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

In the Matter of	)	
	)	
Colorado Callcomm, Inc.	)	File No. EB-00-TS-017
Trunked Business Station	)	
Denver, CO	)	NAL/Acct. No. 915DV0014

FORFEITURE ORDER

Adopted: May 31, 2000 **Released: June 1, 2000**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of ten thousand dollars ($10,000) against Colorado Callcomm, Inc. ("Callcomm")[1] for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended ("Act").[2] The noted violations involve Callcomm's operation of an unlicensed radio station near Plainview, Colorado.

2. On September 22, 1999, the Commission's Denver, Colorado Field Office ("Field Office") issued a Notice of Apparent Liability for Forfeiture ("NAL") to Callcomm in the amount of eleven thousand dollars ($11,000) for the noted violations.[3] Callcomm filed a response on October 22, 1999.

II. BACKGROUND

3. In late 1998, FCC agents from the Field Office and other Commission field offices investigated complaints regarding noncompliant operation and use of the 800 and 900 MHz frequency bands in the Denver, Colorado area. On September 23 and 24, 1998, Field Office agents met with John Gazzo, Callcomm's owner, and, on September 24, 1998,[4] inspected the 900 MHz trunked radio system that he managed and serviced at Eldorado Mountain, near Plainview, Jefferson County, Colorado ("Eldorado Mountain").[5]

4. While inspecting the 900 MHz trunked radio system at the Eldorado Mountain site, the FCC

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[1] The Commission's Denver, Colorado Field Office issued the Notice of Liability for Forfeiture ("NAL") to "Callcom, Inc," to which "Colorado Callcomm, Inc." responded. Opposition to NAL at 1.

[2] 47 U.S.C. § 301.

[3] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 915DV0014 (Compl. & Inf. Bur., Denver, Colo. Field Office, rel. Sept. 22, 1999).

[4] In the NAL, the Field Office mistakenly refers to the inspection date as September 23, 1998.

[5] The trunked radio system inspected was WPDX937.

agents inspected a transmitter operating on 937.0944 MHz for which Mr. Gazzo was unable to provide any FCC authorization. According to Mr. Gazzo, the 900 MHz trunked radio system, of which the transmitter operating on 937.0944 MHz was a part, had been in use at Eldorado Mountain since March of 1994.

5. An FCC agent searched the Commission's wireless license database and determined that the Commission had not authorized anyone to operate a radio station on 937.0944 MHz or the nearest FCC specified channels of 937.0875 MHz and 937.1000 MHz from Eldorado Mountain.

6. As noted above, on September 22, 1999, the Field Office issued an $11,000 NAL to Callcomm for willfully and repeatedly operating an unlicensed radio station on 937.0944 MHz at the Eldorado Mountain site. In its response to the NAL, Callcomm argues that, because it is not the licensee of the transmitter operating on 937.0944 MHz, issuance of the NAL without procedural notice is improper. Callcomm responds further that either the FCC agents improperly measured the transmitter operating on 937.0944 MHz, or the transmitter malfunctioned, which, in the case of the latter event, means that Callcomm could not have "willfully" violated Section 301 of the Act. Assuming that Callcomm is the licensee and the FCC agents properly measured the transmitter operating on 937.0944 MHz, Callcomm contends that the Field Office should have cited it for operating on the "wrong frequency assignment" and not for unlicensed operation. In seeking mitigation of the NAL, Callcomm argues that the $11,000 forfeiture is not consistent with forfeiture amounts previously assessed by the Commission for similar violations and that it is entitled to a reduction of the forfeiture amount as a "small business" subject to the Small Business Regulatory Enforcement Fairness Act ("SBREFA").

III. DISCUSSION

7. Callcomm initially responds to the NAL by stating that because it "is not the licensee of the transmitter located on Eldorado Mountain,"[6] the Field Office should have followed the dictates of Section 503(b)(5) of the Act and Section 1.80(d) of the Commission's Rules ("Rules"), for non-Commission licensees, prior to issuing the NAL. Specifically, Callcomm states that the Field Office should have given it a citation of the violation charged, a reasonable opportunity for a personal interview at the Field Office closest to Callcomm, and an opportunity to cure the violation before it issued the NAL.[7] However, Callcomm overlooks the rest of Section 503(b)(5) of the Act and Section 1.80(d) of the Rules, which provide that the provisions relating to a citation, an interview, and an opportunity to cure the violation shall not apply "if the person involved is engaging in activities for which a license, permit, certificate, or other authorization is required. . . ."[8] Callcomm needed a Commission authorization to operate the transmitter on 937.0944 MHz from Eldorado Mountain,[9] therefore, a citation, an interview, and an opportunity to cure the violation were not required prior to the Field Office's issuance of the NAL. *Andrew R. Yoder*, 9 FCC Rcd 6827, 6930 (1994).

8. Callcomm next responds that the FCC agents improperly measured the transmitter operating on 937.0944 MHz, which Callcomm claims the manufacturer pre-programmed to access only Commission specified channels.[10] However, Callcomm provides no proof to refute the FCC agents' findings, and ignores the

[6] Opposition to the NAL at 2.

[7] *See* 47 U.S.C. § 503(b)(5); 47 C.F.R. § 1.80(d).

[8] *Id.*

[10] The closest authorized channels to 937.0944 MHz are 937.0875 MHz and 937.1000 MHz. 47 C.F.R. § 90.613.

fact that the FCC agents' measurements correctly showed that several of the other transmitters in the 900 MHz trunked radio system were operating on their Commission authorized frequencies.

9. Assuming that the transmitter malfunctioned, which Callcomm discounts as unlikely, Callcomm contends that its operation on 937.0944 MHz could not have been "willful," as defined in Section 312(f) of the Act,[11] because "if the transmitter operated on the [f]requency, it was without Callcomm's knowledge."[12] Callcomm is mistaken on this point. We find that Callcomm, as the manager and service provider of the system, willfully operated a transmitter from the Eldorado Mountain site since March of 1994 without Commission authorization. As the operator of the system, it should have been aware of all frequencies associated with the system, and possessed the authorization for each of the system's associated frequencies. Whether the transmitter malfunctioned and operated on 937.0944 MHz *or any other frequency* is only relevant to the extent that Callcomm held no Commission authorization to operate the transmitter. In other words, had the transmitter been operating on a Commission specified channel, *see* 47 C.F.R. § 90.613, Callcomm would still be liable unless it could produce a Commission authorization for the transmitter or point to a person or entity licensed to use the transmitter. Moreover, Callcomm's failure to comply is also repeated.[13]

10. Callcomm's last response to the NAL is that the Field Office improperly charged it with violating Section 301 of the Act without showing that it (or the actual licensee, if one existed) held no authorization for operating the 900 MHz trunked radio system at the Eldorado Mountain site. The proper charge, Callcomm alleges, is operating transmitting equipment on the wrong frequency assignment, which would have merited a $4,000 base forfeiture amount. However, without Callcomm's submission of a license or other authorization for the transmitter operating on 937.0944 MHz, we must conclude that Callcomm was operating an unlicensed radio station.

11. Although Callcomm asserts that the Field Office erred in its issuance of the NAL, it also seeks a mitigation of the forfeiture amount. In support of mitigation, Callcomm cites other forfeiture cases involving Section 301 of the Act in support of its position that the forfeiture amount here departs from precedent by exceeding the amount levied in more egregious cases. Contrary to the base amount specified in the NAL ($11,000), the base forfeiture amount for operation without an instrument of authorization for the service is $10,000.[14] Accordingly, we will reduce the forfeiture amount to $10,000.

12. Callcomm does not invoke any of the Commission's specified downward adjustment criteria for Section 503 forfeitures (e.g., minor violation, good faith or voluntary disclosure, history of overall compliance,

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[11] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

[12] Opposition to NAL at 3 n.5.

[13] *See* Section 503(b)(1)(B), 47 U.S.C. § 503(b)(1)(B); *see also Hale Broadcasting Corp.*, 79 FCC 2d 169, 171 (1980).

[14] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b), note to paragraph b(4), *Section I.—Base Amounts for Section 503 Forfeitures*.

and inability to pay) and presents no analysis related to the same for our consideration. Instead, Callcomm directs us to three other NAL proceedings involving Section 301 of the Act in which the former Compliance and Information Bureau proposed lower forfeitures than the base amount, *Angel N. Padilla d/b/a Mega Page*, 14 FCC Rcd 4518 (Compl. & Inf. Bur. 1999) ($6,000 forfeiture); *Domingo Del Valle*, 14 FCC Rcd 5464 (Compl. & Inf. Bur. 1999) ($6,000 forfeiture); and *Jeffrey G. Guss*, 13 FCC Rcd 20,368 (Compl. & Inf. Bur. 1998) ($2,500 forfeiture). Leaving aside the correctness of those decisions, the Commission's base forfeiture amount for operation without a license is $10,000. Based on the nature of Callcomm's willful and repeated violation of Section 301 of the Act in this case, we find that the $10,000 forfeiture amount is consistent with Section 503(b)(2)(D) of the Act and the Commission's guidelines set forth in its *Forfeiture Policy Statement.* Moreover, as noted above, Callcomm makes no claim, and offers no proof, as to how any of the Commission's specified downward adjustment criteria for Section 503 forfeitures apply to the facts of this case.

13. Callcomm avers that, under SBREFA, it qualifies as a small business because it is a "start-up firm, independently owned and operated, and is not dominant in its field of operation."[15] Callcomm further argues that its qualification as a small business entity requires the Commission, pursuant to SBREFA, to "provide for reduction or waiver of penalties. . . ." The Commission, through its *Forfeiture Policy Statement*, has already considered its obligations under SBREFA and enunciated the appropriate guidance for upward and downward adjustments to forfeitures, as provided by SBREFA. *See Jerry Szoka*, 14 FCC Rcd 9857, 9866 (1999), *recon. denied* 14 FCC Rcd 20147 (1999). Using this guidance, we do not find that Callcomm is entitled to a further reduction or cancellation of the forfeiture amount.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,[16] and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,[17] Colorado Callcomm, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars ($10,000) for willfully and repeatedly violating Section 301 of the Act.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules,[18] 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.[19] Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995, or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 915DV0014 referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.[20]

[15] *See* 15 U.S.C. § 632(a)(1).

[16] 47 U.S.C. § 503(b).

[17] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[18] 47 C.F.R. § 1.80.

[19] 47 U.S.C. § 504(a).

[20] *See* 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that, a copy of this Order shall be sent by Certified Mail Return Receipt Requested to Russell H. Fox, Esq. and Russ Taylor, Esq., Gardner, Carton & Douglas, 1301 K Street, N.W., East Tower, Washington D.C. 20005-3317, and Colorado Callcomm, Inc., 7000 North Broadway, Building 2, Suite 203, Denver, Colorado 80221.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau