

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

In the Matter of	)	
	)	
Acumen Communications	)	File No.: EB-FIELDWR-13-00009105
	)	NAL/Acct. No.: 201432900004
Licensee of Station WQHT586,	)	FRN: 0016049017
Los Angeles, CA	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER**

**Adopted: April 8, 2014**

**Released: April 9, 2014**

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We propose a penalty of \$10,000 against Acumen Communications (Acumen) for apparently operating its land mobile stations on two unauthorized frequencies. Unauthorized operations undermine the Commission's radio licensing system and potentially cause interference to licensed communications, including public safety channels. Acumen acknowledged its unauthorized operation to FCC agents and, given Acumen's history as a repeat offender, this violation warrants stringent enforcement action.

2. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Acumen, licensee of Station WQHT586 in Los Angeles, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Section 1.903(a) of the Commission's rules (Rules),<sup>2</sup> by operating Station WQHT586 on a frequency pair not authorized by its license. In addition, we direct Acumen to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury confirming compliance with the Act, the Rules, and its license.

**II. BACKGROUND**

3. In response to a complaint of unauthorized operations on VHF frequency 152.405 MHz, agents from the Enforcement Bureau's Los Angeles Office (Los Angeles Office) monitored transmissions on frequency 152.405 MHz on May 7, 2013, that self-identified as Station WQHT586. Review of the FCC's licensing database revealed that frequency 152.405 MHz was not authorized for use by Station WQHT586. The Los Angeles Office agents utilized direction finding techniques on May 10, May 14, and June 5, 2013, to locate land mobile stations operating on frequencies 152.405 MHz and 157.665 MHz under call sign WQHT586 at a truck dispatch service center on Melrose Avenue in Los Angeles (Melrose Avenue Location) and communicating with a repeater station operating under call sign WQHT586 on Cyprean Drive in Hollywood (Cyprean Drive Location) on frequency 152.405 MHz. Inspections of the radio stations at the Melrose Avenue Location were conducted on May 10, 2013, and at the Cyprean Drive Location on May 21, 2013 and June 5, 2013. The agents' investigation found that the mobile and base station radios at the Melrose Avenue Location had been programmed by Acumen personnel to communicate with the Acumen repeater at the Cyprean Drive Location using the frequency pair 152.405

<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> 47 C.F.R. § 1.903(a).

MHz/157.665 MHz, even though Acumen's license for WQHT586 did not authorize use of either frequency.

4. On July 18, 2013, the Los Angeles Office issued Acumen a Notice of Violation (NOV) for violating Section 1.903(a) of the rules by failing to operate Station WQHT586 in accordance with its authorization when it operated without authorization on frequencies 152.405 MHz and 157.665 MHz.<sup>3</sup> In its NOV Response, Acumen acknowledged that "the frequency was used in error on this repeater station and a new application has been filed with the F.C.C, for use on this frequency for this repeater station."<sup>4</sup> On September 27, 2013, Acumen filed an application seeking to add frequencies 152.405 MHz and 157.665 MHz to the Station WQHT586 authorization.<sup>5</sup> The application remains pending.

### III. DISCUSSION

5. 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.<sup>6</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.<sup>7</sup> 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,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>10</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>11</sup>

---

<sup>3</sup> See *Acumen Communication*, Notice of Violation, V201332900033 (Jul. 18, 2013).

<sup>4</sup> See Response to Notice of Violation of Acumen Communication, at 1 (Aug. 13, 2013) (on file in EB-FIELDWR-13-00009105) (NOV Response).

<sup>5</sup> The application seeks to add frequency 152.405 MHz to the Cyprian Drive Location, and frequencies 152.405 MHz and 157.665 MHz for mobile units. See ULS File Number 0005962267, filed Sept. 27, 2013.

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms '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 . . . .").

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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.

**A. Operation on Unauthorized Frequency**

6. Section 301 of the Act prohibits the use or operation of any apparatus for the transmission of energy or communications or signals by radio, except under and in accordance with the Act and with a license granted under the provisions of the Act.<sup>12</sup> Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services, such as Acumen's station, 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.<sup>13</sup> On four separate days in May 2013, Los Angeles Office agents observed that Station WQHT586 was operating radio equipment that was transmitting on frequencies not authorized by its license, and on June 5, 2013, Acumen personnel admitted to agents that it had no authority to operate Station WQHT586 on the frequency pair 152.405 MHz and 157.665 MHz. Acumen also acknowledged operating on the unauthorized frequencies in its response to the NOV. Based on the evidence before us, we find that Acumen apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating Station WQHT586 on frequencies not authorized by its license.

**B. Proposed Forfeiture and Reporting Requirement**

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation on an unauthorized frequency is \$4,000.<sup>14</sup> Because Acumen was operating without authority on a frequency pair, we propose twice the base forfeiture, or \$8,000.<sup>15</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 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.<sup>16</sup> After consideration of these factors, we find that a \$2,000 upward adjustment in the base forfeiture amount is warranted because a prior investigation by the Los Angeles Office determined that Acumen was operating on an unauthorized frequency at another of its licensed stations.<sup>17</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Acumen is apparently liable for a total forfeiture in the amount of ten thousand dollars (\$10,000).

8. We further order Acumen to submit a written statement, pursuant to Section 1.16 of the Rules,<sup>18</sup> signed under penalty of perjury by an officer or director of Acumen, stating that it is operating

---

<sup>12</sup> 47 U.S.C. § 301.

<sup>13</sup> 47 C.F.R. § 1.903(a).

<sup>14</sup> *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.

<sup>15</sup> See *Bryn Mawr Hosp.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 11002 (Enf. Bur. 2012) (proposed an \$8,000 forfeiture for operation on a frequency pair not authorized by the subject's license).

<sup>16</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>17</sup> See *Acumen Communications*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16349 (Enf. Bur. 2013) (proposing a forfeiture of \$17,000 to Acumen for operating a station on a frequency not authorized on its license, and for failing to take reasonable precautions to avoid causing harmful interference to United States Coast Guard communications). Although no forfeiture has been paid in the 2013 proceeding, the "underlying facts of [the] prior violation . . . show[] a pattern of non-complaint behavior" by Acumen. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17103, para. 34 ("[U]sing the underlying facts of a prior violation that shows a pattern of non-compliant behavior against a licensee in a subsequent renewal, forfeiture, transfer, or other proceeding does not cause the prejudice that Congress sought to avoid in Section [47 U.S.C.] 504(c).").

<sup>18</sup> 47 C.F.R. § 1.16.

Station WQHT586 in compliance with Section 301 of the Act,<sup>19</sup> and with Section 1.903(a) of the Rules.<sup>20</sup> Acumen should also provide details of the specific actions it has taken to come into compliance. This statement must be provided to the Los Angeles Office at the address listed in paragraph 11, below, within thirty (30) calendar days of the release date of this NAL.

#### IV. ORDERING CLAUSES

9. 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, Acumen Communications is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act and Section 1.903(a) of the Rules.<sup>21</sup>

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>22</sup> within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Acumen Communications **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that Acumen Communications **SHALL SUBMIT** a written statement, as described in paragraph 8, above, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communication Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703. Acumen Communication shall also e-mail the written statement to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov).

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. Acumen shall send electronic notification of payment to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>23</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

<sup>19</sup> 47 U.S.C. § 301.

<sup>20</sup> 47 C.F.R. § 1.903(a).

<sup>21</sup> 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 1.903(a).

<sup>22</sup> 47 C.F.R. § 1.80.

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

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 Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>24</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.

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.<sup>25</sup> Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703, and include the NAL/Acct. No. referenced in the caption. Acumen Communications also shall e-mail the written response to WR-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 and Order shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Acumen Communications, at 10670 S. La Cienega Blvd., Suite C, Inglewood, CA 90304.

FEDERAL COMMUNICATIONS COMMISSION

Charles A. Cooper  
District Director  
Los Angeles Office  
Western Region  
Enforcement Bureau

---

<sup>24</sup> See 47 C.F.R. § 1.1914.

<sup>25</sup> 47 C.F.R. §§ 1.16, 1.80(f)(3).