

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

In the Matter of	)	File No.: EB-SED-13-00009045 <sup>1</sup>
	)	
Texas Soaring Association, Inc.	)	NAL/Acct. No.: 200932100061
Midlothian, Texas	)	FRN: 0004540456

### FORFEITURE ORDER

**Adopted: July 25, 2013**

**Released: July 25, 2013**

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 nine thousand dollars (\$9,000) against Texas Soaring Association, Inc. (TSA), former licensee of aeronautical and fixed aviation support station KSC8, Midlothian, Texas, for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission's rules (Rules),<sup>2</sup> and for willful violation of Section 1.949(a) of the Rules.<sup>3</sup> The noted violations involve TSA's operation of station KSC8 without Commission authority for more than five years and its failure to timely file a renewal application for continued authority to operate the station after the expiration of the station license.

#### II. BACKGROUND

2. On June 8, 2009, the Enforcement Bureau's Spectrum Enforcement Division (Division) issued a *Notice of Apparent Liability for Forfeiture*<sup>4</sup> to TSA, finding that TSA apparently operated station KSC8 without Commission authority from September 22, 2003, the date that the station license expired, until October 2, 2008, the date that TSA's application for a new station license was granted.<sup>5</sup> The

<sup>1</sup> Although this investigation was initiated and the *Notice of Apparent Liability for Forfeiture* was issued under File No. EB-08-SE-722, the investigation was subsequently assigned to File No. EB-SED-13-00009045.

<sup>2</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>3</sup> 47 C.F.R. § 1.949(a); *see also* *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*, Report and Order, 13 FCC Rcd 21027, 21071, para. 96 (1998) (*Universal Licensing System Report and Order*) (adopting *inter alia* Section 1.949 of the Rules); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485–86, para. 22 (1999) (*Universal Licensing System MO&O*) (collectively, *Universal Licensing System Orders*).

<sup>4</sup> *Tex. Soaring Ass'n, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 7638 (Enf. Bur. 2009) (*NAL*).

<sup>5</sup> *See id.* at 7639–40, paras. 4, 6. The license for station KSC8 was cancelled on November 23, 2003. *See* Universal Licensing System (ULS) archived license record for Texas Soaring Association Inc. under call sign KSC8. *See also* ULS File No. 0003596329 (granting a license to TSA under call sign WQJJ668).

Division also found that TSA apparently failed to file a timely application for renewal of the station license by the license expiration date.<sup>6</sup> Consistent with Enforcement Bureau precedent at the time, the Division proposed a forfeiture against TSA in the amount of \$9,000 for its apparent willful and repeated violation of Section 301 of the Act and Section 1.903(a) of the Rules, and for its willful violation of Section 1.949(a) of the Rules.<sup>7</sup>

3. TSA filed its response to the *NAL* on July 8, 2009.<sup>8</sup> In its *NAL* Response, TSA admits that it operated station KSC8 without Commission authority after the expiration of its station license and failed to timely file a license renewal application.<sup>9</sup> TSA argues, however, that the proposed forfeiture should be cancelled or reduced.<sup>10</sup> For the reasons set forth herein, we decline to cancel or reduce the proposed forfeiture.

### III. DISCUSSION

4. The Division assessed the proposed forfeiture amount in accordance with Section 503(b) of the Act,<sup>11</sup> Section 1.80 of the Rules,<sup>12</sup> and the Commission's *Forfeiture Policy Statement*.<sup>13</sup> In examining TSA's *NAL* Response, 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."<sup>14</sup> As discussed below, we are not persuaded by TSA's arguments for reduction or cancellation of the proposed forfeiture amount. We therefore conclude that TSA is liable for a forfeiture in the amount of \$9,000 for willfully<sup>15</sup> and repeatedly<sup>16</sup>

<sup>6</sup> See *NAL*, 24 FCC Rcd at 7639–40, para. 6.

<sup>7</sup> See *id.* at 7641, para. 11 (reducing the proposed base forfeiture specified in Section 1.80 of the Rules, 47 C.F.R. § 1.80, for unauthorized operations from \$10,000 to \$6,000 based on TSA's status as a former licensee, reasoning that a former licensee is in better stead than a "pirate" operator who lacks prior Commission authority to operate). We have since found that these reduced forfeiture amounts fail to adequately incentivize licensees to monitor their license expiration dates and to adopt appropriate procedures to ensure substantial compliance, and accordingly, have declined to reduce forfeiture amounts on this basis. See, e.g., *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17303, para. 10 (Enf. Bur. 2010) (*BASF*) (forfeiture paid); *Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74, 76–77, para. 11 (Enf. Bur. 2011) (*Call Mobile*) (response pending).

<sup>8</sup> See Written Statement by the Texas Soaring Association, Inc. Seeking Cancellation or Reduction of Proposed Forfeiture (filed July 8, 2009, in EB-SED-13-00009045) (*NAL* Response).

<sup>9</sup> See *id.* at 2.

<sup>10</sup> See *id.* at 2–5.

<sup>11</sup> 47 U.S.C. § 503(b).

<sup>12</sup> 47 C.F.R. § 1.80.

<sup>13</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, 17113 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>14</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>15</sup> Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. *Id.* § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context, see *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991) (*So. Cal.*), *recon. denied*, 7 FCC Rcd 3454 (1992).

violating Section 301 of the Act and Section 1.903(a) of the Rules, and for willfully violating Section 1.949(a) of the Rules.

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 authorization.<sup>17</sup> Additionally, under Section 1.949(a) of the Rules, licensees must file an application for renewal of any station license it intends to continue to operate “no later than the expiration date of the authorization for which renewal is sought and no sooner than 90 days prior to expiration.”<sup>18</sup> Absent a timely filed renewal application, wireless licenses automatically terminate on the license expiration date.<sup>19</sup>

6. In its NAL Response, TSA requests reduction or cancellation of the proposed forfeiture amount based on its assertion that it made “infrequent use” of the station, primarily for safety-related communications.<sup>20</sup> Under Section 301 of the Act and Section 1.903(a) of the Rules, however, TSA must obtain Commission authorization to operate its station, irrespective of how often, or for what purpose, the station is operated.<sup>21</sup> Moreover, there is no exception to this threshold requirement for public safety-related communications.<sup>22</sup> Licensure for safety-related operations is critical because of the enhanced need to ensure service reliability and protection from interference.<sup>23</sup> Indeed, TSA’s unauthorized operations

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<sup>16</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2); *see also So. Cal.*, 6 FCC Rcd at 4388, para. 5.

<sup>17</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a). In addition, under Section 87.18(a) of the Rules, 47 C.F.R. § 87.18(a), a station in the Aviation Service (with the exception of certain aircraft stations not at issue here) must be licensed by the Commission, and under Section 87.25(b) of the Rules, *id.* § 87.25(b), applicants for licenses in the Aviation Service are subject to the requirements and conditions governing licensure in the Wireless Radio Services as set forth in Section 1.901 through Section 1.981 of the Rules, *see id.* §§ 1.901–1.981.

<sup>18</sup> 47 C.F.R. § 1.949(a). Licensees who want to operate their stations after the expiration of their station licenses must affirmatively request continued operating authority from the Commission. In its *Universal Licensing System Orders*, the Commission mandates the filing of certain applications to obtain such authority. If a licensee intending continued operations fails to file a timely renewal application, the Commission nevertheless requires such licensee to seek operating authority. *See Universal Licensing System Report and Order*, 13 FCC Rcd at 21071, para. 98 (directing licensees that fail to file timely renewal applications to submit a new application or, if necessary, a request for special temporary operating authority); *Universal Licensing System MO&O*, 14 FCC Rcd at 11485–86, para. 22 (permitting, in the alternative, the acceptance and processing of late filed renewal applications under certain circumstances). In the *Universal Licensing System MO&O*, the Commission expressly held that it could “initiate enforcement action against the licensee for untimely filing and unauthorized operation between the expiration of the license and the late renewal filing, including, if appropriate, the imposition of fines or forfeitures for these rule violations.” *Id.*

<sup>19</sup> *See* 47 C.F.R. § 1.955(a)(1).

<sup>20</sup> *See* NAL Response at 2–3.

<sup>21</sup> *See* 47 U.S.C. § 301; 47 C.F.R. § 1.903(a); *see also* 47 C.F.R. § 87.18(a).

<sup>22</sup> Contrary to TSA’s argument, any public benefits resulting from TSA’s safety-related operations do not mitigate its forfeiture liability for unauthorized operations. *See cf., e.g., Radio Beaumont, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 904, 904, paras. 3–4 (1975) (a licensee’s public service to its community is not a mitigating factor).

<sup>23</sup> *See, e.g., Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Notice of Proposed Rulemaking, 15 FCC Rcd 24203, 24217, para. 35 (2000) (“At the heart of the Commission’s concerns and obligations relating to Wireless Radio Services licenses is the need to protect the public (continued . . . )

could potentially interfere with properly authorized aeronautical radio communications involving matters relating to aviation safety.<sup>24</sup> Accordingly, we decline to reduce or cancel the proposed forfeiture on this basis.<sup>25</sup>

7. TSA also argues that its actions were not “willful.”<sup>26</sup> In this regard, TSA asserts that its failure to timely file a renewal application was an “oversight” and that it did not make a “conscious decision” to operate the station without Commission authorization, explaining that TSA is staffed by non-professional volunteers who are not familiar with FCC procedures.<sup>27</sup> We disagree. In the context of a forfeiture action, the term “willful” means that the violator knew it was taking (or not taking) the action in question, irrespective of any intent to violate the law.<sup>28</sup> Thus, a willfulness determination does not require a finding that the rule violation was intentional.<sup>29</sup> Here, TSA—a Commission licensee—knew (or should have known) that it had an ongoing and affirmative duty to maintain operating authority for its station, including the duty to ensure timely renewal of the station’s license.<sup>30</sup> Even if administrative oversight, inadvertence, or a lack of familiarity with the Rules may have contributed to the violation, they do not preclude a finding of willfulness where an omission is the basis for liability,<sup>31</sup> nor do they mitigate

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and licensees providing service to the public from interference caused by other authorized or unauthorized users of spectrum.”).

<sup>24</sup> After the expiration and cancellation of TSA’s license, the Commission may have assigned TSA’s coordinates and frequency to a third party seeking to create its own aviation support station. Moreover, Section 87.187(y) of the Rules, 47 C.F.R. § 87.187(y), permits nearby aircraft to transmit brief keyed radio frequency (RF) signals in order to control airport lighting on frequencies reserved for aviation support stations when such frequencies are either assigned to a station at the airport and no harmful interference would be caused to voice communications or when unassigned to a station at the airport.

<sup>25</sup> We note that we have upwardly adjusted forfeiture amounts where public safety risks associated with unauthorized operations were substantial. *See, e.g., Utah Broadband*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 1419, 1424, para. 16 (Enf. Bur. 2011) (forfeiture paid) (upwardly adjusting the proposed base forfeiture amount based in part on the gravity of the public safety risks associated with the unauthorized operation of transceivers causing interference to the Federal Aviation Administration’s Terminal Doppler Weather Radar installation serving Salt Lake City International Airport).

<sup>26</sup> *See* NAL Response at 4.

<sup>27</sup> *See id.*

<sup>28</sup> *See, e.g., American Samoa Telecomm. Auth.*, Forfeiture Order, 27 FCC Rcd 13174, 13180, para. 8 (Enf. Bur. 2012) (forfeiture paid) (emphasizing that a violation is “willful” if the violator knew it was taking or failing to take the action in question, irrespective of any intent to violate the Rules); *Saga Radio Networks, LLC*, Forfeiture Order, 24 FCC Rcd 3852, 3855, para. 10 (Enf. Bur. 2009) (same), *recon. denied*, Memorandum Opinion and Order, 28 FCC Rcd 6875 (Enf. Bur. 2009); *Alacca Bible Conf., Inc.*, Forfeiture Order, 25 FCC Rcd 2584, 2585, para. 5 (Med. Bur. 2009) (same); *see also supra* note 15 (defining “willful” for the purposes of Section 312 and 503(b) of the Act); H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.) (“[W]illful” means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law.”).

<sup>29</sup> *See, e.g., So. Cal.*, 6 FCC Rcd at 4387–88, para. 5 (finding that, consistent with the congressional record accompanying the 1982 amendments to the Act, a “willful” violation need not be intentional).

<sup>30</sup> *See, e.g., Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 7433, 7437, para. 4 (2004) (*Discussion Radio*) (A licensee “is charged with knowledge of the full range of its obligations, including its duty to timely seek renewal of its license to maintain operating authority.”), *forfeiture ordered*, Memorandum Opinion and Order and Forfeiture Order, 24 FCC Rcd 2206 (Med. Bur. 2009). *See also* NAL Response at 4.

<sup>31</sup> *See, e.g., Emery Tel.*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (By issuing forfeitures for apparently inadvertent violations, the Commission “impel[s] . . . licensees to become familiar with the (continued . . . )

liability arising therefrom.<sup>32</sup> Finally, the Commission has consistently held that licensees are responsible for the acts and omissions of persons acting on their behalf and will not be excused from liability where the actions of such persons result in rule violations.<sup>33</sup> Accordingly, we find that TSA's violations were willful, and decline to reduce or cancel the proposed forfeiture based on TSA's claimed lack of familiarity with FCC requirements.

8. TSA also argues that its status as a nonprofit entity and the alleged negative impact that payment of the proposed forfeiture would have on TSA's station operations are mitigating factors that warrant favorable consideration.<sup>34</sup> However, TSA affirmatively states that it not asserting an inability to pay the proposed forfeiture.<sup>35</sup> The Commission has routinely rejected arguments for reduction of a forfeiture based solely on nonprofit status.<sup>36</sup> Accordingly, we decline to reduce or cancel the proposed forfeiture based on TSA's status as a nonprofit entity. Moreover, absent financial documentation to

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 terms of their licenses and the applicable rules, and to adopt procedures, including periodic review [of] operations, which will [e]nsure that stations will be operated in substantial compliance with their licenses and the Commission's rules.") (quoting *Crowell-Collier Broad. Corp.*, Memorandum Opinion and Order, 44 FCC 2444, 2449–50, para. 16 (1961)), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); *see also AT&T Wireless Svcs, Inc., Forfeiture Order*, 17 FCC Rcd 21866, 21873, para. 21 (2002) (imposing a forfeiture for a willful violation in the absence of evidence of compliance or of periodic inspections to learn of noncompliance); *Boulder Cmty Broad. Ass'n, Inc., Forfeiture Order*, 23 FCC Rcd 8308, 8310, para. 10 (Enf. Bur. 2008) (holding that where a licensee was aware or should have been aware of the power limits of its authorization and had data "within its control" demonstrating noncompliance with those limits, the violation was willful).

<sup>32</sup> *See, e.g., Lakewood Broad. Serv., Inc.*, Memorandum Opinion and Order, 37 FCC 2d 437, 438, para. 6 (1972) (denying a mitigation claim based on a licensee's assertion of unfamiliarity with station identification requirements, stating that licensees are expected "to know and conform their conduct to the requirements of our Rules"); *Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8920–21, para. 9 (Enf. Bur. 2012) (*Emigrant Storage*) (response pending) (denying a claim for mitigation based on attestation that the violation resulted from oversight and a change in personnel).

<sup>33</sup> *See, e.g., SBC Comm., Inc.*, Notice of Apparent Liability for Forfeiture and Order, 16 FCC Rcd 19091, 19119, para. 75 (2001) ("[R]egardless of mitigating factors, an employer is responsible for the statements or actions of its employees and 'those who control the corporation must be held accountable for the conduct of those who have been delegated the authority to act in its name.'") (quoting *Nw. Ind. Broad. Corp.*, Initial Decision, 65 FCC 2d 73, 84, para. 4 (ALJ 1976)), *consent decree ordered*, Order and Consent Decree, 17 FCC Rcd 10780 (2002).

<sup>34</sup> *See* NAL Response at 6. According to TSA, payment of the proposed forfeiture would impact its ability to carry out its operations. *See id.*

<sup>35</sup> *See id.*

<sup>36</sup> *See, e.g., Lebanon Educ. Broad. Found.*, Memorandum Opinion and Order, 21 FCC Rcd 1442, 1446, para. 12 (Enf. Bur. 2006) ("Where the Rule is violated, Section 1.80 provides that a monetary forfeiture may be imposed, and there is no exemption or reduction based on the noncommercial status of a station."); *Donald Donovan Jackson*, Forfeiture Order, 19 FCC Rcd 15327, 15329, para. 9 (Enf. Bur. 2004) ("[O]peration for purposes other than financial gain will not, on its own, warrant the cancellation or reduction of a forfeiture."); *see also Valley Pub. Television, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 22795, 22796, paras. 5–6 (1998) (rejecting a nonprofit licensee's claim that payment of a forfeiture would threaten its continued provision of service to the public where the financial data submitted by the licensee showed that it had the ability to pay the forfeiture).



support TSA's assertion that payment of the forfeiture would negatively impact station operations, we decline to reduce the proposed forfeiture on this basis.<sup>37</sup>

9. We also decline to reduce the forfeiture based on TSA's assertion that it took corrective action after being notified of the expiration of its station license,<sup>38</sup> and that it took "affirmative steps" after the issuance of the *NAL* to ensure future compliance with the Rules.<sup>39</sup> While TSA's compliance efforts are laudable, the Commission has repeatedly held that remedial measures implemented after the initiation of an investigation or the issuance of an enforcement action neither nullifies nor mitigates the violation.<sup>40</sup>

10. Finally, TSA asserts that it has a history of compliance with the Rules that warrants a reduction of the proposed forfeiture.<sup>41</sup> We disagree. When evaluating a petitioner's compliance history, we take into account the number of violations (including concurrent violations)<sup>42</sup> and their duration.<sup>43</sup> In this instance, TSA operated station KSC8 after the expiration of the station's license and without authorization for approximately five years.<sup>44</sup> Based on the extended duration of TSA's operation

<sup>37</sup> As stated in the *NAL*, the Commission will not consider 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." *NAL*, 23 FCC Rcd at 7642, para. 16; *see also, e.g., Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893, 17899–900, para. 19 (Enf. Bur. 2005) (forfeiture paid) (declining to reduce the forfeiture amount in the absence of adequate documentation supporting an inability to pay claim, despite petitioner's claims that payment of the forfeiture would result in "grave consequences to the company" and negatively impact employees).

<sup>38</sup> *See NAL Response at 5.* In its *NAL Response*, TSA asserts that it "took immediate steps" to remedy the violation. *See id.* Although TSA does not identify the specific steps it took, we assume that TSA is referring to its filing on October 1, 2008, of an application for a new station authorization.

<sup>39</sup> *See id.* at 6 (indicating that TSA posted certain notices to remind staff members of the obligation to file a timely renewal application for TSA's current station license).

<sup>40</sup> *See, e.g., Behringer USA, Inc.*, Forfeiture Order, 22 FCC Rcd 10451, 10459, para. 19 (2007) (forfeiture paid).

<sup>41</sup> *See NAL Response at 5.*

<sup>42</sup> *See, e.g., Paulino Bernal Evangelism*, Memorandum Opinion and Order, 21 FCC Rcd 9532, 9536, para. 12 (Enf. Bur. 2006) (in determining whether a licensee has a history of overall compliance, offenses need not be "prior" to be considered), *review granted in part, denied in part*, Order on Review, 23 FCC Rcd 15959 (2008); *see also Discussion Radio*, 19 FCC Rcd at 7438, para. 15 (holding that a licensee's continued operation of a station without authorization and the failure to timely seek Commission authority for such operations constitute separate violations warranting the assessment of separate forfeitures).

<sup>43</sup> *See, e.g., Emigrant Storage*, 27 FCC Rcd at 8920, n.26 ("The relative duration of a violation is a critical factor;" failure to take this factor into consideration would create "perverse incentives."). Recently, we have *upwardly adjusted* the recommended base forfeitures where unauthorized operations continued for extended periods of time. *See, e.g., BASF*, 25 FCC Rcd at 17303, para. 11 (five years of unauthorized operation); *Call Mobile*, 26 FCC Rcd at 77–78, para. 12 (two and a half years).

<sup>44</sup> *See NAL*, 24 FCC Rcd at 7641, para. 11. TSA's unlawful operation of station KSC8 continued for approximately five years (from September 22, 2003, when the license for station KSC8 expired, until October 2, 2008, when the new station license was granted). *See id.* at 7639, para. 4. While Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), generally bars the Commission from proposing a forfeiture for violations that occurred more than one year prior to the issuance of a Notice of Apparent Liability for Forfeiture, we may consider misconduct occurring outside that period (in this case, during the four-year period preceding TSA's last year of unauthorized operations) to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *Roadrunner Transp. Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671–72, para. 8 (2000) (internal quotation marks omitted).

without Commission authorization, we find that TSA does not have a history of compliance with FCC requirements and therefore decline to reduce the proposed forfeiture amount on this basis.

11. Having considered TSA's response to the *NAL* in light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, we find that TSA willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules<sup>45</sup> by operating station KSC8 without authorization, and willfully violated Section 1.949(a) of the Rules<sup>46</sup> by failing to file a timely license renewal application for the station. Accordingly, we find TSA liable for a forfeiture in the amount of \$9,000.<sup>47</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's rules,<sup>48</sup> Texas Soaring Association, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand dollars (\$9,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended and Section 1.903(a) of the Commission's rules<sup>49</sup> and for willful violation of Section 1.949(a) of the Commission's rules.<sup>50</sup>

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's rules within ten (10) calendar days after the release date of this Forfeiture Order.<sup>51</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>52</sup> Texas Soaring Association, Inc. shall send electronic notification of payment to Nissa Laughner at Nissa.Laughner@fcc.gov, Daudeline Meme at Daudeline.Meme@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

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<sup>45</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>46</sup> 47 C.F.R. § 1.949(a).

<sup>47</sup> On reflection, we believe that the forfeiture penalty proposed against TSA is unduly low in light of the nature and gravity of the violation, in particular the extended duration of TSA's unauthorized operation. If we were proposing a forfeiture for the first time here, we would be inclined to propose a significantly higher forfeiture amount. *See supra* note 43. As we have previously explained, the relative duration of a violation is a critical factor; for example, we generally would propose a substantially higher forfeiture amount for a violation lasting nearly a decade than for a violation lasting for two months. In doing so, we avoid creating perverse incentives and encourage licensees to monitor their license expiration dates and to timely seek renewal or otherwise take appropriate steps to quickly come into compliance with FCC rules. *See id*; *see also* 47 U.S.C. § 503(b)(2)(E); 47 C.F.R. § 1.80(b)(8) (listing circumstances and extent of a violation as factors in assessing a forfeiture). However, we cannot, consistent with our rules, increase the forfeiture amount at this advanced procedural stage and therefore affirm the proposed forfeiture. *See* 47 C.F.R. § 1.80(f)(1) (notices of apparent liability for forfeiture must specify, *inter alia*, amount of apparent forfeiture penalty).

<sup>48</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>49</sup> 47 U.S.C. § 301; 47 C.F.R. § 1.903(a).

<sup>50</sup> 47 C.F.R. § 1.949(a).

<sup>51</sup> *Id.* § 1.80.

<sup>52</sup> 47 U.S.C. § 504(a).

14. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>53</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. Any request for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>54</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

16. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail return receipt requested to Phillip C. Umphres, President, and Sherman Griffith, President-Elect, Texas Soaring Association, Inc., 9270 Singleton Road, P.O. Box 1069, Midlothian, TX 76065, and to Phillip C. Umphres, The Law Office of Phillip C. Umphres, Counsel for Texas Soaring Association, Inc., 2600 State Street, Dallas TX 75204.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

<sup>53</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>54</sup> See 47 C.F.R. § 1.1914.