

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Lakewood Transportation, LLC	)	File No.: EB-FIELDNER-13-00007073
	)	NAL/Acct. No.: 21432400001
	)	FRN: 0023117930

**FORFEITURE ORDER**

**Adopted: October 22, 2015**

**Released: October 22, 2015**

By the Regional Director, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$6,000 against Lakewood Transportation, LLC (Lakewood) for operating radio communications equipment on an unauthorized frequency.<sup>1</sup> Commission action in this area is essential because radio stations that operate on an unauthorized frequency create a danger of interference to licensed communications and undermine the Commission's authority over FM broadcast radio operation.<sup>2</sup>

2. Lakewood does not deny the violations, but requests cancellation or reduction of the penalty proposed against it based on (1) its purported good faith efforts to meet its regulatory obligation and (2) its inability to pay. However, Lakewood failed to correct the issue until after inspection of its communication equipment and notification of violation. Additionally, the financial documentation submitted by Lakewood does not support its inability to pay. We find no reason to cancel, withdraw, or reduce the proposed penalty and we therefore assess the \$6,000 forfeiture the Bureau previously proposed.

**II. BACKGROUND**

3. On March 1, 2013, in response to a complaint of unauthorized transmissions on 159.675 MHz in the Lakewood, New Jersey area, agents monitored transmissions on the frequency 159.675 and, using radio finding techniques, determined that the transmissions were emanating from the Lakewood Business Office. The agents inspected the radio transmitting equipment at the Lakewood Business Office in the presence of Lakewood's dispatcher and confirmed that Lakewood was operating its dispatch service, which included a base station and mobile radios, on the frequency 159.675 MHz.<sup>3</sup>

4. On November 12, 2013, the Bureau issued the Notice of Apparent Liability for Forfeiture (*NAL*) proposing a \$6,000 forfeiture against Lakewood for its apparent willful and repeated violations of Section 301 of the Communications Act of 1934 (Act) and Section 1.903(a)–(b) of the Commission's

<sup>1</sup> 47 U.S.C. § 301; C.F.R. § 1.903(a)–(b)

<sup>2</sup> It has come to the Commission's attention that a transfer of ownership may have occurred. A review of the Commission's records indicates that no application to assign Private Land Mobile Radio Station WQN564 was ever filed or granted. Thus, it appears that an unauthorized transfer of control has taken place. In no way does this Forfeiture Order relieve the Commission's ability to take action if an unauthorized transfer has occurred.

<sup>3</sup> The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Lakewood Transportation, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 15611, 15611-12, paras. 3–4 (Enf. Bur. 2013) (*NAL*).

rules by operating communications equipment on an unauthorized frequency.

5. On January 14, 2014, Lakewood filed a response to the *NAL*.<sup>4</sup> Lakewood makes a number of arguments as to why the *NAL* should be cancelled or reduced. Lakewood states that, after being informed of its violation, it took immediate action to operate radio communications on an authorized frequency. Furthermore, Lakewood states that financial hardships and recent business losses are grounds for cancellation of the forfeiture.

### III. DISCUSSION

6. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),<sup>5</sup> Section 1.80 of the Commission's rules (Rules),<sup>6</sup> and the Commission's *Forfeiture Policy Statement*.<sup>7</sup> When we assess forfeitures, Section 503(b)(2)(E) requires that we 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 such other matters as justice may require."<sup>8</sup> As discussed below, we have fully considered Lakewood's arguments in response to the *NAL*, but we find none of them persuasive. We therefore affirm the \$6,000 forfeiture proposed in the *NAL*.

#### A. Lakewood Operated on an Unauthorized Frequency

7. Lakewood does not contest the *NAL*'s conclusions that it operated on an unauthorized radio frequency. Nevertheless, Lakewood requests cancellation or reduction of the forfeiture because it claims it made good faith efforts to correct the violation. While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken prior to notification of the violation.<sup>9</sup> In this matter, Lakewood did not correct their violations prior to the notification. During the inspection on March 1, 2013, agents found that Lakewood operated its base station and mobile units on frequency 159.675 MHz.<sup>10</sup> In the *NAL* Response, received by the FCC on January 27, 2014, Lakewood admits that it did not know of the violation until notified by the FCC, and fixed the issue only after receiving that notification.<sup>11</sup> Additionally, Lakewood had been previously approached on April, 14, 2011, and had sufficient time to correct the violation but continued to remain

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<sup>4</sup> *Lakewood Transportation, LLC*, Response to Notice of Apparent Liability (rec. Jan. 27, 2014) (on file in EB-FIELDNER-13-00007073) (*NAL* Response).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</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, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>9</sup> See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122-23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

<sup>10</sup> *NAL*, 28 FCC Rcd at 15612-13, para. 6.

<sup>11</sup> *NAL* Response at 1.

non-compliant; therefore, we find no basis to reduce the forfeiture.<sup>12</sup>

**B. Lakewood Did Not Demonstrate an Inability to Pay Warranting Forfeiture Cancellation or Reduction**

8. We similarly find no basis to reduce the forfeiture based on Lakewood claim that it is unable to pay the forfeiture due to financial difficulties. With regard to an individual's or entity's ability to pay, the Commission has determined that, in general, gross income or revenues are the best indicator of an ability to pay a forfeiture<sup>13</sup>. While the Commission has in a few limited cases looked to other factors, including profits and losses, to determine the ability to pay, those cases involved licensees in severe financial distress.<sup>14</sup> Lakewood has failed to demonstrate that it is experiencing a level of financial distress that would qualify it for an exception to our gross revenues inability to pay analysis. Consequently, based on our review of the financial documents provided by Lakewood, we decline to cancel or reduce the forfeiture on inability to pay grounds.<sup>15</sup>

9. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$6,000 properly reflects the seriousness, duration, and scope of Lakewood's violations.

**IV. CONCLUSION**

10. Based on the record before us and in light of the applicable statutory factors, we conclude that Lakewood willfully and repeatedly violated Section 301 of the Communications Act and Section 1.903(a)–(b) of the Commission's Rules by operating radio communications equipment on an unauthorized frequency. We decline to cancel or reduce the \$6,000 forfeiture proposed in the NAL.

**V. ORDERING CLAUSES**

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,<sup>16</sup> and Section 1.80 of the Rules,<sup>17</sup> Lakewood **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for willfully violating Section 301 of the Communications Act and Section 1.903(a)–(b) of the Commission's Rules.<sup>18</sup>

12. 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 of this Forfeiture Order.<sup>19</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for

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<sup>12</sup> On April 14, 2011, Lakewood was approached by agents of the Enforcement Bureau's Philadelphia's Office after inspection of Lakewood's transmitting equipment. On April 18, 2011, the Philadelphia Office issued a Notice of Unlicensed Operation to Lakewood, after which, on May 19, 2011, Lakewood contacted the Philadelphia Office and subsequently received a license authorizing radio transmission on frequency 160.0575 MHz. Nonetheless, on March 1, 2013, agents determined that Lakewood continued to transmit on 159.675 MHz. *See NAL*, 28 FCC Rcd. at 15611, paras. 1-2.

<sup>13</sup> *See Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd at 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); see also Tommie Salter, Forfeiture Order, 30 FCC Rcd 1041 (Enf. Bur. 2015) (finding reduced forfeiture fell within the percentage range that the Commission previously found acceptable).

<sup>14</sup> *See e.g., First Greenville Corp.*, Memorandum Opinion and Order and Forfeiture Order, 11 FCC at Rcd 7399 (1996); *Benito Rish*, Memorandum Opinion and Order, 10 FCC Rcd 2861 (1995).

<sup>15</sup> *See* NAL Response.

<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. § 1.80.

<sup>18</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)–(b)

<sup>19</sup> *Id.*

enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>20</sup>

13. 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. Lakewood shall send electronic notification of payment to Laura Smith at [Laura.Smith@fcc.gov](mailto:Laura.Smith@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>21</sup> When completing the 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 that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the 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.

14. 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, SW, Room 1-A625, Washington, DC 20554.<sup>22</sup> Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 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 Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Lakewood Transportation, LLC, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt  
Regional Director  
Northeast Region  
Enforcement Bureau

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<sup>20</sup> 47 U.S.C. § 504(a).

<sup>21</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>22</sup> See 47 C.F.R. § 1.1914.