

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

In the Matter of)	
)	
AERCO Broadcasting Corporation)	File No.: EB-FIELDSCR-12-00000602
)	NAL/Acct. No.: 201232680005
Licensee of Station WSJU-TV,)	FRN No.: 0003732435
San Juan, PR 00927)	Facility ID No.: 4077
)	

FORFEITURE ORDER

Adopted: November 18, 2013

Released: November 18, 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 four thousand dollars (\$4,000) to AERCO Broadcasting Corporation (AERCO), licensee of Station WSJU-TV in San Juan, Puerto Rico (Station), for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act), and Section 1.903(a) of the Commission's rules (Rules).¹ The noted violations involved AERCO's operation of a studio-to-transmitter link (STL) on an unauthorized frequency.

II. BACKGROUND

2. On July 30, 2012, the Enforcement Bureau's San Juan Office (San Juan Office) issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) for ten thousand dollars (\$10,000) to AERCO for operating its STL on the frequency 2067.5 MHz without a license.² In response to the *NAL*, AERCO clarifies that its employees incorrectly reported to FCC agents that it did not have a license to operate an STL.³ AERCO asks that we consider canceling the forfeiture because it had (and still has) a valid microwave STL license (i.e., WLJ345) and that, as of August 3, 2012, it has changed the frequency for its STL from 2067.5 MHz to 6912.5 MHz, a frequency that is within the frequency range authorized by its license.⁴ In the alternative, AERCO requests that we consider reducing the forfeiture based on its history of compliance with the Rules and its inability to pay.⁵

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

² See *AERCO Broadcasting Corporation*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 8873 (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.

³ Letter from John A. Borsari, Attorney for AERCO Broadcasting Corporation, to San Juan Office, Enforcement Bureau at 2 (Aug. 29, 2012) (on file in EB-FIELDSCR-12-00000602) (*NAL Response*).

⁴ *Id.* See also Universal Licensing System for Call Sign WLJ345.

⁵ *NAL Response* at 3–5.

3. Given the clarifications in AERCO's filing, the San Juan Office, on December 31, 2012, requested additional information from AERCO about the operations of its STL.⁶ In response, AERCO states that it operated the STL on 2067.5 MHz for approximately nine months prior to the agent's inspection on May 17, 2012.⁷ AERCO explains that it chose to do so because the station, at that time, could not afford to replace defective equipment, and that the available equipment was otherwise capable of operating on 2067.5 MHz.⁸ Finally, AERCO confirms that it has since purchased new equipment capable of operating on 6912.5 MHz on July 12, 2012; that it installed the equipment two days after delivery; and that it is now in full compliance with the Rules.⁹

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,¹⁰ Section 1.80 of the Rules,¹¹ and the *Forfeiture Policy Statement*.¹² In examining AERCO'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.¹³

5. Because AERCO acknowledges that it operated its STL on an unauthorized frequency for approximately nine months, in violation of Section 301 of the Act and Section 1.903 of the Rules, we deny its request for cancellation of the forfeiture; however, we find that a reduction of the forfeiture is warranted based on the clarification provided concerning its STL license. Section 301 of the Act states that that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license issued by the Commission.¹⁴ Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.¹⁵ Section 1.903(b) further provides that the "holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization."¹⁶ Thus, although AERCO may not have been engaged in unlicensed operation of an STL, as originally determined, AERCO nevertheless willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating its STL link on an unauthorized frequency.¹⁷ However, because AERCO's operations were unauthorized, as opposed to unlicensed, we reduce the forfeiture from

⁶ Letter from William Berry, Resident Agent, San Juan Office, Enforcement Bureau, to AERCO Broadcasting Corporation (Dec. 31, 2012) (on file in EB-FIELDSCR-12-00000602).

⁷ Letter from John A. Borsari, Attorney for AERCO Broadcasting Corporation, to San Juan Office, Enforcement Bureau at 1 (Feb. 8, 2013) (on file in EB-FIELDSCR-12-00000602).

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. § 1.80.

¹² *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*).

¹³ 47 U.S.C. § 503(b)(2)(E).

¹⁴ 47 U.S.C. § 301.

¹⁵ 47 C.F.R. § 1.903(a).

¹⁶ 47 C.F.R. § 1.903(b).

¹⁷ *See, e.g., Bryn Mawr Hospital*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 11002 (Enf. Bur. 2012) (finding licensee in violation of Section 301 of the Act and Section 1.903 of the Rules for operating licensed transmitters on two unauthorized frequencies) (forfeiture paid in full).

\$10,000 to \$4,000, the base forfeiture amount for operating a microwave STL on an unauthorized frequency.¹⁸

6. We deny AERCO's request for a forfeiture reduction based on history of compliance and inability to pay. With respect to its history of compliance claim, we find that, contrary to AERCO's assertion, our records show that AERCO does not have a history of compliance with the Rules. Specifically, on February 21, 2006, the Commission issued a notice of apparent liability for forfeiture against AERCO for apparently violating indecency rules.¹⁹ With respect to AERCO'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.²⁰ In this regard, based on the financial documents provided by AERCO, we conclude that its gross revenues are sufficient to support the \$4,000 forfeiture.²¹ In its response to the *NAL*, AERCO also asks that we consider its losses.²² Although the Commission has in a few limited cases looked to other factors, including profits and losses, to determine ability to pay, none of the circumstances extant in those cases (which reflect licensees in several financial distress) exist here.²³ We find that the supporting information and documents that AERCO submitted do not reflect a severely distressed company; nor do they reflect a company incapable of paying a \$4,000 forfeiture.

¹⁸ The base forfeiture amount for unlicensed operation is \$10,000 (*see* 47 C.F.R. § 1.80), which is the forfeiture amount originally proposed in the *NAL*, given the record at that time. *See NAL, supra* note 2. To the extent that AERCO is also arguing that no forfeiture should be imposed because it is now operating an STL on an authorized frequency, such request is denied. In this regard, the Commission has consistently held that corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior violations. *See Cumulus Licensing Corp.*, Forfeiture Order, 19 FCC Rcd 24825, 24818, para. 15 (Enf. Bur. 2004). *See also AT&T Wireless Services, Inc.* Forfeiture Order, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994) (corrective action taken to comply with the Rules is expected, and does not mitigate any prior forfeitures or violations).

¹⁹ *See Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2002*, Notice of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2678–84, paras. 52–71 (2006). Although the statute of limitations for pursuing forfeiture action in this case has expired, the Commission can still rely on the facts underlying the notice of apparent liability, which have not been vacated. *See Tidewater Communications LLC*, Memorandum Opinion and Order, 21 FCC Rcd 14589, 14591, para. 8 (Enf. Bur. 2006) (finding that because a Notice of Violation against the licensee was never cancelled, there remained a history of non-compliance with the Rules). Furthermore, even if AERCO could demonstrate a history of compliance with the Rules, we find that the forfeiture amount remains appropriate, given the facts and circumstances of this case.

²⁰ *See 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).

²¹ The \$4,000 forfeiture falls within the percentage range that the Commission has previously found acceptable.

²² *See NAL Response* at 3–4.

²³ *See id.* at 5 (citing *First Greenville Corporation*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC Rcd 7399 (1996) (*First Greenville*); *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995) (*Rish*)). Unlike *First Greenville*, AERCO has not indicated that its owners have personally funded its losses, loaned it significant funds, and received no income from it. *Cf. First Greenville*, 11 FCC Rcd at 7403 (considering that the station's losses exceeded its income and that the sole shareholder funded those losses and received no income from the station when reducing proposed forfeiture). Moreover, unlike the affected small community in *Rish*, AERCO services San Juan, a city with a population of 381,931 (based on 2010 Census). *See* <http://2010.census.gov/2010census/popmap/ipmtext.php?fl=72> (last visited Nov. 7, 2012). *Cf. Rish*, 10 FCC Rcd at 2862 (considering the station's unprofitable history and the fact that it was a directional daytime-only AM station serving a small community of license with a population of 425 when reducing proposed forfeiture).

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, AERCO Broadcasting Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Sections 301 of the Act and Section 1.903(a) of the Rules.²⁴

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.²⁵ 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.²⁶ AERCO Broadcasting Corporation 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.²⁷ 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 making full payment over time 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. 20554.²⁸ 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.

²⁴ 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).

²⁵ 47 C.F.R. § 1.80.

²⁶ 47 U.S.C. § 504(a).

²⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ 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 AERCO Broadcasting Corporation at 1508 Calle Bori, Urb. Antonsanti, San Juan, PR 00927; and to its attorney, John A. Borsari, Borsari & Assoc., PLC, P.O. Box 100009, Arlington, VA 22210.

FEDERAL COMMUNICATIONS COMMISSION

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