

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

In the Matter of)	
)	
M.J. Phillips Communications, Inc.)	File No.: EB-FIELDNER-13-00011961
)	NAL/Acct. No.: 201432400012
Licensee of Station WHB714)	FRN: 0007293087
West Seneca, New York)	Facility ID No.: 39517

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 \$6,400 against M.J. Phillips Communications, Inc. (Phillips) for operating its studio-transmitter link (STL) from an unauthorized location in West Seneca, New York. Unauthorized operations undermine the Commission's radio licensing system and potentially interfere with licensed communications. Phillips acknowledged that it operated the STL station from an unauthorized location and continued to operate the STL station in this manner even after being warned by the Commission twice in writing that such action violated the law.

2. Phillips requests that the penalty be cancelled or substantially reduced because it claims the alleged violation was performed inadvertently and the burden of the penalty would be difficult to pay because the station only receives modest revenues. We reject these arguments. Inadvertent mistakes do not serve as a basis to reduce a forfeiture. Additionally, the financial information submitted by Phillips does not support its inability to pay claim. After reviewing Phillips's response to the Notice of Apparent Liability and Order (*NAL*),¹ we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the \$6,400 forfeiture the Enforcement Bureau (Bureau) previously proposed.

II. BACKGROUND

3. On March 6 and March 7, 2013, agents from the Bureau's Philadelphia Office (Philadelphia Office) conducted an inspection of Station WHB714 in response to a complaint of unauthorized operation.² Using mobile direction finding techniques, agents were able to determine that Station WHB714 was operating from 976-B Union Road, West Seneca, New York (Union Road Site).³ However, according to its authorization, the licensed location for Station WHB714 is 1223 Main Street, Niagara Falls, New York (Main Street Site), which is 24.3 miles from the Union Road Site.⁴ Agents additionally discovered that Station WHB714 was operating on frequency 947.0 MHz, instead of its

¹ *M.J. Philips Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 29 FCC Rcd 10138 (Enf. Bur. 2014) (*NAL*).

² *NAL*, 29 FCC Rcd at 10138, para. 3. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

³ *Id.*

⁴ *See id.* at 10139 n.4, para. 2.

authorized frequency of 947.5 MHz.⁵ On March 25, 2013, the Philadelphia Office issued a Notice of Violation (First NOV) to Phillips for operating Station WHB714 at an unauthorized location and on an unauthorized frequency.⁶ Phillips responded to the First NOV and acknowledged that it was operating Station WHB714 from an unauthorized location and on an unauthorized frequency.⁷ Phillips stated that it had returned Station WHB714 to operate on its authorized frequency and was in the process of applying for authority to operate Station WHB714 from the Union Road Site.⁸

4. On October 24, 2013, agents from the Philadelphia Office again inspected Station WHB714 and found that it was still operating from the unauthorized Union Road Site.⁹ During the second inspection, Phillips was unable to provide the agents with any evidence that it had sought authorization from the Commission to operate Station WHB714 from the Union Road Site.¹⁰ On November 27, 2013, the Philadelphia Office issued a second Notice of Violation (Second NOV) to Phillips for operating Station WHB714 at an unauthorized location.¹¹ Phillips responded, acknowledging the violation and stating that its counsel failed to file the necessary application for authority to operate from the Union Road Site.¹²

5. On August 28, 2014, the Enforcement Bureau issued the *NAL*, proposing a \$6,400 forfeiture against Phillips for apparently willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act),¹³ and Section 1.903(a) of the Commission's rules (Rules)¹⁴ by operating Station WHB714 from a location other than its licensed location without prior Commission authorization.¹⁵

6. On October 17, 2014, Phillips a response to the *NAL* (*NAL Response*), requesting that the forfeiture be cancelled or reduced.¹⁶ In its *NAL Response*, Phillips admits that it operated Station WHB714 from an unauthorized location, but it contends that the unauthorized operation was inadvertent, which should serve as a mitigating factor towards cancelling or reducing the forfeiture.¹⁷ Phillips

⁵ *Id.* at 10139, para. 3.

⁶ *M.J. Phillips Commc'ns, Inc.*, Notice of Violation, V201332400021 (Enf. Bur. Mar. 25, 2013) (on file in EB-FIELDNER-13-00007256).

⁷ Letter from James R. Cooke, Counsel to M.J. Phillips Communications, Inc. to District Director, Philadelphia Office, Northeast Region, Enforcement Bureau (May 2, 2013) (on file in EB-FIELDNER-13-00007256); *NAL*, 29 FCC Rcd at 10139, para. 3.

⁸ Letter from James R. Cooke, Counsel to M.J. Phillips Communications, Inc. to District Director, Philadelphia Office, Northeast Region, Enforcement Bureau (May 2, 2013) (on file in EB-FIELDNER-13-00007256); *NAL*, 29 FCC Rcd at 10139, para. 3.

⁹ *See NAL*, 29 FCC Rcd at 10139, para. 4.

¹⁰ *NAL*, 29 FCC Rcd at 10139, para. 4.

¹¹ *M.J. Phillips Commc'ns, Inc.*, Notice of Violation, V201432400005 (Enf. Bur. Nov. 27, 2013) (on file in EB-FIELDNER-13-00011961).

¹² Letter from James R. Cooke, Counsel to M.J. Phillips Communications, Inc. to District Director, Philadelphia Office, Northeast Region, Enforcement Bureau (Jan. 3, 2014) (on file in EB-FIELDNER-13-00011961) (*Second NOV Response*).

¹³ 47 U.S.C. § 301.

¹⁴ 47 C.F.R. § 1.903(a).

¹⁵ *NAL*, 29 FCC Rcd at 10138, para. 2.

¹⁶ *M.J. Phillips Communications, Inc.*, Response to Notice of Apparent Liability for Forfeiture and Order, at 3 (October 20, 2014) (on file in EB-FIELDNER-13-00011961) (*NAL Response*).

¹⁷ *Id.* at 2.

additionally argues that it is unable to pay the proposed forfeiture amount because its “limited facilities and coverage in a very competitive market make it impossible for Phillips to generate the revenue needed to have a financially successful operation.”¹⁸

III. DISCUSSION

7. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹⁹ Section 1.80 of the Rules,²⁰ and the Commission’s *Forfeiture Policy Statement*.²¹ 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.”²² As discussed below, we have fully considered Phillips’ response to the *NAL*, but we find none of the arguments persuasive. We therefore affirm the \$6,400 forfeiture proposed in the *NAL*.

A. Phillips’ Violation Does Not Warrant Forfeiture Reduction or Cancellation

8. Phillips does not contest our finding that it willfully and repeatedly operated Station WHB714 from an unauthorized location in violation of its license and in violation of Section 301 of the Act and Section 1.903(a) of the Rules.²³ As defined by Section 312(f) (1) of the Act, “willful” is the “conscious and deliberate commission or omission of any act, irrespective of any intent to violate” the law.²⁴ “Repeated” means the commission or omission of such act more than once or for more than one day.²⁵

9. Rather, Phillips requests that the forfeiture be cancelled or substantially reduced because the violation was performed.²⁶ Although Phillips acknowledged that it was operating Station WHB714 at an unauthorized location, it continued to do so until the time of its response to the Second NOV and still has not submitted a statement, signed under penalty of perjury, stating that its STL station is now operated in compliance with the Commission’s rules and consistent with its license.²⁷

10. Phillips contends that because the violation occurred inadvertently, the penalty should be cancelled or substantially reduced.²⁸ We have repeatedly held that “[i]nadvertent mistakes are not

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80.

²¹ *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).

²² 47 U.S.C. § 503(b)(2)(E).

²³ *NAL* Response at 2.

²⁴ 47 U.S.C. § 312(f)(1).

²⁵ 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.

²⁶ *NAL* Response at 2-3.

²⁷ Second NOV Response; *NAL*, 29 FCC Rcd at 101388

²⁸ *NAL* Response at 2-3.

mitigating circumstances that can serve to justify a forfeiture reduction.²⁹ TPhillips admits that it failed to comply after being warned by the Commission in writing that it was operating Station WHB714 in violation of the law over the course of the March 25, 2013 through November 27, 2013.³⁰ This extensive period of time should have afforded Phillips enough time to come within compliance, but no record exists of any showing that Phillips ever came into compliance with the Act or the Rules. Accordingly, we find no basis to reduce or cancel the forfeiture.

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

Phillips requests that the forfeiture amount be substantially reduced or cancelled because the station only receives modest revenues.³¹ We have reviewed the financial documents submitted by Phillips and find that they do not justify a cancellation or reduction of the forfeiture based on an inability to pay. With regards to an inability to pay claim, the Commission has determined that in general, gross income or revenues are the best indicator of an ability to pay a forfeiture.³² While the Commission has looked to other indicators to determine ability to pay a forfeiture, that review has been limited only to cases where a licensee is experiences severe financial distress.³³ Phillips has failed to demonstrate that it is experiencing a level of financial distress that would qualify it for the exception to the gross revenues inability to pay analysis. Based upon our review of Phillips' financial documents, we decline to reduce the forfeiture amount on an inability to pay basis. Therefore after consideration of the records and all of the factors listed above, we find the forfeiture amount of \$6,400 is warranted.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,³⁴ and Section 1.80 of the Rules,³⁵ Phillips **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand four hundred dollars (\$6,400) for willfully and repeatedly violating Section 301 of the Act and Section 1.903(a) of the Rules.

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.³⁶ 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.³⁷

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. Phillips shall send electronic notification of payment to NER-Response@fcc.gov on the date said payment is made.

²⁹ See *Sound Commc 'ns, LLC*, Forfeiture Order, 30 FCC Rcd 6252, 6254 para. 6 (Enf. Bur. 2015) (citing *W. Slope Commc 'ns, Inc.*, Forfeiture Order, 29 FCC Rcd 10470, 10471 para. 6 (Enf. Bur. 2014)); see also *Steckline Commc 'ns, Inc.*, Forfeiture Order, 29 FCC Rcd 1082, 1084, para. 5 (Enf. Bur. 2014) (“[I]nadvertent mistakes neither excuse a rule violation nor mitigate a forfeiture liability.”)

³⁰ NAL Response at 2; see also *NAL*, 29 FCC Rcd at 10139, paras. 3-4.

³¹ NAL Response at 2.

³² *J & J Broad., Inc.*, Forfeiture Order, 30 FCC Rcd 7050, 7053, para. 9 (Enf. Bur. 2015); *W. Slope Commc 'ns, LLC*, Forfeiture Order, 29 FCC Rcd 10470, 10472, para. 8 (Enf. Bur. 2014); *Martin Broad., Inc.*, Forfeiture Order, 28 FCC Rcd 1923, 1925, para. 5 (Enf. Bur. 2013).

³³ *Id.*; *W. Slope Commc 'ns, LLC*, 29 FCC Rcd at 10472, para. 8; *Martin Broad., Inc.*, 28 FCC Rcd at 1925, para. 5.

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 C.F.R. § 1.80.

³⁶ *Id.*

³⁷ 47 U.S.C. § 504(a).

Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.³⁸ 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 20554.³⁹ 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.

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 M.J. Phillips Communications, Inc., 9976-B Union Road, West Seneca, NY, and to James R. Cooke, Esq., 2821 Beechwood Circle, Arlington, VA 22207.

FEDERAL COMMUNICATIONS COMMISSION

G. Michael Moffitt
Regional Director
Northeast Region
Enforcement Bureau

³⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁹ See 47 C.F.R. § 1.1914.