

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

In the Matter of	)	File No.: EB-08-SE-543
	)	
Saga Radio Networks, LLC	)	NAL/Acct. No.: 200832100063
Satellite Earth Station, Call Sign E872070	)	
Grosse Pointe Farms, Michigan	)	FRN: 0009112400

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 15, 2013**

**Released: May 15, 2013**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (Order), we deny a Petition for Reconsideration filed by Saga Radio Networks, LLC (Saga),<sup>1</sup> licensee of satellite earth station E872070, Grosse Pointe Farms, Michigan. Saga seeks reconsideration of a *Forfeiture Order*<sup>2</sup> issued by the Spectrum Enforcement Division (Division) of the Enforcement Bureau (Bureau) in the amount of five thousand two hundred dollars (\$5,200) for the willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (Act), and Section 25.102(a) of the Commission's rules (Rules), and for the willful violation of Section 25.121(e) of the Rules.<sup>3</sup> The noted violations involve Saga's operation of earth station E872070 without Commission authority, and the failure to file a timely application for authority to continue operation of the earth station.

**II. BACKGROUND**

2. On August 15, 1997, Saga was granted a renewal of its license to operate a Ku-band fixed satellite earth station under call sign E872070. Under the terms of its license, Saga's authorization for the earth station expired on August 28, 2007.<sup>4</sup> Saga did not file a timely application to renew its earth station license. On May 28, 2008, Saga filed a request with the International Bureau for special temporary authority (STA) to operate earth station E872070 pending grant of an application for a new earth station license.<sup>5</sup> On June 13, 2008, Saga submitted its application for a new earth station license, and on July 29, 2008, the International Bureau granted Saga a new license for earth station E872070<sup>6</sup> and dismissed the STA request as moot.

<sup>1</sup> See Saga Radio Networks, LLC, Petition for Reconsideration (May 1, 2009) (on file in EB-08-SE-543) (Petition).

<sup>2</sup> See *Saga Radio Networks, LLC*, Forfeiture Order, 24 FCC Rcd 3852 (Enf. Bur. 2009) (*Forfeiture Order*).

<sup>3</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>4</sup> See File No. SES-RWL-19970806-01078.

<sup>5</sup> See File No. SES-STA-20080528-00682.

<sup>6</sup> See File No. SES-LIC-20080613-00772.

3. Because it appeared that Saga may have operated earth station E872070 without authority after the expiration of its license, the International Bureau referred this matter to the Enforcement Bureau for investigation and possible enforcement action. On June 11, 2008, the Division issued a letter of inquiry to Saga.<sup>7</sup>

4. In its July 11, 2008 response to the LOI, Saga stated that it first became aware that the license for earth station E872070 had expired on May 14, 2008 during a review of Saga's authorizations database.<sup>8</sup> Saga claimed that its Business Manager immediately notified Saga's Director of Engineering who, according to Saga, promptly contacted the appropriate parties to remedy the situation.<sup>9</sup> In addition, Saga acknowledged that it operated earth station E872070 without authority after the license's August 28, 2007 expiration date.<sup>10</sup>

5. On July 30, 2008, the Division released a *Notice of Apparent Liability for Forfeiture* against Saga, finding that Saga operated earth station E872070 without Commission authority and failed to file a timely renewal application for the station in apparent willful and repeated violation of Section 301 of the Act and Sections 25.102(a) and 25.121(e) of the Rules.<sup>11</sup> Consistent with Bureau precedent at that time, the Division reduced the base forfeiture for Saga's unauthorized operation of the earth station from \$10,000 to \$5,000, and reduced the base forfeiture for Saga's failure to file a timely renewal application from \$3,000 to \$1,500.<sup>12</sup> The Division further reduced the aggregate forfeiture from \$6,500 to \$5,200 based on Saga's voluntary disclosure of the violation and corrective measures taken prior to any Commission inquiry or initiation of enforcement action.<sup>13</sup>

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<sup>7</sup> See Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Gregory Urbiel, Saga Radio Networks, LLC (June 11, 2008) (on file in EB-08-SE-543) (LOI).

<sup>8</sup> See Letter from Gary S. Smithwick, Esq., Counsel for Saga Radio Networks, LLC, to Zachary Rothstein, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1–2 (July 11, 2008) (on file in EB-08-SE-543) (LOI Response).

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

<sup>10</sup> See *id.*

<sup>11</sup> See *Saga Radio Networks, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 11273 (Enf. Bur. 2008) (*NAL*). Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under and in accordance with a Commission granted authorization. See 47 U.S.C. § 301; 47 C.F.R. § 25.102(a). Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.” 47 C.F.R. § 25.121(e). Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period. See *id.* § 25.161.

<sup>12</sup> See *NAL*, 23 FCC Rcd at 11275, para. 10 (reasoning that a former licensee who operates a station with an expired license is in better stead than a “pirate” operator who lacks prior Commission authority to operate). However, as we have recently emphasized, reduced forfeitures imposed on licensees for unauthorized operations in past cases have not created sufficient incentives for licensees to monitor their license expiration dates and adopt appropriate procedures to ensure substantial compliance. See, e.g., *Emigrant Storage LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 8917, 8919–21, paras. 8–9 & 8920 n.26 (Enf. Bur. 2012) (applying the recommended base forfeitures, as set forth in Section 1.80(b) of the Rules, 47 C.F.R. § 1.80(b), of \$10,000 for the unauthorized operation of a station and \$3,000 for the failure to file required forms or information when a licensee operated its station without authorization and failed to file a timely renewal application for its station, and finding no basis for downward adjustment of these base forfeitures); *Call Mobile, Inc.*, Notice of Apparent Liability Forfeiture, 26 FCC Rcd 74, 76–77, paras. 9–11 (Enf. Bur. 2011) (same); *BASF Corp.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302–03, paras. 9–10 (Enf. Bur. 2010) (same).

<sup>13</sup> See *NAL*, 23 FCC Rcd at 11275-76, para. 11. In this regard, we note with some disfavor the limited nature of the disclosure in this case. See File No. SES-STA-20080528-00682, Attachment. The *Forfeiture Policy Statement* affords us discretion to adjust forfeitures downward in cases of voluntary disclosure. See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,

(continued....)

6. In its response to the *NAL*,<sup>14</sup> Saga sought cancellation or reduction of the proposed forfeiture amount, contending that its failure to file a timely renewal application was neither willful nor repeated,<sup>15</sup> and that even the reduced forfeiture proposed for that violation was excessive in light of prior Commission precedent.<sup>16</sup> In addition, Saga argued that imposing the proposed forfeiture for operation of its earth station without a license would be contrary to the public interest.<sup>17</sup>

7. On April 1, 2009, the Division released the *Forfeiture Order*, which generally affirmed the *NAL* and imposed the \$5,200 forfeiture against Saga for its willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules, and for its willful violation of Section 25.121(e) of the Rules.<sup>18</sup> The *Forfeiture Order* rejected Saga's assertions that its failure to file a timely renewal application was not willful,<sup>19</sup> that the proposed forfeiture for failure to file a timely renewal application is inconsistent with prior

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Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. § 1.80. The *Forfeiture Policy Statement* does not, however, explain what constitutes voluntary disclosure, nor does it establish a particular downward adjustment percentage. *Forfeiture Policy Statement*, 12 FCC Rcd at 17100, para. 26 (expressly declining to prescribe the amount of the voluntary disclosure adjustment and explaining instead that the adjustment must reflect “the unique facts of each case”). We take this opportunity to emphasize the public interest benefits of express, non-dilatory, and factually detailed noncompliance disclosures provided to the Enforcement Bureau and coupled with immediate corrective action. This type of voluntary disclosure can timely reveal violations that the Commission would otherwise be unlikely to discover, expedite resolution of the resulting enforcement proceeding, and yield tangible benefits to the disclosing party in terms of the forfeiture penalty applied. Of course, the forfeiture we adopt in any particular case will always entail our exercise of discretion based on the particular circumstances before us.

<sup>14</sup> See Letter from Gary S. Smithwick, Esq., Counsel for Saga Radio Networks, LLC, to Kathryn Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 27, 2008) (on file in EB-08-SE-543) (NAL Response).

<sup>15</sup> See *id.* at 3–4, 6–7. Saga argued that its conduct was not “willful” because it “did not know its license had expired and that it had failed to timely file its application for renewal.” *Id.* at 4. Saga also asserted that a showing of *scienter* is necessary to find that a violation is “willful.” See *id.* at 4–5 (citing *CBS Corp. v. FCC*, 535 F.3d 167 (3rd Cir. 2008), *cert. granted, vacated, and remanded*, 129 S. Ct. 2176 (2009)).

<sup>16</sup> See *id.* at 5–6 (asserting that the Media Bureau has routinely assessed forfeitures in the amount of \$250 for failures to file timely license renewal applications in violation of Section 73.3539 of the Rules).

<sup>17</sup> See *id.* at 7–10 (asserting that Saga's continued operation of the earth station was critical to Saga's business and to members of the public who listen to its stations).

<sup>18</sup> See *Forfeiture Order*, 24 FCC Rcd at 3855, para. 13.

<sup>19</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. 47 U.S.C. § 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), *recon. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*). See also, *Forfeiture Order*, 24 FCC Rcd at 3854–55, para. 10 (rejecting Saga's claim that the Commission should have to establish *scienter* as an element of willfulness). The Division noted that because Saga's failure to file the required license renewal application was willful, it was not necessary to address whether the violation also was repeated. See *id.* at 3855 n.24. In this regard, we note that 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 *Southern California*, 6 FCC Rcd at 4387–88, para. 5.

Commission precedent,<sup>20</sup> and that the proposed forfeiture for its unauthorized operation of the earth station should be cancelled on public interest grounds.<sup>21</sup>

8. On May 1, 2009, Saga filed the instant Petition seeking cancellation of the forfeiture. In its Petition, Saga repeats arguments previously raised: its failure to file a timely renewal application was not willful;<sup>22</sup> the forfeiture assessed for that violation is inconsistent with prior Commission precedent;<sup>23</sup> and the forfeiture imposed for its unauthorized operation of the earth station should be cancelled on public interest grounds.<sup>24</sup>

### III. DISCUSSION

9. The arguments raised by Saga in its Petition are merely reiterative of the arguments presented in its NAL Response that the Division fully considered and properly rejected in the *Forfeiture Order*.<sup>25</sup> We therefore uphold the Division's finding that Saga willfully and repeatedly violated Section 301 of the Act<sup>26</sup> and Section 25.102(a) of the Rules,<sup>27</sup> and willfully violated Section 25.121(e) of the Rules,<sup>28</sup> and decline to further reduce the forfeiture amount.<sup>29</sup> In this regard, we note that for the reasons described above the proposed forfeiture has already been significantly reduced, from \$13,000 to \$5,200—a 40 percent reduction of the base forfeiture amount.

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<sup>20</sup> See *Forfeiture Order*, 24 FCC Rcd at 3855, para. 11 (rejecting Saga's claim that the Media Bureau's assessed forfeiture amount for failure to file a timely renewal application of \$250 prior to license expiration is the appropriate amount for failure to timely file a renewal application nine months after license expiration).

<sup>21</sup> See *id.* at 3855, para. 12 (rejecting Saga's claim that the forfeiture should be cancelled on public interest grounds because the continued unlicensed operation was critical to both the public and its business).

<sup>22</sup> See Petition at 3–5.

<sup>23</sup> See *id.* at 5.

<sup>24</sup> See *id.* at 5–8.

<sup>25</sup> See *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, para. 27 (2011) (delegating to the relevant bureaus or offices the authority to dismiss or deny petitions for reconsideration of staff level decisions that are procedurally defective or that merely repeat arguments that have been previously considered and rejected). See also, e.g., *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (“A petition [for reconsideration] that simply reiterates arguments previously considered and rejected will be denied.”) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965)).

<sup>26</sup> 47 U.S.C. § 301.

<sup>27</sup> 47 C.F.R. § 25.102(a) (prohibiting the use or operation of earth stations without a Commission granted authorization).

<sup>28</sup> 47 C.F.R. § 25.121(e) (specifying required filing dates for license renewal applications). Saga failed to file a renewal application until nine months after the earth station license expired. As the Commission has noted, a licensee who intends to operate after the expiration of its station license is required to seek authority for such continued operations. See, e.g., *Union Oil Company of California, a Subsidiary of Chevron Corporation*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 13806, 13808, para. 6 (2012) (citing *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*, 13 FCC Rcd 21027, 21073, para. 98 (1998); Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485–86, para. 22 (1999)). In addition, earth station licensees may seek reinstatement of an expired earth station license, but Saga did not submit such a filing. See 47 C.F.R. § 25.163(a) (permitting reinstatement under certain circumstances if petition for reinstatement is filed within 30 days of license expiration).

<sup>29</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.106 of the Commission's rules,<sup>30</sup> the Petition for Reconsideration of the *Forfeiture Order* filed on May 1, 2009 by Saga Radio Networks, LLC is hereby **DENIED** and the *Forfeiture Order* **IS AFFIRMED**.

11. **IT IS FURTHER 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) of the Commission's rules,<sup>31</sup> Saga Radio Networks, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand two hundred dollars (\$5,200) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended, and Section 25.102(a) of the Commission's rules, and willful violation of Section 25.121(e) of the Commission's rules.<sup>32</sup>

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within ten (10) calendar days after the release date of this Memorandum Opinion and Order.<sup>33</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 Act.<sup>34</sup> Saga Radio Networks, LLC shall send electronic notification of payment to Ricardo Durham at Ricardo.Durham@fcc.gov, Kathy Harvey at Kathy.Harvey@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

13. 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>35</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 –

<sup>30</sup> 47 U.S.C. §§ 154(i), 405; 47 C.F.R. §§ 0.111, 0.311, 1.106.

<sup>31</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f).

<sup>32</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 25.102(a), 25.121(e).

<sup>33</sup> 47 C.F.R. § 1.80.

<sup>34</sup> 47 U.S.C. § 504(a).

<sup>35</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. 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.<sup>36</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).

15. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by First Class and Certified Mail Return Receipt Requested to Gary Smithwick, Esq., Counsel for Saga Radio Networks, LLC, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, DC 20016, and to Mr. Gregory Urbiel, Saga Radio Networks, LLC, 73 Kercheval Avenue, Grosse Pointe Farms, MI 48236.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>36</sup> See 47 C.F.R. § 1.1914.