

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

In the Matter of	)	
	)	File No. EB-03-DV-020
Echonet Corporation	)	
	)	NAL/Acct. No. 200332800011
Television Translator	)	
Station K49AY	)	FRN 0008379216
Cheyenne, Wyoming	)	

**FORFEITURE ORDER**

**Adopted:** December 17, 2004

**Released:** December 21, 2004

By the Assistant Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Echonet Corporation for repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).<sup>1</sup> The noted violation involves Echonet’s repeated operation of a television broadcast translator station without Commission authorization.

**II. BACKGROUND**

2. On October 22, 2002, an agent from the FCC's Denver Office received information that a television translator was operating on channel 49 in Cheyenne, Wyoming, without a valid FCC station license. The agent monitored transmissions on channel 49 in Cheyenne from October 22 through October 24, 2002, and observed retransmitted broadcast television programming on the aural carrier frequency of 685.7545 MHz. On October 24, 2002, using direction finding techniques, the agent located the station's transmitter on the top floor of the Community First National Bank at 1800 Carey Avenue in Cheyenne, Wyoming. Evidence discovered during the inspection revealed Echonet as the station operator. Review of the FCC's databases revealed that Echonet held a license for K49AY, Facility ID 18475, granted on July 10, 1986, for a television translator at coordinates 41° 08' 04" north latitude and 104° 49' 02" west longitude. The license for K49AY expired on October 1, 1998. Further review on March 26, 2003, of the FCC's databases revealed no current license issued for a television translator station to operate on channel 49 in Cheyenne, Wyoming, and no pending application or renewal application for channel 49 in Cheyenne, Wyoming.

3. On April 3, 2003, the Denver Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Echonet in the amount of ten thousand dollars (\$10,000) for the apparent repeated violation of Section 301 of the Act.<sup>2</sup> In its response, Echonet does not argue that it held a valid license at the time the

<sup>1</sup>47 U.S.C. § 301.

<sup>2</sup>*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800011 (Enf. Bur., Denver Office, April 3, 2003).

*NAL* was issued. Instead, it argues that the failure to file a renewal application for the translator was inadvertent and the result of a mistake by individuals, other than Echonet, involved in a transaction concerning other assets and stations.<sup>3</sup> Echonet states that its act of operating the translator was not a willful or knowing violation of the Commission's Rules, that it has never been subject to a forfeiture action before, that it has no other assets other than the license and the equipment related to the license, and that for the last ten years the translator has been used to broadcast public interest programming in Spanish and other programming not available by broadcast in the community. For these reasons, Echonet requests that the forfeiture be retracted.

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Commission's Rules ("Rules"),<sup>5</sup> and *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) ("*Forfeiture Policy Statement*"). In examining Echonet's response, Section 503(b) of the Act requires that the Commission 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 other such matters as justice may require.<sup>6</sup>

5. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license. Echonet does not assert that it had a valid license during the more than four year period noted in the *NAL*, it only argues that its failure to renew the license was inadvertent and was not a willful or knowing violation of the Commission's Rules. We note that the Denver Office did not find any apparent willful violation by Echonet. Rather, it found that Echonet repeatedly violated Section 301. Because we find the violation to be repeated, we need not address Echonet's argument that the violation was not willful.<sup>7</sup>

6. Echonet also asks that we reconsider the forfeiture pursuant to Section 503(b)(2)(D) of the Act in the light most favorable to Echonet.<sup>8</sup> Taking these statutory factors into account, we note that Echonet had previously been licensed to operate translator K49AY, so this violation is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000.<sup>9</sup> In similar circumstances, where a licensee failed to file a timely renewal application and was apparently operating without authorization, the Commission reduced a proposed forfeiture for unauthorized

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<sup>3</sup>After the release of the *NAL*, Echonet filed a renewal application with the Commission which was accepted on July 28, 2003, and granted on October 30, 2003. See File No. BRTT-20030707ADV.

<sup>4</sup>47 U.S.C. § 503(b).

<sup>5</sup>47 C.F.R. § 1.80.

<sup>6</sup>47 U.S.C. § 503(b)(2)(D).

<sup>7</sup>See Section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1) (violator liable for forfeiture if violation is willful or repeated).

<sup>8</sup>47 U.S.C. § 503(b)(2)(D).

<sup>9</sup>See, e.g., *Joe L. Ford, d/b/a Ford Communications*, 15 FCC Rcd 23721 (E.B. 2000).

operation to \$5,000.<sup>10</sup> Consequently, we reduce Echonet's forfeiture amount to \$5,000.

7. Echonet also states that it has no assets other than the license and equipment of the station, however, it provides no additional information or documentation supporting this statement. Absent submission of supporting financial documentation, we cannot assess a violator's inability to pay and we will not reduce or cancel a forfeiture on these grounds.<sup>11</sup> Finally, in support of its request for reduction, Echonet states that it has never been subject to a forfeiture action. We have reviewed our records and we find no instances of Echonet's having received a forfeiture or violation notice. Consequently, we reduce Echonet's forfeiture amount by an additional \$1,000.

8. We have examined Echonet's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Echonet repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture is warranted, given the circumstances surrounding Echonet's unauthorized operation and its compliance record with the Commission's Rules. Accordingly, the forfeiture amount is reduced from ten thousand dollars (\$10,000) to four thousand dollars (\$4,000).

#### IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules,<sup>12</sup> Echonet Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for repeatedly violating Section 301 of the Act.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>13</sup> Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. The payment should note NAL/Acct. No. 200332700027, and FRN 0009232976. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

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<sup>10</sup>*Discussion Radio Incorporated*, 19 FCC Rcd 7433, 7438 (2004). See, also, *Gateway Security Systems, Inc., Jamaica, NY*, (2003 WL 22717864) (DA 03-3660) (EB 2003).

<sup>11</sup>See *Webnet Communications, Inc.*, 18 FCC Rcd 6870 (2003). We also reject Echonet's contention that its unauthorized operation caused no harm, but actually served the public interest. See *AGM-Nevada LLC*, 18 FCC Rcd 1476, 1478-1479 (E.B. 2003) (concluding that "the absence of interference or any showing of harm to the public interest does not entitle AGM to a reduction of the proposed forfeiture").

<sup>12</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>13</sup>47 U.S.C. § 504(a).

<sup>14</sup>See 47 C.F.R. § 1.1914.

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Echonet Corporation, 400 Inverness Parkway, Suite 250, Englewood, Colorado, 80112.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon  
Assistant Chief, Enforcement Bureau