

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

In the Matter of)
)
Robert Schmidt dba RSISP) File No.: EB-FIELDSCR-12-00001225
) NAL/Acct. No.: 2013326800002
Licensee of Station WQMN655) FRN: 0020106373
Ponce, Puerto Rico)
)

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 12, 2013

Released: February 12, 2013

By the Resident Agent, San Juan Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Robert Schmidt dba RSISP, licensee of Station WQMN655, in Ponce, Puerto Rico, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and Sections 1.903 and 90.1307 of the Commission’s rules (Rules), by failing to register two communications sites prior to putting them into operation.1 We conclude that Mr. Schmidt is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. RSISP holds a nationwide non-exclusive license to operate individual fixed and base stations for wireless operations in the 3650-3700 MHz band. However, RSISP’s license states that “[t]his license does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station on ULS To register individual fixed and base stations the licensee must file FCC Form 601 and Schedule M with the FCC.”2

3. On March 16, 2012, in response to a complaint of interference, agents from the Enforcement Bureau’s San Juan Office (San Juan Office) conducted monitoring in the 3650-3700 MHz band and identified two transmissions on or adjacent to 3650 MHz. Using direction-finding techniques, the agents located the sources of these transmissions to two radio communications sites at 18° 02 34.99 North 066 31 46.31 West in Juana Diaz, Puerto Rico and 17° 59 12.9 North 066 37 0.46 West in Ponce, Puerto Rico, respectively. The agents then telephoned Mr. Schmidt, who confirmed that RSISP was operating transmitters at these two sites. The agents consulted the Uniform Licensing System (ULS) and determined that neither of these two sites had been posted as registered stations with the Commission.3

1 47 U.S.C. § 301; 47 C.F.R. §§ 1.903, 90.1307.

2 See Universal Licensing System, License Call Sign WQMN655.

3 Id.

4. On March 19, 2012, the San Juan Office sent RSISP a *Warning* via email.⁴ The *Warning* informed RSISP that operations in the 3650-3700 MHz band without any registered fixed or base stations was not authorized by its license and that it must cease operations until its registrations were posted by the Commission. On March 19, 2012, Mr. Schmidt responded via email that he would “start to take these sites offline beginning from the Juana Diaz site Please give me some time to shut down because it is in a very remote place.”⁵

5. On March 21, 2012, agents from the San Juan Office determined that RSISP was still operating transmitters at the Ponce and Juana Diaz sites on 3660.9 MHz and 3666 MHz, respectively. Later that day, Mr. Schmidt admitted to agents over the telephone that the two sites were still in operation and stated that action would be taken promptly. On March 22, 2012, Mr. Schmidt informed an agent from the San Juan Office via email that all RSISP sites were out of service.⁶ Regarding the Juana Diaz site, Mr. Schmidt wrote it “is the only one that is disabled with program,”⁷ by which he meant that the site was disabled remotely via software.

6. On April 26, 2012, the Wireless Telecommunications Bureau accepted RSISP’s applications to register the Ponce and Juana Diaz sites for Call Sign WQMN655.⁸

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁹ 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.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the Commission has so interpreted the term in the Section 503(b) context.¹² The Commission

⁴ *RSISP*, Warning of Unlicensed Operations (Mar. 19, 2012) (on file in EB-FIELDSCR-12-00001225) (*Warning*).

⁵ Email from Robert Schmidt to Reuben Jusino, Resident Agent, San Juan Office (Mar. 19, 2012, 5:26 P.M.) (on file in EB-FIELDSCR-12-00001225).

⁶ Email from Robert Schmidt to Reuben Jusino, Resident Agent, San Juan Office (Mar. 22, 2012, 1:35 A.M.) (on file in EB-FIELDSCR-12-00001225).

⁷ *Id.*

⁸ See Application Numbers 0004712103 and 0004712285 for License Call Sign WQMN655.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹² See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Operation Inconsistent with Authorization

8. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio except under and in accordance with a license.¹⁵ Section 1.903 of the Rules states that a “[s]tation in the Wireless Radio Service 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 The holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization.”¹⁶ Section 90.1307 of the Rules states, “[t]he 3650-3700 MHz band is licensed on the basis of non-exclusive nationwide licenses. . . . A licensee cannot operate a fixed or base station before registering it under its license and licenses”¹⁷ The license for Station WQMN655 also clearly states that it “does not authorize any operation of a fixed or base station that is not posted by the FCC as a registered fixed or base station” in the ULS.¹⁸ Agents from the San Juan Office determined that RSISP operated radio transmitters in the 3650-3700 MHz band from sites in Juana Diaz and Ponce, Puerto Rico on March 16, and again on March 21, 2012. Mr. Schmidt also admitted to operating transmitters at these two sites during this time. The Juana Diaz and Ponce sites were not posted or registered in the ULS for Call Sign WQMN655 until April 26, 2012. Thus, based on the evidence before us, we find that Mr. Schmidt dba RSISP apparently willfully and repeatedly violated Section 301 of the Act and Sections 1.903 and 90.1307 of the Rules by operating transmitters in the 3650-3700 MHz band at two sites without Commission authorization.

B. Proposed Forfeiture Amount

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for construction or operation at an unauthorized location is \$4,000.¹⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, 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.²⁰ In doing so, we find that the violations here warrant a proposed forfeiture above the base amount. Commission records show that the San Juan Office previously issued a

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹⁵ 47 U.S.C. § 301.

¹⁶ 47 C.F.R. §§ 1.903(a), (b).

¹⁷ 47 C.F.R. § 90.1307.

¹⁸ See Universal Licensing System, License Call Sign WQMN655.

¹⁹ *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) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(E).

Warning to RSISP for operation of its transmitters at Juana Diaz and Ponce, Puerto Rico.²¹ The fact that RSISP continued to operate after being put on notice that its operations were not authorized by its license, demonstrates a deliberate disregard for the Commission's requirements. Thus, we find that an upward adjustment of the forfeiture in the amount of \$4,000 (\$2,000 for each site) is warranted.²² Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Schmidt dba RSISP is apparently liable for a total forfeiture in the amount of \$12,000, consisting of \$6,000 each for the Juana Diaz and Ponce locations.

IV. ORDERING CLAUSES

10. 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 of the Commission's rules, Robert Schmidt dba RSISP is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Section 301 of the Act and Sections 1.903 and 90.1307 of the Commission's rules.²³

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Robert Schmidt dba RSISP **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Robert Schmidt dba RSISP shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁴ 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.

²¹ See *Warning*, *supra* note 4.

²² See, e.g., *Robert Brown*, Memorandum Opinion and Order, 27 FCC Rcd 6975 (Enf. Bur. 2012) (upholding upward adjustment of forfeiture by 50 percent because violator received one prior warning); *Lloyd Morris*, Memorandum Opinion and Order, 27 FCC Rcd 6979 (Enf. Bur. 2012) (upholding upward adjustment of forfeiture by 50 percent because violator received one prior warning).

²³ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903, 90.1307.

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

13. 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, D.C. 20554.²⁵ 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.

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 1.16 and 1.80(f)(3) of the Rules.²⁶ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, San Juan Office, US Federal Building Room 762, San Juan, PR 00918-1731, and include the NAL/Acct. No. referenced in the caption. Robert Schmidt dba RSISP also shall e-mail the written response to SCR-Response@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 (GAAP); 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.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Robert Schmidt dba RSISP at Number 928 Hostos Ave, Ponce, PR 00716.

FEDERAL COMMUNICATIONS COMMISSION

Reuben Jusino
Resident Agent
San Juan Office
South Central Region
Enforcement Bureau

²⁵ See 47 C.F.R. § 1.1914.

²⁶ 47 C.F.R. §§ 1.16, 1.80(f)(3).