

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

In the Matter of)	
)	
Mobile Relay Associates)	File No.: EB-FIELDWR-13-00006950
)	NAL/Acct. No.: 201532900001
Licensee of WPPF234)	FRN: 0001532027
Malibu, California)	

FORFEITURE ORDER

Adopted: December 2, 2015

Released: December 3, 2015

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$25,000 against Mobile Relay Associates (MRA), licensee of private land mobile radio (PLMR) station WPPF234, Malibu, California, for failing to monitor and take other precautions to avoid causing harmful interference to another licensed station operating on a shared frequency in the Los Angeles area. MRA argues that its actions did not violate any of the Commission's rules (Rules) and that imposition of a penalty would be unduly discriminatory. We find that MRA's actions did result in Rule violations and that it is not the subject of disparate treatment. Therefore, after reviewing MRA's response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the full \$25,000 forfeiture the Bureau proposed.

II. BACKGROUND

2. MRA is the licensee of multiple PLMR stations in the Los Angeles area.¹ Frequencies assigned to PLMR stations are available on a shared basis, unless specified otherwise.² On March 20, 2013, after investigating complaints of interference against the Station,³ the Enforcement Bureau's Los Angeles Office issued a Notice of Violation to MRA for violating the Commission's rules (Rules).⁴ The Los Angeles Office found that the Station was operating nearly continuously on the shared frequencies 151.7825 MHz and 152.2925 MHz, and therefore failing to restrict its transmissions to the minimum practical transmission time;⁵ was not monitoring the transmitting frequencies of other licensees or taking

¹ See, e.g., WQQA438, Pasadena, California; WQGW503, Chatsworth, California. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Mobile Relay Associates*, Notice of Apparent Liability for Forfeiture, 30 FCC Red 7134, at 7135–7137, paras. 2–6 (Enf. Bur. 2015) (*NAL*).

² See 47 C.F.R. § 90.173(a) (“Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee.”).

³ The complainants included Eden Memorial Park, licensee of Station WPWA436, Mission Hills, California, operating on frequency 152.2925 MHz, and Knott's Berry Farm, licensee of KML654, Buena Park, California, operating on 151.775 MHz.

⁴ See *Mobile Relay Associates*, Notice of Violation, V201332900014 (Mar. 20, 2013) (*NOV*), issued for failing to: 1) restrict Station WPPF234's transmission to the minimum practical transmission time; 2) monitor the transmitting frequencies of other licensees or take any other reasonable precautions to avoid causing harmful interference; 3) operate Station WPPF234 in accordance with the Commission's rules and the Station's authorization.

⁵ Section 90.403(c) of the Rules states that “[e]xcept for stations that have been granted exclusive channels under (continued....)

any other reasonable precautions to avoid causing harmful interference;⁶ and was not operating its station in accordance with the Rules and the Station's authorization, specifically, failing to operate using trunked technology.⁷ In response to the NOV, MRA stated that it was not operating continuously, but that it was simply engaged in "heavy usage" of the shared frequencies.⁸ MRA stated that it had programmed the shared channels to allow for a pause of five seconds once every five minutes and that if a transmission begins during that five-second interval the system is programmed to prevent the transmitter from resuming.⁹ MRA argued that its "voluntary" efforts were consistent with Section 90.403(e) and that there is no Commission "rule" that requires it to do more.¹⁰ Consequently, MRA's "heavy usage" of the shared frequencies continued.¹¹

3. On May 8, 2015, Los Angeles agents conducted an inspection of the Station and observed that the Station was operating on shared frequencies 151.7825 MHz and 152.2925 MHz using the non-voice digital communications Digital Dispatch System (DDS). The agents observed that the system transmits a synchronizing signal on the repeater output frequency nearly continuously to keep mobile units registered with the system. The agents also observed the synchronizing signal only occasionally punctuated with data addressed to mobile units. On June 4, 2015, Eden Memorial Park (Eden), licensee

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this part and that are classified as commercial mobile radio service providers pursuant to part 20 of this chapter, each licensee must restrict all transmissions to the minimum practical transmission time and must employ an efficient operating procedure designed to maximize the utilization of the spectrum." 47 C.F.R. § 90.403(c). The Los Angeles Office determined that, at the time of the investigation, "Station WPPF234 was transmitting on 151.7825 MHz and 152.2925 MHz nearly continuously." *NOV* at 1.

⁶ Section 90.403(e) of the Rules states that "[l]icensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference." 47 C.F.R. §§ 90.403(e). The Los Angeles Office stated that, "at the time of the investigation, agents monitored WPPF234 and observed digitally modulated continuous signals on 151.7825 MHz and on 152.2925 MHz. Specifically, the continuous transmissions from WPPF234 on 151.7825 MHz with bandwidth of 11.2 KHz interfered with communications of adjacent channel licensees centered on 151.775 MHz, and the continuous transmissions from WPPF234 on 152.2925 MHz interfered with the communications of a co-channel licensee. The agent observed no evidence of monitoring the transmitting frequencies for communications in process or other measures to avoid interference by WPPF234." *NOV* at 2.

⁷ Section 1.903(a) states that "[s]tatements in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part, except as specified in paragraph (b) of this section." 47 C.F.R. § 1.903(a). The Los Angeles Office found that the "WPPF234 license authorized trunked operations in the Industrial Radio Service. At the time of the inspection the station was not using trunking technology and all communications between the base station on 151.7825 MHz and mobile units on 159.8775 MHz were on a single channel pair. In addition, all communications between the base station on 152.2925 MHz and mobile units on 157.5525 MHz were not using trunking technology." *NOV* at 2.

⁸ See Response to Notice of Violation of Mobile Relay Associates at 2 (Apr. 2, 2013) (NOV Response) (on file in EB-FIELDWR-12-00006950).

⁹ *Id.* at 2.

¹⁰ *Id.* MRA contended that if the Commission wanted to create a "more precise rule" that "requires a licensee on a shared channel to force a pause in transmission at any particular interval" it is free to do so but must do so prospectively through a rulemaking complying with the Administrative Procedures Act.¹⁰ MRA also stated that, in order to avoid causing interference it has reduced its power and that it is in compliance with the monitoring requirement as specified by the frequency coordinators.¹⁰ Further, MRA asserted that the station "is employing a form of trunking" and that even if its operation was deemed "conventional" it would not be a rule violation.¹⁰ *Id.* at 3 – 6.

¹¹ On September 25, 2014, October 1, 2014, and May 7, 2015, agents from the Los Angeles Office monitored the Station on frequency 152.2925 MHz, and determined that the Station continued to operate in a nearly continuous mode, with a duty cycle of 96 to 98%. See *NAL*, 30 FCC Rcd at 7136–7137, para. 5.

of PLMR station WPWA436, Mission Hills, California, reported to the Los Angeles Office that it continued to receive harmful interference on frequency 152.2925 MHz, a frequency it shares with MRA's Station.¹² Subsequently, on June 4, 2015, and June 8, 2015, Los Angeles agents monitored 152.2925 MHz near the Station WPWA436 fixed transmitter site¹³ and, using directing finding techniques, located co-channel transmissions to MRA's Station on Saddle Peak in Malibu, California. The agents determined that, on both days, MRA continued to operate its Station in a nearly continuous mode, utilizing a 95% duty cycle, and that its transmissions were seriously degrading Eden's co-channel operations on frequency 152.2925 MHz. This included MRA's near continual transmission of synchronizing signals, generally not containing data, on the shared frequency, even when Eden attempted to utilize the channel.

4. On July 6, 2015, the Enforcement Bureau (Bureau) issued the MRA *NAL* proposing a \$25,000 forfeiture against MRA for its apparent willful and repeated violation of Sections 90.403(e) and 90.187(b) of the Rules,¹⁴ for failing to monitor and take other precautions to avoid causing harmful interference to another licensed station operating on a shared frequency in the Los Angeles area.

5. On August 13, 2015, MRA filed a response to the *NAL*.¹⁵ MRA argues that its operations did not result in rule violations,¹⁶ and that imposition of a penalty would be unduly discriminatory to MRA.¹⁷

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),¹⁸ Section 1.80 of the Rules,¹⁹ and the Commission's *Forfeiture Policy Statement*.²⁰ 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."²¹ As discussed below, we have fully considered MRA's response to the *NAL*, which includes two arguments, but we find neither of them persuasive. We therefore affirm the \$25,000 forfeiture proposed in the *NAL*.

A. MRA's Operations Violated the Commission's Rules

7. Section 90.403(e) of the Rules states that "[l]icensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing

¹² See *supra* note 3.

¹³ The agents monitored the signal 0.4 kilometers from Eden's fixed transmitter site. Eden is authorized to operate on frequency 152.2925 MHz, service class code FB2 (mobile relay) from its fixed transmitter site located at 11500 Sepulveda Boulevard, Mission Hills, California. Its operating area includes a 16 kilometer radius around its fixed location. See WPWA436 Authorization, granted August 3, 2012.

¹⁴ 47 C.F.R. §§ 90.403(e), 90.187(b).

¹⁵ *Mobile Relay Associates*, Response to Notice of Apparent Liability (Aug. 13, 2015) (on file in EB- FIELDWR-13-00006950) (NAL Response).

¹⁶ NAL Response at 4–5.

¹⁷ *Id.* at 5–8.

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 C.F.R. § 1.80.

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*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

²¹ 47 U.S.C. § 503(b)(2)(E).

interference.”²² Section 90.187(b) of the Rules states that “[e]xcept as provided in paragraphs (c) and (d) of this section, trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency. The level of monitoring must be sufficient to avoid harmful interference to other systems.”²³ Agents from the Los Angeles Office determined that MRA operated the Station, on June 4 and June 8, 2015, on a nearly continual basis, giving co-channel users the opportunity to operate on the shared frequency of 152.2925 MHz only 5% of any given interval. The agents also determined that MRA’s synchronizing signal continued unabated even when the co-channel licensee, Eden, attempted to utilize the channel for voice communications.

8. In its NAL Response, MRA does not deny that it operated its Station in the manner described in the *NAL*. Indeed, MRA acknowledges that the DDS equipment it employed is designed for operation on exclusive channels, and states that the adjustments it made to ensure a “hard stop” at a preset regular interval to enable it to monitor, degraded the equipment’s performance.²⁴ MRA asserts there “is no hard and fast ‘maximum’ channel occupancy for shared channels” and that because other licensees have allegedly engaged in close to 100% channel occupancy on shared channels using DDS equipment, its 95% channel occupancy is therefore patently not a failure to share and not a rule violation.²⁵ We disagree.

9. The Rules require, and the Commission expects, licensees to take necessary measures to minimize the potential for causing interference and to take reasonable precautions to avoid causing harmful interference.²⁶ For land mobile stations, harmful interference is defined as “any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.”²⁷ The Commission has also given examples in the Rules and in published guidance to land mobile licensees of appropriate and reasonable measures to avoid causing interference, including monitoring and employing appropriate equipment.²⁸ Utilizing equipment that does not detect when another co-channel licensee is attempting to use the shared frequency, but rather only utilizes a preset short duration “hard stop” is not monitoring.²⁹ If co-channel licensee Eden attempted to operate during any time other than the 5% of the time MRA chose not to transmit, Eden’s operation degraded to the point of being unusable. Moreover, utilizing equipment that emits a near continuous synchronizing signal results in emissions that obstruct

²² 47 C.F.R. § 90.403(e).

²³ 47 C.F.R. § 90.187(b). The exceptions to this rule, which do not apply to MRA in this case, include trunked systems operating in the 470–512 MHz band that meet the loading requirements of 47 C.F.R. § 90.313 and have exclusive use of their frequencies in their service area; or when the licensee has obtained consent from all affected licensees. *See* 47 C.F.R. § 90.187(c)–(d).

²⁴ NAL Response at 3–4.

²⁵ NAL Response at 5.

²⁶ *See NAL*, 30 FCC Red at 7138–7139, paras. 8–10. *See also* 47 C.F.R. §§ 90.187(b), 90.403(e).

²⁷ *See* 47 C.F.R. § 90.7 (definition of harmful interference).

²⁸ *See* 47 C.F.R. § 90.187(b) (“trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency”). Stations operating on shared frequencies must engage in Level 1 Monitoring, which requires the repeater (base station) to monitor the input channel for transmit signals from co-channel mobile and portable units (this level of monitoring requires the corresponding repeater output channel be disabled during the co-channel mobile or portable unit’s transmission). Stations may also be required to engage in Level 2 Monitoring, requiring the additional step of having the repeater (base station) monitor the output channel for transmit signals coming from co-channel base stations (this level of monitoring requires that the corresponding repeater output channel be disabled during the co-channel base station’s transmission). Absent special circumstances, frequency coordinators will recommend Level 1 Monitoring for non-exempt trunked systems. *See Private Land Mobile Radio — Monitoring Levels for Non-Exempt Trunked Systems on Channels Between 150 - 512 MHz*, Public Notice, 16 FCC Red 21421, 21423 (WTB 2001).

²⁹ *See* NAL Response at 3–5.

the provision of services by co-channel licensees.³⁰ Eden was licensed and authorized to use the shared frequency, however, MRA's actions degraded and obstructed the service provided by Eden, *i.e.*, caused harmful interference, effectively precluding Eden from use of the shared channel.

10. The Los Angeles Office investigation found that MRA caused harmful interference to a co-channel licensee on June 4 and June 8, 2015.³¹ The evidence establishing that interference included MRA's acknowledged 95% occupancy of the shared channel, that the transmissions preventing Eden from using the shared channel came from MRA's Station, and that MRA only stopped transmitting for other users for three to five seconds at set intervals so that random attempts by co-channel licensee Eden to use the shared channels were blocked unless they happened to fall within MRA's pre-set window. The evidence is unequivocal that MRA's transmissions caused harmful interference to Eden's operations. Thus, we find that MRA willfully and repeatedly violated Sections 90.403(e) and 90.187(b) of the Rules by failing to take reasonable precautions to avoid causing harmful interference, and failing to employ equipment and engage in monitoring that avoids harmful interference to other systems.

B. MRA's Willful and Repeated Violations Caused Harmful Interference and Require a Monetary Forfeiture

11. MRA also argues that even if it did commit a rule violation by failing to adequately share the frequency, imposing a penalty upon MRA would constitute "undue discrimination," because the Commission has failed to enforce "the rule requiring sharing" against anyone that has caused harmful interference to MRA or MRA's customers.³² We find no merit to this argument. The Commission, in particular, the Enforcement Bureau's Field Offices, have investigated complaints and issued numerous Notices of Apparent Liability for Forfeiture (NALs)³³ and Notices of Violation (NOVs)³⁴ to radio station operators found to be violating Section 90.403(e) of the Rules.

³⁰ MRA admits that the DDS equipment it employed on the shared channel works best on exclusive channels, but argues that the performance degrading modifications it programmed into the DDS system, including setting a "hard stop" at regular intervals in the transmissions of its digital non-data synchronizing signals at set intervals was acceptable monitoring. NAL Response at 3-5.

³¹ See NAL, 30 FCC Rcd at 7137, para. 6.

³² NAL Response at 5-8.

³³ See, e.g., *Acumen Communications*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16349 (Enf Bur. 2013), *forfeiture ordered* Forfeiture Order, 30 FCC Rcd 6472 (Enf. Bur. 2015) (\$17,000 forfeiture for various violations, including Section 90.403(e) of the Rules, for transmission of a signal resulting in harmful interference to U.S. Coast Guard Communications) (*Acumen Forfeiture Order*); *Portland Taxicab Company*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 20432920001 (Enf. Bur., Portland Office, rel. Jan. 30, 2004), *forfeiture ordered* Forfeiture Order, 19 FCC Rcd 22511 (Enf. Bur. 2004), *aff'd* Memorandum Opinion and Order, 22 FCC Rcd 1059 (Enf. Bur. 2007) (\$12,000 forfeiture for various violations, including Section 90.403(e) of the Rules, for transmission of spurious emissions resulting in harmful interference to an amateur station).

³⁴ See, e.g., *Apple, Inc. Licensee of Station WPWU695, Cupertino, California*, Notice of Violation, V201532960003 (Jun. 2, 2015) (issued for violations of Sections 1.903(a), 90.403(e) and 90.425(a) of the Rules); *Air Communications Services Inc. Licensee of Station WPTF286, Montrose, California*, Notice of Violation, V201532900002 (Apr. 9, 2015) (issued for violations of Sections 90.403(e) and 90.425(a) of the Rules); *American Airlines Group Inc. Licensee of Station WNCA631, San Francisco, California*, Notice of Violation, V201532960001 (Jan. 8, 2015) (issued for violations of Sections 1.903(a), 90.403(e) and 90.403(g) of the Rules); *SSA Terminals Licensee of Station WQEW384, Seattle, Washington*, Notice of Violation, V201432980015 (Aug. 28, 2014) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules); *Prudential Insurance Co. Licensee of Station WPWE425, Newark, New Jersey*, Notice of Violation, V201432380008 (Aug. 11, 2014) (issued for violations of Sections 90.403(c), 90.403(e) and 90.425(a) of the Rules); *Auburn School District 408 Licensee of Station KUB430, Auburn, Washington*, Notice of Violation, V201432980014 (Jun. 19, 2014) (issued for violations of Sections 1.903(a), 90.403(e) and 90.425(a) of the Rules); *Temco, LLC Licensee of Station KYK712, Tacoma, Washington*, Notice of Violation, V201432980011 (May 15, 2014) (issued for violations of Sections 90.403(e) and 90.425(a) of (continued....))

12. MRA further argues that because it is unsatisfied with the results of the Commission's investigations of its complaints against its competitors, it is arbitrary and capricious, in violation of Section 706 of the Administrative Procedure Act,³⁵ for the Commission to assess a forfeiture against MRA for its violations.³⁶ MRA cites to case law including *Melody Music, Inc. v. FCC (Melody Music)*,³⁷ to support this

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 the Rules); *Wireless Advanced Communications Licensee of Station WQAZ441, Fort Collins, Colorado*, Notice of Violation, V201432800036 (May 9, 2014) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules); *Alliance Communications Group Licensee of Station WQCA755, Mount Wilson, California*, Notice of Violation, V201432900020 (Apr. 24, 2014) (issued for violations of Sections 1.903(a), 90.403(e) and 90.425(a) of the Rules); *David M. Adams Licensee of Station WNMX489, Syracuse, New York*, Notice of Violation, V201432400016 (Mar. 11, 2014) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules); *Swedish Hospital Licensee of Station KNAX757, Seattle, Washington*, Notice of Violation, V201432980008 (Feb. 6, 2014) (issued for violations of Sections 90.403(e) and 90.425(a) of the Rules); *Kemper Development Licensee of Station WQAM384, Bellevue, Washington*, Notice of Violation, V201432980007 (Feb. 6, 2014) (issued for violations of Sections 1.903(a), 90.187(b), 90.403(e) and 90.425(a) of the Rules); *Doral Resort and Country Club Licensee of Station WPMC578, Miami, Florida*, Notice of Violation, V201432600007 (Jan. 31, 2014) (issued for violations of Sections 90.403(e) and 90.425(a) of the Rules); *Allen Alarm Systems, Inc. Licensee of Station WQFC484, Los Angeles, California*, Notice of Violation, V201432900009 (Dec. 5, 2013) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules); *Day Management Corp dba Day Wireless Systems Licensee of Station WNX421, Issaquah, Washington*, Notice of Violation, V201432980001 (Oct. 31, 2013) (issued for violations of Section 90.403(e) of the Rules); *Cedar Sinai Health System Licensee of WNZC462, Los Angeles, California*, Notice of Violation, V201332900039 (Sep. 5, 2013) (issued for violations of Sections 90.403(c) and 90.403(e) of the Rules); *Fisher Wireless Services, Inc. Licensee of Station WPLZ806, Los Gatos, California*, Notice of Violation, V201332960022 (Aug. 29, 2013) (issued for violations of Sections 90.403(e) and 90.425(a) of the Rules); *Fisher Wireless Services, Inc. Licensee of Station WPMU872, Walnut Creek, California*, Notice of Violation, V201332960020 (Aug. 15, 2013) (issued for violations of Sections 90.403(c) and 90.403(e) of the Rules); *City of Bellflower Licensee of Station WQKK350, Bellflower, California*, Notice of Violation, V201332900035 (Aug. 1, 2013) (issued for violations of Sections 90.403(c), 90.403(e) and 90.425(a) of the Rules); *L.A. Checker Cooperative, Inc. Licensee of Station WCL626, Los Angeles, California*, Notice of Violation, V201332900034 (Jul. 25, 2013) (issued for violations of Sections 90.403(c), 90.403(e) and 90.425(a) of the Rules); *United Independent Taxi Drivers Inc. Licensee of Station KIL251, Los Angeles, California*, Notice of Violation, V201332900031 (Jul. 2, 2013) (issued for violations of Sections 90.403(c), 90.403(e) and 90.425(a) of the Rules); *United Independent Taxi Drivers Inc. Licensee of Station WPTG506, Palos Verde, California*, Notice of Violation, V201332900023 (May 10, 2013) (issued for violations of Sections 1.903(a), 90.403(c), 90.403(e) and 90.425(a) of the Rules); *ASARCO, LLC Licensee of Station WQHR264, Sahuarita, Arizona*, Notice of Violation, V201332940011 (May 9, 2013) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules); *Mobile Relay Associates Licensee of Station WQGW503, Chatsworth, California*, Notice of Violation, V201332900019 (Apr. 25, 2013) (issued for violations of Sections 1.903(a), 90.403(c), 90.403(e) and 90.425(a) of the Rules); *San Gabriel Transit Inc. Licensee of Station WPMY670, Palos Verde, California*, Notice of Violation, V201332900012 (Mar. 20, 2013) (issued for violations of Sections 1.903(a), 90.403(c), 90.403(e) and 90.425(a) of the Rules); *Mobile Relay Associates Licensee of Station WQQA438, Pasadena, California*, Notice of Violation, V201332900013 (Mar. 20, 2013) (issued for violations of Sections 1.903(a), 90.403(c), and 90.403(e) of the Rules); *Acumen Communications Licensee of Station WQHT586, Rancho Palos Verde, California*, Notice of Violation, V201332900016 (Mar. 20, 2013) (issued for violations of Sections 1.903(a), 90.403(c), 90.403(e) and 90.425(a) of the Rules); *Acumen Communications Licensee of Station WQJF635, Los Angeles, California*, Notice of Violation, V201332900008 (Jan. 30, 2013) (issued for violations of Sections 1.903(a) and 90.403(e) of the Rules).

³⁵ 5 U.S.C. § 706.

³⁶ NAL Response at 8.

³⁷ *Id. See Melody Music, Inc., v. FCC*, 345 F.2d 730 (D.C. Cir., 1965) (in a licensing renewal case, the Commission's failure to explain its decision with simplicity and clarity required reversal); *Telephone and Data Systems, Inc., v. FCC*, 19 F.3d 42 (D.C. Cir., 1994) (Commission failed to give an adequate explanation when it departed from precedent determining that a majority owner had not transferred de facto control to a principal minority owner); *Telephone and Data Systems, Inc., v. FCC*, 19 F.3d 655 (D.C. Cir., 1994) (Commission cannot pick and choose relevant control criteria when dismissing application for cellular telephone license). We note that *Melody Music*, and the other cases cited, address the particular burdens that the Commission must meet in justifying its licensing (continued....)

claim and argues that having a “more stringent rule for MRA than for any other licensee in the Los Angeles metropolitan area (or indeed, apparently the entire country) is not permissible.”³⁸ We disagree. As explained above, the Commission’s Field Offices have extensively enforced Section 90.403(e) of the Rules against land mobile operators, issuing both NOV³⁹ and NALs.⁴⁰ The Field Offices have also issued NOV³⁹, and subsequently NALs, in cases when the violator has engaged in egregious conduct,⁴¹ or failed to correct the violation after the issuance of the NOV,⁴² or when the violation endangered the public.⁴³ Given the egregious nature of MRA’s violation, including its failure to correct the violation after the issuance of the NOV, in apparent disregard for the Commission’s authority, we find that it was not subject to a more stringent rule or process than other violators.

13. The Commission has prosecutorial discretion to issue sanctions where appropriate⁴⁴ and has broad discretion to consider a variety of factors in determining a forfeiture amount, if warranted, when faced with a violation of its rules.⁴⁵ Egregiousness as well as the duration of the violation are two of the factors under Section 1.80 of the Rules that must be considered when determining the degree of a sanction.⁴⁶ With respect to MRA’s violations, as explained above and in the *NAL*,⁴⁷ MRA received a NOV on March 20, 2013, notifying it that its operation of the Station was violating Section 90.403(e) of the Rules and interfering with a co-channel licensee. Throughout the next two years, MRA continued to operate its station in a manner that continued to cause interference to co-channel licensees. On June 4 and June 8, 2015, Los Angeles agents monitored and observed the harmful interference being caused by MRA to a co-channel licensee. Given the egregiousness of MRA’s violations, the forfeiture proposed for its operation of the Station is appropriate.

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decisions, not its enforcement actions. See *Greater Boston Radio, Inc.*, Forfeiture Order, 28 FCC Rcd 1951, 1956 – 57, para. 12 (Enf. Bur. 2013).

³⁸ NAL Response at 8.

³⁹ See *supra* note 34.

⁴⁰ See *supra* note 33.

⁴¹ See, e.g., *Coastal Television Broadcasting Company*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 14665 (Enf. Bur. 2013), *forfeiture ordered* Forfeiture Order 29 FCC Rcd 4065 (Enf. Bur. 2014) (failing to update an antenna structure registration for over four and a half years found to be egregious conduct resulting in the issuance of a NOV and then a NAL proposing a \$4,200 forfeiture).

⁴² See, e.g., *M.J. Phillips Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 10138 (Enf. Bur. 2014), *forfeiture ordered* Forfeiture Order, DA 15-1200, 2015 WL 6439202 (Enf. Bur. Oct. 22, 2015) (continued operation of a studio transmitter link from an unauthorized location for seven months, after the issuance of a NOV warning of the violation, resulted in the issuance of a NAL proposing a \$6,400 forfeiture, noting the violator’s apparent disregard for the Commission’s authority).

⁴³ See, e.g., *Sound Communications*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5840 (Enf. Bur. 2014), *forfeiture ordered* Forfeiture Order, 30 FCC Rcd 6252 (Enf. Bur. 2015) (leaving a fence surrounding an AM tower unsecured resulted in the issuance of a NOV and then a NAL proposing a \$7,000 forfeiture). See also, *Acumen Forfeiture Order*, *supra* note 33.

⁴⁴ The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings. The courts have found that, as a general matter, the Commission is best positioned to weigh the benefits of pursuing an adjudication against the costs to the agency and the likelihood of success. *Radio One Licenses, LLC*, Forfeiture Order, 19 FCC Rcd 23922, 23932, para. 24 (2004), citing *Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186 (1999) and *New York State Dept. of Law v. F.C.C.*, 984 F.2d 1209, 1213 (D.C. Cir. 1993).

⁴⁵ See *Greater Boston Radio*, 28 FCC Rcd at 1957, para. 12 (an egregious violation of the Commission’s broadcast contest rule supports the assessment of a monetary forfeiture).

⁴⁶ 47 C.F.R. § 1.80 (the upward adjustment criteria include “egregious misconduct” and “repeated or continuous violation”).

⁴⁷ See *NAL*, 30 FCC Rcd at 7135–7137, paras. 2–6.

IV. CONCLUSION

14. Having considered MRA's response to the *NAL* in light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, we find that MRA willfully and repeatedly violated Sections 90.403(e) and 90.187(b) of the Rules,⁴⁸ by failing to monitor and take other precautions to avoid causing harmful interference to another licensed station operating on a shared frequency in the Los Angeles area. We decline to cancel or reduce the \$25,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's rules,⁴⁹ Mobile Relay Associates **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for willful and repeated violation of Sections 90.403(e) and 90.187(b) of the Commission's rules.⁵⁰

16. 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.⁵¹ 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.⁵²

17. 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. Mobile Relay Associates shall send electronic notification of payment to 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.⁵³ 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.

⁴⁸ 47 C.F.R. §§ 90.187(b), 90.403(e).

⁴⁹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁵⁰ 47 C.F.R. §§ 90.187(b), 90.403(e).

⁵¹ 47 C.F.R. § 1.80.

⁵² 47 U.S.C. § 504(a).

⁵³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

18. 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 20554.⁵⁴ 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.

19. **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 Mobile Relay Associates, P.O. Box 19, Paramount, CA 90723-0019, and to its counsel, David J. Kaufman, Esquire, Rini O’Neil, PC, 1200 New Hampshire Ave. NW, Suite 800, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director
Western Region
Enforcement Bureau

⁵⁴ See 47 C.F.R. § 1.1914.