

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

In the Matter of)	
)	
Access Media 3, Inc.)	File No.: EB-FIELDSCR-13-00008217
)	
West Palm Beach, Florida)	NAL/Acct. No.: 201432600001
)	
)	FRN: 0021818968

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 26, 2014

Released: March 26, 2014

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

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Access Media 3, Inc. (AM3), apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating a Cable Television Relay Service (CARS) Station in West Palm Beach, Florida, without the requisite Commission authorization. We conclude that AM3 is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. Cable operators utilize CARS stations to distribute programming to microwave hubs where it may be physically impossible or too expensive to run cable. In this capacity, CARS stations are either point-to-point or point-to-multipoint microwave systems.² CARS stations are not used to distribute programming directly to subscribers.³ The operation of a CARS station requires a license from the Commission pursuant to Section 301 of the Act and Section 78.13 of the Commission's rules (Rules).⁴ A CARS license is obtained through the filing of an application (Form 327) with the Commission.⁵ The licenses are issued for a period of five years and can be renewed at five year intervals thereafter.⁶

3. Apartment Media Works, LLC was issued a license to operate CARS Station WLY-833 at the Cresthaven Ashley Master Association (Cresthaven) complex in West Palm Beach, Florida. That license, however, expired on December 1, 2009.⁷ AM3 acquired the facilities of the expired CARS station for Cresthaven in December 2012.⁸ On December 6, 2012, the Media Bureau's Engineering Division

¹ 47 U.S.C. § 301.

² See Federal Communications Commission, *Cable Television Relay Service (CARS)*, available at <http://www.fcc.gov/encyclopedia/cable-television-relay-service-cars> (last visited Feb. 26, 2014).

³ See *id.*

⁴ 47 C.F.R. § 78.13.

⁵ 47 C.F.R. § 78.15.

⁶ 47 C.F.R. § 78.29.

⁷ See License WLY-833 (on file in EB-FIELDSCR-13-00008217).

⁸ See Letter from Patrick Cunningham, MDU Communications (USA) Inc., to Cresthaven Ashley Master

provided AM3 detailed instructions on how to request Special Temporary Authority (STA)⁹ and submit the Form 327 for a new CARS authorization.¹⁰

4. On April 23, 2013, agents from the Enforcement Bureau's Miami Office (Miami Office) determined that transmissions in the approximate frequency range 17.75 to 17.98 GHz were emanating from the expired WLY-833 location. Later that day, agents from the Miami Office, accompanied by the AM3 Field Operations Manager, inspected the expired CARS Station WLY-833. The Field Operations Manager confirmed AM3 was transmitting from the WLY-833 location, but could not produce any Commission authorization to operate a CARS station.

5. On August 27, 2013, agents from the Miami Office observed, and the AM3 Field Operations Manager confirmed, that expired Station WLY-833 was not transmitting or in use. The Cresthaven property manager stated that its cable service failed approximately 1 week prior to this date. Therefore, AM3 had operated the expired CARS Station WLY-833 without authorization from the Commission from at least April 23, 2013 until approximately August 19, 2013. An AM3 supervisor later confirmed that the CARS equipment had been repaired and the service had resumed between August 27 and November 2013.

6. Although it submitted an incomplete Form 327 on April 24, 2013,¹¹ as of March 25, 2014, the Commission has no record of a complete Form 327 or an STA being filed by AM3.

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.¹² 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.¹³ 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,¹⁴ and the Commission has so interpreted the term in the Section

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Association (Nov. 5, 2012) (on file in EB-FIELDSCR-13-00008217).

⁹ See 47 C.F.R. § 78.33.

¹⁰ See E-mail from Gloria Conway, Media Bureau, to Jeff Newton, Director of Network Operations, Access Media 3, Inc. (Dec. 6, 2012, 6:03 P.M.) (on file in EB-FIELDSCR-13-00008217) (December 6 Email). See also 47 C.F.R. § 78.15. Those instructions were reiterated in several additional emails. See, e.g., E-mails from Stephanie Dabkowski, Resident Agent, Miami Office, to Lynda Miller, Manager of Carrier Relations, Access Media 3, Inc. (Apr. 24, 2013, 11:01 A.M.; Sept. 9, 2013, 1:21 P.M.); E-mails from Gloria Conway, Media Bureau, to Lynda Miller, Access Media 3, Inc. (June 13, 2013, 2:52 P.M.; Sept. 9, 2013, 2:25 P.M.); E-mail from Stephanie Dabkowski, Resident Agent, Miami Office, to Lynda Miller, and Jeff Newton, Access Media 3, Inc. (Jan. 6, 2014, 8:37 A.M.) (all e-mails on file in EB-FIELDSCR-13-00008217).

¹¹ See E-mail from Lynda Miller, Access Media 3, Inc. to Stephanie Dabkowski, Resident Agent, Miami Office (Apr. 24, 2013, 10:55 A.M.) (on file in EB-FIELDSCR-13-00008217). AM3 e-mailed the incomplete Form 327 to the Miami Office. An agent responded that AM3 needed to follow the detailed filing instructions from the December 6 Email. See E-mail from Stephanie Dabkowski, Resident Agent, Miami Office, to Lynda Miller, Jeff Newton, and Phil Lynch, Access Media 3, Inc. (Apr. 24, 2013, 2:09 P.M.) (on file in EB-FIELDSCR-13-00008217).

¹² 47 U.S.C. § 503(b).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms (continued...)

503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁶ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁷

A. Unlicensed Operation of a CARS Station

8. The evidence in this case is sufficient to establish that AM3 violated Section 301 of the Act. 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 within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹⁸ The CARS service is subject to licensing and technical regulations set forth in Part 78 of the Rules.¹⁹ When AM3 acquired the facilities associated with expired CARS Station WLY-833, the license had already expired. After acquiring the facilities, AM3 was informed by the Media Bureau’s Engineering Division that it must apply for a CARS license and an STA to continue operations. Nevertheless, on April 23, 2013, agents from the Miami Office observed AM3 operating expired Station WLY-833 without Commission authorization. AM3 continued to operate expired Station WLY-833 without Commission authorization until approximately August 19, 2013, and resumed operations without Commission authorization sometime between August 27 and November 2013. As of March 25, 2014, AM3 has not yet submitted the required complete Form 327 or requested an STA. Based on the evidence before us, we find that AM3 apparently willfully and repeatedly violated Section 301 of the Act by operating a CARS station without the required Commission authorization.

B. Proposed Forfeiture

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section

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‘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”).

¹⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁶ 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).

¹⁷ 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, para. 9.

¹⁸ 47 U.S.C. § 301.

¹⁹ See 47 C.F.R. §§ 78.1 *et. seq.*

²⁰ *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.

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.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that AM3 is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Access Media 3, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.²²

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Access Media 3, Inc. **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. AM3 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.²³ 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.

13. 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

²¹ 47 U.S.C. § 503(b)(2)(E).

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

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ 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.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and include the NAL/Acct. No. referenced in the caption. Access Media 3, Inc. 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 principles (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 Certified Mail, Return Receipt Requested, and first class mail to Access Media 3, Inc. at 900 Commerce Drive, Suite 200, Oak Brook, IL 60523.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).