

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

In the Matter of	)	
	)	
Acumen Communications	)	File No.: EB- FIELDWR-13-00006185
	)	NAL/Acct. No.: 201432900001
Licensee of Station WQJF635,	)	FRN: 0016049017
Los Angeles, CA	)	

**FORFEITURE ORDER**

**Adopted: June 25, 2015**

**Released: June 26, 2015**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$17,000 against Acumen Communications (Acumen) licensee of private land mobile radio service station WQJF635 (Station), Los Angeles, California, for operating the 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 (USCG) operations. Acumen argues that the unauthorized frequency was created by a mix of various frequencies, not all within its control, and that it did not willfully or repeatedly violate the Communications Act of 1934, as amended (Act), or the Commission's rules (Rules). We find that the investigation by the Enforcement Bureau's Los Angeles Office shows that Acumen was responsible for the operation on the unauthorized frequency, and that Acumen willfully and repeated violated the Act and the Rules. Therefore, after reviewing Acumen's response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and we therefore assess the full \$17,000 forfeiture the Bureau proposed.

**II. BACKGROUND**

2. On January 17, 2013, in response to a complaint from the USCG concerning interference to their operations in the Los Angeles, California, area in the 150 MHz VHF band, an agent from the Enforcement Bureau's Los Angeles Office (Los Angeles Office), using radio direction-finding methods, determined that the continuous signal that was causing interference to the USCG was coming from the Mount Wilson communications site in Los Angeles, California.<sup>1</sup> The next day, Los Angeles agents located the interfering signal, transmitting on 150.6973 MHz, to the Acumen transmitter and equipment rack, in the Acumen Communications Building on Mount Wilson. In response to a request from the Los Angeles Office, Acumen turned off the offending transmitter remotely and the interference to the USCG ceased. When queried by the agents, Acumen stated that the radio station in question was operating pursuant to the Station WQJF635 authorization.<sup>2</sup> In response to a Notice of Violation<sup>3</sup> issued by the Los

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<sup>1</sup> The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *Acumen Communications*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16349, at 16349–16350, paras. 2–4 (Enf. Bur. 2013) (*NAL*).

<sup>2</sup> According to the Station WQJF635 authorization in effect at the time of the investigation, the only VHF frequencies it was authorized to operate on, from any location, were VHF frequencies 152.285 MHz and 157.545 MHz; the authorization did not include operation on frequency 151.580 MHz.

<sup>3</sup> See *Acumen Communications*, Notice of Violation, V201332900008 (Jan. 30, 2013) (NOV), issued for failing to operate Station WQJF635 in accordance with its authorization, and for failing to take reasonable precautions to (continued....)

Angeles Office, Acumen did not deny that the Station was generating the spurious signal on 150.6973, but stated that the transmitter was operating “on frequency 152.285 [MHz] and . . . that the transmitter was transmitting a spurious signal about .8 [MHz] both sides of the designated [frequency] across the band and . . . [it was] moving all over. (Completely unstable).”<sup>4</sup>

3. On December 11, 2013, the Enforcement Bureau (Bureau) issued the Acumen *NAL* proposing a \$17,000 forfeiture against Acumen for its apparent willful and repeated violation of Section 301 of the Act,<sup>5</sup> and Sections 1.903(a) and 90.403(e) of the Rules,<sup>6</sup> by operating the Station on a frequency not authorized on its license, and by failing to take reasonable precautions to avoid causing harmful interference.

4. On January 12, 2014, Acumen filed a response to the *NAL*.<sup>7</sup> Acumen makes a number of arguments as to why the *NAL* should be canceled, asserting that the unauthorized frequency was created by a mix of various frequencies, not all within its control,<sup>8</sup> and that it did not willfully or repeatedly violate the Act or the Rules.<sup>9</sup>

### III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,<sup>10</sup> Section 1.80 of the Rules,<sup>11</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>12</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>13</sup> As discussed below, we have fully considered Acumen’s response to the *NAL*, which includes two arguments, but we find neither of them persuasive. We therefore affirm the \$17,000 forfeiture proposed in the *NAL*.

#### 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>14</sup> Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules

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avoid causing interference to licensed services, by operating Station WQJF635 on frequency 151.580 MHz and generating a spurious emission on frequency 150.6973 MHz.

<sup>4</sup> See Response to Notice of Violation of Acumen Communications at 1 (Mar. 6, 2013) (on file in EB-FIELDWR-13-00006185).

<sup>5</sup> 47 U.S.C. § 301.

<sup>6</sup> 47 C.F.R. §§ 1.903(a), 90.403(e).

<sup>7</sup> *Acumen*, Response to Notice of Apparent Liability (Jan. 12, 2014) (on file in EB- FIELDWR-13-00006185) (*NAL* Response).

<sup>8</sup> *NAL* Response at 1–3.

<sup>9</sup> *Id.* at 2–3.

<sup>10</sup> 47 U.S.C. § 503(b).

<sup>11</sup> 47 C.F.R. § 1.80.

<sup>12</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>13</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>14</sup> 47 U.S.C. § 301.

applicable to their particular service, and with a valid authorization granted by the Commission.<sup>15</sup>

7. In its NAL Response, Acumen argues that it was not the source of the interfering signal on 150.6973 MHz, but that the signal was produced by a “mix” of signals, including Acumen’s authorized use of frequency 152.285 MHz.<sup>16</sup> Acumen further argues that the Los Angeles Office agents saw only a sticker on the Acumen transmitter that labeled the transmitter as operating on 151.580 MHz.<sup>17</sup> Consequently, Acumen states there is no evidence that it was responsible for the offending signal.<sup>18</sup> Contrary to Acumen’s assertions, we find that the evidence supports the finding in the *NAL* that the Acumen transmitter was responsible for the interfering signal. The Los Angeles agents located the signal on 150.6973 MHz to the Acumen building on Mt. Wilson, and screen captures of spectrum analyzer measurements confirmed that the fundamental frequency in use was 151.580 MHz.<sup>19</sup> A spurious signal causing interference to USCG operations in the 150 MHz band was observed on 150.6973 MHz, a frequency approximately 0.8 MHz below the center frequency of 151.580 MHz, which is within the range of spurious activity that Acumen acknowledged in its NOV Response.<sup>20</sup> Finally, when Acumen remotely turned the transmitter off, the spurious signal disappeared. Acumen proffers no evidence or calculations to support its assertion that other transmitters also contributed to the creation of the interfering signal.

#### **B. Failing to Take Reasonable Precautions to Avoid Interference**

8. Section 90.403(e) of the Rules requires 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.”<sup>21</sup>

9. Acumen argues that because there is no evidence that it intended to create the spurious signal, there is no proof that Acumen willfully or repeatedly violated the Act or the Rules or failed to take reasonable precautions to avoid interference.<sup>22</sup> Acumen also asserts that it did not know that its transmitter “would mix and interfere with the USCG.”<sup>23</sup> We reject Acumen’s argument that the Bureau must show that Acumen intended to create the offending signals. Licensees are expected to know and comply with the Rules.<sup>24</sup> As the Commission has repeatedly held, violations resulting from inadvertent error or failure to become familiar with the FCC’s requirements can be and often are willful violations.<sup>25</sup> In the context of a forfeiture action, “willful” does not require a finding that the rule violation was

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<sup>15</sup> 47 C.F.R. § 1.903(a).

<sup>16</sup> NAL Response at 1–3.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> *Id.* at 2–3.

<sup>19</sup> *NAL*, 28 FCC Rcd at 16349–16350, paras. 2–4.

<sup>20</sup> *Id.* Indeed, in its NOV Response, Acumen did not dispute that it was the cause of the interfering spurious signal, and it also acknowledged that the spurious signal was approximately 0.8 MHz on both sides of the fundamental frequency. NOV Response at 1.

<sup>21</sup> 47 C.F.R. § 90.403(e).

<sup>22</sup> NAL Response at 2–3.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (“[t]he Commission expects [each licensee], and it is each licensee’s obligation, to know and comply with all of the Commission’s rules”).

<sup>25</sup> See, e.g., *Emery Telephone*, Memorandum Opinion and Order, 13 FCC Rcd 23854, 23859, para. 12 (1998) (by issuing forfeitures for inadvertent violations corrected after the fact, “the Bureau impels licensees to be more familiar with the applicable rules in structuring future conduct”), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999).

intentional.<sup>26</sup> Rather, the term “willful” means that the violator knew it was taking (or not taking) the action in question, irrespective of any intent to violate the law.<sup>27</sup> Here, Acumen was operating the offending transmitter which was creating the spurious signal, over a period of at least two days, January 17 and 18, 2013, and it failed to monitor or take any other reasonable precautions to avoid causing harmful interference. Consequently, Acumen’s violations were willful and repeated.

#### IV. CONCLUSION

10. Having considered Acumen’s response to the *NAL* in light of the applicable statutory factors, the Rules, and the *Forfeiture Policy Statement*, we find that Acumen willfully and repeatedly violated Section 301 of the Act and Sections 1.903(a) and 90.403(e) of the Rules,<sup>28</sup> by operating the Station on a frequency not authorized on its license, and by failing to take reasonable precautions to avoid causing harmful interference. We decline to cancel or reduce the \$17,000 forfeiture proposed in the *NAL*.

#### V. ORDERING CLAUSES

11. 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,<sup>29</sup> Acumen Communications **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventeen thousand dollars (\$17,000) for willful violation of Section 301 of the Communications Act of 1934, as amended and Sections 1.903(a) and 90.403(e) of the Commission’s rules.<sup>30</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>31</sup> 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.<sup>32</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. Acumen Communications 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>33</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,

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<sup>26</sup> See, e.g., *Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675, 1676, para. 5 (2010) (“To be willful, the violator must consciously commit or omit certain actions and need not be aware that such actions violate the Rules.”).

<sup>27</sup> See *Catholic Radio of Loveland, Inc.*, Memorandum Opinion and Order, FCC 15-66, 2015 WL 3645698 (June 11, 2015) (conscious and deliberate operation of a station that results in unauthorized emissions, even if the licensee is not aware of the unauthorized emissions, fulfills the “willful” standard required under the Act).

<sup>28</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 90.403(e).

<sup>29</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>30</sup> 47 U.S.C. § 301; 47 C.F.R. §§ 1.903(a), 90.403(e).

<sup>31</sup> 47 C.F.R. § 1.80.

<sup>32</sup> 47 U.S.C. § 504(a).

<sup>33</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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>34</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 Acumen Communications, 10670 S. La Cienega Blvd., Suite C, Inglewood, CA 90304.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director  
Western Region  
Enforcement Bureau

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<sup>34</sup> See 47 C.F.R. § 1.1914.