

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

In the Matter of)	
)	
Hilltop Tower Leasing, Inc.)	File Number: EB-10-PA-0014
Licensee of Station WPSQ972)	NAL/Acct. No.: 201132400003
Everett, Pennsylvania)	FRN: 0016-89-6722
)	

FORFEITURE ORDER

Adopted: November 25, 2013

Released: November 26, 2013

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of three thousand two hundred dollars (\$3,200) to Hilltop Tower Leasing, Inc. (Hilltop), licensee of Private Land Mobile Station WPSQ972, in Everett, Pennsylvania, for willfully and repeatedly violating Section 1.903(a) of the Commission's rules (Rules).¹ The noted violation involved Hilltop's operation of Station WPSQ972 from an unauthorized location.

II. BACKGROUND

2. The Enforcement Bureau's Philadelphia Office issued a Notice of Apparent Liability for Forfeiture (NAL)² to Hilltop for operation of Station WPSQ972 (Station) at an unauthorized location. Specifically, on January 19 and 20, 2010, agents found that emissions on the frequencies 452.2375 MHz and 461.4125 MHz were emanating from radio transmitting equipment located at Kinton Knob Mountain in Bedford, Pennsylvania, approximately eight miles from the location at which Hilltop was authorized to operate on those frequencies under the license for Station WPSQ972.

3. Hilltop filed a response to the NAL requesting a cancellation or reduction of the forfeiture amount.³ In its *NAL Response*, Hilltop does not dispute the findings in the NAL concerning the emissions emanating on 452.2375 MHz and 461.4125 MHz from radio transmitting equipment located at Kinton Knob Mountain, but claims that the violation was not willful because any emissions from the transmitting equipment were inadvertent.⁴ In this regard, Hilltop explains that some of the transmitting equipment for Station WPSQ972 was moved to Kinton Knob as a backup for Bedford County 911's dispatch system and that Hilltop, as Bedford County 911's service provider, intended for the transmitting equipment to remain

¹ 47 C.F.R. § 1.903(a).

² *Hilltop Tower Leasing, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 341 (Enf. Bur. 2011) (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 Jeff MacAlarney, President, Hilltop Tower Leasing, Inc., to Philadelphia Office, Northeast Region, Enforcement Bureau (February 18, 2011) (on file in EB-10-PA-0014) (NAL Response).

⁴ *Id.*

idle unless needed by Bedford County 911.⁵ Hilltop also asserts that a cancellation or reduction of the forfeiture is warranted because it immediately turned off the transmitter once notified of the emissions by FCC agents.⁶

III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁷ Section 1.80 of the Rules,⁸ and the *Forfeiture Policy Statement*.⁹ In examining Hilltop'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.¹⁰ As discussed below, we have considered Hilltop's response in light of these statutory factors, and find that Hilltop willfully and repeatedly violated Section 1.903(a) of the Rules, but that a reduction of the forfeiture is justified based on Hilltop's history of compliance with the Commission's rules.

5. We find that the evidence supports the *NAL*'s findings that Hilltop willfully and repeatedly operated Station WPSQ972 from an unauthorized location. Section 1.903(a) of the Rules states that "[s]tatements 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. . . ." ¹¹ Section 1.903(b) further states that "[t]he holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization." ¹² It is undisputed that, on January 19 and 20, 2010, emissions on the frequencies 452.2375 MHz and 461.4125 MHz were emanating from Hilltop's radio transmitting equipment located at Kinton Knob Mountain in Bedford, Pennsylvania, approximately eight miles from the location at which Hilltop was authorized to operate on those frequencies under the license for Station WPSQ972. Nevertheless, Hilltop claims that, because it believed the transmitting equipment atop Kinton Knob Mountain was idle, the violation was inadvertent and therefore not willful. We disagree. Hilltop conceded in its response to a Letter of Inquiry, dated March 3, 2010, that the equipment it had relocated to Kinton Knob was operating and periodically transmitting data bursts.¹³ It has advanced no reason, nor can we discern one, that would account for that operation other than its own acts. Section 312(f)(1) of the Act defines "willful" as the "conscious and

⁵ Hilltop reports that its plans initially were to request a Special Temporary Authorization to operate from Kinton Knob if necessary. *See NAL Response* at 2. Hilltop states, however, that after the agents' inspection, its sister company, ComPros, Inc., obtained a license to operate at Kinton Knob. *Id.*; *see also* license for Station WQLH893, granted January 26, 2010.

⁶ *NAL Response* at 2.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *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*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 C.F.R. §§ 1.903(a).

¹² 47 C.F.R. §§ 1.903(b).

¹³ *See* Letter from Jeff MacAlarney, President, Hilltop Tower Leasing, Inc., to Gene J. Stanbro, District Director, Philadelphia Office, Northeast Region, Enforcement Bureau, dated March 3, 2010.

deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁴ Moreover, the Commission has held that inadvertent mistakes do not excuse a rule violation nor mitigate a forfeiture liability.¹⁵ We therefore find that Hilltop willfully and repeatedly violated Section 1.903(a) of the Rules by operating Station WPSQ972 from an unauthorized location.

6. We also decline to cancel or reduce the proposed forfeiture based on the actions taken by Hilltop after being notified of the unauthorized emissions by FCC agents. As the Commission has long held, corrective action to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate prior violations or associated forfeiture liability.¹⁶ Accordingly, cancellation or reduction of the proposed forfeiture amount is not warranted on this basis.

7. We do, however, find that a reduction of the forfeiture in the amount of \$800 is warranted to reflect Hilltop’s history of compliance with the Commission’s rules.¹⁷ Therefore, pursuant to Section 503(b) of the Act,¹⁸ and in conjunction with the *Forfeiture Policy Statement*, we impose a forfeiture in the amount of \$3,200.

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, Hilltop Tower Leasing, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of three thousand two hundred dollars (\$3,200) for violation of Section 1.903(a) of the Commission’s rules.¹⁹

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 after the release date of this Forfeiture Order.²⁰ 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.²¹ Hilltop Tower Leasing, Inc. shall send electronic notification of payment to NER-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

¹⁴ 47 U.S.C. § 312(f)(1). Section 312(f)(1) of the Act also applies to violations for which forfeitures are assessed under Section 503(b) of the Act. 47 U.S.C. § 503(b).

¹⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991) (holding that ignorance of the law or inadvertent mistakes are not mitigating circumstances that can serve to justify a forfeiture reduction), *recons. denied*, 7 FCC Rcd 3454 (1992); see also *Princess K Fishing Corp.*, Forfeiture Order, 24 FCC Rcd 2606, 2608-09, para. 8 (Enf. Bur. 2009) (stating that a licensee need not have the *mens rea* to commit a violation in order for a violation to be “willful”), *recons. dismissed*, Memorandum Opinion and Order, 27 FCC Rcd 4707 (Enf. Bur. 2012).

¹⁶ See, e.g., *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013) (finding that post-notification remedial efforts do not warrant mitigation of a forfeiture), citing *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010).

¹⁷ See e.g. *Walgreen Co.*, 22 FCC Rcd 16045, 16049 at para. 11 (Enf. Bur. 2007) (reduced forfeiture amount based, in part, on Walgreen Co.’s history of compliance with the Commission’s rules) (forfeiture paid).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 1.903(a).

²⁰ 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 504(a).

FCC Form 159 (Remittance Advice) must be submitted.²² 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.

10. 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. 20554.²³ 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.

11. **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 Hilltop Tower Leasing, Inc. at 400 Highland Avenue, Altoona, Pennsylvania 16602.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director, Northeast Region
Enforcement Bureau

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.