

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

In the Matter of)	
)	
WWC License LLC)	File No. EB-00-TS-283
Licensee of Microwave Stations WPJE660)	
WPJD256 and WPJA761)	NAL/Acct. No. 200132100014
Kansas)	

FORFEITURE ORDER

Adopted: November 5, 2001

Released: November 7, 2001

By the 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 WWC License LLC (“*WWC*”) for willful and repeated violations of Section 301 of the Communications Act of 1934, as amended (“*Act*”)¹ and Section 101.31 of the Commission’s Rules (“*Rules*”).² The noted violations involve *WWC*’s operation of microwave radio stations WPJE660, WPJD256, and WPJA761 without Commission authorization.

2. On June 7, 2001, the Chief, Technical and Public Safety Division, Enforcement Bureau issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of five thousand dollars (\$5,000).³ *WWC* filed a response to the *NAL* on July 6, 2001.

II. BACKGROUND

3. On March 9, 2000, *WWC* submitted applications to operate fixed microwave radio stations WPJE660, WPJD256, and WPJA761. Thereafter, *WWC* began operating the stations pursuant to Section 101.31(b)(1) of the Rules.⁴ On June 29, 2000, the Commission returned the applications because the bandwidth *WWC* requested exceeded the maximum allowed for the operating frequency, and requested the submission of amendments and waiver requests to operate with the bandwidth *WWC* sought. *WWC* submitted an application for Special Temporary Authority (“*STA*”) on August 10, 2000. The Wireless Telecommunications Bureau granted *WWC*’s *STA* request on August 29, 2000, and granted the amended applications and associated waiver requests on October 10, 2000. *WWC* continued to operate the subject microwave stations from June 29, 2000 to August 29, 2000.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 101.31.

³ *WWC License LLC*, 16 FCC Rcd 11914 (Enforcement Bureau, 2001).

⁴ 47 C.F.R. § 101.31(b)(1).

4. On June 7, 2001, the Chief, Technical and Public Safety Division, Enforcement Bureau issued the subject *NAL* to WWC for operating the microwave stations during the period June 29, 2000, to August 29, 2000, without a valid license in willful and repeated violation of Section 301 of the Act and Section 101.31 of the Rules.

5. In its response, WWC asserts that the Commission should rescind the proposed forfeiture. WWC acknowledges that during the period June 29, 2000, to August 29, 2000, it continued to operate its facilities, but argues that its operations were lawful because they were under color of conditional operating authority.⁵ WWC states that when it first submitted its applications, it believed that it had fulfilled all of the Commission's requirements to operate under conditional authority. WWC argues that under the Commission's rules, conditional authority ceases only if an application is returned as unacceptable for filing,⁶ and there is no separate provision for the cessation of conditional authority if the application is returned for amendment. WWC claims that although the return notice stated that the applications were being returned, it did not "clearly articulate" that WWC would no longer be eligible for conditional authority. WWC argues that under the Administrative Procedure Act, the Commission must provide adequate written notice before conditional authority can be revoked.⁷ WWC states that it believed that it retained conditional authority even after return of its applications.

6. WWC asserts that its alleged violation was minor because the Commission found its offense was not comparable to intentional unlicensed operation. In support of this assertion WWC points out that compared to other forfeiture notices the operation in question was of more limited duration, under less clear notice that the operation was unauthorized, and in violation of a relatively minor rule requiring only a waiver request.⁸ WWC claims that there was no harm to the public or other Commission licensees during the period that it operated the stations. Indeed, WWC asserts, the public would have been adversely affected by termination of the conditional authority as the subject stations were being operated to support valuable services. WWC opines that the public interest was best served by WWC continuing to provide its critical services to the public. Consequently, WWC argues that even if the Commission had properly put WWC on notice that its conditional authority had ceased, the issuance of a forfeiture in this

⁵ 47 C.F.R. § 101.31(b).

⁶ 47 C.F.R. § 101.31(b)(2).

⁷ 5 U.S.C. § 558(c). In support of its argument, WWC cites *Blackwell College of Business v. Attorney General*, 454 F.2d 928 (D.C. Cir. 1971) ("*Blackwell*") and *Contel Cellular of Nashville, Inc.*, 14 FCC Rcd 6302 (1999) ("*Contel*").

⁸ *Verizon Florida, Inc.*, 16 FCC Rcd 2590 (Enforcement Bureau, 2001) ("*Verizon Florida*") (issuing a Notice of Apparent Liability for Forfeiture for \$5,000 for operating a paging station without authorization for one year and four months); *Verizon Southwest, Inc.*, 16 FCC Rcd 2247 (Enforcement Bureau, 2001) ("*Verizon Southwest*") (issuing a Notice of Apparent Liability for Forfeiture for \$5,000 for operating an air-ground system without authorization for six months); *Califormula, Inc.*, 16 FCC Rcd 3057 (Enforcement Bureau, 2001) ("*Califormula*") (imposing \$10,000 forfeiture for operating a microwave radio station without conditional authority), *recon. granted in part* 16 FCC Rcd 15087 (reducing forfeiture to \$6,000); *Central Illinois Public Service Company*, 15 FCC Rcd 1750 (1999) (issuing a Notice of Apparent Liability for Forfeiture for \$30,000 for substantially transferring control of 88 microwave stations without authorization); *Florida Power and Light Co.*, 14 FCC Rcd 7199 (Wireless Telecommunications Bureau, 1999) (issuing a Notice of Apparent Liability for Forfeiture for \$14,000 for operating seven microwave stations after expiration of the licenses for five months).

case suggests that carriers must choose between seriously prejudicing the public by shutting down facilities that are not causing any harm, or risk being subjected to a forfeiture.

III. DISCUSSION

7. As the *NAL* states, the forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ 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). In examining WWC'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.¹¹

8. Under Section 301 of the Act, all radio transmissions within the United States must be licensed by the Commission. Section 101.31(b)(1) of the Rules sets forth eight specific criteria that an applicant for a new point-to-point microwave radio station must meet to qualify for conditional authorization. In situations where these criteria are satisfied, the applicant may operate the station during the pendency of the application. One of these eight criteria is set forth in Section 101.31(b)(1)(iii) of the Rules¹² and provides that an applicant may operate pursuant to conditional authority if grant of the application does not require a waiver of the Commission's rules. As indicated earlier, WWC needed a waiver to operate at the requested bandwidth.¹³ Thus, WWC failed to meet one of the eight criteria provided in Section 101.31(b), and consequently, WWC's microwave radio stations WPJE660, WPJD256, and WPJA761 did not qualify for conditional authorization when it filed its applications with the Commission. *See Califormula, Inc.*, 16 FCC Rcd 3057 (Enforcement Bureau, 2001), *recon. granted in part* 16 FCC Rcd 15087 (Enforcement Bureau, 2001). Since under the Commission's rules, WWC never had conditional authority to operate, its arguments regarding the status of its conditional authority once the Commission's staff returned its applications are irrelevant.

9. WWC is correct, as the *NAL* notes, that the unauthorized operation was not comparable to intentional unlicensed operation. We recognized this fact in setting the forfeiture amount proposed in the *NAL*. The base forfeiture amount for operation without an instrument of authorization is \$10,000.¹⁴ Here, the *NAL* issued a forfeiture amount of only \$5,000. The unauthorized operation in this case was not as egregious as that of a "pirate" operator. For this reason, we have not treated WWC's unauthorized operation the same as a "pirate" operation, and the amount of the proposed forfeiture reflected this fact. However, in view of WWC's short period of unlicensed operation, we will reduce the forfeiture amount to \$4,000. In this regard, we note that the forfeiture amount is lower than all of the cases cited by WWC.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 C.F.R. § 101.31(b)(1)(iii).

¹³ 47 C.F.R. §§ 101.109 and 101.147.

¹⁴ *See* note to 47 C.F.R. § 1.80(b)(4).

10. We find unpersuasive WWC's arguments that the stations were being operated to support valuable services and no harm resulted. Notwithstanding the services WWC may have provided, this does not change our finding that WWC violated our rules by operating the subject stations without Commission authorization.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,¹⁵ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ WWC License LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for operation of microwave radio stations WPJE660, WPJD256, and WPJA761 without a valid license in willful and repeated violation of Section 301 of Act and Section 101.31 of the Rules.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules¹⁷ 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.¹⁸ Payment shall be made 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 the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁹

13. **IT IS FURTHER ORDERED** that, a copy of this *Order* shall be sent by Certified Mail, Return Receipt Requested, to WWC License LLC 3650 131st Ave., S.E. Suite 400, Bellevue, Washington 98006 and to its counsel, Michael Deuel Sullivan, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, NW, Suite 700, Washington, DC 20037-1128.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁵ 47 U.S.C. § 503(b).

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

¹⁷ 47 C.F.R. § 1.80.

¹⁸ 47 U.S.C. § 504(a).

¹⁹ See 47 C.F.R. § 1.1914.