

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

In the Matter of)	
)	
Sandra J. Gizzo)	File No. EB-00-TS-014
)	
Station WNLR864)	NAL/Acct. No. 915DV0012
Denver, CO)	
)	

FORFEITURE ORDER

Adopted: July 6, 2000

Released: July 7, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to Sandra J. Gizzo for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”),¹ and former Section 90.113 of the Commission’s Rules (“Rules”).² The noted violations involve Ms. Gizzo’s operation of radio transmitting equipment from an unauthorized location.

2. On September 22, 1999, the Commission’s Denver, Colorado, Field Office (“Denver Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) to Sandra J. Gizzo for a forfeiture in the amount of twelve thousand dollars (\$12,000).³ Ms. Gizzo filed a response to the NAL on October 22, 1999.

II. BACKGROUND

3. On September 23, 1998, FCC agents from the Denver Office were investigating complaints regarding noncompliant operation and use of 800 MHz and 900 MHz frequencies in the Denver area. As part of the investigation, FCC agents accompanied John Gazzo, President of Callcom, Inc. (“Callcom”), to Squaw Mountain in Idaho Springs, Colorado, to inspect a 900 MHz trunked radio

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 90.113. Effective February 12, 1999, Section 90.113 of the Rules was incorporated into Section 1.903(a) of the Rules, 47 C.F.R. § 1.903(a). See *In the Matter of the Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, 13 FCC Rcd 21027 (1998). Since Section 90.113 of the Rules was applicable at the time the violations were noted, that section was referenced in the NAL.

³ *Notice of Apparent Liability*, NAL/Acct. No. 915DV0012 (Compl. & Inf. Bur., Denver Office, released September 22, 1999).

system managed and serviced by Callcom. Mr. Gazzo identified the radio transmitting equipment under the management of Callcom at Squaw Mountain. Measurements taken by the agents confirmed that one of the operating transmitters in the trunked radio system was transmitting on 938.1100 MHz. Mr. Gazzo indicated that this transmitter had been placed into operation on June 1, 1998, and provided FCC call sign WNLR864 as authorization for operation of the transmitter at Squaw Mountain.

4. On September 23, 1998, FCC agents also inspected 900 MHz radio transmitting equipment managed by Callcom at Republic Plaza, located at 370 17th Street in Denver, Colorado. Mr. Gazzo identified the radio transmitting equipment under the management of Callcom at Republic Plaza. Measurements taken by the agents confirmed that two of the operating transmitters in the trunked radio system were transmitting on 938.0500 MHz and 938.1000 MHz. Mr. Gazzo indicated these transmitters had been placed into operation on June 1, 1998, and provided FCC call sign WNLR864 as authorization for operation of these transmitters at Republic Plaza.

5. A search of Commission records revealed that Station WNLR864 is licensed to Sandra J. Gizzo. The license for Station WNLR864 authorizes the placement of transmitters operating on 938.0500 MHz, 938.1000 MHz and 938.1125 MHz⁴ at Eldorado Mountain, located near Plainview, Colorado. During an inspection of the Eldorado Mountain site on September 23, 1998, no transmitter was found by the FCC agents capable of operating on the frequencies 938.0500 MHz, 938.1000 MHz and 938.1125 MHz. The distance between Eldorado Mountain, the authorized location of the 938.1125 MHz transmitter, and Squaw Mountain, the actual location, is approximately 20 miles. Similarly, the distance between Eldorado Mountain, the authorized location of the 938.0500 MHz and 938.1000 MHz transmitters, and Republic Plaza, the actual location, is approximately 20 miles.

6. On September 22, 1999, the District Director of the Denver Office issued the subject NAL to Sandra J. Gizzo for operating radio transmitting equipment on 938.0500 MHz, 938.1000 MHz and 938.1125 MHz at unauthorized locations in willful and repeated violation of Section 301 of the Act and former Section 90.113 of the Rules. The NAL indicated that a \$12,000 forfeiture is appropriate because the Commission's *Forfeiture Policy Statement*⁵ provides for a base forfeiture amount of \$4,000 for each frequency operated at an unauthorized location. On October 22, 1999, the Commission received Ms. Gizzo's response to the NAL, which seeks rescission or reduction of the forfeiture. Ms. Gizzo argues that the NAL erred in imposing a forfeiture because Station WNLR864 is a Specialized Mobile Radio ("SMR") Service station, not a trunked business radio station as stated in the NAL. Ms. Gizzo asserts that under Section 90.667 of the Rules,⁶ the licensee of an SMR station is permitted to modify or add new transmitter sites without securing prior FCC approval or modifying its license. In addition, Ms. Gizzo

⁴ The NAL erroneously stated that the license for Station WNLR864 authorizes the placement of a transmitter on 938.1100 MHz at Eldorado Mountain. The actual licensed frequency is 938.1125 MHz. During the September 23, 1998 inspection, measurements taken by the FCC agents showed that the transmitter at the Squaw Mountain site was operating at that time on 938.1100 MHz. To avoid confusion, we will refer hereafter to the licensed frequency for the transmitter operating at the Squaw Mountain site, 938.1125 MHz, rather than the frequency as measured at the time of the September 23, 1998 inspection.

⁵ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 C.F.R. § 90.667.

argues that if a forfeiture is imposed, the forfeiture amount should be reduced because the NAL erred in assessing a forfeiture for “construction or operation at an unauthorized location” on a per frequency basis. Finally, Ms. Gizzo argues that she is entitled to a reduction of the forfeiture amount as a “small business” under the Small Business Regulatory Enforcement Fairness Act (“SBREFA”). Ms. Gizzo provides copies of her federal income tax returns for 1996, 1997 and 1998 in support of this argument.

III. DISCUSSION

7. Section 301 of the Act prohibits radio operation “except under and in accordance with this Act and with a license in that behalf granted under the provision of this Act.”⁷ Former Section 90.113 of the Rules provided that stations in the Land Mobile Radio Services must be operated in accordance with a proper authorization granted by the Commission.⁸

8. Ms. Gizzo argues that the NAL was erroneous because Station WNLR864 is an SMR station and under Section 90.667 of the Rules, the licensee of an SMR station may modify or add new transmitter sites without securing prior FCC approval or modifying its license. Section 90.667(a) of the Rules provides that an SMR licensee’s service area “shall be defined by its originally-licensed 40 dBu field strength contour” and permits incumbent SMR licensees “to add new or modify transmit sites in this existing service area without prior notification to the Commission so long as their original 40 dBu field strength contour is not expanded.”⁹ Ms. Gizzo did not provide any information or analysis to support her claim that operation of the transmitters on 938.0500 MHz and 938.1000 MHz at the Republic Plaza site and on 938.1125 MHz at the Squaw Mountain site is authorized under Section 90.667(a) of the Rules. Analysis by Commission staff shows that operation of the transmitters on 938.0500 MHz and 938.1000 MHz at the Republic Plaza site expands the original 40 dBu contour of Station WNLR864 only negligibly. However, the Squaw Mountain site is not even within the originally-licensed 40 dBu contour of Station WNLR864. Transmissions on 938.1125 MHz at this site start beyond the original 40 dBu contour of Station WNLR864 and expand the contour significantly. Accordingly, operation of the transmitter on 938.1125 MHz at the Squaw Mountain site is not authorized under Section 90.667(a) of the Rules.

9. We find that the operation of the transmitter on 938.1125 MHz from the unauthorized Squaw Mountain site was in willful and repeated violation of Section 301 of the Act and former Section 90.113 of the Rules.¹⁰ The Commission has set \$4,000 as the base forfeiture amount for construction or operation at an unauthorized location.¹¹ Given that the expansion of the 40 dBu contour of Station WNLR864 from the Republic Plaza site is negligible, we conclude that no forfeiture is warranted for the

⁷ 47 U.S.C. § 301.

⁸ 47 C.F.R. § 90.113.

⁹ 47 C.F.R. § 90.667(a).

¹⁰ The word “willfully” as employed in Section 503 of the Act does not require that the violation in question be intentional. It is necessary only that a licensee knew that it was doing the act in question. *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991) and Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which applies to Section 503 of the Act.

¹¹ *Forfeiture Policy Statement*, 12 FCC Rcd at 17114; 47 C.F.R. § 1.80(b), note to paragraph (b)(4), *Section I. – Base Amounts for Section 503 Forfeitures*.

operation of the transmitters on 938.0500 MHz and 938.1000 MHz at the Republic Plaza site. Instead, we admonish Ms. Gizzo for operation of the transmitters on 938.0500 and 938.1000 MHz at the unauthorized Republic Plaza site. Accordingly, we reduce the \$12,000 forfeiture set forth in the NAL to the \$4,000 base forfeiture amount. Ms. Gizzo argues that if a forfeiture is imposed, the forfeiture amount should be reduced because the NAL erred in assessing the forfeiture on a per frequency basis. Because we are reducing the original forfeiture amount to the base forfeiture amount for only one of the frequencies associated with Station WNLR864, this argument is moot and requires no further discussion. However, as explained below, we conclude that Ms. Gizzo has justified a reduction of the base forfeiture amount in light of her inability to pay.

10. Ms. Gizzo argues that, under SBREFA, she is entitled to reduction of the forfeiture amount as a small business. The Commission, through its *Forfeiture Policy Statement*, Section 503(b) of the Act, and Section 1.80(b) of the Rules, has already considered its obligations under SBREFA and enunciated the appropriate guidelines for upward and downward adjustment of forfeitures. *See Jerry Szoka*, 14 FCC Rcd 9857, 9866 (1999), *recon. denied*, 14 FCC Rcd 20147 (1999). Under these guidelines, we consider a licensee's ability to pay as a relevant factor in assessing forfeitures. Our review of Ms. Gizzo's tax returns¹² leads us to conclude that the forfeiture should be further reduced from the \$4,000 base forfeiture amount to \$2,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹³ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ Sandra J. Gizzo, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for operation of a transmitter on 938.1125 MHz at an unauthorized location in willful and repeated violation of Section 301 of the Act and former Section 90.113 of the Rules.

12. **IT IS FURTHER ORDERED** that Sandra J. Gizzo **IS ADMONISHED** for operation of transmitters on 938.500 MHz and 938.1000 MHz at an unauthorized location in willful and repeated violation of Section 301 of the Act and former Section 90.113 of the Rules.

13. **IT IS FURTHER ORDERED** that Sandra J. Gizzo's request for confidentiality **IS GRANTED**, and that the financial documents submitted with her response to the NAL **SHALL BE KEPT CONFIDENTIAL** pursuant to Sections 0.457(d) and 0.459 of the Rules.

¹² Ms. Gizzo requests that her tax returns be afforded confidential treatment pursuant to Section 0.457(d) and 0.459 of the Rules, 47 C.F.R. §§ 0.457(d) and 0.459. We grant this request.

¹³ 47 U.S.C. § 503(b).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

14. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by Certified Mail Return Receipt Requested to Sandra J. Gizzo, 3661 Maryland Parkway, Suite 41, Las Vegas, Nevada 89109, and to her counsel, Russell H. Fox, Gardner, Carton & Douglas, 1301 K Street, N.W., Suite 900, Washington, D.C. 20005-3317.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau