

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
SUMARRASE, INC.) NAL/Acct. No. MB-202341410011
) FRN: 0022411177
) Facility ID No. 194387
LPFM Station WSGD-LP, Lehigh Acres, Florida)

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 23, 2023

Released: June 23, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, we find Sumarrase, Inc. (Sumarrase), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended (Act),¹ and section 73.845 of the Commission’s rules (rules)² by operating LPFM station WSGD-LP, Lehigh Acres, Florida (Station) at a variance from its authorized parameters. Based upon our review of the facts and circumstances before us, we conclude that Sumarrase is apparently liable for a monetary forfeiture in the amount of two thousand five hundred dollars (\$2,500).

II. BACKGROUND

2. The Station was licensed in 2018 to operate with a one-bay, Shively model 6812B-1, nondirectional antenna at a maximum ERP of 22 watts and TPO of 22 watts.³ Beginning in early 2020, Sumarrase filed numerous complaints and petitions against Fort Myers Broadcasting Company (FMBC), the licensee of FM translator station W239CL, Golden Gate, Florida, alleging that W239CL causes interference to WSGD-LP.⁴ In response to the interference complaints, FMBC asserted that Sumarrase neither constructed nor operated authorized facilities for WSGD-LP.⁵ Although Sumarrase initially

¹ 47 U.S.C. § 301.

² 47 CFR § 73.845.

³ See File No. BLL-20180104AAH (granted January 31, 2018).

⁴ See, e.g., Pleading Nos. 0000106515 (February 24, 2020); 0000108726 and 0000108741 (March 23, 2020); 0000119563 (July 31, 2020); 0000120308 (August 11, 2020); 0000120661 (August 31, 2020); and 0000124025 (October 6, 2020). These pleadings, seeking reconsideration of the grant of the W239CL renewal application due to alleged interference to WSGD-LP, were dismissed on December 10, 2020. See Letter from Albert Shuldiner, Chief, Audio Division to Sumarrase, Inc., Ref. 1800B3-SS. See also Pleading No. 0000124025 (October 6, 2020). This pleading, seeking reconsideration of the grant of the W239CL covering license application due to the alleged interference, was dismissed on June 23, 2023. See Letter from Albert Shuldiner, Chief, Audio Division to Sumarrase, Inc., Ref. 1800B3-ALV.

⁵ See, e.g., Pleading No. 0000124701 (October 15, 2020) (contending that Sumarrase operates its station above its authorized power using an unauthorized antenna). FMBC also filed a petition for reconsideration of the grant of the WSGD-LP renewal application, arguing that WSGD-LP was neither constructed nor operated in the manner set out in its FCC authorizations. See File No. 0000081972 (granted January 15, 2020); Pleading No 0000105766

(continued....)

refuted FMBC's claims, it subsequently conceded that it did not install the one-bay antenna authorized in its license. Specifically, Sumarrase explained that it:

“initially filed for its construction permit specifying a single bay Shively 6812B antenna system. In an amendment that was denied, two bays were proposed ... When it came time to order the antenna, a 2-bay antenna was ordered ... Sumarrase's consulting engineer was not aware of the actual order and substitution, and the Shively 6812B-1 was inadvertently specified with its corresponding TPO on the forthcoming license application ... Recently in an attempt to mitigate interference and upon learning that the information regarding the substitute antenna was not communicated properly in its license application, Sumarrase has attempted to conform as closely as possible to the single bay requested on the license application ...”⁶

III. DISCUSSION

3. *Non-Conforming Operations.* Section 73.845 of the rules requires each LPFM licensee to maintain and operate its broadcast station in accordance with the terms of its station authorization.⁷ Further, Section 301 of the Act provides: “No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except under and in accordance with ... a license in that behalf granted under the provisions of this Act.”⁸ Sumarrase has admitted that, despite being licensed to operate with a one-bay nondirectional antenna, the Station has been operating with a 2-bay antenna. It appears that the Station has operated in this manner for the entirety of its license term, and continues to do so.

4. Sumarrase explains that it mistakenly submitted its license application with the incorrect antenna and that it has “attempted to conform as closely as possible to the single bay requested on the license application.”⁹ This does not, however, nullify or excuse the violation. Each licensee is responsible for reviewing and ensuring the accuracy of the information contained in its application and authorization, and for operating in conformity with its license authorization.

5. Accordingly, we find that Sumarrase apparently willfully and repeatedly violated section 73.845 of the rules by operating the Station with an unauthorized antenna. Further, as a result of operating with the unauthorized antenna, Sumarrase also engaged in unauthorized operation in violation of section 301 of the Act for over five years.¹⁰ Below, we propose a forfeiture totaling two thousand five hundred dollars (\$2,500) for this apparent violation.

6. *Proposed Forfeiture.* This NAL is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹¹ Section 312(f)(1) of the Act defines willful as “the conscious and

(February 11, 2020). The FMBC petition for reconsideration was dismissed as procedurally defective. *See* Letter from Albert Shuldiner, Chief, Audio Division to Fort Myers Broadcasting Company, Ref. 1800B3-DB (December 10, 2020).

⁶ Pleading No. 0000125099 (October 27, 2020) at 4 (Sumarrase Pleading). Sumarrase explains that “importantly, WSGD-LP has always operated with 22W ERP from its authorized height.” *Id.* at 5.

⁷ 47 CFR §73.845 (“Each licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules set forth elsewhere in this part and in accordance with the terms of the station authorization.”); *see also* 47 CFR §73.1745(a) (prohibiting the operation of a broadcast station at variance from the terms of its authorization).

⁸ 47 U.S.C. § 301.

⁹ Sumarrase Pleading at 4.

¹⁰ 47 U.S.C. § 301.

¹¹ 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹² 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,¹³ and the Commission has so interpreted the term in the section 503(b) context.¹⁴ Section 312(f)(2) 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.”¹⁵

7. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the rules establish a base forfeiture amount of \$5,000 for the use of unauthorized equipment.¹⁶ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “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.”¹⁷

8. As noted above, the Station has apparently operated with an unauthorized antenna from January 31, 2018, until the present. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture for this apparent violation of section 73.845 of the rules from the base amount to \$2,500 because, as an LPFM station, the Station is providing a secondary service.¹⁸

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, that pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s rules, that Sumarrase, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of two thousand five hundred dollars (\$2,500) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and section 73.845 of the Commission’s rules.

10. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission’s rules, that, within thirty (30) days of the release date of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, Sumarrase, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission’s online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are

¹² 47 U.S.C. § 312(f)(1).

¹³ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁴ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

¹⁵ 47 U.S.C. § 312(f)(2).

¹⁶ *The Commission’s Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), Table 1.

¹⁷ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(10).

¹⁸ See, e.g., *Corning Christian Radio Corporation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1084 (MB Oct. 12, 2022); *Virginia Center for Public Press*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 9312 (MB 2019) (each reducing forfeiture for untimely filed renewal application for LPFM station due to secondary service status); *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (MB 2021) (reducing base forfeiture amount as station provided a secondary service).

instructions that payors should follow based on the form of payment selected:

- 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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, 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 Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. 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 “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

12. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules. The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to Amy.Vandekerckhove@fcc.gov will assist in processing the response.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

14. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Sumarrase, Inc., 3507 Lee Blvd., Suite 254, Lehigh Acres, Florida 33971.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau