

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Mr. William Wayne)	File No.: EB-02-SD-015
Licensee, Paging Station WNGS721)	NAL/Acct. No.: 200232940005
1738 Highway 95)	FRN#: 0003-8004-22
Bullhead City, AZ 86430)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 17, 2002

By the Enforcement Bureau: San Diego Office

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Mr. William Wayne, the licensee of a Private Land Mobile radio paging station, WNGS721, in Lake Havasu City, Arizona is liable for a forfeiture, pursuant to Section 503(b) of the Communications Act of 1934,¹ as amended (“Act”), for apparently willfully violating Section 301 of the Act² and Section 1.903(a) of the Commission’s Rules and Regulations (“Rules”)³ by failing to obtain Commission approval prior to relocating station WNGS721 to the Island Inn Hotel, 1300 W. McCulloch Blvd., Lake Havasu City, Arizona. We conclude that Mr. William Wayne is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On January 29, 2002, an agent from the Federal Communications Commission’s (“FCC”) San Diego office was dispatched to the Lake Havasu, Arizona area to help resolve an interference matter to the radio system of the local fire-fighting service, the Desert Hills Fire Department (“Desert Hills”). The Desert Hills radio system which operates on frequency 154.130 MHz in the Public Safety radio service, was receiving interference at times from spurious emissions generated by a paging station in the downtown area of Lake Havasu City, Arizona. A check of the Commission

¹ 47 U.S.C. § 503(b).

² 47 U.S.C. § 301.

³ 47 C.F.R. § 1.903(a)

license records revealed no paging stations authorized in the downtown area of Lake Havasu City, Arizona. However, there was a licensee for frequency 152.480 MHz in the Lake Havasu City area under the individual name of Mr. William Wayne, at 4221 Colt Dr., Lake Havasu City, Arizona under call sign WNGS721, approximately six miles from the downtown area.

3. The FCC agent arrived in the Lake Havasu area and noted that a paging transmitter was operational on frequency 152.480 MHz in the downtown area of Lake Havasu City, Arizona. Using direction finding techniques the FCC agent located the paging station atop the Island Inn Hotel, 1300 W. McCulloch Blvd., Lake Havasu City, Arizona. The transmitter was also emitting low level spurious signals at 156.00 and 157.805 MHz. No spurious signals were noted at 154.130 MHz. Desert Hills was contacted and they reported no interference to their radio system at that time.

4. The next day on January 30, 2002, Mr. William Wayne was contacted by telephone at his business address in Bullhead City, Arizona by the FCC agent. Mr. Wayne was advised of the interference problems encountered by Desert Hills. Mr. Wayne admitted that the Island Inn Hotel paging station was his station. The FCC agent arranged to meet him and a service technician later that day at the transmitter site in order to conduct an inspection. During the inspection Mr. Wayne stated the transmitter for the 4221 Colt Dr. site was never installed and was instead placed into service at the Island Inn Hotel. Mr. Wayne said he had submitted an application to modify his station authorization but it had been returned as being defective and needed frequency coordination. Although his application had been rejected, Mr. Wayne stated he believed relocation without prior FCC approval was possible because the relocation site would not exceed the station's licensed interference contour. Mr. Wayne and the service technician ceased operating the transmitter and promised not to resume operation until FCC authority was received and the spurious signals were eliminated.

III. DISCUSSION

5. Paging station WNGS721 is authorized as a Private Land Mobile Radio ("PLMR") station and is subject to regulations under Part 90 of the Rules⁴. Mr. Wayne apparently mistakenly believed his paging station was subject to regulation under Part 22, Subpart E (Public Mobile Services – Paging & Radiotelephone Service) of the Rules.⁵ Paging licensees in the Public Mobile Service are granted exclusive use of a radio channel for a given area and may relocate transmitters that are not considered a major modification as defined in Section 1.949(c)(1) of the Rules⁶ without prior FCC approval. However, Mr. Wayne applied for a PLMR station under Part 90, not a Public Mobile Service station under Part 22. As a PLMR applicant, Mr. Wayne was required to contact a frequency advisory committee, as outlined in Section 90.175 of the Rules,⁷ in order to determine what impact the proposed station will have upon other users. The recommendation of the frequency

⁴ 47 C.F.R. Part 90.

⁵ 47 C.F.R. Part 22, Subpart E.

⁶ 47 C.F.R. § 1.949(c)(1).

⁷ 47 C.F.R. § 90.175.

advisory committee along with the proper FCC application form was submitted to the Commission, and Mr. Wayne received his PLMR paging authorization for station WNGS721.

6. As stated by Section 301 of the Act², a radio station is considered unlicensed if it has no authority to operate from the Commission. The 152.480 MHz paging station at 1300 W. McCulloch Blvd., Lake Havasu City, Arizona had no authority to operate from that location on January 30, 2002. Also, as stated under Section 1.929(c)(4)(v) of the Rules⁸, the relocation of a PLMR paging station is considered a major change. A FCC application along with a frequency coordination committee recommendation must be filed before the station may conditionally operate from the new location, as outlined under Section 90.159 of the Rules⁹. Following the inspection of WNGS721, Mr. Wayne filed the necessary application and on April 2, 2002 received a modified authorization. However, the granting of this application does not absolve Mr. Wayne of the responsibility to apply to the Commission *before* relocating the paging station. Mr. Wayne failed to comply with the terms and conditions of his license for PLMR station WNGS721 by substantially relocating it. We find Mr. Wayne willfully failed to comply fully with the provisions of the Act, rules and regulations issued by the Commission, and the terms of his license, and is therefore liable for a forfeiture penalty. It is not pertinent whether or not the licensee's actions or omissions were intended to violate the law or that any corrective actions have been made.

7. Based on the evidence before us, we find that on January 30, 2002, Mr. William Wayne willfully violated Section 301 of the Act² and Section 1.903(a) of the Rules³, by failing to obtain prior Commission approval to operate paging station WNGS721 at a new location, known as the Island Inn Hotel, 1300 W. McCulloch Blvd., Lake Havasu City, Arizona. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*,¹⁰ the base forfeiture amount for constructing and operating a radio station at an unauthorized location is \$4,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ In applying Section 1.80(b)(4)¹² of the Rules and the statutory factors to the instant case, we find no compelling evidence to support any adjustments to the base forfeiture amounts. Therefore, a total forfeiture in the amount of \$4,000 is warranted.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹³ Mr. William Wayne, is hereby NOTIFIED of

⁸ 47 C.F.R. § 1.929(c)(4)(v).

⁹ 47 C.F.R. § 90.159

¹⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 C.F.R. § 1.80(b)(4).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

his APPARENT LIABILITY FOR A FORFEITURE in the amount of four thousand dollars (\$4,000) for violating Section 301 of the Communications Act of 1934, as amended and Section 1.903(a) of the Commission's Rules and Regulations.¹⁴

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Mr. William Wayne, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Account No. 200232940005 and FRN # 0003-8004-22.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, DC 20554 and MUST INCLUDE THE NAL/Acct. No. 200232940005.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operation Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

IT IS FURTHER ORDERED THAT this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail, return receipt requested, to Mr. William Wayne, 1738 Highway 95, Bullhead City, AZ 86430.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears Jr.
District Director
San Diego Office

¹⁴ 47 C.F.R. §§ 11.35(a) and 11.61.

¹⁵ 47 C.F.R. § 1.1914.