

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

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| In the Matter of |) | |
| |) | |
| C5 Communications, LLC |) | File No. EB-06-IH-2019 |
| |) | NAL Account No. 200732080001 |
| Applicant for Special Temporary Authority to |) | FRN No. 0014170831 |
| Operate a 1.0 meter Ku-Band Earth Station |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 19, 2006

Released: October 20, 2006

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that C5 Communications, LLC, ("C5 Communications" or the "Company"), Applicant for Special Temporary Authority to Operate a 1.0 meter Ku-Band Earth Station, apparently violated Section 1.17 of the Federal Communications Commission's (the "Commission" or "FCC") rules¹ by twice using a false name to certify the accuracy of certain matters to the Commission in an application for Special Temporary Authority ("STA").² For the reasons explained below, we conclude that C5 Communications is apparently liable for a forfeiture in the amount of seventeen thousand five hundred dollars (\$17,500).

II. BACKGROUND

2. On October 25, 2005, and November 4, 2005, C5 Communications electronically filed two STA applications to operate a 1.0 meter Ku-Band earth station (the "Applications").³ Each Application was signed with an electronic signature, purportedly by an individual named "Noel Imitz."⁴ The Applications were denied by letters from the Commission, dated November 2, 2005, and January 23, 2006.⁵

3. On April 18, 2006, C5 Communications voluntarily reported to the Commission via electronic mail that the name "Noel Imitz" was a pseudonym, and not the name of any actual person employed by the Company and/or authorized to sign on behalf of the Company.⁶ In the e-mail, C5

¹ See 47 C.F.R. § 1.17.

² See SES-STA-20051025 and SES-STA-20051107-01528.

³ See *id.*

⁴ See SES-STA-20051025 at 3 and SES-STA-20051107-01528 at 3.

⁵ See Letter from Scott A. Kotler, Chief, Systems Branch, Satellite Division, International Bureau, Federal Communications Commission, to Noel Imitz, C5 Communications, LLC, dated November 2, 2005. See also Letter from Scott A. Kotler, Chief, Systems Branch, Satellite Division, International Bureau, Federal Communications Commission, to Noel Imitz, C5 Communications, LLC, dated January 23, 2006.

⁶ See Email from Eric Smith, Chief Operating Officer, C5 Communications, to Scott Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau, FCC, dated April 18, 2006 (on file with Satellite Division).

Communications explained that, prior to the Applications, the Company created the “personae” to respond to public inquires regarding engineering and support issues.⁷ According to Eric Smith, Chief Operating Officer of C5 Communications, use of the pseudonym on the Applications was not intended to deceive the Commission.⁸

III. DISCUSSION

4. Based on our review of the record, we find that C5 Communications apparently violated Section 1.17 of the Commission’s rules by using a false name and, thereby, making erroneous certifications to the Commission.⁹ This rule provides in pertinent part:

(a) In any investigatory or adjudicatory matter within the Commission’s jurisdiction. . . no [Applicant for any Commission authorization] shall . . .

* * * *

(2) in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.¹⁰

5. Courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”¹¹ Misrepresentation and lack of candor raise immediate concerns as to whether a licensee will be truthful in future dealings with the Commission.¹² In this case, it is fundamental that the Commission know the identity of an individual who is certifying to the truthfulness of matters contained in an application. The Commission has explained that an original signature on an application is critical because “[t]he original signature requirement provides assurance that the applicant has personally reviewed the application and can be held responsible for the truthfulness and accuracy of the

⁷ *See id.* C5 Communications explained that the name “Noel Imitz” was a derivative of the term “no limits.” C5 Communications also created a website with a similar moniker (www.noelimitz.com) to be used in responding to engineering and support questions on behalf of the Company.

⁸ *See id.*

⁹ *See* 47 C.F.R. § 1.17.

¹⁰ *Id.*

¹¹ *See Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). *See also Policy Regarding Character Qualifications in Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentation to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1210-11, ¶ 60 (1986) (“*Character Policy Statement*”), *recon. denied*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom., National Ass’n for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987).

¹² *See Character Policy Statement*, 102 FCC 2d at 1210-11 ¶ 60 (“The Commission is authorized to treat even the most insignificant misrepresentation as disqualifying.”). A false certification may also constitute a misrepresentation. *See, e.g., San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, ¶ 19 n. 40-41 (2004), Initial Decision, FCC 06D-01 (ALJ April 7, 2006). *See also FCC v. WOKO, Inc.*, 329 U.S. 223, 227 (1946) (“The fact of concealment may be more significant than the facts concealed. The willingness to deceive a regulatory body may be disclosed by immaterial and useless deceptions as well as by material and persuasive ones. We do not think it is an answer to say that the deception was unnecessary and served no purpose.”); *Fox River Broadcasting, Inc.*, Order, BC Dkt. No. 80-310, 93 FCC 2d 127, 129(1983) (“Our concern with misrepresentation and lack of candor stems from the necessity of relying on licensees’ representations to the Commission.”).

statements therein."¹³ While C5 Communications asserts that it did not intend to deceive the Commission by its use of a false name, applicable precedent is clear that the submission of false information with knowledge of its falsity demonstrates fraudulent intent.¹⁴ Indeed, C5's culpability is further demonstrated by its disregard for the express language of the FCC Form 312 STA Applications it filed, which state directly below the signature block that "Willful False Statements Made On This Form Are Punishable by Fine and/or Imprisonment."¹⁵ Despite this clear warning, C5 Communications misled the Commission by submitting two applications under a fictitious name.

6. Section 503(b)(1) of the Communications Act of 1934, as amended,¹⁶ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁷ The term "willful" as used in Section 503(b)(1) has been interpreted to mean "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁸ The term "repeated" means that the action was committed or omitted more than once, or lasts more than one day.¹⁹ Based on the evidence before us, we find that C5 Communications willfully and repeatedly used a fictitious name to certify to the accuracy of information in an application, in violation of Section 1.17 of the Commission's rules.

7. Pursuant to Section 1.80 of the Commission's rules,²⁰ the base forfeiture amount for misrepresentations or lack of candor to the Commission is the statutory maximum, or, in this case, eleven thousand dollars (\$11,000).²¹ Section 1.80(b)(4) of the Commission's rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²²

¹³ See *Hardrock Concrete Placement Company*, Memorandum Opinion and Order, 16 FCC Rcd 2593, 2595-96 (2001); see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4706 (1991). We note that Section 25.110(e) of the Commission's rules provides that, while electronic signatures are to be transmitted to the Commission, applicants are required to print out and sign applications, and retain the originals in their files. 47 C.F.R. § 25.110(e).

¹⁴ "[T]he fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity [is] enough to justify a conclusion that there was fraudulent intent." *Leflore Broadcasting Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980).

¹⁵ See FCC Form 312, citing 18 U.S.C. § 1001.

¹⁶ See 47 U.S.C. § 503(b)(1).

¹⁷ See *id.*

¹⁸ 47 U.S.C. § 312(f)(1). The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, and the Commission has so interpreted the term in the Section 503(b) context. See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

¹⁹ *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability, 16 FCC Rcd 1359, 1362 ¶ 9 (2001).

²⁰ See 47 C.F.R. § 1.80.

²¹ See 47 U.S.C. § 503(b)(2)(C) (setting forth the statutory maximum forfeiture for non-broadcast licensees). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. See *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum forfeiture amounts for non-broadcast licensees from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum forfeiture amounts from \$11,000/\$87,500 to \$11,000/\$97,500).

²² 47 C.F.R. § 1.80(b)(4).

The Commission takes very seriously the requirement that applicants and licensees provide truthful and accurate information to the Commission at all times. This includes, without exception, providing the name of the person who is attesting to the accuracy of the information in an application.²³ If we proposed a forfeiture assessing the base amount of \$11,000 for each violation in this case, C5 Communications would face a \$22,000 forfeiture. We note, however, that C5 Communications voluntarily disclosed this violation. Accordingly, a reasonable reduction in the proposed forfeiture is appropriate here.²⁴ Under these circumstances, we believe that forfeiture in the amount of \$17,500 is warranted.

IV. ORDERING CLAUSES

8. 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 of the Commission's Rules, C5 Communications, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$17,500 for willfully violating Section 1.17 of the Commission's rules.

9. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's rules, within 30 days of the release date of this *Notice of Apparent Liability for Forfeiture*, C5 Communications, LLC 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 must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and FRN No. referenced in the caption. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

11. IT IS FURTHER ORDERED that the response, if any, shall be mailed to William H. Davenport, Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

12. IT IS FURTHER ORDERED that the Commission shall not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent'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.

²³ See note 18 *supra*.

²⁴ See 47 C.F.R. § 1.80(b)(4); see, e.g., *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3926, ¶ 11 (Enf. Bur. 2006); *Gilmore Broadcasting Corporation Evansville, Indiana*, Notice of Apparent Liability, 21 FCC Rcd 6284 (Enf. Bur. 2006) (downwardly adjusting the proposed aggregate forfeiture based on the target's history of compliance and prompt and voluntary disclosure of its violations); see also, e.g., *Emery Telephone*, 13 FCC Rcd 23854, ¶¶ 5, 10 (1998), *recon denied*, 15 FCC Rcd 7181 (1999) (reducing an aggregate forfeiture amount from \$12,000 to \$6,000 for failure to file operation notifications because carrier voluntarily disclosed the six violations and promptly filed the forms after discovering its mistake, but declining to reduce two other forfeitures for lack of voluntary disclosure); *Victoria Cellular Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 7853, 7854, ¶¶ 10-11 (1992) (reducing a proposed forfeiture from \$15,000 to \$6,000 for notification and filing violations because the carrier made a voluntary disclosure, by bringing the violation to the Commission's attention).

13. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²⁵

14. IT IS FURTHER ORDERED that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail - Return Receipt Requested, and regular mail, to the licensee.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau

²⁵ See 47 C.F.R. § 1.1914.