

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

In the Matter of)	
)	File No: EB-11-SJ-0055
Argos Net, Inc.)	File No: EB-11-SJ-0062
)	NAL/Acct. No.: 201232680002
Caguas, PR)	FRN: 0021525951
)	

FORFEITURE ORDER

Adopted: February 12, 2013

Released: February 12, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Argos Net, Inc. (Argos), an operator of Unlicensed National Information Infrastructure (U-NII) transmission systems in Puerto Rico, for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 15.1(b) of the Commission's rules (Rules).² The violations involved Argos's operation of intentional radiators not in accordance with Part 15 of the Rules³ and without a license.

II. BACKGROUND

2. On March 23, 2012, the Enforcement Bureau's San Juan Office (San Juan Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*)⁴ to Argos for its unlicensed operations. Argos submitted a response to the *NAL* requesting cancellation or reduction of the proposed \$25,000 forfeiture, because (1) of "Argos' lack of any history of prior offenses and its continued cooperation with the Commission's field agent in identifying and correcting the situation,"⁵ (2) "Argos' non-complying operation of the device [on December 2, 2011] was due to an isolated mistake and was promptly corrected once Argos was notified,"⁶ and (3) "Argos is a small wireless internet service provider operating in a highly competitive and saturated market" and is unable to pay the forfeiture.⁷

¹ 47 U.S.C. § 301; *see also* 47 C.F.R. § 15.407.

² 47 C.F.R. § 15.1(b).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ *Argos Net, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2786 (Enf. Bur. 2012) (*NAL*). A comprehensive recitation of the facts and history of this case can be found in the *NAL* and is incorporated herein by reference.

⁵ Letter from Edwin Quinones and Alejandro J. Figueroa Ramirez, Attorneys for Argos Net, Inc., to San Juan Office, South Central Region, Enforcement Bureau, at 2 (Apr. 23, 2012) (on file in EB-11-SJ-0055 and EB-11-SJ-0062) (*NAL Response*).

⁶ *Id.* at 3.

⁷ *Id.* at 4.

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the *Forfeiture Policy Statement*.¹⁰ In examining Argos's response, Section 503(b)(2)(E) 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.¹¹ As discussed below, we have considered Argos's response in light of these statutory factors, and find that a reduction of the forfeiture based on its history of compliance is justified.

4. We find that the evidence supports the Bureau's undisputed findings that, on November 18, and December 8 and 21, 2011, Argos operated its U-NII devices on frequencies for which those devices were not certified, thereby rendering such operations unlicensed. Argos asserts that on November 29, 2011, it met with agents from the San Juan Office and "made all technical and programming modifications necessary in order to cease any unintentional interference with the [Terminal Doppler Weather Radar] TDWR."¹² Similarly, Argos states that on December 23, 2011 it notified the agent that the "device had been operating in the 5620 frequency due to a programming error by Argos technician ... [and] that the mistake had been promptly corrected."¹³ Argos's corrective action taken after notification or inspection by the Commission does not mitigate the violation, because such action is expected.¹⁴ Moreover, the Commission has long held that a violator can be held liable for violations resulting from mistakes.¹⁵ Thus, based on the evidence before us, we find that Argos willfully and repeatedly violated Section 301 of the Act and Section 15.1(b) of the Rules by operating unlicensed radio transmitters on November 18, and December 8 and 21, 2011 from two different sites in Puerto Rico.

5. With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹⁶ Based on the financial documents provided by Argos, we find no basis to reduce the proposed forfeiture based on inability to pay.

6. We do, however, agree with Argos regarding its history of compliance with the Commission's rules.¹⁷ We have reviewed our records and found no violations prior to those at issue here today. Thus, we conclude that a reduction in forfeiture in the amount of \$5,000 is warranted.

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *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*).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *NAL Response* at 3.

¹³ *Id.*

¹⁴ *See, e.g., International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010).

¹⁵ *See, e.g., Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675 (2010).

¹⁶ *See PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹⁷ *See* 47 C.F.R. § 1.80 (b)(4) note (stating that history of overall compliance is a downward adjustment criteria for Section 503 forfeitures).

IV. ORDERING CLAUSES

7. 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, Argos Net, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 301 of the Communications Act and Section 15.1(b) of the Commission's rules.¹⁸

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁹ 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 Act.²⁰ Argos Net, Inc. shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. 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.²¹ 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.

9. 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. 20554.²² 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.

¹⁸ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 15.1(b).

¹⁹ 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 504(a).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²² See 47 C.F.R. § 1.1914.

10. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Argos Net, Inc. at Oficina #212, Calle Acosta #32, Caguas, PR, 00725 and to its counsel, Edwin Quinones and Alejandro J. Figueroa Ramirez, Quinones & Arbona, P.O. Box 19417, San Juan, PR 00910.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau