

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

In the Matter of	)	
	)	
	)	NAL/Acct. No. 815DV0002
Taco Time	)	
Rock Springs, WY 82901	)	

**MEMORANDUM OPINION AND ORDER**

Adopted: November 24, 1999

Released: November 29, 1999

By the Chief, Enforcement Bureau:

1. Before the Enforcement Bureau ("the Bureau") is the March 11, 1999 letter from Lee Staley ("Mr. Staley") filed in response to the *Forfeiture Order* in this proceeding.<sup>1</sup> Pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules ("the Rules"), 47 C.F.R. § 1.80, the Director, Legal Services Group, of the former Compliance and Information Bureau found Taco Time Restaurant ("Taco Time") liable for a monetary forfeiture in the amount of \$11,000 for willful and repeated violations of Section 301 of the Act, 47 U.S.C. § 301. For purposes of review, Mr. Staley's letter will be considered as a petition for reconsideration under Section 1.106 of the Rules, 47 C.F.R. § 1.106. For the reasons discussed below, we deny the petition for reconsideration and affirm the monetary forfeiture in the amount of \$11,000.

**BACKGROUND**

2. Prompted by a complaint, the Commission's Denver, Colorado Field Office monitored and identified Taco Time's radio transmissions on Private Land Mobile Radio Service frequency 154.54 MHz on April 10, 1998. Upon inspection of the station by FCC agents of the Denver Field Office, employees of Taco Time were unable to produce a valid FCC authorization for their transmissions on 154.54 MHz, or for any other frequency. Taco Time was warned verbally to cease all unlicensed radio operations and instructed to obtain the appropriate FCC license before recommencing radio activities. A letter was sent to Taco Time on May 18, 1998, via certified mail, return receipt requested, informing Taco Time that the unlicensed operation on 154.54 MHz violated Section 301 of the Act. The letter requested a written response by May 26, 1998, and instructed Taco Time to discontinue the unlicensed operation immediately. The return receipt notification indicated that Taco Time received the warning letter on May 20, 1998, but no written response to the letter was ever received. A subsequent investigation by FCC agents on May 22, 1998, found that Taco Time was conducting radio transmissions on 154.51 MHz, and again found that Taco Time's employees were unable to produce a valid FCC license authorizing such radio transmissions. On May 26, 1998, the Denver Field Office contacted Mr. Staley, an owner of Taco Time, about the unlicensed radio use. Mr. Staley admitted that Taco Time had continued to operate the radio system, but was unable to provide any evidence of authority for its operation on either 154.54 MHz or 154.51 MHz.

3. Based on the above, on June 19, 1998, the District Director of the Denver Field Office issued an NAL in the amount of \$11,000 to Taco Time for repeated violations of Section 301 of the Act. In his written response to the NAL, Mr. Staley admitted that Taco Time had used the radio system without a license even after it was warned not to do so, but claimed to have subsequently obtained an FCC Form 572,

<sup>1</sup> 14 FCC Rcd 2907 (Compl. & Inf. Bur. 1999).

Temporary Permit to Operate a Part 90 Radio Station, on May 30, 1998. Mr. Staley also asserted that an \$11,000 fine would be an overwhelming hardship to his business.

4. In affirming the forfeiture amount, it was noted in the *Forfeiture Order* that Taco Time did not obtain a Temporary Permit for its operations until after the violations which formed the basis for the forfeiture had occurred, and that Taco Time had continued to operate the system despite being warned of its violation of the Act. The *Forfeiture Order* further noted that Taco Time had failed to submit proper documentation to support a reduction in the forfeiture amount based on an inability to pay.

#### DISCUSSION

5. In his March 11, 1999 letter requesting review of this case, Mr. Staley contends that (1) he did respond to the May 18 warning letter; (2) Taco Time was not trying to circumvent the rules by changing to a different frequency after being warned about its unlicensed operation; (3) the violations were not repeated; and (4) \$11,000 is an "extreme" fine for a violation he characterizes as "using an unlicensed transmitter with the power of a cordless telephone." In support thereof, Mr. Staley states that, in response to the Denver Field Office's May 18, 1998 warning letter, his father contacted the Denver Field Office by telephone on May 22, 1998, to discuss resolution of this matter. He further states that Taco Time switched operations from frequency 154.54 MHz to 154.51 MHz after the April 10, 1998 visit and warning because it had already submitted an application for the necessary license on 154.51 MHz, it needed the radio system for the restaurant's operations, and it sought to avoid causing interference on 154.54 MHz. He argues that the violations were not repeated because "there were only two" and, in both of those instances, the system was "immediately shut down" after receiving warnings from the Denver Field Office. In addition, Mr. Staley's letter attaches copies of Taco Time's corporate income tax returns for 1995, 1996 and 1997 in support of his claim that the \$11,000 forfeiture would impose a financial hardship on Taco Time.

6. Mr. Staley's arguments are without merit. Taco Time received the warning letter on May 20, 1998, and it did not respond in writing to that letter, as explicitly requested by the letter. Moreover, Mr. Staley's father did not contact the Denver Field Office by telephone concerning the violations until after an agent from the Denver Field Office had conducted a second inspection and again warned Taco Time about the violations on May 22, 1999. As noted in the *Forfeiture Order*, instead of ceasing its unlicensed operations as requested, Taco Time changed its radio operation to another frequency, for which it also had no license, despite repeated warnings that the frequencies must be licensed before use. Taco Time had a responsibility to ensure that it complied with the Rules for use of the radios prior to their operation on any frequency. That it continued to operate the radios without authorization, even after receiving oral and written warnings, is inexcusable. With regard to the claim that its violations were not repeated, Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), provides, in pertinent part: "The 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* ...." (Emphasis added.) As the record reflects and Mr. Staley's letter admits, the violations in this instance were found at Taco Time on two separate occasions.

7. Finally, we turn to the tax returns submitted in support of Taco Time's contention that paying an \$11,000 forfeiture would cause it financial hardship. The Commission has previously held that a licensee's gross revenues are generally the best indicator of its ability to pay a forfeiture. *See, e.g., PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (\$8,000 forfeiture deemed not excessive where it represented approximately 2.02% of violator's gross revenues of \$395,469). According to the tax returns submitted, Taco Time's gross revenues exceeded \$1.2 million in each of the three years presented, and both the 1996 and 1997 gross revenues increased over those of the previous year. An \$11,000 forfeiture is therefore not excessive, as it amounts to less than one percent of the gross revenues for each of the tax years presented.

**ORDERING CLAUSES**

8. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 1.106 of the Rules, Lee Staley's petition for reconsideration of the *Forfeiture Order* for NAL No. 815DV0002 **IS DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Taco Time must pay the amount of \$11,000 within thirty (30) days of the release date of this Order. Payment may be made by check or money order, drawn on an U.S. financial institution, payable to the Federal Communications Commission. Payment may also be made by credit card with the appropriate documentation.<sup>2</sup> The remittance should be marked "NAL Acct. No. 815DV0002" and mailed to the following address:

Federal Communications Commission  
P.O. Box 73482  
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days will be referred to the U.S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

10. **IT IS FURTHER ORDERED** that, a copy of this Order shall be sent certified mail, return-receipt requested, to Taco Time, 1641 Elk Street, Rock Springs, WY 82901.

FEDERAL COMMUNICATIONS COMMISSION



David H. Solomon  
Chief, Enforcement Bureau

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<sup>2</sup> Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Rules, 47 C.F.R. § 1.1914. Requests for installment plans should be mailed to: Chief, Credit and Debt Management Center, Mail Stop 1110A2, 445 Twelfth Street, S.W., Washington, D.C. 20554. For information regarding credit card payments, contact the Chief, Credit and Debt Management Center, at (202) 418-1995.