

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

In the Matter of)
Broadband Telecommunications Network, Corp.) EB-FIELDSCR-18-00027343
(d/b/a Integra Wireless), San Juan, Puerto Rico) NAL/Acct. No. 201932020004
) FRN: 0028605210
)

FORFEITURE ORDER

Adopted: February 26, 2020

Released: February 26, 2020

By the Acting Field Director, Enforcement Bureau:

I. INTRODUCTION

1. The Federal Aviation Administration (FAA) uses terminal doppler weather radar stations to detect wind shear and other dangerous weather conditions near airports. Interference to these radar stations is unacceptable and, in certain circumstances, could be potentially life threatening. The Enforcement Bureau (Bureau) previously found that Broadband Telecommunications Network, Corp., d/b/a Integra Wireless (Integra),1 apparently operated two Unlicensed National Information Infrastructure (U-NII) devices in an unauthorized manner, in a manner inconsistent with the Commission’s rules, and in a manner that caused interference to an FAA terminal doppler weather radar station in San Juan, Puerto Rico. The Bureau proposed a \$25,000 fine for those apparent statutory and regulatory violations. Integra does not dispute the Bureau’s findings regarding its operations, but instead requests the cancellation or reduction of the proposed fine due to its claimed inability to pay it. After reviewing Integra’s financial condition, we find that reducing the forfeiture to \$4,051 is appropriate in this matter.

II. BACKGROUND

2. On August 22, 2019, the Bureau issued a Notice of Apparent Liability for Forfeiture and Order (Notice)2 against Integra proposing a \$25,000 forfeiture for apparent violations of section 301 of the Communications Act of 1934, as amended (Act),3 and sections 15.1(b) and 15.407(h)(2) of the Commission’s rules.4 Section 301 of the Act states that “[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio” within the United States or its territories without a license granted by the Commission.5 Part 15 of the Commission’s rules provides an exception to this general section 301 license requirement and sets forth conditions under which such

1 Any entity that is a “Small Business Concern” as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, “Oversight of Regulatory Enforcement,” in addition to other rights set forth herein.

2 The Notice includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless), San Juan, Puerto Rico, Notice of Apparent Liability for Forfeiture and Order, 34 FCC Rcd 7243 (EB 2019), at https://docs.fcc.gov/public/attachments/DA-19-802A1.pdf.

3 47 U.S.C § 301.

4 47 CFR §§ 15.1(b), 15.407(h)(2).

5 47 U.S.C. § 301.

devices (intentional radiators) may operate without an individual license.⁶ Pursuant to section 15.1(b) of the Commission's rules, however, "operation of an intentional . . . radiator that is not in accordance with the regulations in this part *must be licensed*. . . ."⁷ In order to avoid interference to the FAA's terminal doppler weather radar installations, the Commission requires, pursuant to section 15.407(h)(2) of its rules, that U-NII devices operating in the 5.25 – 5.35 GHz (U-NII-2A) and 5.47 – 5.725 GHz (U-NII-2C) bands have Dynamic Frequency Selection radar detection functionality, which allows them to detect the presence of radar systems and automatically avoid operating on the same channel as those nearby radar systems.⁸ In the *Notice*, the Bureau stated that its agent observed that Integra had configured its two U-NII devices in a manner that disabled Dynamic Frequency Selection.

3. On September 19, 2019, Integra filed a response to the *Notice*.⁹ In the Response, Integra does not contest the Bureau's allegations that it operated two U-NII devices with Dynamic Frequency Selection disabled.¹⁰ Instead, Integra seeks cancellation or reduction of the forfeiture proposed in the *Notice* based on claims that it did not understand the Commission's rules, that its violations section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules were not willful, and that it lacks the financial ability to pay the proposed forfeiture.¹¹ On November 19, 2019, the Bureau requested additional information from Integra to support its claim that it lacks the financial resources to pay the forfeiture proposed in the *Notice*.¹² On January 2, 2020, Integra supplemented the Response with the additional information that the Bureau requested.¹³

III. DISCUSSION

4. The Bureau proposed a forfeiture in this case in accordance with section 503(b) of the Act,¹⁴ section 1.80 of the Commission's rules,¹⁵ and the Commission's *Forfeiture Policy Statement*.¹⁶ 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

⁶ See 47 CFR §§ 15.1, *et seq.*

⁷ 47 CFR § 15.1(b) (emphasis added).

⁸ See 47 CFR § 15.407(h)(2).

⁹ Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless), Response to Notice of Apparent Liability for Forfeiture and Order (Sept. 19, 2019) (on file in EB-FIELDSCR-18-00027343) (Response). As part of the Response, Integra attempted to enlist the help of the Small Business and Agriculture Regulatory Enforcement Ombudsman under section 30 of the Small Business Act, 15 U.S.C. § 657. Should Integra wish to invoke any rights available to it under the Small Business Act, it should follow the Small Business Administration's procedures for doing so.

¹⁰ See *Notice*, 34 FCC Rcd at 7245, para 8; Response at 2 (acknowledging that, "while examining the potential optimal frequencies to serve point to point location[s], dynamic frequency selection was inadvertently disabled").

¹¹ *Response* at 1, 3.

¹² See E-mail from Matthew L. Gibson, Senior Field Counsel, Office of the Field Director, FCC Enforcement Bureau, to Edilberto A. Berrios Febles, President, Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless) (Nov. 19, 2019, 13:28 EST) (on file in EB-FIELDSCR-18-00027343).

¹³ See E-mail from Edilberto A. Berrios Febles, President, Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless), to Matthew L. Gibson, Senior Field Counsel, Office of the Field Director, FCC Enforcement Bureau (Jan. 2, 2020, 14:48 EST) (on file in EB-FIELDSCR-18-00027343) (Supplemental Response).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 CFR § 1.80.

culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁷ We have fully considered the Response and the Supplemental Response and find that a reduction of the forfeiture is warranted based on Integra's inability to pay the \$25,000 forfeiture proposed in the *Notice*.

5. As an initial matter, we are not persuaded by Integra's arguments that a cancellation or reduction of the forfeiture proposed in the *Notice* is warranted because of its lack of understanding of the applicable regulations. The Commission has long held that "lack of knowledge regarding, or intent to violate, the Commission's requirements does not exonerate, excuse or mitigate past violations and is not a defense to forfeiture penalties."¹⁸ This case presents no distinguishing facts that would warrant departing from precedents.

6. We are similarly unpersuaded by Integra's argument that its failure to ensure that Dynamic Frequency Select was enabled on the U-NII devices at issue was merely inadvertent and therefore not willful. To be willful, "the violator must consciously commit or omit certain actions and need not be aware that such actions violate" the Act or the Commission's rules.¹⁹ Here, Integra consciously and deliberately manipulated the U-NII devices at issue in order to find an optimal frequency to use.²⁰ After conducting its tests, Integra failed to ensure that Dynamic Frequency Selection was enabled²¹—despite having received and responded to a written warning from the Bureau several months earlier regarding this same issue.²² Accordingly, Integra's conduct was willful within the meaning of the Act.

7. We are, however, persuaded by Integra's argument in the Response, as supported by the Supplemental Response, that the company lacks the ability to pay the full \$25,000 forfeiture proposed in the *Notice*. The Commission has previously determined that, in general, gross income or revenues are the best indicators of an entity's ability to pay a forfeiture.²³ Based on the financial documentation provided

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¹⁶ *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).

¹⁷ 47 U.S.C. § 503(b)(2)(E).

¹⁸ *See, e.g., San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042, para. 9 (2007) (stating that "lack of knowledge regarding, or intent to violate, the Commission's requirements does not exonerate, excuse or mitigate past violations and is not a defense to forfeiture penalties") *citing Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993), cancelled on other grounds, 12 FCC Rcd 14999 (1997); *Caribbean Network Solutions, Inc., Bayamon, Puerto Rico.*, Forfeiture Order, 34 FCC Rcd 10450, 10451, para. 5 (EB 2019).

¹⁹ *See* 47 U.S.C. § 312(f)(1). 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, and the Commission has so interpreted the term in the section 503(b) context. H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' . . . 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. The definition[] [is] intended primarily to clarify the language in Sections 312 and 503, and [is] consistent with the Commission's application of those terms"); *see, e.g., S. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

²⁰ *See* Response at 2. The Bureau takes no action regarding the implication in the Response that Integra performed tests with Dynamic Frequency Selection disabled, because (a) that fact was not previously known to the Bureau and included in the *Notice*, and (b) although Integra does not provide a specific date for the tests it described, such tests logically occurred prior to the Bureau's last observation referenced in the *Notice* and, as a result, are now no longer subject to further monetary sanction under section 503(b) of the Act. *See* 47 U.S.C. § 503(b)(6)(B).

²¹ *See* Response at 2.

²² *See Notice*, 34 FCC Rcd at 7245, para. 9.

in the Response, we find that Integra's average gross income over its past three fiscal years supports a reduction of the forfeiture to \$4,051.

8. A party's ability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.²⁴ Indeed, the Commission has previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.²⁵ We therefore warn Integra that we may impose significantly higher penalties—regardless of its financial circumstances—if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

IV. CONCLUSION

9. Based on the record before us, and in light of the applicable statutory factors, we conclude that Integra willfully and repeatedly violated section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules. We further find, after consideration of the entire record, including Integra's Response and supporting documentation, that a reduction of the forfeiture amount to \$4,051 is appropriate based on Integra's ability to pay.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,²⁶ and section 1.80 of the Commission's rules,²⁷ Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless) **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Four Thousand Fifty-One Dollars (\$4,051) for willfully and repeatedly violating section 301 of the Act and sections 15.1(b) and 15.407(h)(2) of the Commission's rules.²⁸

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁹ Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless) shall send electronic notification of payment to matthew.gibson@fcc.gov and field@fcc.gov on the date said payment is made. 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.³⁰

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment

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²³ See, e.g., *Coleman Enterprises, Inc., d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Jean Yves Tullias*, Forfeiture Order, 32 FCC Rcd 7680, 7681, para. 4 (EB 2017) (following *Coleman Enterprises*); *Caribbean Network Solutions, Inc., Bayamon, Puerto Rico.*, Forfeiture Order, 34 FCC Rcd 10450, 10452, para. 6 (EB 2019) (following *Coleman Enterprises*).

²⁴ See 47 U.S.C. § 503(b)(2)(E).

²⁵ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, paras. 8-9 (2019) (declining to reduce a forfeiture based on a documented inability to pay because the individual "provide[d] no evidence to refute that his conduct was egregious...").

²⁶ 47 U.S.C. § 503(b).

²⁷ 47 CFR § 1.80.

²⁸ 47 U.S.C. § 301; 47 CFR §§ 15.1(b), 15.407(h)(2).

²⁹ 47 CFR § 1.80.

³⁰ 47 U.S.C. § 504(a).

system),³¹ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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, SW, Room 1-A625, Washington, DC 20554.³³ 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.

³¹ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

³² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³³ See 47 CFR § 1.1914.

14. **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 Broadband Telecommunications Network, Corp. (d/b/a Integra Wireless) at 74 Calle Bolivia, San Juan, Puerto Rico 00919.

FEDERAL COMMUNICATIONS COMMISSION

Ronald Ramage
Acting Field Director
Enforcement Bureau