Angeles Office) monitored transmissions on frequency 122.950 MHz at the Torrance Airport on February 2, 2010. The Los Angeles agent conducted an inspection at South Bay's offices, located at the Torrance Airport, and confirmed that South Bay was operating on frequency 122.950 MHz. South Bay, however, when asked by the agent, was unable to produce an FCC authorization for its operation. The next day, South Bay's president and principal owner contacted the Los Angeles Office and stated that South Bay Aviation had a license, with call sign KTV5, but that the license had expired. A review of the Commission's records revealed that the KTV5 license had expired on August 3, 2000, and was canceled by the Commission on May 6, 2001. Moreover, the expired KTV5 license had authorized operation on frequency 122.950 MHz at a fixed location at the Long Beach Airport in Long Beach, California, not at South Bay Aviation's current location at the Torrance Airport in Torrance, California.

3. On March 23, 2010, the Los Angeles Office issued a letter of inquiry (*LOI*) to South Bay.<sup>3</sup> On April 5, 2010, the Los Angeles Office received a reply to the *LOI* from South Bay.<sup>4</sup> In its *LOI*

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 1.903(a).

<sup>3</sup> See Letter of Inquiry from Nader Haghighat, District Director, Los Angeles Office, Western Region, FCC Enforcement Bureau, to South Bay Aviation (Mar. 23, 2010) (on file in EB-09-LA-0115).

<sup>4</sup> See Letter from Richard W. Seals, President, South Bay Aviation, Inc., to Nader Haghighat, District Director, Los

*Response*, South Bay acknowledged that it did not have a license to operate on 122.950 MHz at the Torrance Airport location and that it was unaware that its expired license had to be renewed or had a “cancellation date.”<sup>5</sup> South Bay also indicated that it had operated on frequency 122.950 MHz subsequent to its relocation to its current location at the Torrance Airport in 2003, and that it did not operate on the frequency continuously.<sup>6</sup> South Bay further stated that upon becoming aware of the license expiration after communications with the Los Angeles Office, it ceased operation on 122.950 MHz and filed a new application to operate on the frequency at the Torrance Airport location.<sup>7</sup> A new license, call sign WQLY696, for operation on 122.950 MHz at the Torrance Airport location, was granted to South Bay on May 28, 2010.<sup>8</sup>

4. On January 31, 2011, the Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (*NAL*) in the amount of \$12,000 to South Bay for operating a radio transmitter in Torrance, California, without the requisite Commission authorization.<sup>9</sup> After requesting and receiving an extension of time, South Bay responded to the *NAL*.<sup>10</sup> In its *Response*, South Bay does not dispute the facts presented in the *NAL*, but asks that the proposed forfeiture be reduced based on South Bay’s inability to pay the forfeiture amount.<sup>11</sup>

### III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>12</sup> Section 1.80 of the Rules,<sup>13</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>14</sup> In examining South Bay’s response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.<sup>15</sup> We considered South Bay’s response to the *NAL* in light of these statutory factors and find that reduction of the forfeiture is warranted.

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Angeles Office, Western Region, FCC Enforcement Bureau (filed Apr. 5, 2010) (on file in EB-09-LA-0115) (*LOI Response*).

<sup>5</sup> *Id.* at 1.

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

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

<sup>8</sup> See File Number 0004197709, granted May 28, 2010.

<sup>9</sup> *South Bay Aviation, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 972 (Enf. Bur. 2011) (*NAL*).

<sup>10</sup> See Response of South Bay (filed June 6, 2011) (*Response*); Supplemental Response of South Bay (filed Jan. 9, 2012) (*First Supplemental Response*); Supplemental Response of South Bay (filed Jan. 31, 2012) (*Second Supplemental Response*); and Supplemental Response of South Bay (filed Feb. 14, 2012) (*Third Supplemental Response*) (on file in EB-09-LA-0115).

<sup>11</sup> *Id.*

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. § 1.80.

<sup>14</sup> *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), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

6. Section 301 of the Act states 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.”<sup>16</sup> Section 1.903(a) of the Rules states that “[s]tatations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission . . . .”<sup>17</sup> On February 2, 2010, a Los Angeles agent determined that South Bay was operating on frequency 122.950 MHz without Commission authorization. South Bay admitted to the Los Angeles Office that it did not have an FCC authorization to operate on frequency 122.950 MHz in Torrance, California. South Bay immediately stopped its operation and applied for, and received, an FCC authorization to operate on frequency 122.950 MHz.<sup>18</sup>

7. Although South Bay does not dispute the factual findings in the *NAL*, it asks for a reduction of the proposed forfeiture of \$12,000, stating that it is unable to pay the proposed forfeiture. To support its claim, South Bay has supplied its tax returns from the last three years. As South Bay is an “S” corporation, it has also supplied the tax returns and other financial records for its principal shareholder, who is also South Bay’s only full-time employee.<sup>19</sup> Generally, when analyzing a financial hardship claim, the Commission has looked to gross revenues as a reasonable and appropriate yardstick in determining whether a licensee is able to pay the assessed forfeiture.<sup>20</sup> In certain circumstances, however, the Commission has considered other factors to determine an entity’s ability to pay a proposed forfeiture.<sup>21</sup> This includes looking at the totality of the entity’s particular financial circumstances, including its accumulated debt, in evaluating its inability to pay claim, as well as the potential sources of income available to the entity.<sup>22</sup> In addition, we note that South Bay is a small entity and the Commission has stated that it “intends to continue its policy of being sensitive to concerns of small entities who may not have the ability to pay a particular forfeiture amount.”<sup>23</sup> Taking into account the statutory factors, the *Forfeiture Policy Statement*, and the totality of South Bay’s financial circumstances, we conclude that a reduction of the proposed forfeiture is appropriate. Accordingly, as a result of our review of South Bay’s *Response* and supplements, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we conclude that South Bay willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules, and we find that a forfeiture in the amount of \$300 is warranted.

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<sup>16</sup> 47 U.S.C. § 301.

<sup>17</sup> 47 C.F.R. § 1.903(a).

<sup>18</sup> *NAL*, 26 FCC Rcd at 973.

<sup>19</sup> See *Second Supplemental Response* at 1–2; *Third Supplemental Response* at 1–2.

<sup>20</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues).

<sup>21</sup> *A-O Broadcasting Corporation*, Forfeiture Order, 31 Comm. Reg (P&F) 411 (2003) (while a licensee's gross revenues is normally the primary factor used to determine the licensee's ability to pay, it is not the only factor).

<sup>22</sup> *A-O Broadcasting Corporation*, Memorandum Opinion and Order, 20 FCC Rcd 756 (2005) (finding that if such documentation is provided as part of inability to pay claims, the Commission may consider cash on hand or other liquid assets, as well as the financial situation of a corporation’s shareholder and owner). See also *A-O Broadcasting Corporation*, Order, 23 FCC Rcd 11296 (Enf. Bur. 2008) (cancelling a forfeiture for demonstrated inability to pay based on a showing of a lack of revenues along with no apparent access to or use of lines of credit, and no apparent liquid assets); *SM Radio, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 2429 (2008) (if a licensee argues an inability to pay, it must provide evidence that it cannot pay the forfeiture as assessed, despite all of the financial resources available to it).

<sup>23</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17107.

**IV. ORDERING CLAUSES**

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's Rules, South Bay Aviation, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three hundred dollars (\$300) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended, and Section 1.903(a) of the Commission's rules.<sup>24</sup>

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>25</sup> 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](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. South Bay Aviation, Inc., shall also send electronic notification on the date said payment is made to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to South Bay Aviation, Inc., 3481 Airport Drive, Suite 100, Torrance, California 90505, and its counsel, Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, Maryland 20814.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>24</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(a).

<sup>25</sup> 47 U.S.C. § 504(a).